

**Working Group on Common Interest Communities and Homeowners Associations**

**Written Testimony / December 20, 2024**

**Cindy Haase / Homeowner and Board Member**

**148 Units /Vermilion Carriage Homes (VCH), Eagan**

***Perspective I offer:***

Homeowner in VCH HOA since 1997 / Board Member over 10 years

Collections Assistant / Mortgage and Personal Collateral

District Loss Prevention / Kohls Department Stores

Training Development, Risk Management, Claims, and Insurance Placement / Best Buy

Mortgage Underwriting / Wells Fargo

Fraud and Money Laundering / Wells Fargo and US Bank

HOA Property Management

Previously licensed as a MN Real Estate Agent and Mortgage Originator

Previously Series 6 and 63 licensed

Chair Bahner, Co-Chair Lucero, and Working Group Members:

As I listen to the testimony, my wallet explodes and my heart breaks. The waste of funds that these injustices cost in man hours, legal fees, and disheartened homeowners is beyond comprehension.

I fully support an ombudsman program so homeowners and board members feel heard.

This is incredibly important to building community again.

I however struggle to support some of the recommendations suggested because although the shared injustices are beyond comprehension and deserve remedy; they are not representative of the population of homeowners. And most could have been resolved by an ombudsman program.

The working committee may be privy to better statistics, however what I have extracted from the testimony so far, is the following:

Member Cole states AG office received 30,000 complaints in last 2 yrs. (Assuming 2022/2023?)

Of 30,000 complaints, how many are same complaint? How many are same HOA?

How many are same property management company/vendor/construction company?

CAI presentation states there are 1,556,000 homeowners that reside in HOA's.

30,000/1,556,000 is less than 2% ... 15,000 per year / 1,556,000 is less than 1%

If less than 1%, are these recommendations necessary, or only additional burden.

***Definitions:***

"The 1%" - those included in the attorney general statistics that have legit concerns, and may include those that believe they have a legit concern, however yet to be proven.

"The Other 99%" - the other homeowners in all associations who will absorb the cost.

"The 100%" – benefit to All the Members of Association(s)

This is a "housing" obligation. This is not a credit card. This is not a Sling TV subscription.

And this responsibility and obligation affects 100%.

## **Recommendations (5):**

### **1. Ombudsman Office**

- a. Recommendation to task the office to collect statistics on quantity year over year, by issue such as insurance fraud or affiliated business, by vendor (ex. RE Agent, property management company, attorney, construction company) and by association / Helps "The 100%", stops the blaming of the mass and holds the individual accountable.
- b. Ombudsman/Mediation agreement should disallow retaliation by all parties. Don't allow homeowner retaliatory behavior; costs the association money. Ex. Homeowner has an issue with a rule and doesn't like the response or explanation. Homeowner then requests 24 months of printed financials. Rules and financials are mutually exclusive. Financials will not remedy the rule violation. I have personally witnessed this behavior at 3 associations during my brief employment as a property manager. Copies and property management labor will be charged back as Exhibit A fee outside of contract to the association. And note attorneys will usually direct that the association absorb the cost rather than charge back the homeowner account and escalate further. Therefore "The Other 99%" pay for the retaliation costs.
- c. Require a mandatory last page to all Rules/Regulations documents with conflict resolution paths. Ex. Read rules, Send issue email to property manager and Request next meeting date, Attend Board meeting, Ombudsman office contact information.

