

ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020

COMMITTEE STATEMENT

LB767

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**Hearing Date:** Tuesday February 11, 2020  
**Committee On:** Banking, Commerce and Insurance  
**Introducer:** Lindstrom  
**One Liner:** Change provisions on breach of warranty on improvements to real property and provisions under the Nebraska Condominium Act

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 8 Senators Gragert, Howard, Kolterman, La Grone, Lindstrom, McCollister, Quick, Williams  
**Nay:**  
**Absent:**  
**Present Not Voting:**

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**Oral Testimony:**

**Proponents:**

Senator Brett Lindstrom  
Robert Reynoldson  
Josh Moenning  
Scott Dobbie  
David Levy

**Representing:**

Introducer  
Associated General Contractors - NE Building Chapter  
City of Norfolk, Mayor  
Omaha by Design  
Noddle Companies

**Opponents:**

**Representing:**

**Neutral:**

Steven Willborn

**Representing:**

Nebraska Uniform Law Commission

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**Summary of purpose and/or changes:**

This bill will amend section 25-223 of the Civil Procedure Code and sections 76-842, 76-844, 76-854, 76-857, 76-859, 76-860, 76-861, 76-867, 76-869, 76-870, 76-884, and 76-890 of the Nebraska Condominium Act with regard to condominium projects. The bill would provide as follows:

Section 1 will amend section 25-223 of the Civil Procedure Code which provides a statute of limitations applying to builders and contractors making improvements to real property. This section currently provides that an action to recover damages based on an alleged breach of warranty or improvements to real property or based on an alleged deficiency in design, planning, supervision, or observation of construction, or construction of an improvement shall be commenced within four years after the alleged act or omission. The bill would change this time period from "four" years to "two" years. The bill would further provide that if the cause is not and could not be reasonably discovered within such time period then the cause of action may be commenced within "one year" rather "two years." Finally, the bill would reduce this section's period of repose from "ten" years to "five" years.

Section 2 will amend section 76-842 of the Nebraska Condominium Act to provide that the declaration for a condominium must contain, in the case of a project with more than four units, a plan prepared by a licensed engineer or

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architect for the preventive maintenance of the condominium and all common elements, including depreciation studies and reserve analyses, an annually updated five-year capital plan, and minimum financial reserves based on the reserve analysis.

Section 3 would amend section 76-844 of the Nebraska Condominium Act which currently provides, in subsection (a), that the declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. The bill would repeal immediately following language which provides that those allocations may not discriminate in favor of units owned by the declarant.

Section 4 will amend section 76-854 of the Nebraska Condominium Act which currently provides, in subsection (a), that, except for specified exceptions, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies. The bill would provide that the declaration may not specify a larger majority greater than eighty percent of the votes in the association. The bill would further provide, in subsection (d), that no amendment to the declaration may change the boundaries of any unit, increase the allocated interest of any unit, or change the uses to which any unit is restricted, without the consent of the owner of the unit.

Section 5 will amend section 76-857 of the Nebraska Condominium Act to provide that in no case shall the declaration provide that the power to institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners, be delegated to or exercised by any party other than the unit owners.

Section 6 will amend section 76-859 of the Nebraska Condominium Act to provide that a unit owners association must be organized no later than the date the "units" in the condominium "equal to one-half of the total number of units plus one are" conveyed rather than the date the "first unit" in the condominium "is" conveyed.

Section 7 will amend section 76-860 of the Nebraska Condominium Act which currently provides that a unit owners association may institute, "defend," or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. The bill would provide that a unit owners association may institute or intervene "as a plaintiff" in litigation or administrative proceedings, "other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners," in its own name on behalf of itself or two or more unit owners on matters affecting the condominium "upon the affirmative vote of at least ninety percent of the votes in the association."

Section 8 will amend section 76-861 of the Nebraska Condominium Act to provide, in subsection (b), that the executive board of the unit owners association may not act on behalf of the association to "commence litigation on behalf of the association or unit owners." The bill would provide, in subsection (e), that not later than sixty days after conveyance of "fifty" rather than "twenty-five" percent of the units which may be created to unit owners other than the declarant, at least one member and not less than twenty-five percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant. The bill would repeal immediately following language which provides that "not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the executive board shall be elected exclusively by unit owners other than the declarant."

Section 9 will amend section 76-867 of the Nebraska Condominium Act to provide that, unless the bylaws provide otherwise, a quorum for a meeting of a unit owners association is "thirty-five" percent rather than "twenty" percent of the votes which may be cast for election of the executive board of the unit owners association.

