Senate Housing and Homelessness Prevention Committee
Working Group on Common Interest Community and Homeowners Associations
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Phaedra J. Howard, Esq., Hellmuth & Johnson, Edina, MN

My name is Phaedra Howard. I am an attorney with 23+ years' experience practicing primarily in the area of community association law. I have been repeatedly recognized by my peers as a Best Lawyer, Super Lawyer, Top Women in Law, etc. I am also the only attorney in Minnesota admitted as a Fellow in the College of Community Association Lawyers, a distinction held by fewer than 175 attorneys nationwide. Additionally, I have volunteered my time on the MCIOA committee of the MN Bar Association, which is dedicated to ensuring that changes to the Minnesota Common Interest Ownership Act are reasonable and further the legislative goals behind the Act. I also have served on the MN Legislative Action Committee for the Community Associations Institute (CAI) for the past 6 years and currently serve as chair of this committee. I served in a similar capacity for many years for CIC Midwest, which was a division of the Minnesota Multi-Housing Association. I regularly provide education for community association board members, property managers, attorneys and real estate agents at the local and national level on topics related to community associations. Based on these credentials, I was appointed to the CIC working group by the Minnesota State Bar Association. Although I was appointed as someone who regularly represents and advises homeowner associations, I do also occasionally represent homeowners in disputes with their association.

The working group was formed by the legislature "to study the prevalence and impact of common interest communities (CICs) and homeowners associations (HOAs) in Minnesota and how the existing laws regulating CICs and HOAs help homeowners and tenants access safe and affordable housing." There were several fundamental flaws in how the working group was set up and how it operated that prevented any meaningful study of these issues. First and foremost, the composition of the group as dictated by the legislature was noticeably lacking input from several vital stakeholders. Aside from the bar association, who designated two representatives to the Working Group, all other named organizations had only one designee, with the exception of the Housing Justice Center, which got to appoint **4** regular homeowners to the group. This is in addition to the representatives of multiple other organizations that represent the interests of individual homeowners against associations. However, noticeably absent from the list of persons that were part of this working group are *any* homeowners serving on their association's board of directors. An earlier version of the enabling statute included 2 such board members, which was still skewed compared to the 4 non-board homeowners. However, the final version of the statute eliminated any representation from this important group. As such, the group had no representation from anyone serving in this vital role and bringing this important perspective. Additionally, there was no requirement that there be any representative from any management company that provides management services to community associations. CAI did appoint a management company representative as its designee in order to ensure that there was at least one person providing this perspective, and the Department of Commerce also ended up appointing a

representative from a different management company, so that was helpful. However, it should be noted that, aside from these two management company representatives and myself, and to a lesser extent the representative appointed by the Senior Housing Cooperative Council, none of the other members of the working group have significant experience or knowledge of how different types of community associations work or the various laws that currently exist to govern them. A number of the other Members have working knowledge of some of the operational and legal aspects of community associations from a particular area, but very few of us have comprehensive knowledge and experience. As a result, the group was unable to really study the issues or dive into what changes might be necessary or desirable to the existing laws, given the clear lack of knowledge as to what the existing laws are or how associations and boards actually operate.

In addition to the serious flaws in how the Working Group was set up and the failure to include some very necessary perspectives in that group, the process by which the group attempted to carry out its purpose was also less than ideal. First, the group did not start meeting until more than 2 months after the date that the enabling statute required the group to convene. As such, it was very rushed to even try to accomplish anything in the short amount of time that was left. Additionally, there were so many topics that it was tasked with studying and covering that it was impossible to thoroughly address ANY of these topics or issues, especially in the shortened timeframe. Initially, presentations to the group were skewed heavily in favor of complaining homeowners and others who support certain parties' preconceived ideas of what community associations are or do, despite the lack of any actual expertise by those presenters, while others that have expertise working with associations were not permitted to speak or present their viewpoints. Only toward the end did the chairs start seeking a little more balance in the information that was being presented.

