

AMENDMENTS TO LB304

Introduced by Urban Affairs.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Sections 1 to 5 of this act shall be known and may be
4 cited as the Municipal Custodianship for Dissolved Homeowners
5 Associations Act.

6 Sec. 2. For purposes of the Municipal Custodianship for Dissolved
7 Homeowners Associations Act, unless the context otherwise requires:

8 (1) Common area means lot or outlot within a plat or subdivision of
9 real property including the improvements thereon owned or otherwise
10 maintained, cared for, or administered by the homeowners association for
11 the common use, benefit, and enjoyment of its members;

12 (2) Homeowners association means a nonprofit corporation duly
13 incorporated under the laws of the State of Nebraska for the purpose of
14 enforcing the restrictive covenants established upon the real property
15 legally described in the articles of incorporation which is located
16 within the corporate limits of a municipality, each member of which is an
17 owner of a lot located within the plat or subdivision, and by virtue of
18 membership or ownership of a lot is obligated to pay costs for the
19 administration, maintenance, and care of the common area within the plat
20 or subdivision. Homeowners association includes associations of
21 residential homeowners, nonresidential property owners, or both;

22 (3) Lot means any designated parcel of land located within a plat or
23 subdivision to be separately owned, used, developed, or built upon;

24 (4) Member means an owner that is qualified to be a member of a
25 homeowners association by virtue of ownership of a lot covered by the
26 property described in the declaration and articles of incorporation of a
27 homeowners association dissolved under section 21-19,138;

1 (5) Municipality means any city or incorporated village of this
2 state;

3 (6) Owner means the owner of a lot within the plat or subdivision,
4 but does not include a person who has an interest in a lot solely as
5 security for an obligation; and

6 (7) Real property means the real property described in the articles
7 of incorporation which is located within or to be located within a plat
8 or subdivision approved by a municipality and which is subject to
9 restrictive covenants to be enforced by the homeowners association and
10 filed of record in the office of the register of deeds of the county in
11 which the real property is located.

12 Sec. 3. In the event a homeowners association is dissolved pursuant
13 to section 21-19,138 and not reinstated pursuant to the Nebraska
14 Nonprofit Corporation Act, any municipality may bring an action to be
15 appointed as custodian to manage the affairs of the homeowners
16 association as set forth in section 4 of this act.

17 Sec. 4. (1) The district court of the county in which a dissolved
18 homeowners association was previously existing shall, in a proceeding
19 brought by a municipality by petition to the district court, appoint the
20 municipality as custodian to manage the affairs of the homeowners
21 association upon a finding that:

22 (a) The homeowners association has been administratively dissolved
23 by the Secretary of State pursuant to section 21-19,138;

24 (b) The homeowners association has failed in one or more of the
25 following ways:

26 (i) To maintain the common area as required by the municipality's
27 conditions of approval for the plat or subdivision of real property;

28 (ii) To maintain the common area or private improvements located
29 outside of the common area on the real property in the plat or
30 subdivision in accordance with all terms and conditions of any agreement
31 with the municipality; or

1 (iii) To comply with any applicable laws, rules, or regulations
2 pertaining to maintenance of the common area or private improvements
3 located outside of the common area on the real property in the plat or
4 subdivision such that the noncompliance is adverse to the interests of
5 the municipality and may result in expenditures by the municipality not
6 otherwise required;

7 (c) The municipality has made a demand on the members to hold a
8 special meeting to remove and elect new directors and to approve a
9 submission of an application to the Secretary of State for reinstatement
10 pursuant to the Municipal Custodianship for Dissolved Homeowners
11 Associations Act or the Nebraska Nonprofit Corporation Act; and

12 (d) The members have failed to reinstate the homeowners association
13 within six months after the demand.

14 (2) The district court shall hold a hearing, after written
15 notification thereof by the petitioner to all parties to the proceeding
16 and any interested persons designated by the court, before appointing a
17 custodian, and the petitioner shall provide sufficient proof of service
18 to the court. Service by first-class mail shall be deemed sufficient
19 service. The district court appointing the custodian shall have exclusive
20 jurisdiction over the homeowners association and all of its property
21 wherever located.

22 (3) The district court shall describe the powers and duties of the
23 custodian in its appointing order, which order may be amended upon motion
24 and notice to the parties from time to time. Among other powers, the
25 appointing order shall provide that the custodian may exercise all of the
26 powers of the homeowners association, through or in place of its board of
27 directors or officers, to the extent necessary to manage the affairs of
28 the association in the best interests of its members. The custodian shall
29 not be liable for the actions or inactions of the homeowners association
30 and shall maintain all immunities granted to municipalities by applicable
31 law.

