

**Nick Morrison Presentation to
The Working Group on Common Interest Communities and Homeowners Associations**

December 20, 2024

OUTLINE

Reasonableness Standards

- Though the term “reasonable” appears frequently throughout Chapter 515B, in certain parts of the law a reasonable standard is lacking.

Fines

- Currently, Chapter 515B requires fines to be “reasonable” but each HOA can determine what is “reasonable.”
- Texas requires HOAs to establish a policy that is transparent for all homeowners regarding what violations are punishable by fines and what the fine schedule is.
- Other states cap how much an HOA can impose for a fine.

Recommendation: Minnesota should require HOAs to establish a fine policy and schedule and cap the amount a homeowner can be fined.

Rules

- One critical place where the term “reasonable” **does not** appear is in connection with the adoption or modification of rules.

Recommendation: Minnesota, like other states, should require that rules be reasonable.

Aesthetics

- Minnesota HOAs have the power under Chapter 516B to regulate “the exterior appearance of the common interest community, including, for example, balconies and patios, window treatments, and signs and other displays, regardless of whether inside a unit.”
- Utah places limitations on how much the HOA can control individual aesthetic changes to their homes.

Recommendation: Minnesota should restrict the power of HOAs to impose aesthetic limitations on homeowners.

Attorneys' Fees

- HOAs in Minnesota can charge attorney fees for responding to a homeowner's complaint. These charges are unreasonable.

Recommendation: Minnesota should expressly prohibit HOA attorneys from charging fees for responding to questions, complaints, or for providing basic documents.

Late Fees

- There is no reasonable standard for what an HOA can charge for late fees.
- Some states cap how much an HOA can charge for a late fee.

Recommendation: Minnesota should cap late fees.

Foreclosures

- An HOA can foreclose on any assessment, no matter how small. There is no reasonableness standard here.
- Some states require assessments to be late for a certain period of time before an HOA can foreclose.
- Other states set a minimum amount that a homeowner must be in arrears before the HOA can start a foreclosure.

Recommendation: Minnesota should prohibit foreclosures unless arrears are owing for a specified time and should establish a minimum amount that must be owed before an HOA can initiate a foreclosure.

Transparency/Consistency

- Chapter 515B does provide transparency and consistency in certain areas, e.g. notice of meetings and open meetings.
- But there is no transparency and consistency when it comes to management companies. For homeowners, this is an opaque area.
- HOA boards are elected are directly accountable to homeowners. Management companies are not.
- Nationally, 60% to 70% of HOAs hire management companies to manage the operation of the CIC. Minnesota law is silent with respect to oversight, regulation, or requirements of management companies retained by HOAs.
- There is a significant lack of transparency and consistency across HOAs in the state regarding the relationship to HOAs and homeowners and the accountability of management companies.
- Management companies (and HOAs for that matter) are NOT held to any conflict of interest standards.
 - No better illustration of the gap in Minnesota law exists than the recent scandal involving an Otsego HOA in which the board steered the roofing work to a contractor that is a subsidiary of their property manager.
- Other states license management companies and hold them to conflict of interest standards.

Recommendation: Management companies in Minnesota should be licensed and be held to strict conflict of interest standards.

Basic Rights

- Minnesota provides certain rights to homeowners, e.g.:
 - the right to vote;
 - the right to notice of board meetings;
 - the right to association records (for a charge); and
 - the right to a statement of unpaid assessments (for a charge).
- But in other areas, homeowners lack basic rights.

Dispute Resolution

- Chapter 515B also gives homeowners a right to notice and the opportunity to be heard if a fine is levied.
- **But** there is no specificity regarding what rights accrue to a homeowner or what procedures must be followed by the board at such hearing. This leads to a lack of transparency and inconsistency across the state.
- Other states require the establishment internal HOA dispute procedures and the opportunity for the parties to engage in alternative dispute resolution.
- Some states have established HOA Ombudspersons.

Recommendation: Minnesota should:

- Establish an Ombudsperson's Office
- Require HOAs establish an fair, internal dispute resolution process
- Require HOAs to offer alternative dispute resolution options

Right to Speak

- Chapter 515B gives homeowners the right to attend board meetings but, unlike other states, does not provide the express right to speak.

Recommendation: Chapter 515B should expressly provide the right of a homeowner to speak at a board meeting on the topics on the agenda and raise any issue of concern, even if it is not on the agenda.

Right to a Payment Plan

- There is no right under Chapter 515B to a payment agreement if a homeowner falls behind on assessments or owes fines.
- Other states require that HOAs offer affordable payment agreements.

Recommendation: Minnesota should require HOAs to offer payment agreements if homeowners fall behind.

Other Rights

- Minnesota does not give homeowners the right to park their work vehicles in their driveways.
- **Recommendation:** Minnesota should give homeowners the right to park work vehicles in their driveways.

Checks and Balances

- One of the largest gaps in Minnesota law is the fact that there is absolutely no government oversight of HOAs or management companies.
- There is no check on HOA boards or the management companies.
- There is no government agency to turn to for recourse if a homeowner suspects board malfeasance or when a homeowners believes the HOA has violated the law or the governing documents.
- Some states require HOAs and/or Management Companies to be licensed and give licensing agencies varying degrees of regulatory authority.

Recommendation: At a minimum, Minnesota should require Management Companies to be licensed.

Conclusion

- There is significant room for improvement to Chapter 515B and beefing up the rights and consumer protections for homeowners living in HOAs in Minnesota.
- No one should lose their home because of a capricious or petty rule and no one should be forced to pay attorney fees for asking a question.
- As other state law show, we can do better.