Nonprofits / Exempt Organizations

- Federal/IRS recognizes 27 categories of 501(c) organizations, plus 8 other types of exempt organizations.

Each classification has a specific purpose, and has a specific framework within which it must function in order to keep that designation.

IRS determines the purpose and function.

- Minnesota has only one classification for nonprofit organizations.

It has a framework for incorporating, but allows the incorporators to determine the purpose, form and function.

Incorporators determine the purpose and function.

317A.101 PURPOSES.
A corporation may be incorporated under this chapter for any lawful purpose, unless another statute requires incorporation for a purpose under a different law. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful activity. A corporation engaging in conduct that is regulated by another statute is subject to the limitations of the other statute.

Federal law requires board members to have written conflict of interest policies. Minnesota law doesn't require nonprofits to have them.

IRS makes a distinction between a home owner association and a condominium association. Minnesota doesn't have that. (IRC 528)

Federal statutes recognize the impact to stakeholders is different between different types of organizations. Minnesota statutes don't acknowledge/address impact to homeowners in a HOA.

Housing

The majority of the current Minnesota statutes that are directly related to housing either are around financing a home purchase or have to do with renters and rental properties.

What is available specifically for CIC's is limited and provides almost no protections for homeowners. The laws are written for management, but offer no sanctions for not complying.

Minnesota CIOA

Even if the board is found guilty of inappropriate behavior, the homeowners can be assessed to pay their legal fees.

For example, the Minnesota Nonprofit Corporation Act authorizes directors and members with voting rights to bring an action or petition a court for relief under certain circumstances. It should be noted, however, that because associations are funded by owners, costs incurred by a board to defend a lawsuit initiated by its owners may be assessed back to the owners. Further, under the MCIOA, the court may award attorney's fees and costs to the prevailing party. As such, if the association prevails, the opposing owner or owners may be responsible for the association's fees and their own.

Also, special assessments do not need to go through court to be implemented by the board.

Minnesota statute allows an association to initiate a foreclosure action on a unit for not paying a fine, special assessment, or late fee.

It doesn't require the board to justify or even ensure the expense is appropriate. It also doesn't set limits on what can initiate a foreclosure action.

Board Members

Neither federal or state statutes require competency of the board members. Competency is assumed/implied by virtue of being voted (or appointed) into office and there are no sanctions for behavior because standards of conduct are not defined. Minnesota only requires they act in good faith, but offers no remediation for home owners if that doesn't happen.

Examples of industries that involve financial transactions have identified competencies, as well as sanctions for not adhering to those competencies:

- Banking
- Financial
- Insurance
- Legal

Neither federal or state statues require experience in running a business as a condition of serving as a board member.

SBA cites these as top reasons for a business failing:

- Inadequate management
- Working without standards or systems
- Lack of industry experience
- Management inexperience or incompetence

Minnesota Charities Laws

Charitable organizations, professional fundraisers, and charitable trusts are subject to regulation under the Charitable Solicitation Act, Minn. Stat. §§ 309.50-.61 (2017), and the Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33-.45 (2017). Minnesota-organized nonprofits are also governed by the Nonprofit Corporation Act, Minn. Stat. ch. 317A (2017), or equivalent statutes if the organization is a nonprofit limited liability company, Minn. Stat. § 322B.975 (2017).

Charities

Under Minnesota law, a "charitable organization" is any person, including a corporation or other entity, that solicits for any charitable, philanthropic, educational, religious, cultural, or similar public interest purpose.3 Organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code **are likely charitable organizations** under Minnesota law. Organizations that are tax exempt under a different subpart of section 501(c), or that are not tax exempt at all, may also still be charitable organizations, depending on the circumstances. For example, a civic league, a lobbying group, fraternal society, or chamber of commerce could be a charitable organization if it solicits contributions for a charitable purpose. Organizations whose primary purpose is to support or oppose a candidate for public office are not considered charitable organizations.

Another sections says this:

If a charity pays persons to perform services related to its "functions and activities" (i.e. services related to governance or administration, fundraising, solicitation of contributions, representations to donors, etc.) it must register.

If a charity does not pay any staff – or only pays persons for services unrelated to the performance of its functions or activities – then the charity is need not register if it also satisfies the other criteria for the de minimis exemption.

Issues:

If an organization doesn't solicit funds, it is not required to register with the AG's office.

AG's office uses the word "charity" and "nonprofit" interchangeably even if they aren't required to register, and not all nonprofits are considered to be charities.

