

2006 REAL ESTATE LEGISLATIVE UPDATE¹

PRELIMINARY REPORT: NOT ALL BILLS WITH REAL ESTATE CONTENT HAVE BEEN SIGNED BY THE GOVERNOR AS OF 5/24/06

Kevin J. Dunlevy
Beisel & Dunlevy, P.A.
282 US Trust Building
730 Second Avenue South
Minneapolis, MN 55402
612-436-0020
KevinD@bdmnlaw.com

Chapter 183

Rental Property Utility Metering and Billing

Statutes Affected: 504B.215

Creates *de minimis* exception to any tariff approved by the Public Utilities Commission regarding single metered residential building common areas.

Effective Date: August 1, 2006

Chapter 196

Uniform Securities Act of 2002

Statutes Affected: Chapter 80A, and miscellaneous sections

Replaces 1985 version of the Uniform Securities Act with 2002 version of the uniform act.

Effective Date: August 1, 2007

Chapter 200

Manufactured Home Park Conversions

Statute Affected: 327C.095

¹ This summary does not purport to cover all relevant chapters or sections. Please refer to the actual session laws for the exact terms and effective dates. The session laws can be retrieved by chapter at www.house.leg.state.mn.us by clicking on the “Chapters – regular session” link.

Exempts manufactured home park conversions to CICs from the notice requirements of section 515B.4-111 if the conversion is to a cooperative under chapters 308A or 308B, if 90 of the members of the cooperative are residents of the park at the time of conversion and the cooperative does not require residents of the park to become members of the cooperative.

Effective Date: August 1, 2006

Chapter 202

Code Compliance Inspectors – Statutory Residential Construction Warranties

Statutes Affected: 16B.655, 60A.08, 302A.781, 322B.863, 327A.02

Section 1: Requires the department of labor and industry to promulgate competency criteria for construction code inspectors and to establish continuing education for construction inspectors.

Section 2: Declares that certain insurance coverages survive the dissolution of the insured, regardless of the policy language.

Sections 3-4: Amend business corporation and limited liability company statutes to preserve statutory residential construction warranty claims against dissolved business corporations and limited liability companies.

Sections 5-6: Amend statutory residential construction warranties to declare that the warranties are not affected by the dissolution of the vendor or home improvement contractor that is a corporation or limited liability company. Requires the vendee to allow an inspection and opportunity to repair after the vendee gives notice of a claim. Tolls the statute of limitations during the inspection period through the earliest of certain specified events up to 180 days from the date the notice from the vendee is postmarked.

Effective Dates: Most sections effective May 17, 2006.

Chapter 214

Eminent Domain

Statutes Affected: Chapter 117

Overview

Prohibits the use of eminent domain for economic development purposes alone. Raises the burden of proof for showing that a taking is for a necessary public use, when the condemnation is for blight mitigation, contamination remediation, reducing the number of abandoned building or removing public nuisances. Increases procedural safeguards for property owners, including attorney fees for the property owners.

Section 1: Declares that eminent domain can only be used for a public use or public purpose.

Section 2: Provides definitions as follows:

Taking: every interference, under the right of eminent domain, with the possession, enjoyment or value of private property.

Owner: all persons with any interest in the property subject to a taking, whether as proprietors, tenants, life estate holders, encumbrancers, beneficial interest holders or otherwise.

Condemning Authority: a person or entity with the power of eminent domain.

Abandoned Property: property that: (1) has been substantially unoccupied or unused for any commercial or residential purpose for a least one year by a person with a legal or equitable right to occupy the property; (2) has not been maintained; and (3) for which taxes have not be paid for two previous years.

Blighted area: an urban area where more than 50 percent of the buildings are structurally substandard.

Structurally Substandard: a building cited for one or more enforceable housing, maintenance or building code violation in which the building code violation included: (1) a roof and roof framing element, (2) support walls, beams and headers, (3) foundation, footings and subgrade conditions, (4) light and ventilation, (5) fire protection including egress, (6) internal utilities, including electricity, gas and water, (7) flooring and flooring elements, (8) or walls, insulation and exterior envelope; and the cited housing, maintenance or building code violations were not remedied after two notices; and correction of the uncured housing, maintenance and building code violations could cost more than 50 percent of the tax value of the building, excluding the land value.