Additionally, there was little to no effort to actually study the issues that the group was tasked with studying. Instead, there were numerous one-sided stories that were told, mostly by homeowners that had some sort of issues or disputes with their associations or organizations that regularly help homeowners in these situations. There was no effort to seek the other side of any of these stories that were told or to get at the actual truth, and these testifiers were simply taken at their word that the homeowner did nothing wrong and their association and/or management company were being unreasonable. I did mention to the LCC staff and Chair Bahner that I happen to know the back stories of several such testifiers and presenters and that, while attorney/client confidentiality prevents me from revealing any information or identifying which testifiers are involved, I can state for a fact that a number of these such homeowners are not innocent parties and are, instead, the bad actors in those stories. It is common knowledge that civility in our society has hit an all-time low since COVID. This is especially evident within community associations. Whereas in the past, homeowners generally tried to comply with their association's reasonable rules and pay their assessments on time, there is an alarmingly growing trend now for owners to fight back on everything and to harass and abuse those that are simply trying to enforce the rules that everyone agreed to when they purchased a property in an association. It is often these same abusive owners, who refuse to follow the rules or to pay their assessments, that are the loudest complainers about their boards or managers. Additionally, rather than acknowledging their own mistakes and trying to come into compliance with the rules, they want to make a major case over minor issues and then try to micromanage everything that

the board does and fabricate stories to make the board look bad. Further, because they often do not have a very good understanding of how associations operate or what the existing statutes and governing documents say, they often misinterpret the laws and governing documents and assume that the board is doing something wrong even when this is not the case at all. They then fixate on their own misinterpretation and create a dispute with the association over it and then complain when the association finally has to resort to bringing in legal counsel to explain to the owner why the owner is incorrect and defend the association's actions that are completely reasonable and within the board's authority. These homeowners continue to be abusive because it is already difficult for associations to stop the abuse under current laws. Yet, these are the people that our legislators are now listening to and trying to protect from the consequences of their own bad behavior rather than hearing from the board members and property managers that have to put up with this abuse on a regular basis. Board members and property managers literally put their lives on the line to serve their communities and yet are criticized when they take action to try to stop the abuse and harassment.

In addition to much of the presentations being one-sided, there was no attempt to study the effects of existing legislation or proposed legislation on associations or their members. There were some presentations from a representative from the National Conference of State Legislatures (NCLS), who gave very brief overviews of the types of laws that other states have or are considering adopting regarding community associations. But these were really just high-level surveys to show how many states have laws that address different topics and a very general comparison of how those laws treat the particular topic. Also, some of the statements regarding what Minnesota does or does not regulate by statute were inaccurate. As an example, it was reported that Minnesota law does not have any provisions or requirements regarding board of directors conflicts of interest. It is true that conflicts of interest are not directly addressed in Chapter 515B, but they are addressed in the corporate statutes – both in 317A and 308A – so this statement was not correct. Further, there was no discussion or effort to understand how any such legislation works in the greater context of other laws in a particular state or the positive or negative impacts of any such laws on associations and homeowners, how they operate, or any financial impact on the owners living in the associations. In short, just because another state has adopted a particular law does not mean that said law is even working well in that state and certainly does not mean that we should follow suit without digging much deeper into those issues. Additionally, many of the presentations by the House research staff attempting to explain existing Minnesota statutes contained incorrect information, and the staff persons were unable to answer a lot of the questions posed of them by the Members of the Working Group. Those of us who know and understand the law and how associations work were not provided much opportunity to correct the misstatements or to answer questions that the staff could not answer or to provide opposing views on the issues.

With regard to the "recommendations" of the working group, these should all be taken with a HUGE grain of salt. The document that was attached to the final report literally contains any and every idea that any member of the working group threw out in any of our brainstorming sessions, no matter how ridiculous the idea was. These so-called recommendations were not vetted by anybody, nor was there any group consensus on any of them as the document was being compiled. The members of the Working Group were never told what the process would be for discussing or vetting any of these ideas or how it would be decided which of these would

actually be put forth as recommendations of the group, despite Members having asked about the process.

