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## **S.F. No. 4053 - Minnesota Cooperative Housing Act**

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**Section 1** [308C.001] includes the citation for the new chapter, “Minnesota Cooperative Housing Act.”

**Section 2** [308C.003], subdivision 1 provides that a cooperative formed under or governed by preexisting chapters, if it converts to a housing cooperative under this chapter, shall be governed exclusively by this chapter and would not be subject to the Minnesota Common Interest Ownership Act. Subdivision 2 grants membership interests in cooperatives homestead exemptions. Subdivision 3 exempts membership interests in a housing cooperative from security registration requirements to the extent that membership interests in a cooperative formed under preexisting cooperative chapters would be exempt.

**Section 3** [308C.005] defines a number of terms, including address, alternative ballot, articles, association, board of directors, business entity, chapter, cooperative, common elements, common expenses, common expense liability, developer, domestic business entity, domestic cooperative, dwelling unit, filed with the secretary of state, foreign business entity, foreign cooperative, housing cooperative, housing facility, limited equity cooperative, low income, lot, manufactured home, manufactured home park, member, membership certificate, membership interest, member meeting, membership purchase and sale agreement, Minnesota limited liability company, moderate income, nonoccupant membership interest, occupant, occupant membership interest, occupancy agreement, older persons, person, project, proprietary lease, resident, security interest, senior housing cooperative, signed, subscription agreement, transfer value, and unit.

**Section 4** [308C.007] allows use of electronic records and signatures when documents and signatures are required under this chapter and prohibits invalidation of a document or signature because it is electronic.

**Section 5** [308C.009] prohibits use of the term “cooperative” or “housing cooperative” by a business unless it is organized under this chapter or one of the preexisting chapters allowing for organization of a cooperative. Makes violation of this prohibition a misdemeanor.

**Section 6** [308C.101] reserves the state’s right to modify this chapter and to govern a cooperative formed under the chapter.

**Section 7** [308C.111] specifies the fee for filing documents under this chapter.

**Section 8** [308C.115] requires a cooperative to have a registered office and a registered agent. Allows a cooperative to change the agent and office by filing a statement of the change with the secretary of state.

**Section 9** [308C.121] requires a cooperative under this chapter to file an annual renewal with the secretary of state. Requires the secretary of state to dissolve a cooperative that fails to file its renewal but allows the cooperative to reinstate its existence by filing its renewal and paying a \$25 fee.

**Section 10** [308C.201] requires that a cooperative formed or organized under this chapter to have its purpose be providing cooperative residential housing on a nonprofit basis, including providing housing through a senior cooperative or a limited equity cooperative.

**Section 11** [308C.205] allows cooperatives to be organized by organizers who must be natural persons but may be acting as agents of other entities.

**Section 12** [308C.211] requires that a cooperative formed under this chapter have a distinct name that shall be reserved for the cooperative during its existence.

**Section 13** [308C.215] describes what must be included in the articles of organization for the cooperative and requires they be filed with the secretary of state. Once filed, it is assumed that all required conditions have been met and the cooperative becomes a separate legal entity. The secretary of state is required to issue a certificate of organization.

**Section 14** [308C.221] specifies procedures for amending the articles of a cooperative, including that the changes must be sent to each member in advance of a meeting and must be agreed to by a majority of the board at a meeting where a quorum is present, unless more than a majority is required by the bylaws or articles of the cooperative. Following a meeting, a certificate must be distributed to all members including details of the amendment and the procedures for adopting it. The amendment must be filed with the secretary of state. If a cooperative does not have any members, amendments may be made by a majority of directors or a majority of the organizers.

**Section 15** [308C.225] describes the process for converting from a cooperative organized under chapter 308A, 308B, or 515B to a housing cooperative organized under chapter 308C. Where applicable, the common interest community declaration must be terminated and organizational documents must be amended to conform with the requirements in chapter 308C. An affirmative vote of 80 percent of members must occur at a meeting, and the cooperative must provide a disclosure statement describing the rights and obligations of members and the capital structure of the cooperative. The conversion must be filed with the secretary of state and is effective upon this

filing and upon recording in the county recorder's office. Conversion does not affect obligations or liabilities that existed prior to the conversion.

**Section 16** [308C.235] states that the existence of a cooperative commences when its articles are filed with the secretary of state and shall exist in perpetuity unless the articles provide a limited period of duration.

