

State of Massachusetts: Frequently Asked Questions
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GENERAL

1. What state statutes apply to Common Interest Communities in your state?
 - Massachusetts General Laws Chapter 183A, The Massachusetts Condominium Act.
2. Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?
 - Condominiums are not required to incorporate, but they may do so. A very small number of Massachusetts homeowner associations are created as corporations; the majority are trusts. The biggest difference relates to the tax filing status. An association created as a corporation is required to file a Form 355 at the state level, regardless of which federal form is filed. Form 355 is a much more complicated form to prepare than the simple Form 3M, and will result in a higher tax than a Form 3M.
3. Is there a state agency which has authority to regulate and oversee the affairs of Common Interest Communities? What is the scope of its power and authority?
 - Presently, there is no state agency with direct authority over the affairs of condominium and community associations.
4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?
 - The only annual reporting requirements is the filing of a tax return, as discussed above.

MEMBERSHIP MEETINGS

5. Is an Annual Meeting of members required?
 - Chapter 183A does not contain any specific provisions requiring an annual meeting of the members of the association. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
6. How are Special Meetings of the Members called?
 - Chapter 183A does not contain any specific provisions relative to special meetings of the members of the association. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
7. What are the notice requirements for Membership Meetings?
 - Chapter 183A does not contain any specific provisions relative to notice requirements for meetings of the members of the association. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
8. What are Quorum Requirements for Membership Meetings?
 - Chapter 183A does not contain any specific provisions relative to the quorum for meetings of the members of the association. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
9. Can Members use Proxies? Absentee ballots? Mail ballots?

- Chapter 183A does not contain any specific provisions relative to the use of proxies, absentee ballots, mail ballots, or any voting procedures. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
10. Can Members Raise Concerns or Issues at a Membership Meeting?
 - Chapter 183A does not contain any specific provisions relative to the rights of members to speak at member meetings. If such a provision were to exist, it would typically be found in the By-Laws or Rules/Regulations of the association, otherwise, such a decision to allow members to speak is left to the discretion of the Board.
 11. Can Non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?)
 - The decision to allow non-members to attend an association meeting, regardless of whether it's an attorney, tenant, or guest, is left up to the discretion of the Board.

BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings?
 - Chapter 183A does not contain any specific provisions relative to the frequency of Board meetings. However, such a requirement is often found in the governing documents of the association, usually in the By-Laws.
13. How are Special Meetings of the Board called?
 - There are no specific provisions contained in Chapter 183A.
14. What are the Notice requirements for Board meetings? Are Members required to be notified as well?
 - There are no specific provisions contained in Chapter 183A.
15. What constitutes a quorum for Board Meetings?
 - There are no specific provisions contained in Chapter 183A.
16. Can Board Members use Proxies?
 - There are no specific provisions contained in Chapter 183A.
17. Which meetings of the Board of Directors are open to all homeowners?
 - There are no specific provisions contained in Chapter 183A. The decision to have an open meeting is left up to the discretion of the Board.
18. Does a Member have the right to address the Board of Directors during the meeting?
 - There are no specific provisions contained in Chapter 183A. The decision to allow members to address the Board is left up to the discretion of the Board.
19. Can the Board of Directors meet in Closed or Executive Session? If so, for what purposes?
 - There are no specific provisions contained in Chapter 183A.
20. Are minutes or Board meetings required? When can members see the minutes of such meetings?
 - While there is no requirement that a Board keep minutes of their meetings, pursuant to c. 183A, §10(c)(3), to the extent that minutes are kept, such minutes must be made available for review by any unit owner.

21. Does a member have a right to audio- or video-records meetings of the Board? Under what circumstances or conditions?
 - The right of a member to record a Board meeting is left up to the discretion of the board.
22. Can non-members attend Meetings?
 - The right of non-members to attend Board meetings is left up to the discretion of the Board.