1 (4) Upon application of the custodian, the district court from time
2 to time during the custodianship may order compensation paid and expense
3 disbursements or reimbursements made to the custodian from the assets of
4 the association or proceeds from the sale of the assets. Notice of a
5 hearing to determine compensation and costs shall be provided to all
6 owners and interested parties by the custodian as set forth in subsection
7 (2) of this section, with proof of service provided by the custodian. In
8 the event the district court awards compensation or reimbursement of
9 costs, all such compensation and costs shall be a lien on each and all of
10 the lots in the manner as set forth in subsection (5) of this section.
11 Any court order awarding compensation or reimbursement of costs herein
12 shall identify each lot and the amount of compensation or reimbursement
13 of costs each lot shall be charged as a lien.

14 (5)(a) A lien created under subsection (4) of this section shall be
15 effective from the time the district court awards the compensation or
16 reimbursement of costs and a notice containing the dollar amount of the
17 lien is recorded in the office where mortgages or deeds of trust are
18 recorded. The lien may be foreclosed in like manner as a mortgage on real
19 estate but the municipality shall give reasonable notice of its action to
20 all other lienholders whose interest would be affected.

21 (b) A lien created under subsection (4) of this section is prior to
22 all other liens and encumbrances on real estate except (i) liens and
23 encumbrances recorded before the recordation of the declaration or
24 agreement, (ii) a first mortgage or deed of trust on real estate recorded
25 before the notice required under subdivision (5)(a) of this section has
26 been recorded, and (iii) liens for real estate taxes.

27 (6) In the event the homeowners association is reinstated after
28 appointment of a custodian, any interested party may make a request to
29 the district court for termination of the custodianship.

30 (7) A custodian may be allowed to withdraw from or terminate the
31 custodianship upon an order from the district court permitting such

1 withdrawal or termination following a hearing for which notice is
2 provided to all owners and interested parties by the custodian.

3 Sec. 5. (1) Notwithstanding any provision to the contrary in the
4 Nebraska Nonprofit Corporation Act or the articles of incorporation or
5 bylaws of a homeowners association, a homeowners association dissolved
6 pursuant to section 21-19,138 may, in addition to any other procedure
7 allowed by law, apply to the Secretary of State for reinstatement in one
8 or more of the following ways:

9 (a) An application for reinstatement may be brought at any time
10 after dissolution by an officer or director of the dissolved homeowners
11 association pursuant to section 21-19,139; or

12 (b) Three or more members of such homeowners association may, at any
13 time after dissolution, call a special meeting to (i) remove and elect
14 new directors and (ii) approve the submission of an application to the
15 Secretary of State for reinstatement. Such members may set the time and
16 place of the meeting. Notice of the meeting shall be given pursuant to
17 section 21-1955. For purposes of this section only and notwithstanding
18 the declaration, articles of incorporation, or the bylaws of a dissolved
19 homeowners association, action on matters described in this subsection
20 shall be approved by the affirmative vote of the voters present and
21 voting on the matter. Three members eligible to vote on the matter shall
22 constitute a quorum.

23 (2) Upon action being taken to apply for reinstatement as set forth
24 in subdivision (1)(a) or (b) of this section, the process for
25 reinstatement set forth in section 21-19,139 shall apply, except that the
26 reinstatement fee for a homeowners association dissolved more than five
27 years shall be one hundred dollars. Nothing in this subdivision shall be
28 construed to abolish, modify, or otherwise change any restrictive
29 covenant or other benefit or obligation of membership in a homeowners
30 association.

31 (3) The application for reinstatement must:

1 (a) Recite the name of the homeowners association and the effective
2 date of its administrative dissolution;

3 (b) State that the ground or grounds for dissolution either did not
4 exist or have been eliminated; and

5 (c) State that the homeowners association's name satisfies the
6 requirements of section 21-1931.

7 (4) If the Secretary of State determines that the application
8 contains the information required by subdivisions (1)(a) and (b) of this
9 section and that the information is correct, the Secretary of State shall
10 cancel the certificate of dissolution and prepare a certificate of
11 reinstatement reciting that determination and the effective date of
12 reinstatement, file the original of the certificate, and serve a copy on
13 the homeowners association under section 21-1937.

14 (5) When reinstatement is effective, the reinstatement shall relate
15 back to and take effect as of the effective date of the administrative
16 dissolution, and the homeowners association shall resume carrying on its
17 activities as if the administrative dissolution had never occurred.

18 Sec. 6. The Revisor of Statutes shall assign sections 1, 2, 3, 4,
19 and 5 of this act within Chapter 18.