

MINNESOTA HOMEOWNERS ASSOCIATION

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REFERENCE  
GUIDE**

SMITH JADIN JOHNSON  

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# AUTHORITY

In Minnesota, common interest communities (“CICs”) — usually residential condominiums, townhomes, or single-family homes — are controlled by a set of governing documents and Minnesota law.

By comparison, associations are nonprofit corporations created specifically to operate and maintain the CIC. Associations get their power to operate the CIC from several sources, including Minnesota law and the CIC's governing documents.

## GOVERNING DOCUMENTS

**PLAT MAP:** The legal document recorded in the county where the CIC is located. It shows how the land within the CIC is divided, the boundaries of the units, and common elements within the CIC, and any easements or rights-of-way.

**ARTICLES OF INCORPORATION:** The legal document recorded with the Minnesota Secretary of State that creates the association (the nonprofit corporation that operates and maintains the CIC).

**DECLARATION:** The legal document that creates the CIC. It is recorded in the county where the CIC is located. The Declaration provides a roadmap to homeowners living within HOA communities of what is expected and permitted in their neighborhood. Among other things, it typically addresses assessments, use restrictions, maintenance requirements, and construction and design restrictions.

**BYLAWS:** The internal guidelines of the association. They create the structure of the association to make sure that it runs smoothly. Among other things, they address the number of directors and officers in the association, the procedure for holding member meetings and board meetings, and how voting is handled.

**RULES & REGULATIONS:** Generally, association boards have the power to adopt rules and regulations to facilitate the operation of the CIC. Think of them as a “catch-all” for things that are not covered by the declaration or the bylaws. The declaration and bylaws take precedence and the rules and regulations cannot be more restrictive than those documents.

## MINNESOTA LAW

### MINNESOTA NONPROFIT CORPORATION ACT (MINN. STAT. § 317A):

This law provides authority and guidance for all nonprofit corporations in Minnesota. Since nearly all associations are nonprofit corporations, they must follow the Minnesota Nonprofit Corporation Act.

### THE MINNESOTA COMMON INTEREST OWNERSHIP ACT (MINN. STAT. § 515B):

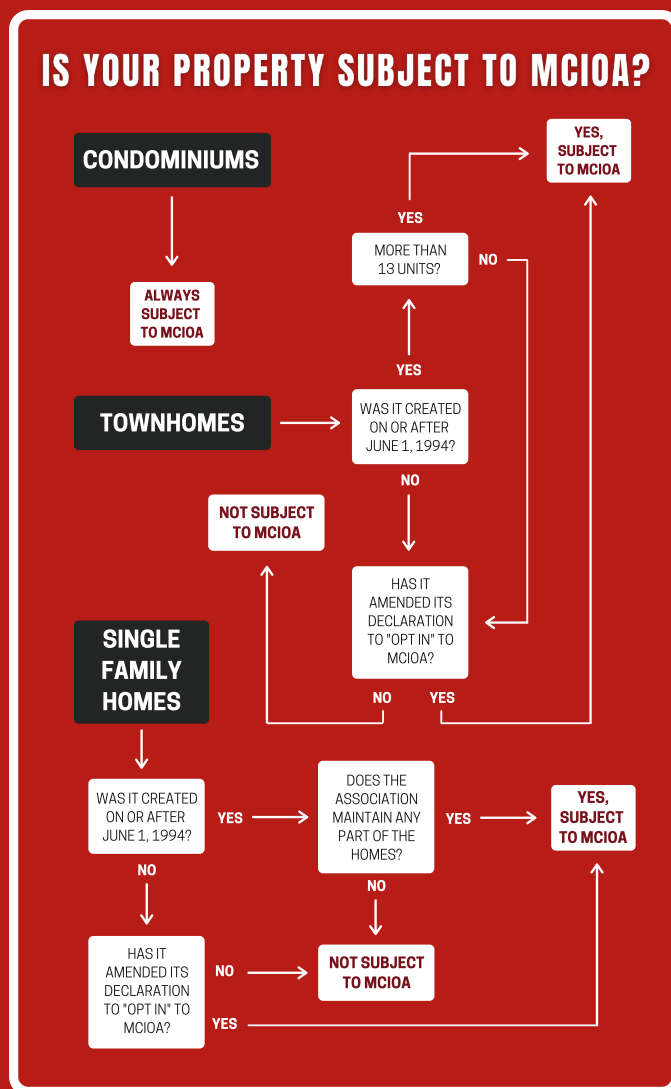
The Minnesota Common Interest Ownership Act (“MCIOA”) is a Minnesota state law that governs the operation of CICs and gives legal authority to address issues that frequently affect them. MCIOA applies to many, but not all, CICs in Minnesota. The flowchart on the right can help you determine if MCIOA applies to your CIC.

