

Working Group on Common Interest Communities and
Homeowners Associations

DRAFT Report to the Legislature

January 2025

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Executive Summary

The Working Group on Common Interest Communities and Homeowners Associations (“Working Group”) was established by the Legislature in 2024 to study the prevalence and impact of common interest communities (CICs) and homeowners associations (HOAs) in Minnesota and how existing laws regulating CICs and HOAs help homeowners and tenants access safe and affordable housing. The Working Group was charged with reviewing how many HOAs exist in Minnesota, governing documents commonly used by HOAs, fees and costs commonly associated with HOAs, HOA management and organization and how they impact housing costs, accessibility and affordability, and how other states regulate HOAs. The Working Group is required to submit a report of its review and recommendations to the Legislature by February 1st, 2025.

The Working Group hosted meetings both in-person and online via Zoom to hear presentations from subject matter experts, attorneys for homeowners and common interest communities, property management companies, and homeowner advocates. The Working Group also received public testimony from homeowners experiencing issues with their HOAs.

Additionally, the Working Group hosted three public listening sessions around the Twin Cities metropolitan area, where members of the public provided comments to the Working Group on issues they’ve faced with HOAs.

This draft final report contains the Working Group’s review of Minnesota’s HOAs and their existing laws and presents draft recommendations to the Legislature.

Enabling Legislation

Minnesota Laws 2024, Chapter 127, Article 15, Section 48

WORKING GROUP ON COMMON INTEREST COMMUNITIES AND HOMEOWNERS ASSOCIATIONS.

Subdivision 1.

Creation; duties.

(a) A working group is created to study the prevalence and impact of common interest communities (CICs) and homeowners associations (HOAs) in Minnesota and how the existing laws regulating CICs and HOAs help homeowners and tenants access safe and affordable housing. The working group shall study:

(1) how many CICs and HOAs exist, how many people may reside in those housing units, and where they are located in the state;

(2) the governing documents commonly used by CICs and HOAs and whether the governing documents or common practices create barriers for participation by homeowners in the board of directors for CICs or HOAs;

(3) the fees and costs commonly associated with CICs and HOAs and how those fees have increased, including the cost of outside management, accounting, and attorney fees that are assessed to owners and residents;

(4) whether there should be uniform, statutory standards regarding fees, fines, and costs assessed to residents;

(5) how the organization and management of CICs and HOAs, including boards and management companies, impact the affordability of CICs and HOAs;

(6) the impact of CICs and HOAs on the housing market and housing costs;

(7) the racial disparity in homeownership as it relates to CICs and HOAs;

(8) the accessibility and affordability of CICs and HOAs for Minnesotans with disabilities;

(9) how other states regulate CICs and HOAs and best practices related to board transparency, dispute resolution, and foreclosures; and

(10) how the current laws governing CICs and HOAs may be consolidated and reformed for clarity and to improve the experience of homeowners and residents in CICs and HOAs.

(b) The focus and duties of the working group shall be to recommend legislative reforms or other methods to regulate CICs and HOAs, including the consolidation or recodification of existing chapters regulating CICs and HOAs.

Subd. 2.

Membership.

(a) The working group shall consist of the following:

(1) two members of the house of representatives, one appointed by the speaker of the house and one appointed by the minority leader;

(2) two members of the senate, one appointed by the senate majority leader and one appointed by the senate minority leader;

- (3) one member from the Minnesota Homeownership Center;
 - (4) one member from the Community Associations Institute;
 - (5) one member from a business association that supports, educates, or provides services to CICs and HOAs in Minnesota designated by the commissioner of commerce;
 - (6) one member from a legal aid association familiar with housing laws and representing low-income clients designated by Mid-Minnesota Legal Assistance;
 - (7) one member from the Minnesota Association of Realtors;
 - (8) one member who is an attorney who regularly works advising homeowners or residents in CICs and HOAs and is familiar with the state foreclosure laws designed by the State Bar Association;
 - (9) one member who is an attorney who regularly works advising CIC and HOA boards designated by the State Bar Association;
 - (10) one member from a metropolitan area government who is familiar with issues homeowners and tenants face while living in CICs and HOAs in the metropolitan area designated by League of Minnesota Cities;
 - (11) the commissioner of the Minnesota Housing Finance Agency or the commissioner's designee;
 - (12) one member from the attorney general's office designated by the attorney general;
 - (13) one member designated by the North Country Cooperative Foundation and one member to be designated by the Senior Housing Cooperative Council;
 - (14) four members who are current or recent owners of a residence that is part of a CIC or HOA designated by the Housing Justice Center.
- (b) Appointments and designations for members of the working group shall be made by July 1, 2024, and information about the appointed and designated members shall be provided by the commissioner of housing finance to the chairs and ranking minority members of the legislative committees with jurisdiction over housing no later than July 1, 2024.

