

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 304

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) City means any city or incorporated village of this state;

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

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

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

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

27 (6) Real property means the real property described in the articles
28 of incorporation which is located within or to be located within a plat
29 or subdivision approved by a city and which is subject to restrictive
30 covenants to be enforced by the homeowners association and filed of
31 record in the office of the register of deeds of the county in which the

1 real property is located.

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

7 Sec. 4. (1) The district court of the county in which a dissolved
8 homeowners association was previously existing shall, in a proceeding
9 brought by a city by petition to the district court, appoint the city as
10 custodian to manage the affairs of the homeowners association upon a
11 finding that:

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

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

16 (i) To maintain the common area as required by the city conditions
17 of approval for the plat or subdivision of real property;

18 (ii) To maintain the common area or private improvements located
19 outside of the common area on the real property in the plat or
20 subdivision in accordance with all terms and conditions of any agreement
21 with the city; or

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

28 (c) The city has plat or subdivision authority jurisdiction over the
29 real property in the plat or subdivision;

30 (d) The city has made a demand on the members to hold a special
31 meeting to remove and elect new directors and to approve a submittal of

1 an application to the Secretary of State for reinstatement pursuant to
2 the Nebraska Nonprofit Corporation Act; and

3 (e) The members have failed to reinstate the homeowners association
4 within six months after the demand.

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

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

22 (4) The district court from time to time during the custodianship
23 may order compensation paid and expense disbursements or reimbursements
24 made to the custodian from the assets of the association or proceeds from
25 the sale of the assets. Notice of a hearing to determine compensation and
26 costs shall be provided to all owners and interested parties by the
27 custodian. In the event the district court awards compensation or
28 reimbursement of costs, all such compensation and costs shall be a lien
29 on each and all of the lots in the same manner as set forth in the
30 covenants for assessment of costs. Any court order awarding compensation
31 or reimbursement of costs herein shall identify each lot and the amount

1 of compensation or reimbursement of costs each lot shall be charged as a
2 lien.

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

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

10 Sec. 5. (1) A homeowners association dissolved pursuant to section
11 21-19,138 may, in addition to any other procedure, be reinstated by
12 compliance with the procedure set forth in this section.

13 (2) Notwithstanding any provision to the contrary in the Nebraska
14 Nonprofit Corporation Act or the articles of incorporation or bylaws of
15 such a homeowners association, three or more members of such a homeowners
16 association may call a meeting to (a) remove and elect new directors and
17 (b) approve the submittal of an application to the Secretary of State for
18 reinstatement. The members may set the time and place of the meeting.
19 Notice of the meeting shall be given pursuant to section 21-1955. For
20 purposes of this section only and notwithstanding the declaration,
21 articles of incorporation, or the bylaws of a dissolved homeowners
22 association, action on matters described in this section shall be
23 approved by the affirmative vote of the voters present and voting on the
24 matter. One member eligible to vote on the matter shall constitute a
25 quorum. Upon an affirmative vote to apply for reinstatement, the process
26 for reinstatement set forth in section 21-19,139 shall apply except that
27 any fees or taxes due to the Secretary of State for reinstatement that
28 are more than five years past due shall not be required to be paid.
29 Nothing herein shall be construed to abolish, modify, or otherwise change
30 any restrictive covenant or other benefit or obligation of membership in
31 a homeowners association.

1 (3) An application for reinstatement of a homeowners association
2 dissolved by section 21-19,138 may be brought at any time up to five
3 years after dissolution by an officer or director of the dissolved
4 homeowners association pursuant to this section or at any time after
5 dissolution pursuant to section 21-1952. All applications for
6 reinstatement must:

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

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

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

13 (4) If the Secretary of State determines that the application
14 contains the information required by subsections (1) and (2) of this
15 section and that the information is correct, the Secretary of State shall
16 cancel the certificate of dissolution and prepare a certificate of
17 reinstatement reciting that determination and the effective date of
18 reinstatement, file the original of the certificate, and serve a copy on
19 the homeowners association under section 21-1937.

20 (5) When reinstatement is effective, it relates back to and takes
21 effect as of the effective date of the administrative dissolution and the
22 homeowners association shall resume carrying on its activities as if the
23 administrative dissolution had never occurred.

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