The actual process for how these recommendations were put together was as follows. The large laundry list of suggestions was compiled by staff and organized by category. At the second to last meeting of the Working Group, the Members split into smaller groups of 3 or 4 and were assigned first one category and then a second one. Nobody knew ahead of time which categories they would be assigned to, so there was no way to prepare for such a focused discussion. The groups had only 20 minutes to discuss all items on their list within that category, and to compile or reword any of them and then rank the items in terms of importance. Each category of recommendations was reviewed and discussed by at most 4 Members of the Working Group, and each Member present at that meeting got to review and discuss only 2 of the 8 categories in these very rushed break-out sessions. Depending on who was assigned to which discussion groups, the results of those discussions may be skewed in a particular direction that may or may not reflect the opinions of the larger group. These smaller lists from the breakout sessions were then reorganized again by staff based on the order of importance given to the particular recommendation by the group of 3 or 4 members that reviewed each one. At the final meeting on January 24, 2025, there was some additional discussion by the entire group on the revised compiled list and a few additional changes were made based on some of the comments made by Members. But there was no real opportunity to debate or revise the rankings of importance of the various recommendations that had been assigned by the small sub-groups. Further, I think many of us believed that we would still be able to have a separate discussion on each of the individual recommendations prior to voting on whether or not to include them in the final report. I and some other Members were quite surprised when it came time to vote on the recommendations and we were told that we had to approve or reject the revised list as a whole because no time was carved out to discuss or vote on the individual recommendations. This was extremely disappointing, given how little any of these suggestions had been vetted up to that point. In retrospect, I should have abstained from the vote after learning this. However, I reluctantly voted to approve the list because I do support SOME of the recommendations on there and hoped that there would be opportunities down the road to have further discussions about the ones that I do not support before these bad ideas become law. In my subsequent discussions with some of the other Working Group Members, they felt the same way about the process and how the final vote was conducted.

I think it is important for this committee and the public to understand the process of how this Working Group operated and how the final report was compiled before taking the report and recommendations too seriously. The recommendations in that report are not the result of any serious study of these issues and do not even necessarily represent the opinions of a majority of those persons who were on the Working Group. Further, there were necessary voices that were excluded from this group that we should be listening to. Finally, I think it is really important to give appropriate weight to the ideas and opinions expressed by persons who have experience and expertise working with community associations and the various practical and legal issues that they deal with vs. those expressed by persons with little to no experience or expertise in these areas and to make sure that we seek out and listen to all sides of any story before taking any action to correct something that might not actually be a problem. Please note that the report does reference statistics compiled by the Foundation for Community Association Research that

indicates that across the country and regionally, people report a very high level of satisfaction with their community associations. Those that are dissatisfied are not in the majority and often express dissatisfaction because of a singular incident or dispute or because they did not have appropriate expectations of what it means to live in a common interest community before purchasing their home. I do acknowledge that there are boards and managers that we would all classify as bad actors in particular situations, but that does not mean that such bad behavior is the norm or that it is an issue with not enough legislation. So I think we all need to take a step back and acknowledge this before trying to adopt sweeping legislation that will do more harm than good and result in unintended consequences for associations and all the homeowners and residents who live in them.

I would also urge anyone considering any proposed legislation that would impact community associations to consult with ***and listen to*** CAI, the Minnesota Bar Association and any other stakeholders that might be able to provide guidance on the potential impact of such legislation before pushing something through that has not been properly vetted or thought through. We are already dealing with the negative effects of such legislation that was passed in recent years and do not need to compound the problems that associations already face in today's landscape with the rising cost and unavailability of insurance, being black-listed by Fannie/Freddie and other issues that significantly impact the future viability of community associations as a whole.

I do agree with some of the high-priority recommendations listed in the report. I will also note that many of these recommendations are for things that already exist under current statutes, which highlights the lack of knowledge and understanding behind these recommendations. Of those that are not currently addressed in existing law, I support the recommendations extending the sunset date for HIA loans and to make that process easier and more accessible to more associations in order to help fund necessary repairs to their properties. I also agree that we need to study the insurance issue further and see if there are reasonable ways to address this crisis to assist associations that are having difficulty obtaining and/or paying for insurance, including but not limited to allowing boards to levy emergency assessments without homeowner approval to cover insurance premiums and other unexpected emergency expenses. I agree with recommendation 2.06 about not being able to force associations to use a particular vendor, with the exception of banking, where it would be extremely difficult for management companies to have to work with potentially dozens of different banks. I also support the *concept* of creating an ombudsperson office to be a neutral third party to assist associations and homeowners resolve disputes without having to involve attorneys, though the statistics from other states that have such an office reflect that it is not well utilized and the low number of disputes that are actually resolved through that process may not justify the cost of creating such an office.