Subd. 3.

Facilitation; organization; meetings.

(a) The Legislative Coordinating Commission shall facilitate the working group, provide administrative assistance, and convene the first meeting by July 15, 2024. Members of the working group may receive compensation and reimbursement for expenses as authorized by Minnesota Statutes, section 15.059, subdivision 3.

(b) The working group must meet at regular intervals as often as necessary to accomplish the goals enumerated under subdivision 1. Meetings of the working group are subject to the Minnesota Open Meeting Law under Minnesota Statutes, chapter 13D.

Subd. 4.

External consultation.

The working group shall consult with other individuals and organizations that have expertise and experience that may assist the working group in fulfilling its responsibilities, including entities engaging in additional external stakeholder

input from those with experience living in CICs and HOAs as well as working with the board of directors for CICs and HOAs.

Subd. 5.

Report required.

The working group shall submit a final report by February 1, 2025, to the chairs and ranking minority members of the legislative committees with jurisdiction over housing finance and policy, commerce, and real property. The report shall include recommendations and draft legislation based on the duties and focus for the working group provided in subdivision 1.

Subd. 6.

Expiration.

The working group expires upon submission of the final report in subdivision 5, or February 28, 2025, whichever is later.

EFFECTIVE DATE.

This section is effective the day following final enactment and expires March 1, 2025.

Working Group Members

Chair: **Representative Kristin Bahner**

Vice-Chair: **Senator Eric Lucero**

Representative Shane Mekeland

Senator Susan Pha

Minnesota Homeownership Center designee: **Roxanne Kimball**

Community Associations Institute designee: **Shaun Zavadsky**

Commissioner of commerce designee: **JoAnn Borden**

Mid-Minnesota Legal Assistance designee: **Colleen Daly**

Minnesota Association of Realtors designee: **Emily Green**

State Bar Association designee who regularly works advising HOA homeowners: **Matthew Anderson**

State Bar Association designee who regularly works advising HOA boards: **Phaedra Howard**

League of Minnesota Cities designee: **Kim Berggren**

Commissioner of the Minnesota Housing Finance Agency designee: **Tal Anderson**

Attorney general's office designee: **Carin Mrotz**

North Country Cooperative Foundation designee: **Joel Hanson**

Senior Housing Cooperative Council designee: **Joe Nemo**

Housing Justice Center designees: **Denise Butler, Jonathan Murray, Becky Cole, and Ivory Taylor**

Overview of Presentations to the Working Group

As outlined in the enabling legislation, the Working Group was charged with reviewing several aspects of CICs, including how many CICs exist in Minnesota, governing documents commonly used by CICs, fees and costs commonly associated with CICs, property management and organization and how they impact housing costs, accessibility and affordability, and how other states regulate CICs.¹ These topics were reviewed and discussed by the Working Group at the following meetings.

Meeting 1 – Tuesday, September 10, 2024

The Working Group members introduced themselves and elected Representative Kristin Bahner as Chair and Senator Eric Lucero as Vice-Chair. Staff from Management, Analysis, and Development (MAD) at Minnesota Management and Budget and the Legislative Coordinating Commission (LCC) walked through the enabling legislation and duties of the Working Group.

Meeting 2 – Friday, October 4th, 2024 – Overview of Community Association Industry

The Working Group heard from the industry perspective on CICs and HOAs. Dawn Bauman, Chief Strategy Officer for Community Associations Institute (CAI) and Patrick Hynes, representative for the Minnesota Chapter of CAI, presented to the Working Group. According to CAI, approximately 1,556,000 Minnesotans live in more than 7,950 community associations.² CIC residents in Minnesota pay \$31 billion a year to maintain their communities—costs that would otherwise fall to local governments. 89% of CIC residents say their association’s rules protect and enhance their property values.³ Moreover, CICs are typically required to provide services that are generally municipal responsibilities, on top of other local taxes, creating a form of “double taxation.”⁴ CAI highlighted assessment deduction and the Municipal Services Act, where local governments are obligated to provide support to homeowners within a CIC as taxation remedies.⁵

¹ Throughout Working Group meetings, presentations, and discussion, the terms ‘HOA’, ‘CIC’, and ‘community association’ were used interchangeably. The term common-interest community (CIC) will be used in this report to remain consistent.

² Bauman, “Common Interest Community Working Group Minnesota.”

³ Ibid.

⁴ Ibid.

