

GENERAL

1. What state statutes apply to Common Interest Communities in your state?

Answer: Michigan Condominium Act and Landlord/Tenant Act. MCL 559.101 *et seq.* and MCL 600.5714. As well as MCL 450.108, which relates to cooperative corporations, such as Farm Cooperatives.

2. Are Common Interest Communities required to incorporate? Can they be incorporated? Advantages/Disadvantages?

Answer: No they are not required to incorporate. Yes, they can be incorporated. Advantages of a non-profit corporation are evident in regard to liability of the members of the association. Disadvantages are the same as any disadvantage in that a corporation is required to file annual reports and other expenses attributable to corporate governance.

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?

Answer: No.

4. On the state level, what are the annual reporting requirements of a Common Interest Community, if any, and to whom?

Answer: None specifically designed to deal with common interest communities.

MEMBERSHIP MEETINGS

5. Is an Annual Meeting of Members required?

Answer: Yes if a non-profit corporation.

6. How are Special Meetings of the Members called?

Answer: Depends upon the provisions set forth in the Bylaws.

7. What are the Notice Requirements for Membership Meetings?

Answer: See Michigan Non-Profit Corporation Act, MCL 450.2404.

8. What are Quorum Requirements for Membership Meetings?

Answer: See the Bylaws of the Community Association and/or the Michigan Non-Profit Corporation Act, MCL 450.2415.

9. Can Members use Proxies? Absentee Ballots? Mail Ballots?

Answer: Proxies - it depends on the Bylaws. Absentee Ballots - it depends on the Bylaws. Mail Ballots - it depends on the Bylaws and provisions in the Articles of Incorporation regarding action without a meeting, etc.

10. Can Members Raise Concerns or Issues at a Membership Meetings?

Answer: It depends upon the Bylaws and/or Roberts Rules of Order.

11. Can Non-Members attend Membership Meetings? (Attorneys of Members? Guests of Members? Local or National Media representatives?)

Answer: No statutory restrictions but pursuant to Roberts Rules, the members may limit and/or exclude non-members, such as attorneys, from membership meetings.

BOARD MEETINGS

12. Are Boards of Directors required to hold Regular Board Meetings?

Answer: It depends on the Bylaws of the Association. Nothing in the Nonprofit Act but the Board shall meet sufficiently to properly manage the Association.

13. How are Special Meetings of the Board called?

Answer: It depends upon the Bylaws and the Michigan Non-Profit Corporation Act.

14. What are the Notice requirements for Board meetings? Are Members required to be notified as well?

Answer: For notice requirements, check the Michigan Non-Profit Corporation Act. Check the Michigan Non-Profit Corporation Act regarding members being notified.

15. What constitutes a quorum for Board Meetings?

Answer: It depends upon the Bylaws. Generally, a majority of the directors will constitute a quorum for a Board Meeting.

16. Can Board Members use Proxies?

Answer: No.

17. Which meetings of the Board of Directors are open to all homeowners?

Answer: None.

18. Does a Member have the right to address the Board of Directors during the meeting?

Answer: Not necessarily.

19. Can the Board of Directors meet in Closed or Executive Session? If so, for what purposes?

Answer: There is no Open Meetings Act as it relates to Community Association in Michigan.

20. Are Minutes of Board Meetings required? When can Members see the minutes of such meetings?

Answer: It depends on normal governance requirements of a corporation. Under the Michigan Non-Profit Corporation Act and/or the Michigan Condominium Act, the members have a right to review the books and records and, in the case of condominiums, the contracts of the Association.

21. Does a Member have a right to audio- or video-records meetings of the Board? Under what circumstances or conditions?

Answer: Not necessarily, but it is subject to the Bylaws and policies of the Association.

22. Can Non-Members attend Board Meetings?

Answer: Only if permitted by the Board of Directors.

ADMINISTRATION

23. Do a Member have a right to review books and records of the Association?

Answer: Yes.

- a. If so, what books and records can be reviewed?

Answer: All books and records that are not privileged.

- b. Can the Member obtain copies of the books and records requested?

Answer: Only if provided for by the Bylaws or at the liberty of the Association.

- c. Does a Member have to pay for copies of the books and records?

Answer: Probably yes.

- d. Are there books and records which the Association can withhold or otherwise prevent a Member from reviewing?

Answer: Yes, privileged minutes and other matters which are customarily subject to the Attorney/Client Privilege or other privileges.

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?

Answer: Reserve requirements for a Condominium are ten (10%) percent of the budget on a non-accumulative basis. But there is a statute that suggests that the Board of Directors of the Condominium retain or establish sufficient reserves to properly maintain the Condominium. (MCL 559.205).

Reserve Studies are not mandated other than through normal requirements of a CPA doing an audit.

Only the reporting requirements of the CPA.

25. What are the resale disclosure requirements?

Answer: There are no specific provisions that relate only to common community interest communities. However, MCL 565.951 *et seq.* sets forth what disclosure requirements must be included in a form disclosure statement for any used property.

26. Does the Membership by Vote or the Board of Directors establish the Assessment?

Answer: Sometimes.