Authorizes (in the definition of “Structurally Substandard”) a local government to seek a warrant to inspect a specific building upon showing of probable cause that a specific code violation has occurred and not been cured, and that the owner has denied access.

Environmentally Contaminated Area: an area in which (1) more than 50% of the parcels contain hazardous substances identified as hazardous to human health or the environment under state or federal law or regulation and (2) the estimated costs of investigation, monitoring, testing and remediation including any state costs of remediation, exceed the tax value for the contaminated parcel or a court has ordered remediation and the owner has failed to comply.

Public Nuisance: a public nuisance under 609.74.

Public Service Corporation: utility companies under 116C.52, subdivision 10; municipal utilities under 452.25 or 452.26; a municipal airport under chapters 360 or 473; common carriers,

watershed districts or drainage authorities; and regional distribution centers within an international economic development zone under 469.322.

Public Use; Public Purpose: (1) possession, occupation, ownership and enjoyment of the land by the general public or by public agencies; (2) creation or function of a public service corporations; or (3) mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned buildings or removal of a public nuisance. Declares that the public benefits of economic development, including an increase in taxes, employment or economic health do not alone constitute a public use or public purpose.

Section 3: Requires condemning authorities to avoid taking buildings that are not structurally substandard, or taking properties that are not environmentally contaminated. Prohibits use of parcels blighted or contaminated by the developer in determination of blight or environmental contamination.

Section 4: Requires award of all the owner's attorney fees and expenses if the final award is more than 40% greater than the last written offer prior to filing the petition. Allows the court discretion to award the owner its attorney fees and expenses if the award is between 20% and 40% of the last written offer. Prohibits award of the owner's attorney fees and expenses if the award does not exceed \$25,000. Requires court to award the owner reasonable attorney fees and expenses if the court determines the taking was not for a public use.

Section 5 and Section 9: Requires the condemning authority to provide the owner with each appraisal the condemning authority has obtained at least 60 days before filing the petition and upon request thereafter. Increases the maximum owner's reimbursement from the condemning authority for appraisals from \$1500 to \$5000 for other than one and two family residential properties. Requires the owner to provide a copy of the appraisal to be reimbursed. Requires condemning authority to negotiate in good faith for both a full and a partial taking if the condemning authority is considering both. Prohibits use of an appraisal or testimony from an appraiser at a commissioners' hearing, unless the appraisal was provided to the opposing party at least five days before the hearing. Documentation of going concern loss cannot be used at a commissioners' hearing unless provided to the opposing party at least 14 days before the hearing.

Section 6: Increases local governmental hearing procedural requirements and notification to property owner requirements for takings related to mitigation of blighted areas, remediation of environmentally contaminated areas, reducing abandoned property or removing a public nuisance.

Section 7: Increases procedural due process notifications in condemnation petitions.

Section 8: Increases evidentiary standard for takings related to mitigation of blighted areas, remediation of environmentally contaminated areas, reducing abandoned property or removing a public nuisance to a preponderance of the evidence that the taking is necessary and for the designated public use. Declares that a court order approving the public use, necessity and authority is final unless appealed within 60 days after service of the order on the party.

Section 10: Declares that any ordinance or regulation that requires removal of a legal nonconforming use as a condition for the issuance of a permit, license or approval is a taking and requires payment of just compensation. Exempts a permit, license or approval for construction of a building or structure that cannot be built without physically moving the nonconforming use.