⁵ Ibid.

Meeting 3 – Friday, October 25th, 2024 – Homeowners’ Perspectives on Community Associations

The Working Group heard from subject matter experts on the homeowner perspective on CICs and HOAs. Ron Elwood, Supervising Attorney at Mid-Minnesota Legal Aid, and Julie Gugin, former CEO and president of the Minnesota Homeownership Center, presented their professional experiences representing homeowners living in Minnesota CICs.

According to Mr. Elwood, 27% of Minnesotans live in a CIC.⁶ Additionally, 82% of new homes sold in 2023 were part of a CIC.⁷ According to Mr. Elwood, the “overriding issue” of CICs are their ability to levy fines as private governments and enforce rules and regulations without the transparency, accountability, or checks and balances of government.⁸ Mr. Elwood highlighted the following issues he has seen, along with suggested areas of reform:

1. Fees/Fines

- Reduce the scope issues for which of what HOAs can charge fees
- Cap or prohibit certain fees (Senator Lucero’s bill)
 - No fee for first time late
 - Aesthetics
- Prohibit HOAs from charging attorney fees for certain issues
 - No fees for requests that resident are legally entitled to, including:
 - Asking for breakdown/itemization of liens
 - Asking a question of the board
 - Asking for board minutes
 - Create statutory form/letter
- Attorney fees for foreclosure should follow caps in foreclosure law
- Prohibit foreclosure for attorney 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)

3. Rules

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

4. Disputes

⁶ Elwood, Testimony

⁷ Ibid.

⁸ Ibid.

- No statutory or HOA specific internal dispute resolution process

Ms. Gugin highlighted three main issues related to CICs that her organization has faced: governance, debt collection, and accountability.

Meeting 4 – Friday, November 15th, 2024 – Governance Structures

At Meeting 4, Working Group members learned the governance structures of CICs. The Working Group heard presentations from Mary Davis, Legislative Analyst with the House Research Department, and Heather Morton, with the National Conference of State Legislatures (NCSL).

Ms. Davis presented an overview of CIC law pertaining to governing documents in Minnesota. CICs are established by a Declaration, which controls the CIC and often starts with a developer who controls the CIC for a period of time.⁹ Most CICs are incorporated as nonprofit corporations under Minnesota Chapter 317A.¹⁰ CICs can also be organized as a cooperative or for-profit businesses.¹¹ These articles of incorporation control how the CIC operates.

In addition to having articles of incorporation and declarations, many CICs have by-laws, which frequently provide direction for the CIC's actions.¹² Rules and regulation documents, which are not governing documents, can be used to control the CIC and members.¹³ Using their articles and by-laws, CICs pass rules and regulations that are binding on activities and spending of the CIC.¹⁴

Governing documents and the powers of the association are administered by unit owners, who have the power to:

- Create, amend, and revoke rules regulating the CIC including rules related to conduct, damages, animals, and exterior appearance of the CIC unit
- Adopt a budget, levy, and collect assessments
- Hire managing agents and independent contractors
- Litigate and sign contracts for the CIC
- Maintain, repair, improve, and regulate the use of the common elements of the CIC

⁹ Davis, "Overview of Laws Related to Governing Documents."

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

- Provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance
- Follow reasonable procedures for meetings and election of directors

CICs administer governing documents through Chapter 515B, Article 3, which contains provisions regulating CIC associations and authorizing their powers, activities, and duties.¹⁵ Article 3 of Chapter 515B also contains requirements for boards of directors and officers, as well as open meeting requirements, statutory requirements of by-laws, preventative maintenance plans, meeting requirements, and liability, insurance, lawsuits, reserve funds, assessments and liens.¹⁶

Ms. Morton of NCSL provided a national overview of CIC law. Minnesota is one of 10 states that have one or more versions of the Uniform Law Commission's Uniform Common Interest Ownership Act.¹⁷ The remainder of states have more state-specific homeownership and planned community laws. Minnesota has duty of care requirements for board members, requiring members to act in good faith, reasonable care, or may act as a fiduciary.¹⁸ Minnesota is also one of 41 states that do not have a conflict-of-interest provision for board members.¹⁹ Additionally, Minnesota does not have an education requirement for board members.²⁰

Meeting 5 – Tuesday, November 26th, 2024 – Overview of laws related to financial interests

At Meeting 5, the Working Group focused on financial interests of CICs and HOAs in Minnesota. Ms. Davis from the Minnesota House Research Department and Lynn Boergerhoff, President of the HOA Leadership Network, presented to the Working Group.

