

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 336**

Introduced by Harr, 8.

Read first time January 15, 2015

Committee: Banking, Commerce and Insurance

- 1 A BILL FOR AN ACT relating to real property; to amend sections 76-854,
- 2 76-855, 76-870, and 76-871, Reissue Revised Statutes of Nebraska; to
- 3 change provisions relating to the Nebraska Condominium Act; and to
- 4 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 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, or subsection (b) of section 76-855, and except as  
10 limited by subsection (d) of this section, the declaration, including the  
11 plats and plans, may be amended only by vote or agreement of unit owners  
12 of units to which at least sixty-seven percent of the votes in the  
13 association are allocated or any larger majority the declaration  
14 specifies. The declaration may specify a smaller number only if all of  
15 the units are restricted exclusively to nonresidential use.

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

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

22 (d) Except to the extent expressly permitted or required by other  
23 provisions of the Nebraska Condominium Act, no amendment may create or  
24 increase special declarant rights, ~~increase the number of units, or~~  
25 ~~change the boundaries of any unit, the allocated interests of a unit, or~~  
26 ~~the uses to which any unit is restricted~~ in the absence of the unanimous  
27 consent of the unit owners. In addition, no amendment may change the  
28 boundaries of any unit, the allocated interests of any unit, or the uses  
29 to which any unit is restricted without the consent of the owner of the  
30 unit.

31 (e) Amendments to the declaration required by the act to be recorded

1 by the association shall be prepared, executed, recorded, and certified  
2 on behalf of the association by any officer of the association designated  
3 for that purpose or, in the absence of designation, by the president of  
4 the association.

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

7 76-855 (a) Except in the case of a taking of all units by eminent  
8 domain as provided in section 76-831, a condominium may be terminated  
9 only by agreement of unit owners of units to which at least sixty-seven  
10 ~~eighty~~ percent of the votes in the association are allocated, or any  
11 larger percentage the declaration specifies. The declaration may specify  
12 a smaller percentage only if all of the units in the condominium are  
13 restricted exclusively to nonresidential uses.

14 (b) An agreement to terminate must be evidenced by the execution of  
15 a termination agreement, or ratifications thereof, in the same manner as  
16 a deed, by the requisite number of unit owners. The termination agreement  
17 must specify a date after which the agreement will be void unless it is  
18 recorded before that date. A termination agreement and all ratifications  
19 thereof must be recorded in every county in which a portion of the  
20 condominium is situated, and is effective only upon recordation.

21 (c) In the case of a condominium containing only units having  
22 horizontal boundaries described in the declaration, a termination  
23 agreement may provide that all the common elements and units of the  
24 condominium shall be sold following termination. If, pursuant to the  
25 agreement, any real estate in the condominium is to be sold following  
26 termination, the termination agreement must set forth the minimum terms  
27 of the sale.

28 (d) In the case of a condominium containing any units not having  
29 horizontal boundaries described in the declaration, a termination  
30 agreement may provide for sale of the common elements, but may not  
31 require that the units be sold following termination, unless the

1 declaration as originally recorded provided otherwise or unless all the  
2 unit owners consent to the sale.

3 (e) The association, on behalf of the unit owners, may contract for  
4 the sale of real estate in the condominium, but the contract is not  
5 binding on the unit owners until approved pursuant to subsections (a) and  
6 (b) of this section. If any real estate in the condominium is to be sold  
7 following termination, title to that real estate, upon termination, vests  
8 in the association as trustee for the holders of all interests in the  
9 units. Thereafter, the association has all powers necessary and  
10 appropriate to effect the sale. Until the sale has been concluded and the  
11 proceeds thereof distributed, the association continues in existence with  
12 all powers it had before termination. Proceeds of the sale must be  
13 distributed to unit owners and lienholders as their interests may appear,  
14 in proportion to the respective interests of unit owners as provided in  
15 subsection (h) of this section. Unless otherwise specified in the  
16 termination agreement, as long as the association holds title to the real  
17 estate, each unit owner and his or her successors in interest have an  
18 exclusive right to occupancy of the portion of the real estate that  
19 formerly constituted his or her unit. During the period of that  
20 occupancy, each unit owner and his or her successors in interest remain  
21 liable for all assessments and other obligations imposed on unit owners  
22 by sections 76-825 to 76-894 or the declaration.

23 (f) If the real estate constituting the condominium is not to be  
24 sold following termination, title to the common elements and, in a  
25 condominium containing only units having horizontal boundaries described  
26 in the declaration, title to all the real estate in the condominium,  
27 vests in the unit owners upon termination as tenants in common in  
28 proportion to their respective interests as provided in subsection (h) of  
29 this section, and liens on the units shift accordingly. While the tenancy  
30 in common exists, each unit owner and his or her successors in interest  
31 have an exclusive right to occupancy of the portion of the real estate

1 that formerly constituted his or her unit.

2 (g) Following termination of the condominium, the proceeds of any  
3 sale of real estate, together with the assets of the association, are  
4 held by the association as trustee for unit owners and holders of liens  
5 on the units as their interests may appear. Following termination,  
6 creditors of the association holding liens on the units, which were  
7 recorded before termination, may enforce those liens in the same manner  
8 as any lienholder. All other creditors of the association are to be  
9 treated as if they had perfected liens on the units immediately before  
10 termination.

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

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

25 (2) If any unit or any limited common element is destroyed to the  
26 extent that an appraisal of the fair market value thereof before  
27 destruction cannot be made, the interests of all unit owners are their  
28 respective common element interests immediately before the termination.