Membership dues are not considered to be solicitations, even though it serves the same purpose – for the sustainability of the organization.

Membership Exemption

A charity that solicits donations only from persons who have a right to vote as a member of the organization are exempt from registering. Examples may include fraternal, alumni, trade, or professional associations.

Employees vs contractors. Management companies perform services related to governance and administration.

Annual Reporting Requirements for Charitable Organizations
(for organizations required to register)

Charitable organizations that want to maintain their registration must file an annual report form and certain accompanying materials, and pay a fee, every year.

Contents of Annual Report The contents of the annual report that charities must file with the Attorney General's Office include the following documents:

1. Annual Report Form
A charity's annual report form provides information to the public and the Attorney General's Office about its operations, finances, and activities over the prior year. Charities must fully, accurately, and truthfully answer all questions contained in the form. It must be executed pursuant to a resolution of the charitable organization's board of directors and signed by two of its officers. Part of this annual report form requires charities to identify their five highest paid directors, officers, and employees if such persons receive total compensation of more than $100,000 from the charity or from any related organization, when aggregated. The term "related organization" is defined by Minnesota Statutes section 317A.011, subdivision 18, which charities should consult when completing this part of the form. This requirement applies to persons who are directors, officers, and employees of the reporting charity, but does not require highly paid employees of a related organization to be listed if they are not also a director, officer, or employee of the reporting charitable organization.

2. IRS Tax or Information Return If a charity files a federal tax or information return with the IRS, it must also file a copy of the return with the Attorney General's Office. The most common type of tax return that charities file is Form 990, with the others being Form 990-EZ, 990-N, and 990-PF. A charity must include all schedules that it submitted with its tax return when filing a copy of the return with the Attorney General's Office, except for a schedule of the charity's contributors.

3. Financial Statement
A charity must include with its annual report a financial statement covering its most recent fiscal year. The statement must be prepared in accordance with GAAP, and must contain a balance sheet, a statement of income and expenses, and a statement of functional expenses. **It must further identify the portion of the charity's revenue that the organization allocated towards management and general expenses, program services, and fundraising.**

Financial statements that do not comply with GAAP, which include those prepared on a cash basis, do not meet the requirements of the Charitable Solicitation Act and may result in a charity's registration falling into default.

Make all organizations that are incorporated as a nonprofit and are not religious or education exemptions, meet these requirements.

515B

Issues:

Bylaws are at the heart of all of the statutes.

- There are no standards for how bylaws are to be written or the content contained in them.
- There is no requirement that if the bylaws are changed for any reason, members are to get an updated copy.
- Minnesota doesn't require conflict of interest policies to be written and implemented for the organization or for the board members.
- There is no "plain language" requirement for how the bylaws are to be written.

515B.3-106 BYLAWS; ANNUAL REPORT.
(a) A common interest community shall have bylaws which comply with this chapter and the statute under which the association is incorporated. ***The bylaws and any amendments may be recorded, but need not be recorded to be effective unless so provided in the bylaws.***

Recommendations:

Require ALL nonprofit organizations that are not religious or educational exemptions to register with the AG's office.

Require ALL nonprofit organizations that are not exemptions 2 and 3 and are incorporated as a nonprofit organization to have an audited financial statement, if they meet the income threshold.

If they don't meet the threshold for an audited financial statement, the require the regular tax return to be filed with the AG's office.

Require ALL nonprofit organizations that are not religious or educational exemptions to file a standardized annual report with the AG's office.

Require ALL nonprofit organizations that are not religious or educational exemptions to list their board of directors with their renewal application with the SOS office.

Require ALL nonprofit organizations that are not religious or educational exemptions to include the most current copy of their bylaws with the annual renewal application with the SOS office.

Require ALL nonprofit organizations that are not religious or educational exemptions to provide proof of the association's liability insurance as part of their annual registration with the AG's office and with the renewal with the SOS office.

Prohibit anyone who is not an owner from serving on the board of directors, regardless of what is contained in the bylaws.

What it says:

515B.3-101 ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

A common interest community shall be administered by an association. The association shall be incorporated no later than the date the common interest community is created. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 515B.2-119 or their heirs, successors, or assigns. The association shall be organized as a Minnesota profit or nonprofit corporation, or may, in the case of a cooperative, be organized under chapter 308A or 308B. In the event of a conflict between this chapter and any other chapter under which the association is incorporated, this chapter shall control.