Ms. Davis gave an overview on current Minnesota CIC statute. Minnesota Statute Chapter 515B requires that an annual report be provided to owners, and that financial statements must be completed by a licensed CPA, and that the report be sent to all association members.²¹ The annual budget must also provide “for adequate reserve funds to cover the replacement of those parts of the CIC which the association is obligated to replace.”²² Article 3 of 515B further regulates assessments for common area expenses.²³

¹⁵ Davis, “Overview of Laws Related to Governing Documents.”

¹⁶ Ibid.

¹⁷ Morton, Common Ownership Association Overview

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Davis, “Overview of Laws related to Financial Considerations.”

²² Ibid.

²³ Ibid.

Minnesota CIC law requires insurance for causes of loss in an amount not less than the full insurable replacement cost for the common elements throughout the community.²⁴ Governing documents, including by-laws, however, can require more insurance than what is statutorily required.²⁵ Furthermore, CICs are at risk if they choose insurance policies with less coverage, potentially resulting in added assessments.²⁶ Property insurance costs have increased significantly, due to extreme weather events, rising reinsurance costs, and the increased costs of repairs and supplies.²⁷

With CICs' responsibilities for overseeing the community and ensuring legal compliance with governing documents, many community associations pass their duties to a professional management company to:

- 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
- Occasionally serve as a neutral third party to help solve problems that arise in CICs

The association is also responsible for maintaining, repairing, and replacing common elements as needed.²⁸ CICs must have a written preventative maintenance plan, schedule, and budget for common elements of the CIC or HOA.²⁹ This plan must be provided to association owners.

Fines and fees are another financial aspect of CICs. The board may levy fines and fees against owners for violating the bylaws, rules, or declarations, but only after the owner has been given notice and an opportunity to be heard.³⁰ While owing fees cannot prevent an owner from voting, an owner may be denied the use of common area amenities. If fines and fees or other assessments are not paid in a timely manner, the CIC is allowed to charge for interest and late charges, collection costs incurred, and reasonable attorneys' fees.³¹ The fines, assessments, and fees are automatic liens on an owner's unit. CICs, operating within the Fair Debt Collection Practices Act, can hire a foreclosure service, collection agency, or attorney to enforce the

²⁴ Davis, "Overview of Laws related to Financial Considerations."

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

amount owed. Minnesota Statute 515B also governs liens for assessments and foreclosures, while liens are automatic for fines and fees, late charges, and interest.³² CICs under 515B may foreclose under action (Chapter 581) or advertisement (Chapter 580).³³

Mr. Boergerhoff presented on financial interests from a board members' perspective. There are roughly 3,800 HOAs in the Twin Cities metropolitan area, comprising around 194,000 housing units.³⁴ CICs and HOAs work to manage community finances by collecting assessments from homeowners, purchasing services, and funding reserves. Mr. Boergerhoff highlighted 14 common CIC expenses, with the costliest expense often being master insurance.³⁵ Other costs for which CICs collect assessments are collected include building maintenance, lawn care and snow clearing, association management, irrigation systems, tree and shrub care, asphalt and cement, elevators, HVAC systems, trash removal, pool maintenance, municipal water, legal fees, and utilities.³⁶

Reserve funds are another financial aspect CICs must consider. Reserves are money saved for large future expenses and are a part of the annual budget process to help determine assessments.³⁷

After the budgeting process is completed, assessments are determined. Assessments are fees or dues CIC charge owners to allow the board to fulfill its duties and are usually paid as monthly dues. Dues must be paid on time and in full to cover CIC expenses, according to Mr. Boergerhoff.³⁸ The homeowner has a duty to pay dues, and the board has a fiduciary duty to collect them. Fines, liens, and foreclosures are monetary and legal penalties the board can use to enforce the collection of dues.³⁹ Occasionally there are special assessments required for homeowners, which are as needed dues homeowners must pay to fund unexpected expenses or excess costs.

The CIC board's financial interests include the fiduciary duty to maintain and protect property values. This is accomplished through risk management, with preventative services, safety, homeowner behaviors, emergency plans, and other financial procedures. Additionally, this duty is achieved through HOA insurance, which is an increasing financial burden due to rising premiums, less providers, and more exclusions.⁴⁰

³² Davis, "Overview of Laws related to Financial Considerations."

³³ Ibid.

³⁴ Boergerhoff, "Comments and Recommendations."

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

Mr. Boergerhoff highlighted several potential homeowner concerns when considering CIC financial interests. These include outdated governing documents, restrictions, or documents that lack key provisions.⁴¹ The board may also create unreasonable rules or unfairly enforce those rules.⁴² The board could misinterpret or not follow open meeting practices, grievances mechanisms or collections processes.⁴³ Finally, the board may act beyond its scope of authority.