29 (i) Except as provided in subsection (j) of this section,  
30 foreclosure or enforcement of a lien or encumbrance against the entire  
31 condominium does not of itself terminate the condominium, and foreclosure

1 or enforcement of a lien or encumbrance against a portion of the  
2 condominium, other than withdrawable real estate, does not withdraw that  
3 portion from the condominium. Foreclosure or enforcement of a lien or  
4 encumbrance against withdrawable real estate does not of itself withdraw  
5 that real estate from the condominium, but the person taking title  
6 thereto has the right to require from the association, upon request, an  
7 amendment excluding the real estate from the condominium.

8 (j) If a lien or encumbrance against a portion of the real estate  
9 comprising the condominium has priority over the declaration, and the  
10 lien or encumbrance has not been partially released, and the parties  
11 foreclosing the lien or encumbrance have not assented to or are not  
12 joining the declaration establishing such condominium, such parties may  
13 upon foreclosure, record an instrument excluding the real estate subject  
14 to that lien or encumbrance from the condominium.

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

17 76-870 (a) Portions of the common elements may be conveyed or  
18 subjected to a security interest by the association if persons entitled  
19 to cast at least sixty-seven ~~eighty~~ percent of the votes in the  
20 association, including sixty-seven ~~eighty~~ percent of the votes allocated  
21 to units not owned by a declarant, or any larger percentage the  
22 declaration specifies, agree to that action; but all the owners of units  
23 to which any limited common element is allocated must agree in order to  
24 convey that limited common element or subject it to a security interest.  
25 The declaration may specify a smaller percentage only if all of the units  
26 are restricted exclusively to nonresidential uses. Proceeds of the sale  
27 are an asset of the association.

28 (b) An agreement to convey common elements or subject them to a  
29 security interest must be evidenced by the execution of an agreement, or  
30 ratifications thereof, in the same manner as a deed, by the requisite  
31 number of unit owners. The agreement must specify a date after which the

1 agreement will be void unless recorded before that date. The agreement  
2 and all ratifications thereof must be recorded in every county in which a  
3 portion of the condominium is situated and is effective only upon  
4 recordation.

5 (c) The association, on behalf of the unit owners, may contract to  
6 convey common elements or subject them to a security interest, but the  
7 contract is not enforceable against the association until approved  
8 pursuant to subsections (a) and (b) of this section. Thereafter, the  
9 association has all powers necessary and appropriate to effect the  
10 conveyance or encumbrance, including the power to execute deeds or other  
11 instruments.

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

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

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

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

22 76-871 (a) Commencing not later than the time of the first  
23 conveyance of a unit to a person other than a declarant, the association  
24 shall maintain, to the extent reasonably available:

25 (1) Property insurance on the property including the common elements  
26 insuring against all risks of direct physical loss commonly insured  
27 against or, in the case of a conversion building, against fire and  
28 extended coverage perils. The total amount of insurance after application  
29 of any deductibles shall be not less than eighty percent of the actual  
30 cash value of the insured property at the time the insurance is purchased  
31 and at each renewal date, exclusive of land, excavations, foundations,

1 and other items normally excluded from property policies; and

2 (2) Liability insurance, including medical payments insurance, in an  
3 amount determined by the executive board but not less than any amount  
4 specified in the declaration, covering all occurrences commonly insured  
5 against for death, bodily injury, and property damage arising out of or  
6 in connection with the use, ownership, or maintenance of the common  
7 elements.

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

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

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

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

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

27 (3) No act or omission by any unit owner, unless acting within the  
28 scope of his or her authority on behalf of the association, will void the  
29 policy or be a condition to recovery under the policy; and

30 (4) If, at the time of a loss under the policy there is other  
31 insurance in the name of a unit owner covering the same risk covered by



1 the policy, the association's policy provides primary insurance.

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

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

17 (g) An insurer that has issued an insurance policy under this  
18 section shall issue certificates or memoranda of insurance to the  
19 association and, upon written request, to any unit owner, mortgagee, or  
20 beneficiary under a deed of trust. The insurer issuing the policy may not  
21 cancel or refuse to renew it until thirty days after notice of the  
22 proposed cancellation or nonrenewal has been mailed to the association,  
23 each unit owner and each mortgagee or beneficiary under a deed of trust  
24 to whom a certificate or memorandum of insurance has been issued at their  
25 respective last-known addresses.

26 (h) Any portion of the condominium for which insurance is required  
27 under this section which is damaged or destroyed shall be repaired or  
28 replaced promptly by the association unless (i) the condominium is  
29 terminated, (ii) repair or replacement would be illegal under any state  
30 or local health or safety statute or ordinance, or (iii) sixty-seven  
31 ~~eighty~~ percent of the unit owners, including every owner of a unit or

1 assigned limited common element which will not be rebuilt, vote not to  
2 rebuild. The cost of repair or replacement in excess of insurance  
3 proceeds and reserves is a common expense. If the entire condominium is  
4 not repaired or replaced, (i) the insurance proceeds attributable to the  
5 damaged common elements must be used to restore the damaged area to a  
6 condition compatible with the remainder of the condominium, (ii) the  
7 insurance proceeds attributable to units and limited common elements  
8 which are not rebuilt must be distributed to the owners of those units  
9 and the owners of the units to which those limited common elements were  
10 allocated, or to lienholders, as their interests may appear, and (iii)  
11 the remainder of the proceeds must be distributed to all the unit owners  
12 or lienholders, as their interests may appear, in proportion to the  
13 common element interests of all the units. If the unit owners vote not to  
14 rebuild any unit, that unit's allocated interests are automatically  
15 reallocated upon the vote as if the unit had been condemned under  
16 subsection (a) of section 76-831, and the association promptly shall  
17 prepare, execute, and record an amendment to the declaration reflecting  
18 the reallocations. Notwithstanding the provisions of this subsection,  
19 section 76-855 governs the distribution of insurance proceeds if the  
20 condominium is terminated.

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

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