

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 304

FINAL READING

Introduced by Hansen, 26.

Read first time January 15, 2015

Committee: Urban Affairs

- 1 A BILL FOR AN ACT relating to cities and villages; to adopt the Municipal
- 2 Custodianship for Dissolved Homeowners Associations Act; and to
- 3 provide a duty for the Revisor of Statutes.
- 4 Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

26 (5) Municipality means any city or incorporated village of this
27 state;

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

31 (7) Real property means the real property described in the articles

1 of incorporation which is located within or to be located within a plat
2 or subdivision approved by a municipality and which is subject to
3 restrictive covenants to be enforced by the homeowners association and
4 filed of record in the office of the register of deeds of the county in
5 which the real property is located.

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

11 Sec. 4. (1) The district court of the county in which a dissolved
12 homeowners association was previously existing shall, in a proceeding
13 brought by a municipality by petition to the district court, appoint the
14 municipality as custodian to manage the affairs of the homeowners
15 association upon a finding that:

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

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

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

22 (ii) To maintain the common area or private improvements located
23 outside of the common area on the real property in the plat or
24 subdivision in accordance with all terms and conditions of any agreement
25 with the municipality; or

26 (iii) To comply with any applicable laws, rules, or regulations
27 pertaining to maintenance of the common area or private improvements
28 located outside of the common area on the real property in the plat or
29 subdivision such that the noncompliance is adverse to the interests of
30 the municipality and may result in expenditures by the municipality not
31 otherwise required;

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

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

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

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

26 (4) Upon application of the custodian, the district court from time
27 to time during the custodianship may order compensation paid and expense
28 disbursements or reimbursements made to the custodian from the assets of
29 the association or proceeds from the sale of the assets. Notice of a
30 hearing to determine compensation and costs shall be provided to all
31 owners and interested parties by the custodian as set forth in subsection

1 (2) of this section, with proof of service provided by the custodian. In
2 the event the district court awards compensation or reimbursement of
3 costs, all such compensation and costs shall be a lien on each and all of
4 the lots in the manner as set forth in subsection (5) of this section.
5 Any court order awarding compensation or reimbursement of costs herein
6 shall identify each lot and the amount of compensation or reimbursement
7 of costs each lot shall be charged as a lien.

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

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

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

24 (7) A custodian may be allowed to withdraw from or terminate the
25 custodianship upon an order from the district court permitting such
26 withdrawal or termination following a hearing for which notice is
27 provided to all owners and interested parties by the custodian.

28 Sec. 5. (1) Notwithstanding any provision to the contrary in the
29 Nebraska Nonprofit Corporation Act or the articles of incorporation or
30 bylaws of a homeowners association, a homeowners association dissolved
31 pursuant to section 21-19,138 may, in addition to any other procedure

1 allowed by law, apply to the Secretary of State for reinstatement in one
2 or more of the following ways:

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

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

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

25 (3) The application for reinstatement must:

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

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

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

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

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

12 Sec. 6. The Revisor of Statutes shall assign sections 1 to 5 of
13 this act within Chapter 18.