Mr. Boergerhoff presented five recommendations to the Working Group:

- Codify CIC board leader education
- Codify Minnesota CIC homeowner grievance mechanism
- Promote certification for Minnesota CIC managers
- Strengthen CIC registration with the Minnesota Secretary of State
- Strengthen regulatory oversight of Minnesota CIC insurance

Meeting 6 – Friday, December 6th, 2024 – Dispute Resolution

The Working Group reviewed dispute resolution in Minnesota CICs, as well as nationally. The Working Group invited Heather Morton with NCSL to provide a national overview of this issue, Chris Wilcox, an attorney with Christensen Sampsel, and Karly Kauf, an attorney with Chestnut Cambronne.

Ms. Morton from NCSL gave a national overview of dispute resolution practices between associations and homeowners and highlighted various actions states have taken across the country. The first part of her analysis was on states that have created a homeowners' ombudsman or resource offices. Five states have created ombudsman offices, which are a neutral party that can act as a liaison between homeowners, board members, management companies, and other associated parties.⁴⁴ Additionally, nine states require dispute resolution within common ownership statutes when issues arise between the homeowner and association.⁴⁵

Chris Wilcox, an attorney with Christensen Sampsel, which primarily represents homeowners in HOA disputes, provided background and recommendations on dispute resolution from a professional and legal perspective. Mr. Wilcox identified several general issues in his practice, including transparency, the use of fines, fees, and foreclosures as a tool for enforcement, and a lack of accountability or homeowner remedies. Mr. Wilcox additionally

⁴¹ Boergerhoff, "Comments and Recommendations."

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Morton, "Common Ownership Associations Dispute Resolution and Foreclosure Overview."

⁴⁵ Ibid.

recommended pre-foreclosure protections, similar to federal statute 12 CHR Part 1024 that protects consumers with mortgage loans.⁴⁶

Karly Kauf, an attorney with Chestnut Cambronne, presented on the CICs' point of view on dispute resolution. Ms. Kauf highlighted several issues from her legal and professional perspective. First, while consumer protection is vital and all owners deserve protection, "we cannot protect the individual owner at the expense of the rest of the group."⁴⁷ Furthermore, without the ability of the CIC's to collect dues and enforce by-laws and rules, the association cannot function.⁴⁸ As such, the ability of a CIC to foreclose is an important tool of the community association.

Ms. Kauf highlighted several current protections, including Minnesota Statute 515B and the Nonprofit Corporations Act. As well, Ms. Kauf stated that board elections serve to limit power, and boards and associations are careful to "balance the need for enforcement against the risk of unfair practices and unnecessary costs."⁴⁹

Ms. Kauf provided several recommendations for dispute resolution:

- Training and education
- Ombudsperson
 - Must be a neutral third party with expertise in the area
 - Important to weigh costs against actual use and need
- Foreclosure protections
 - Could add a minimum time requirement prior to collection action – typically see at least 60 days
 - Could require associations to adopt a clear collections policy
- Additional resale disclosure requirements
- Extension of open meeting and records requirements to non-Minnesota Common Interest Ownership Act (MCIOA) associations
- Additional Board training opportunities and/or requirements

⁴⁶ Wilcox, testimony

⁴⁷ Kauf, testimony

⁴⁸ Ibid.

⁴⁹ Ibid.

Meeting 7 – December 20th, 2024 – Policies on Community Living Issues

The Working Group reviewed community living issues in Minnesota CICs and HOAs. Ms. Morton with NCSL returned to present a national overview of this topic, and heard from subject matter experts Chris Charbonneau from the Minnesota Chapter of the Community Associations Institute and Nick Morrison with Southern Minnesota Regional Legal Services (SMRLS).

Six states and Puerto Rico have provisions in their CIC law that include payment plans for delinquent dues or special assessments, Ms. Morton reported.⁵⁰ Additionally, six states have statutes creating an option or requirement for homeowners to have a hearing process for fines or suspension of privileges.⁵¹ Ms. Morton further highlighted that several states require associations to improve notification and communication with members, provide greater ability for members to provide feedback on budgets, and regulate when fees and fines can be assessed, including California, Colorado, Connecticut, Florida, Idaho, and Maryland.⁵²

Chris Charbonneau, representing CAI, presented on industry perspectives and recommendations related to policies on community living issues. Mr. Charbonneau highlighted several best practices for boards, including understanding and adhering to governing documents, transparent communication, financial responsibility, fair and consistent enforcement of rules and regulations, professional guidance, and promoting community building.⁵³ Mr. Charbonneau then outlined best practices for homeowners, including understanding governing documents, reading all communications, payment of dues and assessments in a timely manner, respecting neighbors, resolving disputes respectfully, and getting involved with the community.⁵⁴

From this discussion on board and homeowner responsibilities, Mr. Charbonneau highlighted five recommendations to the Working Group:

- Homeowner/board education
- Realtor/CIC manager education
- Housing Improvement Areas (HIA) required in all cities
- Collection of delinquent assessments and foreclosures
- Homeowner advocacy

⁵⁰ Morton, “Common Ownership Associations Community Living Policies Overview.”