History: 1993 c 222 art 3 s 1; 2005 c 121 s 21; 2010 c 267 art 3 s 1

Updated information:

515B.3-101 ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

A common interest community shall be administered by an association. The association shall be incorporated no later than the date the common interest community is created. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 515B.2-119 or their heirs, successors, or assigns. The association shall be organized as a Minnesota profit or nonprofit corporation, or may, in the case of a cooperative, be organized under chapter 308A or 308B. In the event of a conflict between this chapter and any other chapter under which the association is incorporated, this chapter shall control.

If the association is incorporated as a nonprofit organization and does not qualify for religious or education exemptions, all of the rules and laws involving managing a nonprofit will apply.

Note:

Require associations to register with the AG's office.

Require the nonprofit to file annual reports and have an audited financial statement if it meets the income threshold.

In the annual renewal with the SOS office, require the org to include the following information with the application:

- *Names of board members at time of renewal*
- *Most recent tax return*
- *Bylaws*

What it says:

515B.1-112 UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result. **For purposes of this section, a contract includes a declaration, master declaration, the articles of incorporation and bylaws of an association or master association, and a proprietary lease.**

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect the other party's interests by reason of physical or mental infirmity, illiteracy, **inability to understand the language of the agreement,** or similar factors;

(3) the effect and purpose of the contract or clause; **and**

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transaction, provided, that this factor shall not, of itself, render the contract unconscionable.

History:
1993 c 222 art 1 s 12; *2010 c 267 art 1 s 5*

Additional information:

Much of the existing law centers around the bylaws. Bylaws are not required to be written in plain language, and initial bylaws are typically written by an attorney for the benefit of the management, not for the owners.

The AG's office tells home owners to read the bylaws before purchasing the property.

The law doesn't require there to be any standards for how they are written.

What it says:

515B.1-113 OBLIGATION OF GOOD FAITH.
Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

History**:**
1993 c 222 art 1 s 13

Additional information:

What happens when it isn't done that way?

Who decides what constitutes "good faith"?

317A.011 DEFINITIONS.
Subd. 10.Good faith. "Good faith" means honesty in fact in the conduct of an act or transaction.

What it says:

515B.1-114 REMEDIES TO BE LIBERALLY ADMINISTERED.
(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.
(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding, unless the provision declaring it provides otherwise.

History:
1993 c 222 art 1 s 14

What it says:

515B.3-101 ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

A common interest community shall be administered by an association. The association shall be incorporated no later than the date the common interest community is created. **The membership of the association at all times consists exclusively of all unit owners** or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 515B.2-119 or their heirs, successors, or assigns. The association shall be organized as a Minnesota profit or nonprofit corporation, or may, in the case of a cooperative, be organized under chapter 308A or 308B. In the event of a conflict between this chapter and any other chapter under which the association is incorporated, this chapter shall control.

History:

1993 c 222 art 3 s 1; 2005 c 121 s 21; 2010 c 267 art 3 s 1

Additional Text:

A contractor or management company may not serve on the board of directors. Board members must be owners.

What it says:

515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.

(12) impose reasonable charges for the review, preparation and recordation of amendments to the declaration, resale certificates required by section 515B.4-107, statements of unpaid assessments, or furnishing copies of association records;

(13) provide for the indemnification of its officers and directors, and maintain directors' and officers' liability insurance;

(14) provide for reasonable procedures governing the conduct of meetings and election of directors;

(15) exercise any other powers conferred by law, or by the declaration, articles of incorporation or bylaws; and

(16) exercise any other powers necessary and proper for the governance and operation of the association.

(11) impose interest and late charges for late payment of assessments and, after notice and an opportunity to be heard before the board or a committee appointed by it, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

Additional information:

We don't know who our board is.

Which version of the bylaws – bylaws can be changed on a whim and without notice to the members.

It's asinine to have a process to be forced to appeal to the same people who imposed the fee in the first place.

What is "reasonable", especially when there is no competency requirement for board members to be board members.

What remedies do owners have when the board abuses it's powers?

What if they don't manage it appropriately?

This doesn't require the board to provide a copy of the additional rules or regulations to the owner – it gives the board the right to make up things as they go along and without a justification for it, either.