**Section 17** [308C.241] requires a cooperative to have bylaws governing business affairs, structure, qualifications, and classification as well as any rights or obligations of members not provided for in chapter 308C or the articles of organization. The section lists the contents required in the bylaws and specifies procedures for adoption and amendment, including in the event of an emergency.

**Section 18** [308C.245] requires a cooperative to maintain records and specifies what must be contained in the records.

**Section 19** [308C.301] describes the powers a cooperative holds, including the capacity to sue and be sued, enter into contracts, construct buildings or structures, participate in real estate transactions, loan or borrow money, pay pensions and benefits, hold ownership interest in other business entity, and exercise fiduciary powers.

**Section 20** [308C.305] describes the emergency powers of a board in the event of a catastrophic event.

**Section 21** [308C.311] gives cooperatives the authority to execute occupancy and lease agreements specifying terms. Bylaws and occupancy and lease agreements may include requirements for members to pay any damages in the event of a breach of any provision. The section also states that title to a cooperative property that contains multiple dwelling units remains the property of the cooperative, while a manufactured home owned by a member placed in a manufactured home park owned by a cooperative remains the property of the manufactured home owner.

**Section 22** [308C.312] allows a cooperative formed under chapter 308C to organize as a limited equity cooperative to serve households of low and moderate income, and specifies conditions for organizing as a limited equity cooperative.

**Section 23** [308C.401] states that a cooperative must be governed by its board.

**Section 24** [308C.405] requires a board of directors to consist of at least three individuals, who are elected by members. If the board of directors contains fewer than three directors, a majority of the board may appoint individuals to serve as set forth in the articles or bylaws.

**Section 25** [308C.411] describes the process for electing directors, including for the first board. It also states that in the event of a director's term expiring with or without a successor, prior acts of a director are not voidable.

**Section 26** [308C.415] describes the process for filling vacancies on the board of directors.

**Section 27** [308C.421] describes the process for removing a director from the board of directors, though this process may be modified in the articles or bylaws.

**Section 28** [308C.425] specifies requirements for board of directors' meetings.

**Section 29** [308C.431] describes what constitutes a quorum of the board of directors.

**Section 30** [308C.435] states that the affirmative vote of a majority of directors present at a board meeting may take action, unless chapter 308C or the bylaws or articles of a cooperative require a larger proportion.

**Section 31** [308C.441] describes procedures for board actions that may occur without a meeting and specifies that any director that does not consent to the action bears no liability for the action taken.

**Section 32** [308C.451] allows the board of directors to establish committees if provided in the bylaws and describes procedures for committee meetings and actions. It subjects committee members to the same provisions as directors relating to standards of conduct, conflicts of interest, and indemnification.

**Section 33** [308C.455] describes standards of conduct for directors and states that a director who acts in good faith is not liable.

**Section 34** [308C.461] describes material financial interests for a director and how conflicts of interest are managed.

**Section 35** [308C.465] provides that a director's personal liability to the cooperative may be eliminated or limited in the articles or bylaws except in specific circumstances.

**Section 36** [308C.471] requires a cooperative to indemnify a person who is made or threatened to be made a party to a proceeding by reason of the former or present official role of the person in the cooperative, provided that: (1) no other organization has indemnified the person; (2) the person acted in good faith; (3) the person received no improper personal benefit from the actions giving rise to the proceeding; (4) in the case of a criminal proceeding, the person had no reason to believe the conduct was unlawful; and (5) depending on the official capacity of the person, reasonably believed that the conduct was either in, or not opposed to, the best interests of the cooperative. Subdivision 3 requires that legal fees be advanced to a person entitled to indemnification. The section allows determinations regarding who is entitled to indemnification to be made by the board, by directors, by special legal counsel, by members, or by a court. Subdivision 7 allows the cooperative to purchase insurance to cover costs of indemnification, and subdivision 8 requires a cooperative to inform members if it indemnifies a person or advances legal fees.

**Section 37** [308C.475] specifies the officers each board of directors must have, procedures for their election and removal, and allows the board to employ a general manager.

**Section 38** [308C.501] relates to cooperative members, requiring that a cooperative could have more than one class of members as long as one class of members are occupant members. The section specifies what may occur if a member commits violations and when a member may inspect or copy cooperative records.