ADMINISTRATION

23. Does a Member have a right to review books and records of the association?
 - Yes. Chapter 183A, §10(c) provides that records shall be available for reasonable inspection by any unit owner during regular business hours and at such other times as may be provided. Access to the records includes the right to photocopy the records at the expense of the person making the request.
 - a. If so, what books and records can be reviewed?
 - Section 10(c) states that the organization of unit owners shall keep a complete copy of the following items: master deed and any amendments; the by-laws and any amendments; the minute book to the extent such minutes are kept; and financial records (including records of all receipts and expenditures, invoices, records of the replacement reserve fund, bank statement, audits, accounting statement, financial reports, contracts for work to be performed, and all current insurance policies).
 - b. Can the Member obtain copies of the books and records requested?
 - Yes, access to the records includes the right to photocopy the records at the expense of the individual making the request.
 - c. Does a Member have to pay for copies of the books and records?
 - The board or managing agent may charge the unit owner for the costs to copy any records, and some associations also charge a reasonable fee for the preparation of the records.
 - d. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing?
 - Any records which might be considered confidential, such as personnel files of employees, or records related to litigation may be withheld.
24. What are the reserve requirements in the state? Are reserve studies mandated? What reporting requirements does the Association have with respect to the status of the reserves, the reserve accounts or the funding of the reserves?
 - Chapter 183A, §10(i) states, “All condominiums shall be required to maintain an adequate replacement reserve fund, collected as part of the common expenses and deposited in an account or accounts separate and segregated from operating funds.”
 - There are no reporting requirements with respect to the status of the reserves and reserve studies are not mandated.
25. What are the resale disclosure requirements?
 - There are no resale disclosure requirements contained in Chapter 183A.

26. Does the Membership by vote or the Board of Directors establish the Assessment?
- While there are no specific provisions contained in Chapter 183A relative to the establish of the assessment, almost all association documents grant this power to the Board.
27. Is a budget required?
- There are no specific provisions requiring a budget, but there are provision in Chapter 183A that require the preparation of a financial report and the keeping of financial records.
28. Is an annual audit required?
- Pursuant to c. 183A, §10(d), an independent certified public accountant shall conduct a review of the financial report for any condominium with fifty (50) or more units. Such review shall be conducted annually. For condominiums of less than 50 units, a CPA shall conduct a review if voted by a majority in beneficial interest of the unit owners at a meeting.
29. Does the state regulate the collection of assessments?
- No. The collection of assessments is handled by the Board and/or its managing agent.
 - a. What happens if a member is delinquent in the payment assessments?
 - Chapter 183A, §6(c) provides that when a unit owner's assessment has been delinquent for at least 60 days, the association shall send a notice stating the amount of delinquency; the association shall also send a notice of the delinquency to the first mortgagee, if any; 30 days prior to the filing of a legal action, the association shall send a notice stating its intention to file an action to the first mortgagee; and if the delinquency is not paid, the association may file a legal action, and record the complaint with the registry of deeds to secure its priority lien over the first mortgagee for 6 months of regular monthly common expenses and all costs of collection, including attorneys' fees/costs.
 - b. How can an association increase annual assessments?
 - The Board may vote to increase annual assessments.
 - c. Under what circumstances can an association levy special assessments?
 - The Board may vote to levy a special or supplemental assessment to cover unforeseen costs/expenses.
 - d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?
 - The Board may vote to levy a special or supplemental assessment to cover unforeseen costs/expenses.
30. What authority does the association have to access a Unit or Lot? Under what circumstances?
- Pursuant to c. 183A, §4(2), "The organization of unit owners, its agent or agents shall have access to each unit from time to time during reasonable hours for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another unit or units."

- Additional provisions granting the association access to a Unit are often contained in the association's master deed or by-laws.
31. Does the Association have the authority to adopt rules and regulations? By law or by statute?
 - Yes. The Board may adopt rules and regulations pertaining to the use of the condominium. It should be noted, that some association documents require the vote of unit owners, but most grant the authority to the Board.
 32. Does the Association have the authority to assess charges or fines for violations by Members? Does the association have the right to suspend the right of use of the common elements or common areas in the event of a violation? To suspend the right of a member to vote or otherwise participate in the Association in the event of a violation?
 - Yes. Chapter 183A, §6(a)(ii) and §10(b)(5) gives the Board the power to assess fines for violations of the statute and/or governing documents of the association. The right to suspend the use of common elements, common areas and/or vote must be contained in the master deed or by-laws; the board may not suspend by rule/regulation.
 33. Is there a requirement to have an internal administrative Complaint or Dispute Process? Is it mandatory and/or a prerequisite to other legal action?
 - There are no requirements for an internal dispute process.
 34. Does any applicable statute provide for the removal of a Board Member, several Board members of the entire Board? Under what conditions? Who decides upon their successors and when?
 - Chapter 183A does not contain any provisions relative to the removal of a Board member. Such a provision is often times contained in the by-laws of the association.
 35. Can an association be placed into receivership by a Court under state law?
 - ????????????????
 36. Does state statute provide for condemnation of common property?
 - There are no provisions relative to condemnation in Chapter 183A, but language relative to this matter is often contained in the by-laws.