### **2. Universal Property Management Contracts**

- a. Results in less need for lengthy contract review by attorneys, helps "The 100%" reduce attorney costs. Eliminates cost of repeated attorney review if all are standardized and ensures each party has correct division of liability and responsibility. (Standardization similar to MN RE Agent). Standardization supports consistency, transparency, and balance of power. Association becomes the customer again, not the beggar for services.
- b. Require language be put back into contracts that holds property management company accountable. Year over year the protection of associations related to property management error has declined.
- c. Require language that mandates property management company to pay attorney and/or ombudsman fees/costs related to disputes with an affiliated business of their company. Require strict disclosure of all affiliated businesses in the contract.
- d. 317A applies to conflict of interest for Board Member(s), but NOT to vendors/affiliated businesses/etc. Recommend language be added to 317A regarding conflict of interest between property management company and association when an affiliated business does not perform. Who does the property management company represent at this point, their affiliated business or the association? And who does the attorney represent at this point, the property management company or the association?
- e. Do not allow auto renewal contracts or at the least make property management company responsible for 90-day notice to the Board in writing.
- f. For fraud prevention, it would be beneficial for contract to state all refunds to homeowners to be returned in the form they were received after a waiting period. (Ex. ACH as ACH, refund to checking acct drawn on, refund to orig credit card number)

### 3. Training and Education

- a. Real Estate Agents / helps "The 100%"
  - i. Realtors, somewhat unknowingly, can set up the HOA relationship to fail
    - 1. By not educating buyer about the HOA Lifestyle Choice, by not fully understanding what the buyer will be able to live with or not, and by not taking them to an HOA that better fits their needs and wants.
    - 2. By not putting correct info on MLS listing / ex. Pet weight limits, rental
    - 3. By not covering the resale disclosure issues with the buyer
    - 4. By stating to buyers "inside is their responsibility; the outside is association" / INCORRECT, varies by governing documents
    - 5. By not ensuring buyer reads and understands rules
  - ii. Require a disclosure form in the RE packet:
    - 1. That buyer watched a video and understands the HOA Lifestyle Choice.
    - 2. That buyer received a copy of governing documents and rules, and can feel free to ask agent to find an HOA that is a better fit.
    - 3. That buyer understands failure to pay dues housing responsibility can result in foreclosure.
- b. Property Management Companies need training on de-escalation and conflict resolution
  - i. Training should include information on the importance of timely communication and quality responses to combat escalation. Helps "The 100%".
  - ii. Training on the importance of doing what you say you are going to do.
  - iii. Training should include information on how lack of response or inability to reach the property manager escalates a homeowner.
  - iv. Training should include information on how to resolve without shaming homeowner, or blaming the board, association, other vendors. Many adversarial relationships could be avoided if property management would not say, "The Board says" or "Your Board decided ..." Better stated as "the city ordinance states", or "fire code enforces", or "the 1997 HOA rules note..." And worst of all, please discontinue saying "No other associations does it this way." This immediately says the Board is wrong or the Attorney is wrong ...
- c. However, NOT for Board Members
  - i. Agree could be used as consequence by Ombudsman office if issue found
  - ii. Board members are volunteers that contract with professionals for this service, using the property manager, attorneys, CPA, Insurance agent for guidance.
  - iii. Consequences:
    - 1. Board members may be unwilling to give up more of their personal life and not volunteer. HOA's often struggle to get a full board.
    - 2. If no volunteers, HOA could be turned over to conservatorship, resulting in extreme Atty costs for operation of HOA in board absence.
  - iv. Who will pay for board education, classes, time and mileage? Board members should not be required to take on additional expenses personally
    - \*\*Note RE Agents, Financial Planners, Teachers, etc, who are required to take continuing education classes also receive a salary or paycheck as a result.
    - Board members do not currently receive compensation to warrant expenses.

- v. Some will say there are “free” classes available. It is reasonable to forecast that classes will no longer be free once they are required. They will become an income source for multiple vendor types. It will become another line item on the Exhibit A Fee Sheet.

Assuming “\$50 per board member per class.” CAI notes 7,950 HOA’s in MN  
 $x 5 \text{ board members} \times \$50 = \$1,987,500$  of income opportunity.