**Section 39** [308C.502] describes the restrictions allowed on cooperative membership. Subdivision 1 specifies the conditions required for a housing cooperative serving senior households, subdivision 2 describes housing cooperatives for low- and moderate-income households, subdivision 3 allows for

membership to be restricted to persons who engage in a specific activity, and subdivision 4 allows housing cooperatives to impose the same restrictions on non-member occupants.

**Section 40** [308C.505] specifies that an individual member is not personally liable for the activities of a cooperative.

**Section 41** [308C.511] provides the requirements for member meetings, which must be held annually at a location convenient to members. Officers must submit reports to the members and directors must be elected at the meeting. Notification of a meeting must be given to each member at least 15 days, but not more than 30 days, prior to the meeting. A member may waive notice by attending a meeting, unless the member objects at the beginning of the meeting because the meeting was not properly notified or objects before a vote is taken on action that wasn't included in the notice.

**Section 42** [308C.515] specifies when and how special member meetings may be held.

**Section 43** [308C.521] states that after delivering meeting notices, a cooperative must execute a certificate containing mailing or delivery date and this must be made a part of the record of the meeting. Failure of a member to receive a meeting notice does not invalidate action taken at a member meeting.

**Section 44** [308C.525] describes what constitutes a quorum of a cooperative's membership and states that an action is not valid or legal in the absence of a quorum.

**Section 45** [308C.531] specifies procedures for member meetings using remote communication methods.

**Section 46** [308C.535] allows articles or bylaws to have a higher proportion of members required to vote affirmatively for an action to be taken.

**Section 47** [308C.541] specifies a procedure that allows written actions to be taken if signed by the majority of membership required if a meeting would otherwise be required.

**Section 48** [308C.545] describes member voting rights, methods, procedures for absentee voting, and how jointly owned membership interests are provided for.

**Section 49** [308C.571] allows a cooperative to sell or dispose of all of its assets through an affirmative vote of a majority of the board of directors if approved by a majority of members present at a notified meeting.

**Section 50** [308C.601] allows members to vote on the number and divisions of membership interests, including nonoccupant membership interests, if authorized. Subdivision 3 requires occupant membership interests to be entitled to at least 60% of the rights to profit allocations and distributions. Board approval is required to sell or transfer membership interests, and the cooperative has the first right to purchase membership interests. Subdivision 7 allows a nonoccupant member to demand the fair market value of the membership interest if an amendment to the bylaws or articles materially and adversely affects the rights of nonoccupant members.

**Section 51** [308C.602] describes who may hold title to membership in a cooperative.

**Section 52** [308C.603] allows a developer who organizes a cooperative to appoint the first board of directors. Prior to occupancy, the developer must pay all expenses of the cooperative. The developer's control of the board terminates on the date of the first annual meeting of members, which must occur approximately 60 days following the issuance of an occupancy certificate. Any obligation of the cooperative to the developer or affiliate, except for a mortgage, may be terminated by the cooperative upon at least 90 days' notice if entered into prior to the termination of developer control.

**Section 53** [308C.605] allows for a member's financial rights to be transferred, except where these rights are restricted.

**Section 54** [308C.611] deems membership interests to be personal property and allows for cooperatives to place liens on membership interests. Cooperatives may have distinctions between occupant and nonoccupant membership interests. A creditor may garnish a member's distributions. The legal representative of a member may exercise the rights of the member if the member is a natural person and dies or becomes incompetent or if the member is a business entity and is dissolved, terminated, or placed in receivership or bankruptcy.

**Section 55** [308C.612] requires that documents be provided to each subscriber in a senior housing cooperative and to a purchaser if a membership interest in a senior housing cooperative is resold. The section imposes requirements on subscription agreements for new senior housing cooperative projects and on occupancy agreements for senior housing cooperatives.

**Section 56** [308C.613] specifies what must be included in the annual budget for a senior housing cooperative, including the amounts needed for general operating expenses, replacement reserves, any other reserves, and the projected common monthly expense assessment for each unit. Replacement reserves must be sufficient to replace components that have a useful life of 30 years or less that the cooperative is obligated to maintain.

**Section 57** [308C.614] provides that all senior housing cooperatives have a lien on membership interests and occupancy rights for any assessments.

**Section 58** [308C.615] describes procedures for foreclosure of liens.

**Section 59** [308C.616] allows for membership interests to be either certificated or uncertificated and describes requirements for a certificate. The section also allows a board of directors to take action to make classes of membership interest uncertificated unless this is prohibited by the articles or bylaws.