⁵¹ Ibid.

⁵² Ibid.

⁵³ Charbonneau, “Minnesota Legislative Working Group on common Interest Communities and Homeowner Associations.”

⁵⁴ Ibid.

Finally, Mr. Morrison, an attorney with SMRLS, delivered the following overview of various issues and accompanying recommendations as outlined in the table below.

Current Issue	Overview of Issue	Recommendation
Reasonableness standard: Fines	Chapter 515B requires fines to be “reasonable” but each HOA determines what is “reasonable”	Minnesota should require HOAs to establish a policy on fines and schedule and cap the amount a homeowner can be fined.
Reasonableness Standards: Rules	“Reasonable” does not appear in connection with modification or adoption of rules	Minnesota should require rules to be reasonable.
Reasonableness standard: Aesthetics	515B allows HOAs 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.”	Minnesota should restrict the power of HOAs to impose aesthetic limitations on homeowners.
Reasonableness standard: Attorney’s Fees	HOAs in Minnesota can charge attorney fees for responding to a homeowner’s complaint.	Minnesota should expressly prohibit HOA attorneys from charging fees for responding to questions, complaints, or for providing basic documents.
Reasonableness standard: Late Fees	There is no reasonable standard for what an HOA can charge for late fees.	Minnesota should cap late fees
Reasonableness standard: Foreclosures	An HOA can foreclose on any assessment, no matter how small. There is no reasonableness standard.	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	No transparency or consistency with management companies. Nationally, 60-70% of HOAs hire management companies, but	Management companies in Minnesota should be licensed and be held to strict conflict-of interest-standards.

	Minnesota law is silent about oversight, requirements, or regulation of management companies. Management companies are not held to conflict-of-interest standards.	
Basic rights: dispute Resolution	515B is not specific regarding what rights accrue to a homeowner or what procedures must be followed by a board at a fine hearing.	Establish an Ombudsperson's Office. Require HOAs establish a fair, internal dispute resolution process. Require HOAs to offer alternative dispute resolution options.
Basic rights: right to speak	515B gives homeowners the right to attend board meetings, but not the express right to speak.	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.
Basic rights: Right to a payment plan	There is no right under 515B to a payment agreement if a homeowner falls behind on assessments	Minnesota should require HOAs to offer payment agreements if homeowners fall behind.
Basic rights: Other rights	Current law does not give homeowners the right to park work vehicles in their driveways	Minnesota should give homeowners the right to park work vehicles in their driveways.
Checks and balances	There is 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 help if a homeowner suspects board malfeasance, or if they believe the HOA has violated the law or the governing documents.	Minnesota should require management companies to be licensed.

Meeting 8 – January 6th, 2025 – Municipal Covenants

The Working Group reviewed the intersection of CICs and local government. Speakers from the League of Minnesota Cities and Hellmuth and Johnson, (representing the industry’s perspective), delivered presentations on this issue with recommendations to the Working Group.

Daniel Lightfoot, Senior Government Relations Manager with the League of Minnesota Cities, spoke to the Working Group on the relationship between cities and HOAs. Currently, municipalities cannot legally require HOAs and do not directly mandate the establishment of HOAs, but may work to ensure that private common property is appropriately managed.⁵⁵ Furthermore, cities have no authority to enforce HOA rules.⁵⁶

The decision to create a CIC is typically decisions made at the developer-level.⁵⁷ Here, the developer provides plans for approval that may include private common area properties, which may necessitate the need for private CIC management.⁵⁸ Cities do not have oversight over resulting HOA governance or covenants, conditions, and restrictions (CC&Rs).⁵⁹

Municipalities have experienced a growing number of issues reported by residents living in CICs, including lack of information, ambiguity between the roles of homeowners and associations, poor administration by management companies, disagreements about fines and fees, financial mismanagement, governing documents not being made available to homeowners, and discriminatory behaviors, rules, or fines by CICs, among others.⁶⁰ Mr. Lightfoot highlighted several recommendations for the Working Group:

- Focus legislation on HOA/CIC oversight, scope, transparency, and conflict resolution
- Avoid any legislation that removes the ability for cities to ensure proper management and maintenance of private common-area property
- Retain existing tools including HIAs, where cities can assist with improvements of common elements

Working Group member Phaedra Howard, an attorney with Hellmuth and Johnson, stepped in on behalf of attorney Nancy Polomis who was unavailable, to present the industry’s perspective on the relationship between CICs and municipalities. During a housing development

⁵⁵ Lightfoot, “Cities and Homeowners Associations (HOAs).”