**4. Double Taxation** fix please, if it applies to Minnesota / See CAI presentation, 10/04/2024

**5. Insurance Oversight and Accountability Changes**

- a. Move from oversight by commercial to residential
- b. Require more timely adjustments to premiums  
Ex. 400% increases in one year, due to last 5 years losses
- c. Could these recent 300% - 400% increases 2 years in a row cause a bankruptcy concern for MN HOA’s?
- d. Take action now in the HO6 arena so carrier cannot limit loss assessment coverage less than Master policy deductible resulting in large gaps in coverage to the homeowner.

**Not Recommended and Why (4):**

**1. Daycares/Work Vehicles/Short term rentals on HOA property**

- a. Need to consider additional risk, such as foot traffic where there are no sidewalks, inattentive guests, exposure to more slip fall incidents, personal injury, theft of work equipment, damage to buildings/roads. There is a reason that daycares and schools have designated unload/load zones ... Risk.  
This is risk and cost imposed on “The Other 99%” for the benefit of 1%.
- b. Choosing to park a work truck at a single-family residence (SFR) is different than an HOA. Choosing to operate a daycare at a SFR is different than an HOA.  
Incidents at a SFR could affect 1 owner, when in an HOA affects the whole population.
- c. Property managers are on site less and less, so who deals with the parking complaints, the grounds damages, littering, and noise complaints?  
This is setting up a Board and HOA to fail, and exposure to more contentious situations.
- d. Homeowners could be exposed to increasing maintenance/repair costs, increased insurance premiums, more risk shifted to HO6, attorney fees if even just to get dismissed from a case. Because everyone is named, initially! May cause more open claims at time of renewal when loss runs are reviewed for risk assessment.
  - i. Will work trucks be emptied of all tools every night to avoid theft and diminish risk to neighbors of theft by opportunity?
  - ii. Climbing in trees is a fun activity, who is responsible when an arm is broken?
- e. Insurance companies will most definitely fight any claim, attempting to refuse the claim, and possibly leaving the homeowners’ association with the costs of settlement, attorneys fees, and damages. Cost of fighting claims will be cost to “The 100%”.
- f. Allowing these on the property could increase premiums and potentially even dictate eligibility by some carriers. When carrier options are restricted and competition declines, there is more likelihood of higher annual premiums.
- g. Daycares/Work vehicles/Renters may restrict the freedom of movement for All throughout the property, including vendors such as postal carrier, UPS, FedEx, Amazon.

Daycare customers may need to park on the side of streets restricting flow and damaging turf, especially if more than one drop-off at a time. Work vehicles may be too wide or too long for many of the driveways, may extend into the street and/or cause damage to siding, fences, gutters, and roofs. When the association charges these businesses back for damages, they'll be accused of targeting them.

## **2. Restricting Foreclosure**

- a. An attorney in a prior meeting suggested more action to delay foreclosure to protect the homeowner, what about the "other" homeowners that are paycheck to paycheck and have to cover the costs until the funds are recovered.  
"The Other 99%" should not be expected to carry another's debt. Where are our rights?
- b. Bill 311 in NC / CAI lobbied against ombudsman and against foreclosure under \$2500. I agree with the lobbyist regarding the dollar minimum to start the foreclosure process. Lengthening the allowed delinquency timeline is proven to result in less success of recovery, because the debt compounds and as the debt grows the options lessen, such as 2<sup>nd</sup> mtg, line of credit, borrowing from 401K, credit card advances, familial or community support. Once dues are delinquent about 3 months total, and any portion hits the 90-day mark, it should immediately be sent for a demand letter by an attorney. At this point, the homeowner has already received 3 statements of balance/delinquency from the property management company and most often has not reached out to property management company or the Board. In addition, once the attorney is involved it can be another 6 months before a sheriff's sale. The homeowner has over 6 months, usually closer to 9 months, to remedy and most would be surprised how neither the Board nor the attorney receives any communication.
- c. If a number is put to this ... for example \$2500 minimum to refer to attorney for demand letter ... in the case of our dues at \$285, this homeowner is already over 8 months past due and will have another 6 months minimum in the foreclosure process ... so the other homeowners have carried them for 14 months.
- d. Neither the property management company nor the Board is a collection agent, and should not be held captive in this process by legislation that does not serve the homeowner or the association's best interest.
- e. Standard of Reasonableness, some suggest that the Board should work with the homeowner. The Board should put their neck out there when the homeowner has not even reached out at the 10-day mark or 30 or 60? Keep in mind the Association/Board/Property Managers are not collection agents and should not discuss or reach out to discuss a delinquency. They will be exposed to the homeowner's version of the conversation, they could ask illegal questions that the homeowner does not have to disclose, they could make implied agreements not sanctioned by the whole board or by an attorney. All putting the association at risk.
- f. AND if the Board accepts a payment plan or explanation, have they now set a precedent that they have to accept the same payment plan and explanation from every homeowner going forward? How does a Board consistently do this with Board turnover ... or what each homeowner "believes" to be the same/similar offer?  
Once waffling is inserted, there will be attorney fees.

