

Condominium and Townhome Associations



The Office of the
Minnesota Attorney General
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Townhome, condominium, and other homeowner associations are typically part of what is called a common interest community, or CIC. Membership in a CIC offers an opportunity for home ownership without many of the added day-to-day responsibilities, such as snow removal or yard maintenance. However, CICs may also impose requirements on members and limit certain abilities or impose fees. Buyers should carefully weigh these considerations when deciding whether to own a home in a CIC.

In a CIC, individuals are members of an association composed of all owners in the community. The association administers the CIC through its board of directors. Administration 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 for-profit, nonprofit, or cooperative organization, but CICs are generally controlled by Minnesota Statutes Chapter 515B, which is called the Minnesota Common Interest Ownership Act (MCIOA), and the association's governing documents (i.e., declaration, bylaws, articles of incorporation, and rules and regulations). Depending on when a particular CIC was formed and its governing documents, chapters 515 or 515A of the Minnesota Statutes may also apply to particular circumstances.

While many associations operate under the basic framework provided in the MCIOA or other applicable statutes, an association's governing documents provide additional provisions for operating the association and may differ in some respects from the statute. The declaration and bylaws dictate how the association operates, unless they are inconsistent with the MCIOA. If the association's governing documents conflict with the MCIOA, then the MCIOA's requirements apply to your community. **Be sure to carefully review an association's governing documents before purchasing a unit in a CIC.** If you want help understanding your governing documents, you can contact the Minnesota Department of Commerce's new CIC

Ombudsperson. Under Minnesota law, the Ombudsperson is responsible for providing plain language explanations of commonly-used provisions of governing documents. (Minn. Stat. § 45.0137).

The MCIOA requires that a seller of a unit in a CIC provide certain information to a prospective buyer before a sale, 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; and the existence of any outstanding judgments or lawsuits pending against the association (Minn. Stat. § 515B.4-107). A purchaser has ten days after receiving the disclosures to cancel the purchase agreement, unless the disclosures were made more than ten days before the purchase agreement was signed or the buyer waived the right in writing.

Powers and Responsibilities of the Association and its Board of Directors

A CIC association must be governed by a board of directors, which is generally elected by the association's unit owners. The declaration creating the association, however, may provide that the declarant (typically the developer or builder) control the association for a period of time. This period will generally begin on the date the CIC is created and end at the earliest of several possible events, such as 5 years after the declarant first transfers ownership of a unit to someone else or when 75 percent of the units are sold. At the end of the declarant's control, the unit owners must elect the association's board.

When the unit owners elect the board, they expect that the board will operate the association and preserve, enhance, and protect the CIC's value. While the association's governing documents will specify the board's exact powers, the board generally has powers to administer the CIC, including the powers specified in Minn. Stat. § 515B.3-102. These powers include making,

amending, or revoking rules and regulations for the CIC and its units, which includes regulating the use of the common areas and units, the appearance of the CIC, and the allowance of animals. Accordingly, a 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. **When deciding whether to own a home in a CIC, be sure to consider your options and the benefits or risks.** The board also adopts the budget and levies assessments, hires agents and contractors, and otherwise operates the CIC.

Associations are generally responsible for maintaining, repairing, and replacing common elements and are required to maintain property and liability insurance "to the extent reasonably available" (Minn. Stat. §§ 515B.3-107, -113). Unit owners, however, are responsible for maintaining and repairing their units and for any damage that they or their guests cause to the common elements (Minn. Stat. § 515B.3-107(a)). **Be sure to read the association's governing documents carefully and understand the insurance coverage provided by the association and the association's responsibilities regarding maintenance and repair.** Sometimes, there may be damage to an element not specifically defined in the declarations or damage to external elements that causes damage inside a unit, resulting in a dispute over who is responsible. Owners 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.

Association Assessments

Associations bill unit owners for their share of the CIC's expenses. These charges are typically called assessments or dues. Regular assessments are needed for the association's day-to-day operations and long-term expenses. The board must budget for adequate reserve funds and replacement reserves to cover the replacement of the CIC's common elements. Ideally, these assessments are sufficient to pay the bills for the services and goods contemplated in the budget. If, however, the regular assessments collected are insufficient, the board may levy special assessments for emergency or unbudgeted expenses or to replenish underfunded replacement

reserves. Further, when common expenses do not benefit all units, a board may assess the expenses against only the units that are benefitted (Minn. Stat. § 515B.3-115(e) (2), -1151(e)(2)).

