

Minnesota's HOAs

An Unregulated Industry

Why Homeowners Need Protections

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Associations are a business, yet:

- Federal law recognizes there are different purposes for exempt organizations.
- Minnesota law says an organization can be incorporated for any legal purpose.
- There is no mandated reporting requirement.
- There are no legally required standards of conduct for how the business is to be run.
- Minnesota requires nonprofits that have an annual revenue of \$750,000 or more to have an audited financial statement.
 - HOA's have no reporting requirement, regardless of revenue
- Minnesota requires nonprofits that are incorporated as a public charity to file an annual report with the Attorney General's office.
 - HOA's have no reporting requirement
 - They just have to fill out an annual renewal form with the SOS's office.

Bylaws

Bylaws are to be given to homeowners upon the purchase of the property.

Minnesota Attorney General's office encourages homeowner's to read them before they sign the mortgage.

Realtor, at best, only has to ensure the homeowner gets a copy. They don't have a say about the content or the validity of the information.

- Bylaws are not the same as a legally binding contract.
- The only real purpose they serve is to fulfill the application requirement for incorporation with the SOS's office.
- Minnesota law does not require them to be updated or even followed, if the board chooses to not follow them.
- Bylaws only describe the purpose of the organization. They don't describe the nature of the relationship between the board and the homeowners.

There is no formal contract between homeowners and the board:

- HOA homeowners have, at best, bylaws.
- Bylaws are not a contract.
- Bylaws are not legally enforceable.
- Renters have a lease that outlines the nature, terms and conditions of the relationship.
- The lease is legally enforceable.

Board of Directors

If the association is incorporated as a nonprofit organization, it is supposed to have a board of directors.

Minnesota mandates two board members and allows additional board members to be determined by the bylaws.

- Minnesota law doesn't require the bylaws to be followed.

Minnesota nonprofit law requires board members to have a duty of loyalty to the organization.

- Minnesota HOA law says board members can be appointed – they don't have to be voted in by members.
- Minnesota HOA law says board members do not have to be homeowners or members of the association.
- Minnesota HOA law does not set term limits or competency requirements for board members.
- Board members of an organization incorporated as a public charity can be held liable for how the organization is run. Minnesota HOA laws says board members just have to put forth a “good faith effort.”

Homeowners have no legal authority over who serves on the board:

- Minnesota HOA law is written for the management of the organization.
- Homeowners are not considered in how the law is written.
- If there is a vote and the board chooses to not honor it, there is no legal or other recourse for homeowners.
- ***Note: our board chair was appointed by the management company. So were the rest of the board members.***

Management Companies

Management companies are contracted by the board of directors to fulfill different functions of the association.

Minnesota law says they are supposed to be neutral third parties.

Minnesota Dept of Commerce would support requiring management companies to be licensed.

- Minnesota law does not require management companies to be licensed or have any other qualification to be a management company.
- Minnesota law does not prevent management companies from serving on the board of directors, even if this could be construed as a conflict of interest for the organization.
- ***Note: Our management company established the association and then hired itself out to be the management company. They serve on the board of directors and their contract is always signed by the board chair they appointed.***

Insurance Companies

Minnesota Dept of Commerce
doesn't know the difference
between a HOA and a CIC.

Minnesota Dept of Commerce
doesn't regulate the content of an
insurance policy, only that it is
within the law.

- Acuity has our master plan insurance policy that is paid for with the dues I pay.
- The policy includes the management company as a named insured, but Acuity says they don't have to name the board members to cover them.

“Industry Standard”

I asked Acuity several questions about the policy, including:

What makes it ok for them to ignore the conflict of interest it creates for us as homeowners to pay for coverage for the management company.

How is the signature on the policy legitimate given it is signed by a board chair who refuses to declare he represents us, and given the fact that our association doesn't have it's own legally required business address.

- The first response was “it’s industry standard”. But not to worry, they do that for everyone.
- The second agent screamed at me and threatened me with harm if I don’t stop asking questions, so I reported him to his HR department.
- The third response was from the police because the insurance company was attempting to get a restraining order on me to get me to stop asking questions.
- Minnesota says they have no say in what an insurance company chooses to insure and what it doesn’t – as long as it is a legal purpose.
- Wisconsin – where the company is located, says it’s up to Minnesota to decide whether or not threatening me with harm for asking questions is wrong or not.

“Industry Standard”

I asked FirstService Residential the same questions (our management company):

What makes it ok for them to ignore the conflict of interest it creates for us as homeowners to pay for coverage for the management company.

How is the signature on the policy legitimate given it is signed by a board chair who refuses to declare he represents us, and given the fact that our association doesn't have it's own legally required business address.

- The response I got was that their contract requires us to cover them.
- Note: The contract was signed by the board chair they appointed.
- Note: No one is addressing the issue of how this is in our best interest as homeowners, even though we are footing the bill for this.