It is suggested to put more direct liability on a Board for their perceived bad decisions, but then it is also suggested that they insert themselves in a payment plan negotiation?

- g. FNMA/Freddie mortgage approvals have restrictions on number of homes that can be 60/90 or more delinquent? If fees/fines/foreclosure is limited, more homeowners carry outstanding balances into 60/90 days, then that affects "The Other 99%" while trying to sell their home. Buyers could be declined due to delinquencies exceeding guidelines.
- h. Association does not get benefit of interest income when funds are unpaid, less funding for reserves. Resulting in need for more reserve contribution for the future.
- i. This narrative that Boards are horrible for proceeding with foreclosure needs to stop. Boards are trying to protect "The other 99%" by acting timely, consistently, fairly and in the whole associations best interest. Also of note, the HOA is not a lender, nor should they be expected to act or operate as one. There are laws that prohibit this.

### **3. Restricting Fees / Fines**

- a. How then do associations encourage the obligation to pay this housing responsibility? This is the same as a mortgage, or 2<sup>nd</sup> mortgage. Dues have to be collected to pay insurance premiums required by lenders, lawncare and trash pickup required by cities, and utilities required by counties/coops.
- b. If fees/fines are restricted, does this directly affect what the attorney can charge? Because if not, then who covers the remaining attorney fees after the cap is reached? "The Other 99%"?
- c. Suggested enforcement by amenity refusal ... what amenities? Like stop their trash pickup? Don't let them walk on the grass? Don't allow them to drive down the private streets? Who will ask them to get out of the pool or off the pickleball court? Who will tell them they can't rent the community space for a gathering? And who is going to enforce these amenities restrictions? The same Board that is said to already be overreaching? What if an association has no amenities to use as leverage? This will seem petty and create a more contentious community.
- d. Our association used to have a late fee of \$10 and the Board was repeatedly told that their credit card late fee was more than that, so they chose to pay the credit card instead. Not paying the credit card does not as directly affect others. "The Other 99%" now must carry the burden of unpaid dues.

### **4. Shifting of Liability**

- a. Suggestion to hold Board members more "personally" liable.
- b. I will resign my board position, will advise the rest of the Board to quit immediately.
- c. I will not lose my retirement because of law changes to hold me "even more" liable than I already am.

In closing, please help the truly injured HOA's with roof insurance claim issues and insurance premium increase issues as a consequence. I ask that the working committee hold off on attaching any other legislation to this bill unless it has been fully vetted to ensure it has the intended impact. We all can cite a few pieces of legislation recently that were not well thought out for the end user, and that caused unnecessary labor hours and excessive costs in prep for implementation, only to be put on hold by a court and/or that is still waiting to be clarified so HOA/CIC's can enforce as intended. In addition, it needs to be proven that many of these recommendations are actually necessary statistically.