



Condominium and Townhome Associations

From the Office of Minnesota Attorney General Lori Swanson

Ownership in a condominium or townhome association offers an opportunity for home ownership without many of the added day-to-day responsibilities, such as snow removal or yard maintenance. In a condominium or townhome association, homeowners are members in an association comprised of all owners in the community. The association administers the condominium or townhome association, which includes setting and enforcing rules regarding the use and operation of the community and the individual units. An association may be organized in the form of a profit, nonprofit, or cooperative organization, but the operation and management of condominium or townhome associations is generally controlled by the Minnesota Common Interest Ownership Act (“MCIOA”), Chapter 515B of Minnesota Statutes, and the organization’s governing documents (i.e., declaration, bylaws, articles of incorporation, and rules and regulations). Depending on when a particular condominium or townhome association was formed and its governing documents, Chapters 515 or 515A may also apply to particular circumstances. It is important to understand, however, that while many associations operate under the basic framework for the establishment and operation of condominium or townhome associations provided in MCIOA or other applicable statutes, an association’s governing documents provide specific provisions for the operation of the particular association and may differ in some respects from the statute. The declaration and bylaws control unless they are inconsistent with the MCIOA. Accordingly, people should carefully review an association’s governing documents before purchasing a home in a condominium or townhome association. In fact, MCIOA requires the seller of a condominium or townhome unit to provide certain information, including the declaration and any amendments; bylaws, articles of incorporation, and rules and regulations; a disclosure statement or resale disclosure certificate; the most recent financial statement; and current budget; as well

as inform the prospective purchaser of any outstanding judgments or lawsuits pending against the association, prior to a sale.

Powers and Responsibilities of the Association

A condominium or townhome association must be governed by a board of directors, which is generally elected by the association’s members. However, the declaration creating the condominium or townhome association may provide that the association be controlled by the declarant (typically the developer or builder) for a period, during which time the declarant may appoint and remove officers. This period will generally begin on the date of creation of the condominium or townhome association and end at the earliest of several possible events, such as five years after the date the declarant first conveys a unit to an owner other than itself or when seventy-five percent of the units are sold. At the termination of this period, the unit owners must elect the board.

When homeowners elect the board of directors, they expect that the association board will operate the association and preserve, enhance, and protect the value of the common interest community. While the condominium or townhome association’s governing documents will specify the board’s exact powers, the association board generally has powers to administer the common interest community, including those specified in Minn. Stat. § 515B.3-102. With these powers, the association has the right to bill its members for their share of the budgeted amount. Regular assessments are needed for the operating (day-to-day) and reserve (long-term maintenance) activities of the association. Ideally, the association collects sufficient money through these assessments to pay the bills for the services and goods contemplated in the budget. If, however, the assessments collected are insufficient to pay the bills, the board of

directors is allowed to levy a special assessment. Special assessments are levied for major repairs, replacement, or new construction of the common area or for a one-time, unanticipated expense, such as bringing elevators up to code or structural repairs being made on aging communities, which cannot be covered by the regular assessment and where the reserve fund was not adequately funded over the years.

A special assessment should not be confused with a monetary penalty levied by the association against an individual owner to reimburse the association for an expense such as damage to the common area, or imposed as a disciplinary measure for a violation of the rules and regulations. Nonpayment of assessments may be referred to an attorney or foreclosure service. The association has the right to lien a homeowner's property for the amount owed as well as other costs such as late fees and attorney's fees. Ultimately, the association can foreclose and take a homeowner's property for failure to pay assessments. A personal judgment may also be entered against the homeowner.

By paying a fair share of the obligations of the association, through the budget and assessment process, the homeowners are proportionally paying for the current and long-term maintenance obligations of the association. As you can see, it is imperative that all homeowners pay their assessments in a timely manner. Failure by several homeowners to pay their assessment obligation could place the association in financial jeopardy.

Often an association board will contract with a professional management company to run the day-to-day affairs of the association. Ultimately, however, the association board is responsible for the oversight of the homeowner association, and answers to the homeowners. The management company is a separate business enterprise usually hired, at a cost, to act as the agent of the association. As an agent of the association, it takes direction specifically from the board of directors. Typical contractual responsibilities of the managing agent may include a variety of services to the association, such as collecting assessments, paying the

association's bills, taking direction from the association board for enforcement of rule infractions, and obtaining various vendors to perform services. Other possibilities for management company duties include assisting with the budget process; preparing meeting agendas and meeting minutes for the board of directors; or serving as a neutral third party to help solve problems that can occur in common interest communities.