## CONFLICTING AUTHORITY

If there are conflicts between the governing documents, then the document with the highest authority will control. Ranked from highest priority to lowest priority, the governing documents are:

1. Plat
2. Articles of Incorporation
3. Declaration
4. Bylaws
5. Rules and Regulations

If there are conflicts between the law and the governing documents, the law will control.



# GOVERNANCE

Associations are operated and governed by an elected board of directors. The powers, duties, and responsibilities of the board of directors can be found in the governing documents, the Minnesota Nonprofit Corporation Act, and/or the Minnesota Common Interest Ownership Act.

## THE BOARD OF DIRECTORS

The homeowners elect the board to act on behalf of the association. The board exercises the powers given to the association, such as levying and collecting assessments, performing maintenance and repairs, reviewing and approving architectural requests, adopting rules and regulations, and enforcing the governing documents.

While the board's power is broad, it is not unlimited. The board cannot take action that is not authorized by the governing documents or applicable law. And depending on the governing documents, the board may require homeowner approval for certain actions.

Generally, the bylaws state how many board members an association must have, how long they serve, and their powers and authority.

## BOARD DUTIES

The board operates and manages the CIC as required by the governing documents. Common duties and responsibilities of the board include:

- Levying and collecting assessments
- Purchasing insurance for the CIC
- Maintaining and repairing the CIC
- Adopting and enforcing rules and regulations
- Enforcing the declaration
- Hiring vendors (community managers, lawn and snow vendors, contractors, attorneys, accountants, engineers)
- Maintaining association records (board meeting minutes, member meeting minutes, written actions adopted by the board, financial statements, etc.)
- Preparing resale disclosure statements

## OFFICERS

Associations also have officers (usually a president, vice president, secretary, and treasurer) to help oversee daily aspects of the association's operation.

Officers are not board members. They are appointed by the board, rather than the homeowners, and they do not have the right to vote on board matters.

**But** some board members wear two "hats" and are both board members and officers. Individuals who are both board members and officers have the right to vote on board matters because they are board members. Individuals who are officers but not board members do not have voting rights.

## MEETINGS

Associations are required to hold an annual member meeting and regular board meetings. Meeting agendas are determined and set by the board, except in the case of special member meetings requested by the homeowners.

## BOARD MEETINGS

- Presided over by the association president
- Must have quorum (usually a simple majority of the board members) to conduct business
- Generally must be open to the members (there are some limited exceptions)
- Can be held electronically or in person
- Unless the bylaws state otherwise, the board can take action without a meeting only with the unanimous written consent of all board members

## MEMBER MEETINGS

- Presided over by the association president
- Must have quorum (as specified in bylaws) to conduct business
- Cannot be held electronically unless expressly permitted by the articles or bylaws
- Members can generally conduct business via written ballots instead of at a member meeting
- Annual Meetings:
  - Must be held once per year
  - Typical business includes election of new board members and approval of previous year's annual meeting minutes
  - Member meetings may also address any other business properly before the members
- Special Meetings
  - Can be called by the association's president
  - Bylaws may also permit homeowners to call a special member meeting under certain circumstances

## FINANCING

**ANNUAL ASSESSMENTS:** Annual assessments cover the association's annual operating expenses and contributions to reserves. They are generally set by the board, but some increases may require homeowner approval.

**SPECIAL ASSESSMENTS:** Special assessments may be levied to pay for unforeseen emergency repairs and other unbudgeted common expenses. They are set by the board, but may need homeowner approval.