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

process, the development agreements generally do not include provisions ensuring that construction meets industry standards or that governing documents comply with state law.⁶¹ Homeowners, then, are left to address construction defects and poorly drafted governing documents. Municipalities, moreover, do not provide ongoing support for CICs to ensure their success.⁶² Homeowners in CICs with public and private streets are also ‘double-taxed’.⁶³ Ms. Howard highlighted several recommendations:

- Greater consistency in how municipalities deal with CICs, such as in the areas of:
 - Permitting and inspections
 - Emergency and police response
 - Streets assessments
 - HIA participation
- Require studies by developers to address drainage, runoff, erosion, etc.
- Require proof of compliance by homeowners with CIC’s architectural change process before issuing building permits
- Legislative work-around to allow CICs to levy emergency assessments without owner approval.

Meeting 9 – January 10th, 2025 – Affordability and Civil Rights

The Working Group reviewed the impact of CICs on housing affordability and civil rights. The Working Group heard presenters Cameron Rifkin from NCSL, Shana Tomenes from the Housing Justice Center, and Nick Erickson of Housing First.

According to Mr. Rifkin, the United States is currently facing a housing crisis, with a national shortage of at least 1.5 million housing units.⁶⁴ Construction challenges include rising material costs, restrictive land use and zoning regulations, minimum parking requirements, building code requirements, workforce shortages, and lengthy permitting processes.⁶⁵ Additionally, interest rates are currently around 7%. The total monthly payment for a median-priced home is \$3,096, which is affordable by 29% of Asian households, 16% of White households, 13% of Hispanic households and 8% of Black households.⁶⁶

The issue of dwindling housing supply intersects with community associations. 30% of the current housing stock nationally is governed by a CIC, and 60% of new single-family homes

⁶¹ Howard, “The Interplay Between Community Associations and Municipalities.”

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Rifkin, “Housing Affordability Relating to Homeowners Associations & Common Interest Communities.”

⁶⁵ Ibid.

⁶⁶ Ibid.

are constructed in a CIC.⁶⁷ Furthermore, units in community associations tend to be valued at 5-6% more than similar homes without an HOA.⁶⁸ Research also shows that White and Asian-American homeowners disproportionately reside in community associations compared to other racial groups.⁶⁹

Mr. Rifkin highlighted multiple policies that states have enacted to regulate CICs. Colorado enacted the Homeowners Association Board Accountability and Transparency Act, prohibiting an HOA from imposing daily late fees or fines.⁷⁰ Idaho prohibits community associations from restricting internal accessory dwelling units.⁷¹ In 2023, Texas established procedural requirements that CICs must follow for placing a lien on a property.⁷² Finally, in 2024, Washington State restricted the authority of community associations from regulating or limiting occupancy by unrelated persons.⁷³ Additionally, Illinois allows homeowners in CICs to legally compel the voiding of discriminatory covenants.⁷⁴

Shana Tomenes from the Housing Justice Center presented on CICs' impacts on housing affordability and civil rights from the homeowner viewpoint. According to Ms. Tomenes, CICs have a history of discriminatory practices and systemic exclusion and contribute to the racial wealth and homeownership gaps.⁷⁵ Despite the Minnesota Supreme Court ruling in 1948 that racially restrictive covenants were unenforceable, research indicates that CICs have continued to maintain racial, religious, ability, familial, and economic status through a more covert lens.⁷⁶ This includes elements of CIC such as neighborhood standards and community controls.⁷⁷

As such, Ms. Tomenes concluded that the need for CIC regulation and homeowner and board education are issues of both racial and disability justice.⁷⁸ There are currently no requirements for CIC board members to be representative of the community, and boards are given significant power over financial and community rules that affect their neighbors and homeowners.⁷⁹ There are also no requirements for board members to become knowledgeable in disability law, the importance of reasonable accommodations, or issues related to race or

⁶⁷ Rifkin, "Housing Affordability Relating to Homeowners Associations & Common Interest Communities."