“Industry Standard”

The master plan insurance policy:

- Has us paying for employee fraud coverage – our association doesn’t have employees
- Doesn’t cover improvements and betterments
- Was sent to an address that isn’t a business address for the association
- My insurance company says if there is another weather related claim, my policy will be dropped
- I had only one claim for my policy and the management company never provided any clear information on why it was necessary in the first place. Our reserves could have more than covered the cost.
- I have to pay more to cover the higher deductible on the master plan policy
- So what, exactly, are we paying for and why? (Note: Minnesota law doesn’t require the association to carry insurance)

Legal

Because Minnesota HOA law is designed for management, there are no legal resources available for homeowners.

- Minnesota Attorney General has no regulatory authority.
- Private practice attorneys represent management companies.
 - William Mitchell

“Industry Standard”

Our dues pay for an attorney, Nancy Polomis, Helmuth and Johnson, who at least in theory is supposed to represent our board of directors, yet her communication is never complete, and it almost always benefits the management company.

- In one letter about an assessment we were being required to pay without any truthful information about why or how they arrived at that amount, she quotes the law about charging interest for those who need to make payments. What she doesn't say is that the law doesn't require them to charge interest or that this additional money will benefit FirstService.
- I also have another letter from her telling me “The Board” has prohibited me from contacting FirstService through email, and if I have any questions, I need to send a snail mail to their (FSR's) office and they will decide whether or not the board sees it.

Dues and Assessments

Dues are monthly payments.

Assessments are special payments.

- Minnesota law doesn't require there to be a legally justified or necessary reason for either of these.
- Minnesota law doesn't cap what can be charged or set a frequency limit, either.
- Minnesota law doesn't require a court action for an assessment, but will allow the association to foreclose on a property for nonpayment, even when there is no justifiable reason for the assessment.

“Industry Standard”

Our dues pay for an attorney, Nancy Polomis, Helmuth and Johnson, who at least in theory is supposed to represent our board of directors, yet her communication is never complete, and it almost always benefits the management company.

Note: I have asked the board chair three times to declare he represents the association, and each time he has refused to respond. The answer always comes from Nancy who conveniently sidesteps the issue.

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Organization Documents and Practices

Because our association was established by the for-profit company, we have no separate organization documents, such as risk management policies and other operational information.

The only operating guidelines we have are with the contract that is written by FSR and signed by the board chair they appointed.

- No one from our association is a signer on our accounts. FSR says “the board” wants it that way.
- We have over \$1m in reserves, but it is held at a bank that doesn’t have a charter in Minnesota, and the management company is the only signer on the account.
- The contract with FSR includes their access to \$1,500 per month in discretionary money – another “industry standard”.

We need a new “industry standard”

- Regulatory Authority
- Advocacy for Homeowners
- Statewide Taskforce
 - To inform best business practices
 - To be a resource for boards on business practices

Third Party Involvement/Intervention is necessary for homeowners

- Renters have protection against retaliation from landlords
 - Homeowners have no protection or recourse.
- HOA board members are not required to know how to run a business
 - Homeowners are ultimately financially liable for choices they make
 - Minnesota law says they just have to put forth a “good faith” effort. That’s good enough when you are running a neighborhood block club, but not good enough when they are managing thousands of dollars with no accountability.
 - There’s no reporting requirements.
 - Many instances where board meeting minutes are different from what actually happened.
 - There’s no method for accountability – how do we know the financial reports they publish are truthful and accurate? When they settled the insurance claim for the roofing, why are we not allowed to know the terms and conditions of the settlement?
- The current relationship structure is based on a form of blackmail, with homeowners bearing the financial risk
 - Assessments can be levied for any reason and for any amount, and if we don’t pay, we can lose our homes or otherwise be financially harmed.
 - Minneapolis lady got hit with \$7,000 in assessments within a year after moving in to make up for mismanagement of funds. She has to pay it to keep her home, but what is to prevent it from happening again?
 - Elk River couple is being threatened with financial harm for wanting to pull buckthorn from their property.
 - We had to pay \$1,500 to make up for the difference in the insurance claim for the roof, yet we have money in our reserves to pay for it and have never been given an answer for the nature of the damage or why the claim was settled in the manner in which it was settled. I filed with my insurance company and my insurance company says if I have another weather related claim, I will be dropped.

Other places

- Nevada / Homeowners charged up to \$11,000 to remove grass:
 - <https://www.fox5vegas.com/video/2022/06/28/homeowners-charged-up-remove-grass-by-hoa/>
- Stories from all over the country
 - <https://www.yourgreenpal.com/blog/17-things-the-hoa-can-fine-for-and-stories-of-abused-home-owners-association-regulations>
- Colorado / Under state law, HOAs can initiate foreclosure proceedings against homeowners who owe money to them, and their actions aren't subject to any oversight from regulatory agencies:
 - <https://www.propublica.org/article/they-faced-foreclosure-not-from-their-mortgage-lender-but-from-their-hoa>
- Minneapolis / "...foreclosures are often an effective enforcement tool":
 - <https://www.startribune.com/fines-fees-and-fear-minneapolis-neighbors-speak-out-against-harassing-homeowners-association/572411472/>