What it says:

515B.3-103 BOARD OF DIRECTORS, OFFICERS AND DECLARANT CONTROL.
(1) Unless otherwise approved by a vote of unit owners other than the declarant or an affiliate of the declarant, a majority of the directors shall be unit owners or a natural person designated by a unit owner that is not a natural person, other than a declarant or an affiliate of a declarant. The remaining directors need not be unit owners unless required by the articles of incorporation or bylaws.

Additional Text:

Needs to be changed to ALL directors need to be unit owners in order to avoid a conflict of interest and to meet the standard that management companies need to be neutral in the relationship.

Additional information:

The declarant's powers are supposed to be terminated at or before 5 years, but there is no indication that whoever they appoint during that time has to be ended/terminated with them.

What it says:

Associations are generally responsible for maintaining, repairing, and replacing common elements and are required to maintain property and liability insurance "*to the extent reasonably available*" (Minn. Stat. §§ 515B.3-107, -113).

Additional information:

The "reasonably available" part of the statute creates a financial risk for the homeowners.

This goes to the competency of the board, the financial security of the association as well as the board's legal requirement of "duty of care" and "fiduciary responsibility" to the nonprofit organization.

There is no reporting requirement for when there is no insurance on the property.

What it says:

515B.3-103 BOARD OF DIRECTORS, OFFICERS AND DECLARANT CONTROL

> Nothing in this subsection imposes a duty on the board to provide special facilities for meetings. The failure to give notice as required by this subsection shall not invalidate the board meeting or any action taken at the meeting. The minutes of any part of a meeting that is closed under this subsection may be kept confidential at the discretion of the board.

Additional text:

If the meeting is to be a closed meeting, the public record must indicate a justification of the need for the meeting to be closed.

Additional information:

According to the way this is written, they can say they are having a board meeting to meet the legal requirements of having one, but they don't have to provide space for anyone to attend. Also, it's acceptable if they don't follow the bylaws when it comes to giving notice.

They bylaws only matter for when it comes to the homeowner, not for how the board conducts their business.

This part of the statute also doesn't require meeting minutes to be complete or an accurate account of the meeting, even when the meeting is supposedly an "open meeting." Yet, at the same time, meeting minutes are supposed to be legal documents.

This goes to "appropriately" running the business.

If the bylaws require a quorum to implement an action, how do you get a quorum if you do not have the space to hold the meeting?

What it says:

317A.311 OTHER OFFICERS.
Except to the extent that the articles or bylaws provide that the members may exercise the powers under this section, the board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution adopted by the board, other officers the board considers necessary for the operation and management of the corporation, each of whom has the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board. Unless reserved to the members with voting rights, to the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.

History: 1989 c 304 s 49; 1990 c 488 s 22; 2010 c 250 art 1 s 31; 2017 c 17 s 7

317A.321 OFFICERS CONSIDERED ELECTED.
In the absence of an election or appointment of officers by the board or the members with voting rights, the person exercising the principal functions of the president or the treasurer is considered to have been elected to the office.

History: 1989 c 304 s 51; 1990 c 488 s 23; 2010 c 250 art 1 s 33

Additional Information:

This doesn't qualify who can be appointed and for how long they can serve.

This allows someone who is not a member to serve on the board.

This also allows the board to override the vote of the members without cause or justification.

Issue:

The length of time a director may serve on a nonprofit's board may not exceed ten years without the person being ***elected or appointed to a new term.*** There is no limit on how many terms a director may serve on a board.

This is the language for co-ops:

308B.401 BOARD GOVERNS COOPERATIVE.
A cooperative shall be governed by its board, which shall take all action for and on behalf of the cooperative, except those actions reserved or granted to members. Board action shall be by the affirmative vote of a majority of the directors voting at a duly called meeting unless a greater majority is required by the articles or bylaws. A director individually or collectively with other directors does not have authority to act for or on behalf of the cooperative unless authorized by the board. A director *may* advocate interests of members or member groups to the board, **but the fiduciary duty of each director is to represent the best interests of the cooperative and all members collectively.**

308B.405 NUMBER OF DIRECTORS.

The board shall not have less than five directors, except that a cooperative with 50 or fewer members may have three or more directors as prescribed in the articles or bylaws.