Finally, I am open to the idea of requiring some sort of minimum level of education and/or licensing for property managers and association board members, though this would depend entirely on how it is structured and what is being required. CAI offers some very good education for both managers and board members and has several levels of manager certifications that many managers in Minnesota have obtained. Most managers want to be educated to do their job better and voluntarily attend various educational sessions for that reason. A large number of board members that I work with also seek out education for the same reason. If we were looking at some sort of manager training or licensing requirements, I think CAI's certification programs

could be used as an example. I also agree that board members need education on their roles and responsibilities, their legal obligations under statutes and their governing documents, and fair housing and implicit bias. I am concerned that requiring training of board members may scare many homeowners away from being willing to serve on their boards, so that is something that needs to be taken into consideration. I would also add that there is a general need for education, not just of managers and board members, but also homeowners who buy into community associations and real estate agents and others who assist them with his process. There is a lot of misinformation and a lack of understanding about community associations that results in buyers having unrealistic expectations about everything from maintenance to assessments, rule enforcement and other areas that often lead to disputes. There are also some people that are just not suited to living in an association who might think harder about their decision if they were better educated on what it means to live in an association and to abide by the covenants and restrictions of that property.

With regard to the other listed recommendations, I agree that boards need to be transparent with their members about anything not related to a confidential matter. MCIOA already requires associations to hold open board meetings and to provide certain association records to members. If boards are not abiding by these existing requirements, that is an issue of education and/or enforcement and does not necessarily mean that more legislation is needed. The same applies to the recommendations regarding the assessment of legal fees to individual homeowners. MCIOA allows associations to assess owners for legal fees incurred in connection with the collection of unpaid assessments and the enforcement of the governing documents, rules or the Act. If associations are assessing back legal fees that are not related to enforcement or collection of assessments, that is not a problem with the current law but rather one of educating those board members on what the law says and which fees can and cannot be assessed back. If necessary, those provisions of MCIOA could be tweaked to provide more clarity to boards on this issue, but should not take away the ability of associations to assess legal fees and costs to owners whose actions or failure to pay assessments necessitated some sort of legal action.

I disagree with any proposal that will make it harder for associations to collect assessments or to enforce their legitimate and reasonable rules, and I strongly disagree with any proposal to make the other owners within an association pay for the costs that are incurred as the result of an owner not paying assessments or not abiding by the governing documents or rules. That just encourages those owners to continue breaking the rules and provides no incentive for them to pay their assessments or to comply with the governing documents that they agreed to when they purchased their home if they do not have consequences for their actions. It also unnecessarily increases the cost for everyone else just because one person chooses not to abide by his or her obligations. That is not fair to those other owners who are paying their assessments and following the rules to have to pay for the actions of someone else who chooses not to do so. I also oppose any recommendation that unreasonably interferes with the right of community associations to regulate the appearance of their property. One of the primary purposes that a community association serves is to regulate the appearance of the property in order to preserve property values. This is also one of the main reasons most people living in a community association choose to do so. If we strip associations of the ability to adopt and enforce rules designed to maintain property values, that will have a negative impact on all of those homeowners, both in terms of their property value and their ability to sell their homes.

Finally, while I agree that developers should have more options and should not be forced to create an association through direct or indirect requirements imposed by cities, counties or the Metropolitan Council, I strongly disagree with any proposal that would make it easier to dissolve or terminate existing community associations. There is a good reason why MCIOA requires approval of at least 80% of members and first mortgagees to terminate a CIC. This is to ensure that associations are not dissolved on a whim or without approval from the vast majority of owners who purchased their property with the intention of being governed by said association. Additionally, lenders loan money for people to purchase property in an association with the same intention and assumption. Banks look at the association financials, reserve study, insurance and other criteria to determine whether they are willing to invest in that property and should be consulted on any decision to terminate the association that would have a negative impact on that investment and the value of their collateral.

Rather than seeking to make major sweeping changes to the existing statutes that will further complicate things, place larger burdens on homeowners and make it even harder for community associations to operate, I would urge legislators to focus on simple solutions that will have a greater positive impact. This starts first and foremost with education of all parties involved to ensure that homeowners and boards alike understand their rights and responsibilities. This alone would go a long way in addressing the issues and disputes that we see between boards and homeowners. If combined with some sort of dispute resolution process that could be available for little or no charge to homeowners and associations, this would have a huge impact on the number of complaints that we are seeing about associations and eliminate the need for major reform. Finally, I urge you to look at ways to help associations that are struggling with insurance issues, aging properties, deferred maintenance or major repairs, and other financial or operational issues caused by rising costs and governing documents that prevent them from increasing their assessments to keep up with those costs and to oppose any legislation that would absolve developers of liability for construction defects or any other failure to properly manage or fund an association.

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