UNIT/LOT OWNER ISSUES

37. What action(s) can an association take in the event of non-payment of association assessments? Is foreclosure an option? Under what circumstances? (Please address judicial and non-judicial foreclosure.)
 - Yes, foreclosure is an option. Pursuant to c. 183A, §6(c), the association may file a legal action for non-payment of assessments, and the association may seek an order of sale as part of its legal action.
38. Are there state laws that regulate whether a member can be assessed a charge or otherwise fined by my association for violations? What violations trigger this authority? What procedures must be followed?
 - Yes. Chapter 183A, §6(a)(ii) and §10(b)(5) gives the Board the power to assess fines for violations of the statute and/or governing documents of the association. The Board may establish its own procedures for dealing with violations.
 - a. What actions can the association take to collect these charges or fines;

- Any fines assessed to a unit owner is a common expense and shall constitute a lien against the unit, which if unpaid, may be foreclosed upon in the same manner as other unpaid common expenses.
 - b. Can my association foreclose on my property for non-payment of these charges or fines?
 - Yes. Any fines assessed to a unit owner is a common expense and shall constitute a lien against the unit, which if unpaid, may be foreclosed upon in the same manner as other unpaid common expenses.
39. What, if any, other internal administrative enforcement options can the association take in the event of a violation of the state statute, association's governing documents, or the rules and regulations of the association?
- Each Board may establish their own policies and procedures for dealing with violations and misconduct. In some circumstances, the Board may take legal action, where necessary, to ensure compliance and/or enforcement of the governing documents of the association.
40. Does any applicable statute regulation the flying of the American Flag?
- There are no Massachusetts laws specifically pertaining to the flying of the American flag.
41. Does any applicable statute regulate solar panels? Clotheslines?
- The association may not impose the restrictions on the use of solar panels in those portions of the condominium that are part of the unit, but may impose reasonable restrictions on the installation of solar panels in the common areas.
42. What are the rules regarding placement of satellite dishes or antennas on my property? (Link to the OTARD Fact Sheet.)
43. What dispute resolution options do I have if I have a problem with the board?
- Chapter 183A does not contain any mandatory provisions relative to the resolution of disputes with the Board. Section 12(b) states that the by-laws may provide for procedures relative to disputes. We suggest reviewing your governing documents, particularly the by-laws, for specific provisions on this matter.
44. What is the state law regarding recalling board members?
- Chapter 183A does not contain any provisions relative to the removal of a Board member. Such a provision is often times contained in the by-laws of the association.

AMENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents?
- The state statute does not provide any specifics relative to amendments, but rather states that the master deed and by-laws must contain a provision relative to the method for amending each. Therefore, the provisions for amending are contained in the documents themselves, not in statute.
 - a. What percentage of the owners must approve?
 - See above answer.
 - b. Is percentage based on those voting or totality of the number of owners?
 - Each condominium has its own procedure for amending.

- c. Is the vote taken at a meeting or is it required to be by written consent?
 - o See association documents for relevant provisions.

- d. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?
 - o See association documents for relevant provisions.

USE OF TECHNOLOGY

46. Other than a written document or by voting at a meeting, can an association use the most advanced technology, including e-mail or the internet to:
- There are no provisions regarding this contained in statute, and rarely are such provisions contained in the association documents
 - a. Provide notice to members of any meeting?
 - b. Obtain votes of the members?
 - c. Obtain the consents, acknowledgements or ratifications of members?;
 - d. Obtain the electronic signatures of members?