What it says:

317A.011 DEFINITIONS.
Subd. 18.Related organization. "Related organization" means an organization that controls, is controlled by, or is under common control with, another corporation. Control exists if an organization:

(1) owns, directly or indirectly, at least 50 percent of the stock ownership or membership interests of another organization;

(2) has the right, directly or indirectly, to elect, **appoint**, or remove 50 percent or more of the members with voting rights of the governing body of another organization; or

(3) has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

Additional Information:

Management companies are supposed to be "neutral"

What it says:

515B.3-119 ASSOCIATION AS TRUSTEE.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and third person, without actual knowledge that the association is exceeding its powers or improperly exercising them, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

What it says:

515B.3-1151 ASSESSMENTS FOR COMMON EXPENSES; CIC CREATED ON OR AFTER AUGUST 1, 2010.
(c) After an assessment has been levied by the association, assessments shall be levied at least annually, based upon an annual budget approved by the **association**. In addition to and not in lieu of annual assessments, an association may, if so provided in the declaration, levy special assessments against all units in the common interest community based upon the same formula required by the declaration for levying annual assessments. Special assessments may be levied only (1) to cover expenditures of an emergency nature, (2) to replenish underfunded replacement reserves, **(3) to cover unbudgeted capital expenditures or operating expenses**, or (4) to replace certain components of the common interest community described in section 515B.3-114(a), if such alternative method of funding is approved under section 515B.3-114(a)(5). The association may also levy assessments against fewer than all units as provided in subsections (e), (f), and (g). An assessment under subsection (e)(2) for replacement reserves is subject to the requirements of section 515B.3-1141(a)(5).

4) reasonable attorney fees and costs incurred by the association in connection with (i) the collection of assessments, and (ii) the enforcement of this chapter, the articles, bylaws, declaration, or rules and regulations, against a unit owner, **may** be assessed against the unit owner's unit; and

(5) fees, charges, late charges, fines, and interest **may** be assessed as provided in section 515B.3-116(a).

What it says:

515B.3-1141 REPLACEMENT RESERVES.
(b) Unless the declaration provides otherwise, any surplus funds that the association has remaining after payment of or provision for common expenses and reserves shall be (i) credited to the unit owners to reduce their future common expense assessments or (ii) credited to reserves, or any combination thereof, as determined by the board of directors.

Additional information:

This doesn't indicate any limits on how much and how often or require a justification.

We had dues raised 3 times in less than 2 years, and part of the recent one was to help pay for a shed to store bird seed for birds the DNR says should be left alone.

Fines and late fees go to FSR, not our association.

This whole section has more to do with when the CIC is first established than addressing the needs of an organization that has been operating for several years.

What it says:

5.36 REGISTERED AGENT FOR SERVICE OF PROCESS.
Subdivision 1.**Registered office. A business entity shall continuously maintain a registered office in this state**. A registered office need not be the same as the principal place of business in this state or the principal executive office of the corporation. If the current registered office address listed in the records of the secretary of state is not an actual office location, or is solely a post office box, the business entity must provide a new registered office address that includes an actual office location and that may also include a mailing address or post office box. A fee may not be charged if the registered office address is being changed only to bring the address into compliance. The new registered office address must have been approved by the governing body of the business entity.

§Subd. 2.**Registered agent**. A business entity formed under the laws of Minnesota may designate a registered agent in its formation document. A business entity formed under the laws of another jurisdiction must designate a registered agent when registering to do business in Minnesota. The registered agent may be a natural person residing in this state, a domestic corporation, or limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office.

Additional Information:

Our association has never had a registered office.

The registration with the SOS has always only listed FSR as the registered agent.

Our tax returns show the address for FSR as the organization's address.

When we paid the assessment for the roof, I mailed my check to FSR at an address in South Carolina.

The address on the master plan shows an Elk River address. When I asked the insurance agent who's address that was, his response was "FSR" and later said he would file an amendment to change the address to Bloomington – where FSR is located. The address on the insurance policy is the home address of the current board chair, who was appointed, not voted in by members, and who also refuses to declare that he represents the association.

This is what it says for co-ops:

308B.115 REGISTERED OFFICE AND AGENT.
Every cooperative ***shall*** have a registered office, and ***may*** have a registered agent and may change its registered office or change its registered agent, and the agent may resign or change its business address or name, in the manner prescribed by section 5

What it says:

317A.207 TERMS.

Subdivision 1.**Length.**

(a) Directors are elected or appointed and hold office for fixed terms provided for in the articles or bylaws. A term of a director, other than an ex officio director, may not exceed ten years. If the articles or bylaws do not provide for a fixed term, the term is one year. An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.

(b) Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and qualified, or until the earlier death, resignation, removal, or disqualification of the director.

(c) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(d) Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.

What it says:

317A.225 REMOVAL OF APPOINTED DIRECTORS.

Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary. A removal is effective when the notice is effective unless the notice states a future effective date.

Additional Information:

We have one board member who said she has been on the board for 13 years.

How do members remove a board member if the board isn’t required to honor the votes of the members and is allowed to appoint anyone at any time?

What it says:

317A.255 DIRECTOR CONFLICTS OF INTEREST.
Subdivision 1.Conflict; procedure when conflict arises. (a) A contract or other transaction between a corporation and: (1) its director or a member of the family of its director; (2) a director of a related organization, or a member of the family of a director of a related organization; or (3) an organization in or of which the corporation's director, or a member of the family of its director, is a director, officer, or legal representative or has a material financial interest; is not void or voidable because the director or the other individual or organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if a requirement of paragraph (b) is satisfied.(b) A contract or transaction described in paragraph (a) is not void or voidable if:

(1) the contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

(2) the material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is **approved in good faith by two-thirds of the members entitled to vote,** not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;

Additional Information:

FSR is a named insured on our master policy under the board’s D&O insurance.

Owners have never voted on their contract because the option has never been presented to us.

What it says:

317A.467 EQUITABLE REMEDIES.
If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least 50 members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorney fees and disbursements, to the members.

Additional Information:

There is nothing that prevents them from turning around and issuing a special assessment to get this money back.

There is no timeframe in which they have to honor the request for records.

What it says:

317A.461 BOOKS AND RECORDS; FINANCIAL STATEMENT.
Subd. 7.Remedies. A member or a director who is wrongfully denied access to or copies of documents under this section may bring an action for injunctive relief, damages, and costs and reasonable attorney fees.

Additional Information:

There is nothing that prevents them from turning around and issuing a special assessment to get this money back.

Special assessments don’t have to go through court to be issued.

What it says:

317A.661 TRANSFER OF ASSETS; REQUIRED APPROVAL.
Subd. 2a.Grant of security interest; approval by board. Unless otherwise provided in its articles or bylaws and subject to section 317A.501, subdivision 1, a corporation may, by the affirmative vote of a majority of directors, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient. ***Member approval is not required under this section.***

Additional information:

This statute also says they don’t have to notify the AG’s office, either, unless:
(1) a corporation that holds assets for a charitable purpose as defined in section 501B.35, subdivision 2; or

(2) a corporation that is exempt under section 501(c)(3) of the Internal Revenue Code of 1986, or any successor section.

What it says:

Club Contracts

https://www.ag.state.mn.us/Charity/clubcontracts.asp

Registration. Minnesota law requires health, dating, and buying clubs to register with the Attorney General's Office and renew their registration annually. Minn. Stat. § 325G.23-.28. Such clubs register by completing and filing the required forms (see below), paying a registration fee, and filing a surety bond if they accept prepayments from members of $50 or more. Members of a club who lose a portion of their pre-paid membership fee because, for example, the club closes or declares bankruptcy may file a claim with entity that provided the club with its surety bond. The Minnesota Attorney General's Office may also file a claim on behalf of any member who loses a portion of their pre-paid membership fee.

Renewal. Every year after registering, clubs must file by September 1 an annual renewal form, a financial statement, illustrative copies of all versions of membership contract forms, and pay a renewal fee. Clubs that cease operating are required to file a closing statement that includes details of the club's outstanding liabilities to its members.

Exemptions. Some clubs may be exempt from registration. A club that believes it is exempt must file an exemption form with the Attorney General's Office.

Forms for Filing. All forms clubs need to use when registering, renewing their registration, or making an exemption claim can be downloaded using the links below:

Required for initial registrations:
Club Initial Registration Form
Surety Bond of Health, Dating, or Buying Club
Club Application for Exemption from Surety Bond Requirement
Club Statement of Alternative Form of Security

Required for clubs claiming exemption from registration:
Club Application for Exemption from Registration

Required for annual renewals:
2021 Club Registration Renewal Form

Required when a club closes:
Club Statement Upon Ceasing Operations

Additional Information:

If an association declares bankruptcy, there is no safety net for home owners. Home owners would be financially liable for any outstanding debt.

