

Working Group on CLCs and HOAs

Overview of Laws Related to Financial Considerations

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Topic for Today: “Financial Interests”

- Account Reserves and Insurance
- Property Management and Maintenance
- Assessments, Fines and Fees, and Foreclosure

Account Reserves

Minn. Stat. § 515B.3-106 By Laws; Annual Report.

- Requires an annual report to be provided at the annual meeting or sent out beforehand
- Financial statements must be done by a licensed, independent CPA and the report must be delivered to all the members of the association

Minn Stat. § 515B.3-114 Reserves; Surplus Funds.

- Requires the annual budget for the association to provide “for adequate reserve funds to cover the replacement of those parts of the CIC which the association is obligated to replace.”
- Allows excess funds to be credited to reserves

Account Reserves Cont.

Minn. Stat. § 515B.3-1141 Replacement Reserves.

- Requires the association to have in the budget replacement reserves and provides that they must be a separate account, and requires the association to reevaluate the adequacy of the replacement reserves every third year

Minn. Stat. §§ 515B.3-115 and 515B.3-1151 regulate Assessments for Common Area expenses

Insurance

Minn. Stat. § 515B.3-113

Requires insurance coverage be carried for board causes of loss in an amount not less than the full insurable replacement cost for the common elements throughout the community

Governing Documents

Bylaws, etc. can require MORE insurance than statutorily required.

Insurance Costs

CICs are at risk if they choose less comprehensive insurance policies, it could result in unexpected assessments

Statutory requirements limit the insurance they can purchase to ensure necessary common areas are covered

Minnesota Property Insurance Costs have risen significantly:

- Extreme weather events annually
- Reinsurance costs rising
- Cost of repairs and supplies for repairs have risen

See [Minnesota Department of Commerce New](#)

Property Management

The association is responsible for overseeing the CIC and ensuring legal compliance with all the governing documents.

Many associations pass their duties onto a professional management company who is paid to do the work of the association, including:

- collect assessments;
- pay the association's bills;
- enforce rule infractions as instructed by the board;
- obtain various vendors to perform services;
- assist with the budget process;
- prepare meeting agendas and minutes for the board; or
- occasionally, management companies serve as a neutral third party to help solve problems that can occur in CICs

Property Maintenance

Minn. Stat. § 515B.3-107

- The association is responsible for maintenance, repair, and replacement of common elements
- If damage is caused by a unit owner, or invitee, or by the association for failure to properly maintain, repair, or replace common elements, it is the responsibility of the person or association who caused the damage
- Associations must have a written preventative maintenance plan, schedule, and budget for the common elements of the CIC
- Must provide a copy of the maintenance plan to unit owners
- Association can have access to units to do required maintenance and repairs they are responsible for

Fines and Fees

When?

- The board may levy fines against owners for violating the rules, bylaws, or declaration
- Only after giving the owner notice and an opportunity to be heard (Minn. Stat. § 515B.3-102(a)(10-12))
- Owing fees cannot prevent an owner from voting, but an owner can be denied the use of common area amenities

Fines and Fees Cont.

What if they are not paid?

- If fines and fees or assessments are not timely paid, the association can charge interest and late charges; reasonable attorney's fees; and any collection costs incurred in collecting past due assessments. (Minn. Stat. § 515B.3-102(a)(10-12))
- The fines, fees, assessments, and related charges are automatic liens on an owner's unit. (Minn. Stat. § 515B.3-116)
- Associations can hire an attorney, collection agency, or foreclosure service to enforce the amount owed, but regardless of who enforces the debt they need to follow the Fair Debt Collection Practices Act.

Foreclosure

Minn. Stat. § 515B.3-116 Governs liens for assessments and foreclosure

- If an HOA or CIC is subject to MCIOA (Chapter 515B), then lien is automatic for fees, fines, late charges, and interest
- If not subject to Chapter 515B, then the lien needs to be recorded
- Lien is generally a priority except for first mortgages and taxes
- Lien enforcement should come within 3 years of when the last portion of the assessment was due
- Consider requirements of the Fair Debt Collection Practices Act, 15 USCA 1692

Foreclosure Cont.

Minn. Stat. § 515B.3-116 Governs liens for assessments and foreclosure

- If an HOA or CIC is subject to MCIOA (Chapter 515B), then foreclosure may be done by action (Chapter 581) or advertisement (Chapter 580)
- If it is not subject to MCIOA, then foreclosures should be done by action under Chapter 581
- Six-month redemption period
- In both advertisement and action foreclosures, the foreclosing party can get attorneys fees and costs

Questions?



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