SJJ LAW

INTEGRITY. HONESTY. TENACITY.

WRITER'S DIRECT DIAL: (952) 653-6453
EMAIL: FJACOBSEN@SJJLAWFIRM.COM
REPLY TO: **Minnesota Office**
WWW.SJJLAWFIRM.COM

March 13, 2025

SENT VIA EMAIL

Senate Committee on Housing
and Homelessness Prevention
Senate Building
95 University Avenue W
Room 115
Saint Paul, MN 55103

Re: Proposed Improvements to SF 1750

To the Members of the Committee:

My name is Finn Jacobsen, and I am a partner at SJJ Law. Our firm represents hundreds of homeowners' associations ("HOAs") across Minnesota. These associations are non-profits, governed by their own homeowners who volunteer their time to help preserve their homes and their community.

As HOA attorneys, we support an update to Minnesota association law to improve protection for the unit owners, codify guardrails, and enshrine best practices that many associations have already introduced. We want the new law to align with the myriads of other laws that also regulate association living as well as the realities of governing an HOA in Minnesota.

To that end, we have submitted proposed amendments that we believe would improve the bill and align it more closely with these goals. I address some of those amendments in this letter and have attached proposed redlines of the bill. I would be happy to meet with any member of this Committee and your staff to discuss specific provisions and possible modifications to better align with the Committee's intent.

I. BETTER ALIGNING SF 1750 WITH EXISTING MCIOA GOVERNANCE STRUCTURES.

HOAs in Minnesota are governed by various state statutes, including the Minnesota Common Interest Ownership Act ("MCIOA"). SF 1750 proposes amendments to MCIOA, but some of its new provisions conflict with existing sections that remain unchanged, potentially stripping unit owners of rights they currently hold.

i. The bill revises rulemaking authority but should mirror existing mechanisms within MCIOA for members looking to challenge board decisions.

The proposed bill introduces § 515B.3-102(g), requiring that new association rules and regulations be "reasonable" and "not arbitrary or capricious," while also mandating 60 days' advance notice before adoption, amendment, or revocation. These changes promote transparency and give unit owners an opportunity for input—an approach we support.

However, the bill also states that "any rule in effect may be revoked by a majority vote of the unit owners at a board meeting," which directly contradicts existing provisions of MCIOA. Section 515B.3-103 establishes board meetings are for elected board members to conduct association business, while unit owners vote at member meetings. Unit owners already have a clear mechanism to change rules by removing the Board. § 515B.3-108(a). We would propose a specific provision, mirroring the Board removal language, to allow for homeowners to specifically override Rules. Proposed language can be found in the attached redlined version of the bill (Lines 16.7-16.14)

ii. The bill expands unit owner participation in board meetings but should preserve meeting efficiency by allowing flexibility when to hear unit owner commentary.

The bill proposes new language in § 515B.3-103(g), granting unit owners the right to speak at board meetings on agenda items, as well as raise other association-related issues during a designated time. We support open communication between boards and unit owners.

In practice, we encourage, and most associations hold, "homeowner forums" before or after board meetings to allow residents to share concerns without interfering with the board's ability to manage its agenda. Our proposed language can be found in the attached redline version of the bill (Lines 19.9-19.14).

If codified into law, this slightly modified approach should be introduced to strike the right balance between unit owner engagement and efficient board governance.

iii. The bill creates unnecessary ambiguity with respect to bylaw amendments.

Provision § 515B.3-106 allows bylaws to be revoked by "a majority vote of unit owners at a board meeting." Board meetings are for elected Directors to act on behalf of the community whereas votes of the membership of the community occur at member meetings. The proposed provision creates inconsistencies in the law and it is unnecessary as MCIOA already provides statutory guidance on amending bylaws. Minn. Stat. § 515B.2-118(a)7. We urge the committee to strike this provision from the bill.

iv. The bill requires approval procedures for unit modification but should clarify terms to avoid associations needing to incur substantial costs in amending their documents.

Another new provision, § 515B.3-107(e), requires association boards to establish a fair and timely process for approving or denying proposed changes to a unit or limited common element, including an appeal procedure. These processes must be detailed in the association's "governing documents."

While this requirement promotes good governance, the bill should clarify that "governing documents" include rules and regulations. This is needed because "governing documents" is not always read to include association rules. Without this clarification, many associations in Minnesota would have an affirmative duty to amend their declarations—an expensive and time-consuming process that often requires a full membership vote. Allowing these procedures to be implemented through rules and regulations would ensure compliance without imposing unnecessary burdens on associations. Proposed language can be found in our attached redlined version of the bill (Lines 22.27-22.29).

II. REFLECTING THE REALITIES IN WHICH HOAS VOTE AND RESOLVE DISPUTES.

HOAs are more than legal entities—they are communities of individuals with diverse interests living in close proximity. Effective governance requires cooperation to pass budgets and maintain the community, and occasional disputes among unit owners are inevitable. Our practice focuses on both fostering best practices for collaboration and conflicts resolution in line with the practical realities of HOA management.

i. Restrictions on proxy voting undermines an HOAs ability to function.

A proposed amendment to Section 515B.3-110(b) adds that "a current board member cannot act as a proxy for a unit owner" and that "[n]o more than 20 percent of votes cast on any single vote can be by proxy." Among the hundreds of HOAs we represent, many—if not most—would struggle to hold annual meetings and validly elect a Board each year under these restrictions. Proxy voting is essential for achieving quorum and conducting association business, particularly given that most unit owners do not attend annual meetings or participate in board elections.