If the club is not able to obtain a Surety Bond, there is an option for an Alternative Form of Security:

3. In lieu of filing a surety bond, I certify that I have satisfied the financial security requirements of Minnesota Statutes section 325G.27 in one of the two following manners:
By filing an irrevocable letter of credit with the Minnesota Attorney General's Office sufficient to cover all of the club's outstanding liabilities,1 and fully and accurately answering Question 4.
or
By filing a cash deposit with the Minnesota Attorney General's Office sufficient to cover all of the club's outstanding liabilities, and fully and accurately answering Question 5.
4. Attach: An open-ended (i.e., no expiration date) irrevocable letter of credit drawn on a bank and approved by the Minnesota Attorney General's Office that covers the club's outstanding liabilities.
Further provide the following information about this letter of credit:
Amount of Irrevocable Letter of Credit:

____

Name of Bank:

____

Bank Address:

____

Bank Telephone Number:

____

Name and Telephone Number of Contact Person at Bank Regarding Letter of Credit:

____

5. Attach: A cash deposit that covers the club's outstanding liabilities, ***which is to be held by the Minnesota Attorney General's Office*** for the benefit of any person who suffers or sustains any loss by reason of breach of contract, bankruptcy, or club closure by the seller of the club membership contracts.
Amount of Cash Deposit:

____

• NOTE: The amount of security that should be posted pursuant to either Question 4 or 5 is based on the club's financial statement covering the immediately preceding 12 month period reflecting the club's total outstanding liabilities to the members. This financial statement must be filed with the club's initial registration or renewal, as applicable.

What it says:

Real Estate Education, Research and Recovery Fund

https://mn.gov/commerce-stat/pdfs/real-estate-recovery-fund.pdf

Minnesota Statute section 82.86

The purpose of the Real Estate Education, Research and Recovery Fund is to compensate a person who suffered out-of-pocket losses due to a licensed real estate broker, salesperson, or closing agent's fraudulent, deceptive or dishonest practices, or conversion of trust funds. The action must be an activity that required a license.

In addition, the real estate broker, salesperson, or closing agent must have been licensed at the time of the fraudulent action.

Minnesota Statute section 82.86 is applicable to the recovery fund. The recovery fund is limited. Specific rules and requirements determine whether or not the applicant qualifies for reimbursement from the fund. The statute also describes the procedure for filing a claim.

The Commissioner of Commerce has the responsibility to maintain the Real Estate Education, Research and Recovery Fund.

According to state law, each licensed real estate broker, salesperson, and closing agent in Minnesota must pay into the recovery fund each year.

The Department reviews each application to determine if
it meets the statutory requirements.

Additional Information:

Attorney General's office says to read the bylaws before purchasing a property in a HOA.

At what point in the sales transaction do you get the bylaws?

Who has the responsibility for making sure the information is correct, current and understood?

Is the broker, salesperson or closing agent just a pass through?

Attorney Professional Conduct /Conflict of Interest

https://www.revisor.mn.gov/court_rules/pr/subtype/cond/id/1.7/

Rule 1.7Conflict of Interest: Current Clients
(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person, or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Additional Information:

The pool of licensed attorneys who are competent in representing home owners in a HOA/CIC is very small.

Our board uses an attorney, but there is nothing in the contract they have with the firm about a conflict of interest with the management company.

The management company is a named insured for fraud and under the board’s D&O policy on the master plan.

Therefore, it follows that the same attorney would be representing both the management company and the board.

Our association pays the attorney fees, FSR doesn’t pay, even though the firm represents both organizations.

Receivership

The process where a court orders an outside party to take custodial responsibility of another's property is called receivership.

576.24 TYPES OF RECEIVERSHIPS.

A receivership may be either a limited receivership or a general receivership.

Any receivership which is based upon the enforcement of an assignment of rents or leases, or the foreclosure of a mortgage lien, judgment lien, mechanic's lien, or other lien pursuant to which the respondent or any holder of a lien would have a statutory right of redemption, shall be a limited receivership.

If the order appointing the receiver does not specify whether the receivership is a limited receivership or a general receivership, the receivership shall be a limited receivership unless and until the court by later order designates the receivership as a general receivership, notwithstanding that pursuant to section 576.25, subdivision 8, a receiver may have control over all the property of the respondent.

At any time, the court may order a general receivership to be converted to a limited receivership and a limited receivership to be converted to a general receivership.

Additional Information:

There are specific laws for entering into receivership for:

Co-ops
Group homes
Nursing homes
For profit businesses
Nonprofits that are not associations
Rental housing properties

What it says:

501B.41 BREACH OF TRUST; PROCEEDINGS TO SECURE COMPLIANCE.