Section 10 will amend section 76-867 of the Nebraska Condominium Act which provides that the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. This section further provides that the declarant who then controlled the association is liable to the association or to any unit owner "(i) For all tort losses not covered by insurance suffered by the association on that unit owner, and

(ii) for "all" costs "which" the association would not have incurred but for a breach of contract or other "wrongful" act or omission. The bill would amend this language to provide that the declarant who then controlled association is liable to the association or to any unit owner "only" for costs the association would not have incurred but for a breach of contract or other "negligent" act or omission "by the declarant". The bill would repeal immediately following language which provides that "Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorney's fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates."

Section 11 will amend section 76-870 of the Nebraska Condominium Act to provide that portions of the common elements may be "encumbered" rather than "conveyed" or subjected to a security interest by the association if persons entitled to cast at least "sixty-seven" percent rather than "eighty" percent of the votes in the association, including "sixty-seven" percent rather than "eighty" percent of the votes allocated to units not owned by the declarant, or any larger percentage the declaration specifies, agrees to that action.

Section 12 will amend section 76-884 of the Nebraska Condominium Act to provide that upon resale of a unit the information furnished to a prospective purchaser shall include "a disclosure of any threatened or pending litigation involving the unit or the association."

Section 13 will amend section 76-890 of the Nebraska Condominium Act to provide that a judicial proceeding for breach of any warranty obligation must be commenced within "two" years rather than "four" years after the cause of action accrues, but the parties may agree to reduce the period of limitation to not less than "one year" rather than "two years". The bill would further amend this section to provide that "prior to commencing any judicial proceeding under this section, the person seeking to commence the judicial proceeding must: (1) Provide written notice of the proposed proceeding to the prospective defendant or defendants; (2) give the prospective defendant or defendants at least six months to cure the alleged defect or defects; and (3) submit the matter to mediation before a disinterested, professional, third-party mediator. If the defect or defects are such that they cannot reasonably be cured within six months, the cure period shall extend as long as the prospective defendant has commenced and is diligently proceeding with repairs. Any proceeding commenced without strict compliance with this section is subject to dismissal for such noncompliance."

Section 14 will provide for repeal of amendatory sections.

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**Explanation of amendments:**

The committee amendments would make the following changes:

The committee amendments would change section 1 to amend section 25-223 to provide that the proposed reductions in statutes of limitations and repose apply only with regard to improvements to real property subject to the Nebraska Condominium Act.

The committee amendments would change section 2 to amend section 76-842 to provide that a declaration for a condominium must contain a preventive maintenance plan in the case of a project with more than "fifteen" units instead of "four" units.

The committee amendments would change section 4 to amend section 76-854 which currently provides that, except for specified exceptions, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated or any larger majority the declaration specifies. The bill would provide that the declaration may not specify a larger majority greater than eighty percent of the votes in the association. The committee amendments would provide that the declaration may not specify a larger majority greater than eighty percent of the votes in the association "exclusive of the declarant."

The committee amendments would change section 5 to amend section 76-857 which would provide that in no case shall the declaration provide that the power to institute or intervene as a plaintiff in litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners, be delegated to or exercised by any party other than the unit

owners. The committee amendments would provide that in no case shall the declaration provide that the power to institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners "or the unit owners association," be delegated to or exercised by any party other than the unit owners "or the declarant."

The committee amendments would change section 7 to amend section 76-860 which would provide that a unit owners association may institute or intervene "as a plaintiff" in litigation or administrative proceedings, "other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners," in its own name on behalf of itself or two or more unit owners on matters affecting the condominium "upon the affirmative vote of at least ninety percent of the votes in the association." The committee amendments would provide that a unit owners association may institute or intervene as a plaintiff in litigation or administrative proceedings, other than litigation or administrative proceedings to enforce covenants, bylaws, or rules against unit owners "or the unit owners association," in its our name or behalf of itself or two or more unit owners on matters affecting the condominium upon the affirmative vote of at least "eighty" percent instead of "ninety" percent of the votes of the association "exclusive of the declarant."

The committee amendments would change section 8 to amend section 76-861 to correct terminology in subsection (b).

The committee amendments would change section 11 to amend section 76-870 which would provide that common elements may be "encumbered" but no longer "conveyed" by the unit owners association. The committee amendments would provide that common elements may be encumbered as well as conveyed by the unit owners association.

The committee amendments would change section 13 to amend section 76-890 which provides that prior to commencing judicial proceedings for breach of any warranty obligation, the person seeking to commence the judicial proceedings must: (1) provide written notice of the proposed proceedings to the prospective defendant or defendants; (2) give the prospective defendant or defendants at least six months to cure the alleged defect or defects; and (3) submit the matter to mediation before a disinterested, professional, third-party mediator. The committee amendments would provide that the written notice must set out the specific alleged defect or defects. The committee amendments would reduce the cure period from "six" months to "three" months. The committee would eliminate the mediation requirements. Finally the committee amendments would provide that providing the notice shall toll any applicable statute of limitations until the alleged defect or defects are cured.

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Matt Williams, Chairperson