Section 11: Defines “going concern” as the benefits that accrue to a business or trade as a result of its location, business good will or any other circumstances that lead to retention of old or acquisition of new patronage. Defines “owner” as under section 2 above, but also including a tenant who operates a business on the subject property. Requires payment for loss of going concern unless the condemning authority establishes that loss is not caused by the taking, the loss can reasonably be prevented by relocating the business or by mitigation by the owner, or the going concern compensation duplicates other awards to the owner. Establishes procedures to determining loss of going concern damages. Declares a business is entitled to reasonable compensation if the condemnation caused the permanent elimination of 51 percent or greater driveway access and business revenue was reduced by 51 percent or more. Established procedures for determining loss of business revenue. Declares that installation of a median is not elimination of driveway access.

Section 12: Requires minimum compensation for relocation of not less than the approved appraisal value of the property, less any duplication of compensation otherwise awarded to the owner.

Section 13: Prohibits the condemning authority from requiring the owner to accept any substitute property, or the return of any portion of the property acquired.

Section 14: Exempts public service corporations from some new requirements.

Section 15: Requires the condemning authority to offer the property back to the former owner if the property is no longer needed for public use. The offer must be at price determined in the condemnation, or the current market value, whichever is lower. Allows recording of a certificate of the condemning authority that the former owner could not be found or that the former owner declined to repurchase. Declares a recorded certificate as prima facie evidence that the right of first refusal has been terminated.

Sections 18 & 19: Requires condemning authorities to reimburse displaced businesses for reestablishment expenses up to \$50,000. Allows condemning authority to initiate contested administrative law proceedings for determination of business relocation assistance, and establishes procedures.

Section 20: Instructs the Revisor of Statutes to change all references to the “right of eminent domain” to the “power of eminent domain.”

Effective Date: Most sections effective May 20, 2006.

Chapter 221

Real Property Section Bill

Statutes Affected: 272.44, 272.45, chapter 501B, 514.10, chapter 515B, 518.191, 524.3-715, 548.27.

Sections 2 & 3: Amend 272.44 and 272.45 to clarify that if a lien holder pays past due or delinquent real estate taxes, the amount paid is added to the existing lien rather than becoming a new lien, with interest at the amount specified in the lien or at law. Clarifies that a person with an interest in the land other than a mortgage who pays past due or delinquent real estate taxes may record a separate lien statement. The lien statement must state the interest claimed in the land upon which the taxes were paid.

Sections 4 & 5: Provide for certificates of custodianship and affidavits of custodian similar in concept to certificates of trusts and affidavits of trustees.

Section 6: Permits the deposit with the court administrator of a bond from a surety listed on the Department of Treasury Circular 507 made payable on entry of a mechanic's lien foreclosure judgment to release the mechanic's lien from the land, in lieu of cash.

Section 7: Provides that 515B.4-101(e) disclosures apply to any real estate subject to a master declaration.

Section 8: Declares that any local ordinances that prohibit the conversion of buildings to CICs are not effective for at least 18 months.

Section 9: Adds a comma to 515B.2-101.

Section 10: Clarifies 515B.2-110 regarding CIC plats to add references to registered land surveys and chapters 508 and 508A.

Section 11: Clarifies subdivision, combination and conversion of units under 515B.2-112.

Section 12: Changes reference in 515B.2-121 from "residential use by a person or the person's tenants" to "private ownership and use."

Section 13: Requires the use of the accrual method of accounting for determination of the operating deficit, as of the date of termination of declarant control.

Section 14: Corrects cross references with the Torrens Act in 515B.3-117.

Section 15: Changes references to "purchaser" to "buyer" regarding delivery of the disclosure statement in section 515B.4-101.

Section 16: Changes purchaser's period for review of the disclosure statement from 5 to 10 days in section 515B.4-102.

Section 17: Adds additional requirements to summary real estate disposition judgments ("SREDJs") under section 518.191, subdivision 2. (1) Requires disclosure of whether the property was stipulated by legal description, if the decree was by stipulation. (2) Requires disclosure of whether the petition contained the legal description and whether disposition was in accordance with the petition, if the decree was by default. (3) Requires disclosure of whether the summons and petition were personally served under Rule 4.03(a) of the Rules of Civil Procedure, or section 543.19. (4) Requires the name of the newspaper and county of publication, and the dates of publication, if the summons and petition were served by publication.