This is for charitable trusts, but it allows the attorney general to step in to ensure compliance:

Subdivision 1.**Enforcement powers.**

The attorney general may institute appropriate proceedings to obtain compliance with sections 501B.33 to 501B.45 and the proper administration of a charitable trust. The powers and duties of the attorney general in this section are in addition to all other powers and duties.

Subd. 6.**Breach of trust.**

The failure of a trustee to register under section 501B.37, to file annual reports under section 501B.38, or to administer and manage property held for charitable purposes in accordance with law or consistent with fiduciary obligations constitutes a breach of trust.

Subd. 7.**Civil actions.**

The attorney general may begin a civil action in order to remedy and redress a breach of trust, as described in subdivision 6 or as otherwise provided by law, committed by a trustee subject to sections 501B.33 to 501B.45. If it appears to the attorney general that a breach of trust has been committed, the attorney general may sue for and obtain:
(1) injunctive relief against the breach of trust or threatened breach of trust;
(2) the removal of a trustee who has committed or is committing a breach of trust;
(3) the recovery of damages; and
(4) another appropriate remedy.

Additional Information:

There is nothing that allows the attorney general to step in when an association is being mismanaged.

For the most part, the only thing an association has to do in order to remain legally compliant is to renew the annual registration with the secretary of state's office.

Renters have this:

Retaliation
A landlord may not evict a tenant or end a tenancy in retaliation for the tenant's "good faith" attempt to enforce the tenant's rights, nor can a landlord respond to such an attempt by raising the tenant's rent, cutting services, or otherwise adversely changing the rental terms. For instance, if a tenant has reported the landlord to a governmental agency for violating health, safety, housing, or building codes, the landlord cannot try to "get even" by evicting the tenant.(185)

If, within 90 days of a tenant's action, the landlord starts an Eviction Action or gives the tenant a notice to vacate, the law presumes that the landlord is retaliating. It will then be up to the landlord to prove the eviction is not retaliatory. However, if the landlord's notice to vacate comes more than 90 days after a tenant exercises the tenant's rights, it will be up to the tenant to prove the eviction is retaliatory. These provisions also apply to oral rental agreements.

Home owners in a CIC have nothing from preventing the board from issuing an assessment for any amount for the fun of it and without any justification.

Renters have this:

Repairs:
If the tenant has trouble getting the landlord to make necessary repairs in the unit, the tenant may use one or more of the following remedies:

- File a complaint with the local housing, health, energy or fire inspector —if there is one—and ask that the unit be inspected. If there is no city inspector for the community, write the landlord and request repairs within 14 days. If management fails to make such repairs, the tenant may file a rent escrow action.
- Place the full rent in escrow with the court, and ask the court to order the landlord to make repairs.
- Sue the landlord in district court under the Tenant's Remedies Act.
- Sue in conciliation court or district court for rent abatement (this is the return of part of the rent, or, in extreme cases, all of the rent).
- Use the landlord's failure to make necessary repairs as a defense to either the landlord's Eviction Action based on nonpayment of rent or the landlord's lawsuit for unpaid rent.

Home owners in a CIC have no effective remedy option when it comes to issues with common areas. Also, the board can require changes to the property at any time and issues an assessment if there is no compliance.

Minnesota statute allows an association to initiate a foreclosure action on a unit for not paying a fine, special assessment, or late fee.

It doesn't require the board to justify or even ensure the expense is appropriate. It also doesn't set limits on what can initiate a foreclosure action.

Need for and Benefits of a Third Party

- Mitigates the financial risk for both the homeowner and the HOA.
- Mitigates the potential for a situation to escalate because a board decides to make it into an unfortunate power play, rather than a conversation between grownups.
- Mitigates the risk to homeowners and HOA's when competency is not a requirement to service on a board.
- Resources for homeowners in a CIC relationship don't currently exist.
- Addresses the issue of board members not required to be competent to sit on the board.
- Can have a central place to gather information to identify needs and trends within HOA's, as well as to identify best practices.
- Helps to create standards of business practices.
- Gives a voice to homeowners where there currently is no option for it among the current legal and other systems.
- Helps to ensure associations are complying with the "duty of care" requirement of nonprofit governance.
- Can help to ensure contracts with vendors and management companies are in the best interest of the association.
- Helps to ensure accountability for both the homeowner and the HOA.
- Provides a witness for discussions between HOA and homeowner.
- Ensures the nature of the relationship between the HOA and the homeowner is consistently defined and applied.