**LIMITED ASSESSMENTS:** Associations may be able to assess certain maintenance and repair costs to the units benefited by them. This does not require homeowner approval.

**RESERVE ACCOUNT:** Associations are required by law to maintain a reserve account to pay to replace building components when they reach the end of their useful life. Reserve contributions should be based on a reasonable analysis of: (1) the components the association is required to maintain; (2) the remaining life of those components; and (3) the estimated cost to replace them at the end of their lifespan. A reserve study can help analyze these questions and help the association determine how much it should be contributing to reserves.

**COLLECTIONS:** Associations must diligently pursue collection of past-due assessments. Failure to do so may result in budgetary shortfalls.

# LEGAL

There are many legal requirements and issues that affect associations. The intricacies and requirements of the law, as well as the unique facts of each situation, can be confusing, and it is important that associations seek quality legal advice when situations arise.

## GOVERNANCE & COMPLIANCE

Legal issues often arise in interpreting and enforcing the governing documents. Common legal concerns include:

- Issuing fines and holding hearings for violations
- Interpreting vague or ambiguous sections of the governing documents
- Determining if, when, and how to assess costs back to individual units and/or homeowners
- Resolving conflicts with difficult homeowners

The attorneys at Smith Jadin Johnson can help your associations with these—and any other—legal issues.

## COLLECTING ASSESSMENTS

Collecting assessments is crucial for all associations. The best way to make sure collections occur in a consistent and timely manner is to adopt and follow a standard collection policy that applies to all members.

Generally, there are two ways a lawyer can proceed against a delinquent homeowner: (1) a personal judgment or (2) an assessment lien foreclosure by action or advertisement.

**PERSONAL JUDGEMENT:** Associations may opt to pursue a delinquent homeowner personally by obtaining a judgment in Conciliation Court (small claims court) or District Court for the amount due. The collection process involves: (1) filing a lawsuit against the homeowner; (2) producing evidence that the homeowner owes the association money, either at trial or via motion; (3) obtaining a judgment against the homeowner; and (4) collecting on the judgment via wage garnishment or bank levies. While generally quick and relatively inexpensive, there is no guarantee that the homeowner will pay the judgment.

**LIEN FORECLOSURE:** Associations governed by MCIOA have a statutory lien against a unit for unpaid assessments. MCIOA permits associations to foreclose their assessment liens.

There are two ways to foreclose assessment liens: (1) by advertisement, which involves giving certain notices to the homeowner and publishing notice of the intent to foreclose the lien in a legal newspaper; or (2) by action, which means a lawsuit.

MCIOA permits associations to foreclose their liens by advertisement, which is faster and less expensive than foreclosing by action. Associations not subject to MCIOA may be entitled to foreclose their liens by advertisement if permitted by the governing documents.

**ATTORNEY FEES & COSTS:** Associations subject to MCIOA are entitled to recover their attorneys' fees and collection costs incurred in collecting on the past-due account. Associations that are not subject to MCIOA may be able to recover these costs if permitted by the declaration.

## DISCRIMINATION

Associations are subject to federal and state anti-discrimination laws that prohibit discrimination in housing. These laws include the federal Fair Housing Act ("FHA") and the Minnesota Human Rights Act ("MHRA").

Discrimination claims against associations typically involve failure to approve requests for reasonable accommodations to the disabled, rules and regulations that inadvertently discriminate against families with children, and claims of differential enforcement of rules and regulations based on an individual's membership in a protected class (race, sex, sexual orientation, age, religion, disability status, familial status, and others).

Discrimination claims are minefields and can trigger severe penalties. If your CIC has been accused of housing discrimination, consult with an attorney immediately.

## LITIGATION

**BEFORE STARTING A LAWSUIT:** There are times when an association may find it necessary to start a lawsuit to protect its interests. These situations include, but are not limited to: defective construction or repairs, insurance coverage and valuation disputes, covenant enforcement, and other matters. Before starting a lawsuit, an association should carefully consider the following factors:

- The cost of the lawsuit
- The amount at issue
- The likelihood of success
- The likelihood of collecting any money won in litigation
- The effect a lawsuit would have on the community

An association should only start a lawsuit after it carefully considers these factors in consultation with an attorney.