Section 18: Adds subdivision 2a to section 518.191 regarding amendment of SREDJs. Allows issuance of a court order to issue an amended SREDJ to correct an erroneous legal description in the original decree of dissolution. Specifies the information needed in the application to correct a legal description and requires expedited consideration of the application. Permits the court to issue an order to correct a legal description without a hearing or notice. Prohibits a filing fee for the application. Declares that the amended SREDJ operates as an amendment of the original decree of dissolution without further amendment of the decree of dissolution. Provides that the order is retroactive to the date of the original decree of dissolution. Provides that an amended SREDJ has the same effect as the prior SREDJ for all purposes. Allows any person to obtain a certified copy of the amended SREDJ from the court administrator. Prohibits the use of an amended SREDJ for property omitted from the original decree of dissolution, unless the court determines the omitted property is an integral or appurtenant part of the real property already included in the original decree of dissolution.

Section 19: Declares that an SREDJ or amended SREDJ is prima facie evidence of the facts stated in the SREDJ. Declares that a good faith purchaser can rely on a SREDJ or an amended SREDJ to establish the facts stated in the SREDJ.

Section 20: Deletes requirement that a social security number be included in an informal probate application.

Section 21: Clarifies that personal representatives can sell the homestead of the decedent without the consent of the heirs unless the property was specifically devised by a will or unless an order in a formal probate provides otherwise. Legislatively overrules the unpublished opinion *Hardon v. Patek*, 2003 WL 1908063, Minn. App., Apr 22, 2003.

Section 23: Provides that Minnesota's statutory interest rate on judgments is the applicable rate for foreign judgments transcribed to Minnesota. Provides that the time period for enforcement of foreign judgments transcribed to Minnesota begins with the date the judgment was originally docketed in the foreign jurisdiction, and that Minnesota's ten-year judgment enforcement period applies rather than the time period of the foreign jurisdiction. Requires that foreign judgments be recorded on the certificate of title for Torrens property.

Section 24: Declares Section 21 applies to all conveyances by personal representatives made before, on or after the effective date of section 21, except for litigation pending on August 1, 2006 or commenced before February 1, 2007 with a lis pendens recorded before February 1, 2007.

Effective Dates: August 1, 2006

Chapter 222

County Recorders

Statutes Affected: 508.093, 508.74, 508.75, 508.82, 508A.11, 508A.82

Section 1: Clarifies that the right half of the 3 inch top margin is to be used for recording information and the left half is to be used for tax certification. Permits any person to add an administrative page before the first page of a document. Deletes obsolete references to the ERER Task Force under 507.094.

Section 2: Corrects cross references in 508.75 regarding investment of recording fees received by the registrar of titles.

Section 3: Corrects 508.82 regarding recording fees charged by the registrar of titles for documents recorded on multiple certificates and CIC documents. Adds cross reference to 515B.1-116 for special requirements for CICs.

Section 4: Corrects cross reference in 508A.11.

Section 5: Corrects 508A.82 regarding recording fees charged by the registrar of titles for issuance of common elements certificates of title and CIC documents. Adds cross reference to 515B.1-116 for special requirements for CICs.

Section 6: Repeals 508.74 regarding certain fees charged on initial registration.

Effective Date: August 1, 2006

Chapter 224

Straight-Pipe Sewage Disposal Systems

Statute Affected: 115.55

Prohibits sewage disposal systems that transport raw or partially settled sewage directly into a lake, stream, drainage system or onto the ground surface. Requires reporting by inspectors to the MPCA, a ten-month mandatory replacement period, and a \$500 per month administrative penalty beyond the ten-month replacement period.

Effective Date: August 1, 2006

SESSION LAWS NOT YET SIGNED BY THE GOVERNOR

Chapter 235

Real Estate Appraisers

Chapter 240

Adult Business Zoning

Chapter 250

Business Corporations

Chapter 259

Omnibus Tax

Chapter 261

Metropolitan Airports – Zoning

Chapter 269

Land Dedication Standards

Chapter 270

Planning and Zoning