

## HOA Workgroup – Areas for Reform

### Overview

1. 27% of Minnesotans live in HOAs  
*HOA Statistics (2024): Average HOA Fees + Number of HOAs (ipropertymanagement.com)*
2. More than 1.5 million Minnesotans live in HOA's  
*Foundation for Community Association Research, Statistical Review 2023*  
(<https://foundation.caionline.org/>)
3. 82.4% of new homes sold in 2023 were part of HOA communities  
*HOA Statistics (2024): Average HOA Fees + Number of HOAs (ipropertymanagement.com)*
4. 30% - 40% (nationally) are self-managed  
*Foundation for Community Association Research, Statistical Review 2023*
5. Governing law (Chapter 515B) was enacted 30 years ago, in 1993. It has been amended repeatedly over the years.
  - The powers to assess for attorney fees and the granting of a lien by operation of law and the power to foreclosure on that lien have been there from the beginning.

### Two Sides to the Story

#### HOA Side

- We would not be here if legislators all over the state were not hearing from constituents about their dissatisfaction with HOA laws and rules and battles with HOA boards.
- Let's acknowledge that if you ARE living in a common interest community, each member household must pay dues because to the extent they don't the deficiency falls on the other members who must unfairly subsidize their neighbors.
- Let's also acknowledge that board chairs and members are volunteers who take on a large, thankless, and unpaid responsibility for the operation of the entire HOA community.
- Let's also acknowledge that all residents are not angels and trying to deal with difficult residents, whether it be volunteer board members or a professional management company, can be challenging.
- Let's also acknowledge that some residents simply flaunt the rules and get angry when held to account.
- The rules are intended to preserve property values.

## Resident Side

- A common response to homeowner complaints that I have heard is “if you don’t like the rules, don’t live in an HOA!”
  - That response is harder to justify when 82% of new homes sold today are part of an HOA. There just isn’t the degree of choice that this response implies there are.
- The overriding issue as I see it is, as a New Jersey appellate court described it: the broad power to levy fines as a “governmental power.”
  - One law review article termed HOA’s “private governments” that “serves to deprive the homeowner of certain liberties traditionally possessed by property owners”
  - Another law review article notes that the statutes “give a small group of people nearly unlimited power to impose whatever restrictions they deem necessary.”
  - Another law review article notes that “HOAs frequently enforce rules that would otherwise be clear constitutional violations if committed by a state agency.”
    - In a John Oliver examination of HOA’s, he notes:  
“HOA’s can have the authority of a government and collect fees and fines like one, but when it comes to accountability, they can actively resist it in ways that government officials can only dream of.”
- It is the sweeping power of HOA’s and the perceived imbalance or abuse of this power by some that have led us here today.
  - And while – like elected officials who constituents don’t feel are serving them well -- board members may be voted out, the reality is homeowners feel they have no recourse when they have problems or disputes.
- The other macro issue is the tension in an HOA between freedom of choice and conformity.

## Complaints/Horror Stories

- We've all heard them:
  - Feeling disrespected when filing a complaint
  - Getting a bill for attorney fees when asking a question or asking for documents
  - Fines for ticky-tacky violations, like the grass is a little too long or the color of swing set for the kids or the garbage being a little too far over the line.
  - Rules that defy common sense
- Here's one that is illustrative of why constituents get riled: this one HOA changed the rules and required residents to haul their garbage cans on pickup day to a designated place on the grounds. Seniors were upset, especially in the winter when they had to navigate the ice to bring their containers to a spot far from their unit.

## Areas for Reform

### 1. Fees/Fines

- Reduce the scope of what HOAs can charge fees for
- Cap or prohibit certain fees (Senator Lucero's bill)
  - No fee for first time late
  - Aesthetics
- Prohibit charging attorney fees for certain things
  - No fees for what resident legally entitled to<sup>1</sup>
    - Asking for breakdown/itemization of liens
    - Asking a question of the board
    - Asking for board minutes
  - Create statutory form/letter
- Atty fees for foreclosure should follow caps in foreclosure law
- Apply no foreclosure for atty fees to older CICs not covered by 515B
- Late fees assessed after statutory time period to pay (Sen. Lucero's bill)

### 2. Payments (Acceleration)

- HOA must take partial payment. HOA can't say all or nothing
- Require payment agreements, not accruing late fee.
  - If below a certain amount, then allow payment plan (middle ground)

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<sup>1</sup> 515B.3-118 (allows atty to charge "the actual costs of making or electronically transmitting the copies and searching for and retrieving the requested records, including the cost of agent or employee time for responding to the request.")

### 3. Rules

- Establish a reasonableness standard (see manufactured home park law)
  - Aesthetics
- Allow work vehicles/home work

### 4. Disputes

- No statutory or HOA specific internal dispute resolution process

#### **Pre-Litigation/Pre-Fine Internal Dispute Resolution Procedures Required**

- California
- Connecticut
- Colorado (before fines can be imposed)
- Illinois
- Indiana
- Maryland (hearing)
- Nevada (hearing)
- North Carolina (hearing)
- Washington (either party can request conference)