**RESPONDING TO A LAWSUIT:** Of course, associations can also be sued. Associations may find themselves embroiled in lawsuits with angry homeowners, upset vendors, and other parties.

Fortunately, associations have liability insurance that may provide them with a defense (an attorney) if they are sued. Additionally, those insurance policies may indemnify (pay a judgment on behalf of) the association.

If your association is sued, you should immediately tender the lawsuit to the association's insurance company and request that it defend and indemnify it.

# PROPERTY & INSURANCE

CICs are divided into units and common elements. Maintenance and insurance obligations often depend on whether property is a unit or common element.

## BOUNDARIES & DEFINITIONS

### PROPERTY

- Everything contained within the CIC

### UNITS

- Portions owned by individual homeowners
- Condominiums — usually interior unfinished surfaces
- Townhomes — usually platted lot lines

### COMMON ELEMENTS

- Everything at the property except the units
- Condominium examples: hallways, elevators, and shared common space
- Townhome examples: private roads or a pool

### LIMITED COMMON ELEMENTS

- A subset of common elements that are used/accessible by only a portion of the homeowners
- Condominium examples: patios or balconies
- Townhome examples: driveways or sidewalks



## MAINTENANCE

Each association is unique, and you should check the declaration for specifics. However, the party who decides when maintenance should occur, who should perform the work, and who is responsible for paying for it commonly breaks down as follows:

### UNITS

- Decides when maintenance occurs = Homeowners
- Who hires the contractor = Homeowners
- Financially responsible = Homeowners

*Note: Associations, particularly townhome associations, may be responsible for maintaining certain exterior parts of the units. In that case, the association will be responsible for deciding when maintenance occurs and hiring a contractor to complete the work.*

### COMMON ELEMENTS & LIMITED COMMON ELEMENTS

- Decides when maintenance occurs = Association
- Who hires the contractor = Association
- Financially responsible = Association, but the cost may be assessed back to specific homeowners in some situations

## INSURANCE

Associations are required to purchase and maintain insurance coverage by their declarations and/or Minnesota law.

Homeowners may also have an obligation to purchase their own insurance policies for their personal property and any improvements they may make to their units.

### ASSOCIATION INSURANCE

Associations are generally required to purchase and maintain the following types of insurance:

- **PROPERTY:** Covers damage to the building from events like fire, wind, and hail
  - **BEST PRACTICE - BUY A POLICY WITH MATCHING COVERAGE:** Some insurance policies allow damaged property to be replaced with mismatched materials like different color siding. Associations should make sure that it has coverage for "matching" to avoid mismatched materials.
- **LIABILITY:** Protects the association if it is sued, for example, if a person slips and falls on the Association's sidewalk
- **DIRECTORS & OFFICERS:** Protects the association if the Board is sued for actions they take in exercising their duties as the Board. This coverage usually fills in the gaps where a liability policy may not provide coverage
- **FIDELITY:** Protects the association in case of theft from parties such as board members or property managers
- **WORKERS COMPENSATION:** Protects the association if someone is injured doing something for the association: for example, a volunteer shoveling ice, a property manager doing an inspection, or an uninsured contractor

### HOMEOWNERS INSURANCE (HO-6 POLICIES)

An association's master insurance policy does not cover everything. Therefore, every homeowner should have a personal insurance policy (called an HO-6 policy) that covers the following: (1) their personal property; (2) any improvements or betterments they have made to their unit; and (3) loss assessment coverage.

"Loss assessment coverage" may reimburse the unit owner for an assessment of the association's master policy deductible to the units. Owners should speak with their insurance agents to make sure that their HO-6 policy provides enough loss assessment coverage based on the potential maximum deductible assessment.



SMITH JADIN JOHNSON

PLLC

**THE ONLY LAW FIRM YOUR ASSOCIATION WILL EVER NEED**

952-388-0289

INFO@SJJLAWFIRM.COM

7900 XERXES AVENUE SOUTH  
SUITE 2020  
BLOOMINGTON, MN 55431

WWW.SJJLAWFIRM.COM

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