An association board typically also has the power to adopt, amend and revoke rules not inconsistent with the association's governing documents. The association may regulate the use of units and conduct of unit owners that may jeopardize the health, safety or welfare of other occupants. Accordingly, an association board may be able to prohibit or limit smoking, enact parking regulations, adopt regulations regarding pet ownership, or even limit the use of bird feeders. This is a substantial difference from owning a free-standing home and is an important consideration when buying a home in a condominium or townhome association.

In addition, an association is generally responsible for the maintenance, repair, and replacement of common elements, while the homeowner is responsible for his or her unit. Minn. Stat. § 515B.3-107(a). Furthermore, Minnesota law requires an association to maintain certain insurance "to the extent reasonably available." Minn. Stat. § 515B.3-113. It is important to read the association's governing documents carefully and understand the insurance coverage provided by the association as well as the association's responsibilities regarding maintenance and repair. Sometimes, damage to external elements may cause damage inside your unit, resulting in a dispute over who is responsible. Homeowners should also be aware that an association is typically entitled to have access to each unit to perform maintenance or repairs and to correct or abate certain conditions.

Rights of Homeowners

Access to Documents.

Minnesota law requires an association to keep adequate records relating to its operation and make such records reasonably available for inspection by any unit owner or the unit owner's agent. Minn. Stat. § 515B.3-118. Such records include, but are not limited to, records of the association's membership, unit owners meetings, board of directors meetings and committee meetings, certain financial records, association agreements and certain correspondence. The access requirement does not apply, however, to information that was the basis for a closed board meeting under MCIOA. Additional document access provisions may also be found in the particular statute under which the association was formed. The Minnesota Nonprofit Corporation Act, for example, grants access for members and directors to certain documents and provides a claim for injunctive and other relief for anyone wrongfully denied access. Keep in mind that you may be required to pay copy fees if you wish to copy any documents.

Annual Report.

You have a right to be kept informed as to certain information regarding your association. An association must prepare an annual report and provide a copy to each unit owner prior to or at the association's annual meeting. Minn. Stat. § 515B.3-106(b)(2). The annual report must contain certain information, including but not limited to, revenue and expense statements, capital expenditures, a statement of replacement reserves, pending litigation or judgments, and a description of insurance coverage provided by the association.

Claim for Relief.

MCIOA establishes a claim for relief for those who are adversely affected when a declarant, association or any other person violates MCIOA or the association's governing documents. *See* Minn. Stat. § 515B.4-116. This claim is in addition to any other rights, remedies, or claims you may have under other statutes or common law. Again, the statute under which the association was formed or incorporated may provide additional relief.

For example, the Minnesota Nonprofit Corporation Act authorizes directors and members with voting rights to bring an action or petition the court for appropriate relief under certain circumstances. It should be noted however, that because associations are funded by members, costs incurred by a board while defending a lawsuit initiated by its members may be assessed to the members.

Tips for Addressing Problems in a Condominium or Townhome Association

Contact the Board of Directors.

The first step to address problems with your condominium or townhome association is to notify the board of directors of your concerns. Although an association may hire agents or independent contractors, such as a management company, the board of directors governs the association and should be aware of issues and concerns that involve the community. Thus, if you seek particular information or have an issue with your unit, make the board aware of the matter. If it withholds information or does not respond, ask the board under what authority it is acting.

Attend Meetings and Participate.

Many decisions regarding the operation of a condominium or townhome association are made through the vote of a majority of the members, generally at association meetings. Minnesota law requires that an association meeting be held at least annually, and special meetings may also be called. Accordingly, to make your voice heard, you should attend member meetings when possible and cast your vote on particular issues.

Talk to Other Members.

Because an association is comprised of the unit owners, you may find that you can accomplish a great deal by simply speaking with others in your condominium or townhome association about your concerns or ideas. Other concerned members may be willing to join you in contacting the board of directors regarding particular issues or may help determine whether other action is necessary.

Conciliation Court.

If your dispute with the association involves an amount less than the \$15,000 maximum judgment allowed in conciliation court, you may wish to consider filing a claim in conciliation court, also known as small claims court. This Office has prepared a brochure entitled *Conciliation Court: A User's Guide to Small Claims Court*, which provides information regarding filing a claim in conciliation court.

Contact a Private Attorney.

If other methods do not accomplish the desired result, you may wish to speak with a private attorney about your concerns. The laws affecting condominium or townhome associations can be complicated, and a private attorney familiar with these laws is in the best position to advise you of your legal rights and potential avenues of recourse.

For more information concerning condominium or townhome associations, you may wish to contact the following organizations:

Minnesota Multi Housing Association CIC Midwest

1600 West 82nd Street, Suite 110
Bloomington, MN 55431
952-854-8500
Fax: 952-854-3810
www.mmha.com

Community Associations Institute Minnesota Chapter

1000 Westgate Drive, Suite 252
St. Paul, MN 55114
651-203-7250
Fax: 651-290-2266
www.cai-mn.com