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Tomenes, "Presentation by Housing Justice Center to the Working Group on Common Interest Communities and Homeowners Associations."

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

affordable housing.⁸⁰ Furthermore, decisions that CIC boards make disproportionately impact BIPOC and disabled homeowners negatively in their communities.⁸¹ As such, Ms. Tomenes recommended the requirement for reasonable rules that protect homeowners and better serve the community.⁸²

Ms. Tomenes further highlighted three issues around affordability and civil rights with recommendations: providing minimum standards for CIC rulemaking, protections for homeowners who wish to use their property as a landlord, and protections that allow for meaningful redress before a homeowner loses their home due to an CIC dispute.⁸³

There are currently no set standards for how CIC rules are created and enforced.⁸⁴ While rules and regulations exist to support the desires of some owners, they may not meet the needs of other owners. As such, creating reasonable standards for CIC rulemaking is important. Ms. Tomenes highlighted several recommendations for this issue:

- Prohibit rules from conflicting with homeowners' freedom of privacy within their homes, freedom of expression, or civil rights.
- Require 60-day notices before changes go into effect and require a comment period.
- Changes to rules must be reasonable.
- New rules that substantially modify previous policies should only be enforced against new owners.
- Require religious accommodations for rules not related to health and safety.

Ms. Tomenes also presented the issue of protection for homeowners who wish to use their property as a landlord. Many CIC rules limit how and when someone can choose to be a landlord and rent their property, negatively impacting renters.⁸⁵ Rules, for example, may limit renters' age, or have residency limits, minimum credit scores (often a proxy for excluding BIPOC and disabled communities), or require background reports.⁸⁶ This is, Ms. Tomenes stated, not truly indicative of the needs of the community and infringes on homeowners' rights.⁸⁷ The following recommendations for this issue area were presented to the Working Group:

- Protection for source of income.

⁸⁰ Tomenes, "Presentation by Housing Justice Center to the Working Group on Common Interest Communities and Homeowners Associations."

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

- No blanket requirements for rental screening.

Finally, Ms. Tomenes discussed the issue of lack of due process if a homeowner has gotten a fine, fallen behind on dues, or broken rules and could potentially have their home foreclosed. Due to the power to foreclose by CIC boards, it is important that there is some formality of board meetings and powers. Ms. Tomenes presented several recommendations:

- Require boards to have agendas for meetings and allow homeowners to have the right to speak at board meetings.
- Ensure that the Attorney General’s Office has regulatory oversight of CIC law and provide appropriate funding.
- Do not exempt CICs from adhering to Minnesota law when they conflict with broader protections that otherwise exist.
- Require 60-day notice for fee increases and special assessments.

Nick Erickson, Senior Director of Housing Policy at Housing First, presented on the developers’ perspective on this issue.⁸⁸ Minnesota has the highest costs for new single-family homes in the upper Midwest, with a median price of \$540,592, and \$548,000 in the Twin Cities metropolitan area.⁸⁹ Developers may require certain common property elements that increase housing costs, including recreational amenities, private streets, stormwater ponds, and other infrastructure.⁹⁰ Mr. Erickson highlighted how CICs may be created through requirement by the development’s structure design or the target market.⁹¹ Zoning requirements may also indirectly necessitate the creation of a community association for new developments.⁹²

According to Mr. Erickson, community associations are a “tool of fiscal exclusion.”⁹³ While median existing homes prices are around \$340,000, they are around \$540,000 for new homes and are often in a CIC.⁹⁴ Moreover, community association fees reduce purchasing power; with 7% interest rates, the national median community association fee of \$293 per month results in a \$36,625 loss in purchasing power.⁹⁵ Mr. Erickson highlighted several other challenges CICs impart on housing affordability and stock, including fees increasing over time, unpredictable insurance markets, reducing property rights, and the overlap of association fees and property taxes.⁹⁶

⁸⁸ Erickson, “New Construction HOAs: HOA Formation, Affordability & Common Property.”

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ibid.

Summary of Public Testimony

The Working Group invited members of the public to share their issues they have experienced with CICs and HOAs in Minnesota. The Working Group welcomed public testimony at meetings and at 3 public listening sessions held around the Twin Cities metropolitan area.

Issues highlighted by public testifiers included:

- CIC conflicts of interest
- Board transparency and withhold information
- Rules and regulations
- Fines and fees
- Lack of oversight of insurance companies and property management companies
- HOA insurance
- Attorney's fees
- Kickbacks from vendors to property management companies
- Open meetings and ability to speak at meetings
- Lack of board experience
- Inadequate notice for assessment/insurance increases

Recommendations

TO BE INSERTED WHEN FINALIZED