

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1020**

Introduced by Fox, 7; Campbell, 25; Ebke, 32; Gloor, 35; Lindstrom, 18;  
Scheer, 19; Williams, 36.

Read first time January 19, 2016

Committee:

1 A BILL FOR AN ACT relating to the Nebraska Condominium Act; to amend  
2 sections 76-854 and 76-861, Reissue Revised Statutes of Nebraska; to  
3 provide for amendments to declarations to correct scrivener's  
4 errors, omissions, or errors in the declaration; to harmonize  
5 provisions; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

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

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

17 (b) If there is a scrivener's error or an omission or error in the  
18 declaration, the association may correct the scrivener's error or the  
19 omission or error in such respects as may be required to correct the  
20 scrivener's error or in the case of the error or omission as may be  
21 required to conform to the Nebraska Condominium Act and any other  
22 applicable statute or to the declaration by a vote of two-thirds of the  
23 members of the executive board or by a majority vote of the unit owners  
24 at a meeting called for this purpose. If a scrivener's error or other  
25 error or omission as outlined in this subsection is corrected by a vote  
26 of two-thirds of the members of the executive board, the executive board,  
27 upon written petition of unit owners with twenty percent of the votes of  
28 the association filed within thirty days after the action of the  
29 executive board, shall call a meeting of the unit owners within thirty  
30 days after the filing of the petition to consider the action of the  
31 executive board. Unless a majority of the votes of the unit owners of the

1 association are cast at the meeting to reject the action, it is ratified  
2 whether or not a quorum is present.

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

6 (d e) Every amendment to the declaration must be recorded in every  
7 county in which any portion of the condominium is located and is  
8 effective only upon recordation.

9 (e d) Except to the extent expressly permitted or required by other  
10 provisions of the Nebraska Condominium Act, no amendment may create or  
11 increase special declarant rights, increase the number of units, or  
12 change the boundaries of any unit, the allocated interests of a unit, or  
13 the uses to which any unit is restricted in the absence of the unanimous  
14 consent of the unit owners.

15 (f e) Amendments to the declaration required by the act to be  
16 recorded by the association shall be prepared, executed, recorded, and  
17 certified on behalf of the association by any officer of the association  
18 designated for that purpose or, in the absence of designation, by the  
19 president of the association.

20 Sec. 2. Section 76-861, Reissue Revised Statutes of Nebraska, is  
21 amended to read:

22 76-861 (a) Except as provided in the declaration, the bylaws,  
23 subsection (b) of this section, or other provisions of sections 76-825 to  
24 76-894, the executive board may act in all instances on behalf of the  
25 association. In the performance of their duties, the officers and members  
26 of the executive board are required to exercise ordinary and reasonable  
27 care.

28 (b) The executive board may not act on behalf of the association to  
29 amend the declaration, except as provided in subsection (b) of ~~pursuant~~  
30 ~~to~~ section 76-854, to terminate the condominium pursuant to section  
31 76-855, or to elect members of the executive board or determine the

1 qualifications, powers and duties, or terms of office of executive board  
2 members pursuant to subsection (f) of this section, but the executive  
3 board may fill vacancies in its membership for the unexpired portion of  
4 any term.

5 (c) Within thirty days after adoption of any proposed budget for the  
6 condominium, the executive board shall provide a summary of the budget to  
7 all the unit owners, and shall set a date for a meeting of the unit  
8 owners to consider ratification of the budget not less than fourteen nor  
9 more than thirty days after mailing of the summary. Unless at that  
10 meeting a majority of all votes in the association or any larger vote  
11 specified in the declaration reject the budget, the budget is ratified,  
12 whether or not a quorum is present. In the event the proposed budget is  
13 rejected, the periodic budget last ratified by the unit owners shall be  
14 continued until such time as the unit owners ratify a subsequent budget  
15 proposed by the executive board.

16 (d) Subject to subsection (e) of this section, the declaration may  
17 provide for a period of declarant control of the association, during  
18 which period a declarant, or persons designated by him or her, may  
19 appoint and remove the officers and members of the executive board.  
20 Regardless of the period provided in the declaration, a period of  
21 declarant control terminates no later than the earlier of: (i) Sixty days  
22 after conveyance of ninety percent of the units which may be created to  
23 unit owners other than a declarant; or (ii) two years after all  
24 declarants have ceased to offer units for sale in the ordinary course of  
25 business. A declarant may voluntarily surrender the right to appoint and  
26 remove officers and members of the executive board before termination of  
27 that period, but in that event he or she may require, for the duration of  
28 the period of declarant control, that specified actions of the  
29 association or executive board, as described in a recorded instrument  
30 executed by the declarant, be approved by the declarant before they  
31 become effective. Successor boards following declarant control may not

1 discriminate nor act arbitrarily with respect to units still owned by a  
2 declarant or a successor declarant.

3 (e) Not later than sixty days after conveyance of twenty-five  
4 percent of the units which may be created to unit owners other than a  
5 declarant, at least one member and not less than twenty-five percent of  
6 the members of the executive board shall be elected exclusively by unit  
7 owners other than the declarant. Not later than sixty days after  
8 conveyance of fifty percent of the units which may be created to unit  
9 owners other than a declarant, not less than thirty-three and one-third  
10 percent of the members of the executive board shall be elected  
11 exclusively by unit owners other than the declarant.

12 (f) Not later than the termination of any period of declarant  
13 control, the unit owners shall elect an executive board of at least three  
14 members, at least a majority of whom must be unit owners. The executive  
15 board shall elect the officers. The executive board members and officers  
16 shall take office upon election.

17 (g) Notwithstanding any provision of the declaration or bylaws to  
18 the contrary, the unit owners, by a two-thirds vote of all persons  
19 present and entitled to vote at any meeting of the unit owners at which a  
20 quorum is present, may remove any member of the executive board with or  
21 without cause, other than a member appointed by the declarant.

22 Sec. 3. Original sections 76-854 and 76-861, Reissue Revised  
23 Statutes of Nebraska, are repealed.