



Common Interest Communities

From the Office of Minnesota Attorney General Lori Swanson

Ownership in a Common Interest Community (“CIC”), such as a townhome or condominium, offers an opportunity for home ownership without many of the added day-to-day responsibilities, such as snow removal or yard maintenance. In a CIC, homeowners are members in an association comprised of all owners in the community. The association administers the CIC, which 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 profit, nonprofit, or cooperative organization, but the operation and management of CIC associations is generally controlled by the Minnesota Common Interest Ownership Act (“MCIOA”), Chapter 515B of Minnesota Statutes, and the organization’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 may also apply to particular circumstances. It is important to understand, however, that while many associations operate under the basic framework for the establishment and operation of CIC associations provided in MCIOA or other applicable statutes, an association’s governing documents provide specific provisions for the operation of the particular association and may differ in some respects from the statute. Accordingly, people should carefully review an association’s governing documents before purchasing a home in a CIC. In fact, MCIOA requires the seller of a CIC unit to provide certain information, including governing documents, prior to a sale.

Powers and Responsibilities of the Association

A CIC association must be governed by a board of directors, which is generally elected by the association’s members. However, the declaration creating the CIC may provide that the association be controlled by the declarant (typically the developer or

builder) for a period, during which time the declarant may appoint and remove officers. This period will generally begin on the date of creation of the CIC and end at the earliest of several possible events, such as five years after the date the declarant first conveys a unit to an owner other than itself. At the termination of this period, the unit owners must elect the board.

While the CIC’s governing documents will specify the board’s exact powers, the association board generally has powers to administer the community, including those specified in Minn. Stat. § 515B.3-102. This typically includes the power to charge for the use, rental or operation of the common elements and services provided to unit owners by the association. These charges commonly take the form of monthly dues and other assessments. Although an association’s governing documents may provide for a different process, dues and assessments must generally be approved by the members by a special meeting or, more commonly, by the adoption of an annual budget. However, some association documents give the board broad powers to levy special assessments in certain situations. MCIOA requires homeowners to pay any assessment levied against their unit and provides that the association has a lien for unpaid amounts, which it may foreclose. If your home has a first mortgage or other priority lien, it may be unlikely that the association would foreclose for a small amount of fees, but you should be aware that foreclosure is possible.

An association typically also has the power to adopt, amend and revoke rules not inconsistent with the association’s governing documents. Under this power, the association may regulate the use of units and conduct of unit owners that may jeopardize the health, safety or welfare of other occupants. Accordingly, an association may be able to prohibit or limit smoking, enact parking regulations, adopt regulations regarding pet ownership, or even limit the use of bird feeders. This is a substantial difference from owning a free-

standing home and is an important consideration when buying a home in a CIC.

In addition, an association is generally responsible for the maintenance, repair, and replacement of common elements, while the homeowner is responsible for his or her unit. Minn. Stat. § 515B.3-107(a). Furthermore, Minnesota law requires an association to maintain certain insurance “to the extent reasonably available.” Minn. Stat. § 515B.3-113. It is important to read your association’s governing documents carefully and understand the insurance coverage provided by your association and your association’s responsibilities regarding maintenance and repair. Sometimes, damage to external elements may cause damage inside your unit, resulting in a dispute over who is responsible. Homeowners 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.

Rights of Homeowners

Access to Documents. Minnesota law requires an association to keep adequate records relating to its operation and make such records reasonably available for inspection by any unit owner or the unit owner’s agent. Minn. Stat. § 515B.3-118. Such records include, but are not limited to, records of the association’s membership, unit owners meetings, board of directors meetings and committee meetings, certain financial records, association agreements and certain correspondence. The access requirement does not apply, however, to information that was the basis for a closed board meeting under MCIOA. Additional document access provisions may also be found in the particular statute under which the association was formed. The Minnesota Nonprofit Corporation Act, for example, grants access for members and directors to certain documents and provides a claim for injunctive and other relief for anyone wrongfully denied access. Keep in mind that you may be required to pay copy fees if you wish to copy any documents.

Annual Report. You have a right to be kept informed as to certain information regarding your association. An

association must prepare an annual report and provide a copy to each unit owner prior to or at the association’s annual meeting. Minn. Stat. § 515B.3-106(b)(2). The annual report must contain certain information, including but not limited to, revenue and expense statements, capital expenditures, a statement of replacement reserves, pending litigation or judgments, and a description of insurance coverage provided by the association.

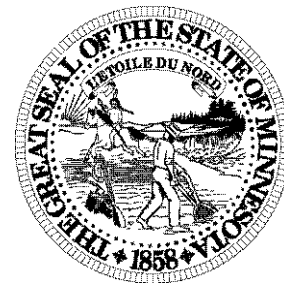
Claim for Relief. MCIOA establishes a claim for relief for those who are adversely affected when a declarant, association or any other person violates MCIOA or the association’s governing documents. *See* Minn. Stat. § 515B.4-116. This claim is in addition to any other rights, remedies, or claims you may have under other statutes or common law. Again, the statute under which the association was formed or incorporated may provide additional relief. For example, the Minnesota Nonprofit Corporation Act authorizes directors and members with voting rights to bring an action or petition the court for appropriate relief under certain circumstances. It should be noted however, that because associations are funded by members, costs incurred by a board while defending a lawsuit initiated by its members may be assessed to the members.

Tips for Addressing Problems in a CIC

- Contact the Board of Directors. The first step to address problems with your CIC is to notify the board of directors of your concerns. Although an association may hire agents or independent contractors, such as a management company, the board of directors 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 unit, 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 operation of a CIC are made through the vote of a majority of the members, generally

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 member meetings when possible and cast your vote on particular issues.

- Talk to Other Members. Because an association is comprised of the unit owners, you may find that you can accomplish a great deal by simply speaking with others in your CIC about your concerns or ideas. Other concerned members may be willing to join you in contacting the board of directors regarding particular issues or may help determine whether other action is necessary.
- Conciliation Court. If your dispute with the association involves an amount less than the \$7,500 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 has prepared a brochure entitled *Conciliation Court: A User's Guide to Small Claims Court*, which provides information regarding filing a claim in conciliation court.
- 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 CICs 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.



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

Minnesota Multi Housing Association
CIC Midwest
1600 West 82nd Street, Suite 110
Bloomington, MN 55431
952-854-8500
Fax: 952-854-3810
www.mmha.com