**Section 60** [308C.621] provides for replacement of a lost or destroyed certificate.

**Section 61** [308C.625] allows a cooperative to place restrictions on the transfer of membership interest. Restrictions must be conspicuous and noted on the front or back of the certificate; included in chapter 308C, the articles, or bylaws; or included in information sent to holders of uncertificated membership interests.

**Section 62** [308C.627] allows an operating agreement to be valid through the written agreement of all members. An operating agreement may relate to any business or affairs of the cooperative,



including sales of all property and termination of the cooperative. This section does not limit or restrict other agreements otherwise valid.

**Section 63** [308C.701] allows a cooperative to accept contributions when authorized by the board of directors, which must state the value and terms of the contribution.

**Section 64** [308C.705] requires a board of directors to restate the value of previous contributions when a cooperative accepts a new contribution and specifies the methods of restatement. It also allows any contributions received simultaneously to be treated as a single contribution.

**Section 65** [308C.711] specifies terms, restrictions, and requirements for contribution agreements.

**Section 66** [308C.715] allows a cooperative to enter into contribution rights agreements, which must be executed in writing and may only be assigned to members who were members at the time of agreement unless all members approve by unanimous written consent.

**Section 67** [308C.721] specifies how profits and losses shall be allocated if the bylaws or operating agreement does not and specifies how cash or other assets will be distributed among the membership interests if the bylaws or operating agreement does not.

**Section 68** [308C.725] allows a cooperative to set aside a portion of income for reserves and specifies how distributions shall be made.

**Section 69** [308C.735] allows a cooperative to distribute unclaimed property to a nonprofit organization instead of delivering it to the state.

**Section 70** [308C.801] describes when and how a merger or consolidation with a housing cooperative may occur.

**Section 71** [308C.805] describes when and how a parent company may complete a merger of a subsidiary with a housing cooperative.

**Section 72** [308C.835] describes conditions and procedures required for abandoning a merger.

**Section 73** [308C.901] states that a cooperative may be dissolved by its members or by order of the court.

**Section 74** [308C.902] describes procedures for voluntary dissolution of the cooperative by its members.

**Section 75** [308C.903] requires that before a cooperative is dissolved, notice must be filed with the secretary of state.

**Section 76** [308C.905] specifies procedures for collection and payment of debts, transfer of assets, and distribution to members in the event of dissolution.

**Section 77** [308C.911] allows members of a cooperative to revoke dissolution before articles of dissolution are filed with the secretary of state.

**Section 78** [308C.915] species a statute of limitations on claims against a dissolving cooperative of two years after the notice of intent to dissolve is filed with the secretary of state.

**Section 79** [308C.921] requires a cooperative to file articles of dissolution with the secretary of state specifying that all debts and obligations have been paid or discharged, remaining assets have been distributed among members, and there are no legal or arbitration proceedings pending. The cooperative is dissolved when the articles are filed, and the secretary of state must issue a certificate of dissolution.

**Section 80** [308C.925] allows a member or creditor to request court supervision of dissolution for good cause.

**Section 81** [308C.931] allows the court to provide equitable relief and to order dissolution in proceedings involving a cooperative and requires the court to consider lesser relief before ordering dissolution.

**Section 82** [308C.935] describes procedures for court-supervised dissolution actions.

**Section 83** [308C.941] describes the qualifications required for a person to be appointed as a receiver, requires a receiver to give a bond, and allows a receiver to sue and defend all actions as receiver of the cooperative.

**Section 84** [308C.945] describes under what conditions a cooperative may be involuntarily dissolved and the notice required to take this action.

**Section 85** [308C.951] allows a court to require all creditors and claimants to file a claim and allows the receiver or other party of interest to object to a claim.

**Section 86** [308C.955] allows a court to discontinue dissolution of a cooperative if cause for dissolution does not exist.

**Section 87** [308C.961] states that once debts and obligations are paid or discharged as much as possible, the court shall enter an order dissolving the cooperative.

**Section 88** [308C.965] requires a court administrator to file a certified copy of the dissolution order with the secretary of state.

**Section 89** [308C.971] bars a creditor who does not file a claim while dissolution is pending from suing on that claim unless the creditor can show good cause for not having filed a claim. The section also requires that debts and liabilities must be paid before assets are distributed to a member unless dissolution is occurring under the supervision or order of a court.

**Section 90** [308C.975] provides that after a cooperative has been dissolved, any former officer, director, or member may defend a claim against the cooperative.