27. Is a budget required?

Answer: Sometimes, depending upon the Documents.

28. Is an annual audit required?

Answer: Section 57 of the Michigan Condominium Act, MCL 559.157, requires an annual preparation of a financial statement by an independent accountant and the books must be audited or reviewed, but such audits need not be certified.

29. Does the State regulate the collection of assessments?

Answer: No.

a. What happens if a Member is delinquent in the payment of assessments?

Answer: The Association can pursue foreclosure of the Condominium lien and/or money judgment and/or other remedies as set forth in the Documents.

b. How can an association increase annual assessments?

Answer: It is based upon the Documents and Bylaws.

c. Under what circumstances can my association levy special assessments?

Answer: It depends upon the Bylaws.

d. Are there provisions related to additional assessments or adjustments in the budget or assessment level in the event of a deficit?

Answer: It depends upon the Bylaws.

30. What authority does the association have to access a Unit or Lot? Under what circumstances?

Answer: It generally depends upon the Documents, which provide typically for access upon notice or in the event of an emergency, immediate access.

31. Does the Association have the authority to adopt rules and regulations? By law or by statute?

Answer: Yes, the Association has the authority to adopt rules and regulations. Section 65 of the Michigan Condominium Act, MCL 559.165, specifically provides that each co-owner, tenant, or nonco-owner occupant shall comply with the master deed, bylaws, and rules and regulations of the condominium project and the Michigan Condominium Act.

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?

Answer: Yes, pursuant to MCL 559.206, the Association has authority to assess charges or fines for violations by Members as provided in the condominium bylaws or rules and regulations of the condominium. The Association has the right to suspend the right of use of common elements or common areas in the event of a violation, if provided for in the Documents. The Association may also suspend the right of a member to vote, if provided by the Documents.

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?

Answer: The only requirement for internal administrative Complaint or Dispute is in the event that the Association wishes to levy a fine, in which case, they must provide due process and a hearing to the Co-owner.

34. Does any applicable statute provide for the removal of a Board Member, several Board members, or the entire Board? Under what conditions? Who decides upon their successors and when?

Answer: The Michigan Non-Profit Corporation Act provides for the removal of a Board Member. MCL 450.2511 Removal of director or entire board, provides as follows:

Sec. 511.

(1) Unless otherwise provided in the articles of incorporation or bylaws, a director or the entire board may be removed:

(a) With or without cause, by vote of the holders of a majority of the shares or by majority vote of members entitled to vote at an election of directors.

(b) With cause, by the vote of a majority of the directors then in office in the case of a corporation organized upon a directorship basis.

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

(3) When shareholders or members of a class are entitled by the articles or a bylaw adopted pursuant to section 506(2) to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares or members of that class and not to the vote of the outstanding shares or membership as a whole.

It is also typically provided for in the Condominium Documents.

35. Can an association be placed into receivership by a Court under state law?

Answer: Yes.

36. Does state statute provide for condemnation of common property?

Answer: Yes.

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.)

Answer: Yes. Either judicial foreclosure or foreclosure by advertisement and suit for money damages, as well as self-help relief.

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?

- a. What actions can the association take to collect these charges or fines;
- b. Can my association foreclosure on my property for non-payment of these charges or fines?

Answer: Yes, see MCL 559.206. Violation of the Documents will trigger this authority.

a. Typically they can be assessed as an assessment under the Condominium Documents with the various remedies.

b. Yes.

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?

Answer: Certain self-help remedies such as deprivation of voter rights, non-use of amenities, etc.

40. Does any applicable statute regulate the flying of the American Flag?

Answer: Yes. MCL 559.156a provides that an association shall not prohibit a co-owner from displaying a single United States flag of a size not greater than 3 feet by 5 feet anywhere on the exterior of the co-owner's condominium unit.

41. Does any applicable statute regulate solar panels? Clotheslines?

Answer: No.

42. What are the rules regarding placement of satellite dishes or antennas on my property? (Link to the OTARD Fact Sheet.)

Answer: The Federal Communications Act.

43. What dispute resolution options do I have if I have a problem with the board?
Answer: Possible arbitration if both parties agree.

44. What is the state law regarding recalling board members?

Answer: Please see response to 34 supra.

AMENDMENT OF DOCUMENTS

45. Does state statute provide for the amendment of the association's documents?
a. What percentage of the owners must approve?
b. Is percentage based on those voting or totality of the number of owners?
c. Is the vote taken at a meeting or is it required to be by written consent?
d. Is mortgagee approval required? Is there a statutory process for obtaining mortgagee approval or providing for a presumptive mortgagee approval?

Answer: Yes.

a. Sixty-six and two-thirds (66 2/3%) percent of Co-owners qualified to vote and, in certain instances, two-thirds (2/3's) of the first mortgagees.
b. The totality of the number of owners qualified to vote.
c. Possibly both, if appropriate.
d. Yes to both.

USE OF TECHNOLOGY

46. Other than a written document or by voting at a meeting, can an Common Interest Community use the most advanced technology, including e-mail or the internet to:
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?

Answer: a-d. If Articles of Incorporation and/or Bylaws are amended.

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