The board may also levy fines against owners for violating the rules, bylaws, or declaration. But the board can levy fines only after giving the owner notice and an opportunity to be heard before the board.

If assessments are not timely paid, the association can charge interest and late charges. It can also charge reasonable attorney's fees and any collection costs incurred in collecting past due assessments, which may substantially increase the amount owed. The assessments and related charges are automatically liens on the owner's unit. To collect the assessments, the association may hire an attorney, collection agency, or foreclosure service. The association may obtain a personal judgment or foreclose on its lien and take an owner's unit. A foreclosure of an association lien is just like a mortgage foreclosure (or in certain cooperatives, like the foreclosure of a security interest).

By paying a fair share of the association's obligations, through the budget and assessment process, the owners are proportionally paying for the association's current and long-term maintenance obligations. It is imperative that all owners pay their assessments in a timely manner as the failure by several owners to pay their assessments could place the association in financial jeopardy.

Management Companies

Often an association board will contract with a professional management company to run the association's day-to-day affairs. Ultimately, however, the board is responsible for overseeing the association, and the board answers to the unit owners. The management company is a separate business enterprise usually hired, at a cost, to act as the association's agent. As the association's agent, the management company takes direction from the board. The managing agent may collect assessments, pay the association's bills, enforce rule infractions as instructed by the board, and obtain various vendors to perform services. Management companies may also assist with the budget

process, prepare meeting agendas and minutes for the board, or serve as a neutral third party to help solve problems that can occur in CICs.

Rights of Owners

Access to Documents

MCIOA requires associations to keep certain records and make them available for inspection by any unit owner or their agent (Minn. Stat. § 515B.3-118). Required records include membership records; meeting records; financial records; association contracts, leases, and agreements; and material correspondence and memoranda relating to its operations. Associations do not need to make available information that was the basis for a closed board meeting under the MCIOA. Additional document-access provisions may also be found in the particular statute under which the association was formed. The Minnesota Nonprofit Corporation Act (Minn. Stat. § 317A), for example, grants members and directors access to certain documents and allows court-ordered relief for anyone wrongfully denied access. Keep in mind that an owner may be required to pay copy fees if he or she wishes to copy any documents.

Annual Report

Owners have a right to be kept informed about their association. Associations must prepare an annual report and provide a copy to each unit owner before or at the association's annual owner meeting (Minn. Stat. § 515B.3-106(b)(2)). The annual report must contain, at a minimum, revenue and expense statements, capital expenditures, a replacement-reserves statement, the status of any pending litigation or judgments, and a description of insurance coverage provided by the association.

Claim for Relief

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

For example, the Minnesota Nonprofit Corporation Act (Minn. Stat. § 317A) authorizes directors and members with voting rights to bring an action or petition a court for relief under certain circumstances. It should be noted, however, that because associations are funded by owners, costs incurred by a board to defend a lawsuit initiated by its owners may be assessed back to the owners. Further, under the MCIOA, the court may award attorney's fees and costs to the prevailing party. As such, if the association prevails, the opposing owner or owners may be responsible for the association's fees and their own.

Tips for Addressing Problems in an Association

Contact the Board of Directors

The first step to address problems with your CIC association is to notify the board of your concerns. Although an association may hire agents such as a management company, the board 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 CIC, 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 association's operation are made through the majority vote of owners 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 meetings and cast your vote on issues, including electing the board.

Talk to Other Owners

Because unit owners comprise the association, you may find that you can accomplish a great deal simply by speaking with others in your association about your concerns or ideas. Other concerned owners may be willing to join you in contacting the board 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's brochure, *Conciliation Court: A User's Guide to Small Claims Court*, provides information regarding filing a claim in conciliation court.

Contact the MN Department of Commerce Ombudsperson

The CIC Ombudsperson was created to help facilitate disputes between homeowners and HOAs (Minn. Stat. 45.0137). The Ombudsperson will assist homeowners, tenants, and associations in better understanding their rights under Minnesota law and the CIC's governing documents. Once the Ombudsperson is established, they will also maintain a website with more information and resources. If you want help with a dispute, you can contact the future Ombudsperson for informal mediation services. However, the Ombudsperson cannot assist with complaints that are pending in a judicial or administrative proceeding or in arbitration. This means that you should carefully weigh your options for dispute resolution before moving forward.

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 CIC 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.

Community Associations Institute

For more information concerning CICs, you may wish to contact the following organization:

Community Associations Institute

Minnesota Chapter

P.O. Box 390181

Edina, MN 55439

(612) 504-0567

www.cai-mn.com