We welcome the opportunity to work with the Committee to better understand the concerns driving this provision. As written, it creates unnecessary obstacles to effective governance. Minnesota law already provides comprehensive rules for proxy voting in HOAs under Section 515B.3-110 and other parts of MCIOA. Additionally, § 317A.453, which governs nonprofits, imposes no such restrictions. Since HOAs are nonprofit entities subject to this statute, imposing stricter proxy voting limits would be arbitrary and disruptive. We urge the Committee to remove or reconsider this provision.

ii. A "meet and confer" requirement is a productive idea, but must be practical.

The bill adds a new section, § 515B.3-122, titled "Requirement to Meet and Confer," codifying a HOA best practice: resolving disputes before resorting to legal action. We encourage this approach for enforcement actions involving litigation or, when necessary, foreclosure.

However, subdivision 1 is unclear on whether "enforcement action" includes internal rule enforcement, such as late fees or fines. Section 515B.3-102(a)(11) already mandates notice and a hearing before imposing such charges and prohibits attorneys' fees from being assessed if the charge is not upheld. The Committee should clarify that two separate hearings are not required for the same dispute.

For external enforcement actions, such as litigation or foreclosure, the proposed "meet and confer" requirement in subdivision 2 could prevent HOAs from taking action if a unit owner simply refuses to meet. To make this provision more practical, it should align with § 515B.3-102(a)(11) by allowing the board to notify the unit owner in writing and offer a meeting. The burden would then shift to the owner to confirm they would like to have a meeting; if they decline, the board should be free to proceed. To ensure fairness, no legal fees should be assessed for attending the meet and confer. We urge the Committee to adopt this added flexibility. Proposed language can be found in our attached redlined version of the bill (Lines 36.13-36.24)

iii. Recognizing that HOAs need to be able to fund their obligations without increasing cost to compliant owners.

In Minnesota, elected HOA board members are unpaid volunteers with a legal duty to act in good faith, exercise due care, and prioritize the association's best interests. See § 515B.3-103(a). These obligations align with the Minnesota Nonprofit Corporation Act, which requires directors to act in a manner they reasonably believe serves the organization's best interests. See § 317A.251. A core responsibility of an HOA is to collect unpaid assessments to ensure the community's financial health. Under current law, associations enjoy the same statutory rights as most creditors or fiduciaries to collect the amounts owed to them.

The proposed bill, as written, will not reduce the need for these services. Instead, these provisions will increase litigation, force associations to absorb legal costs that should be assigned to specific unit owners, and put associations in a position where they may be forced to forgo collecting some owed assessments. Simply put, this will drive up costs for all unit owners.

Guardrails on HOA lien foreclosures are reasonable. In practice, foreclosure occurs only after multiple failed attempts to resolve nonpayment through calls, mail, and/or in-person outreach. Setting overly high limits before allowing an association to begin foreclosure allows owners to delay payments for extended periods, creating cash flow issues for the HOA, and requiring compliant neighbors to absorb the costs. For example, with $250 monthly

dues, an owner could willfully go 20 months without paying their dues. A more measured guardrail, such as a $2,000 minimum**,** would offer protection while ensuring that most associations can act within a year of nonpayment.

Limiting the costs an association can assess back to delinquent homeowners to $1,000 will not stop HOAs from needing to collect that debt, it will simply shift those costs to compliant unit owners. Further, requiring them take into account financial circumstances of unit owners, and prohibiting them from selling their lien when a senior lien holder is foreclosing will create cash flow issues, necessitating increased assessments for everyone to make up for those who will not pay.

We urge the Committee to reconsider these provisions and adopt a more practical alternative. Proposed language can be found in our attached redlined version of the bill (Lines 16.15-16.16 [selling debt]; 27.9-27.12 [limiting assessable fees]; 28.3-28.4 [payment plans] 31.18-31.22 [limiting assessable fees]; 32.11-32.12 [payment plans]; 33.31-33.35 [triggering amounts for foreclosure]; and 35.23 [limiting assessable fees])

iv. The bill imposes new limits on late fees and fines but risks shifting financial burdens to all unit owners.

The primary means of enforcing community rules—established and overseen by elected volunteers in a process open to all unit owners—is through occasional fines or direct assessments. Reasonable limits and safeguards protect those facing temporary hardship or isolated violations, but without effective enforcement and revenue collection, associations cannot function. With many already struggling under rising costs for operations, repairs, and insurance, overly restrictive policies could push more associations into financial distress—or even collapse.

As written, the proposed amendments to § 515B.3-102(a)(11) cap late payment fees at $15 and limit special assessment penalties to the lesser of 5% or $100. § 515B.3-102(c) restricts fines for a single violation to $100, with a lifetime cap of $2,500. § 515B.3-116(h) prohibits foreclosure on liens under $5,000 or those outstanding for less than 180 days.

No doubt these proposed amendments are intended to protect unit owners who are unable to pay their obligations to the association. If implemented, they would have the unintended consequence of passing a greater financial burden to every other unit owner.

Capping late fees at $15 disproportionately impacts different associations, given the wide variation in assessment amounts. A fixed amount effectively penalizes owners in associations with lower fees while offering minimal deterrence in higher-fee communities. When Minnesota imposes late fee limits, they are typically percentage-based. For example, § 504B.177 caps residential landlord late fees at 8%. We urge the Committee to consider a similar percentage-based approach for HOAs or consider our proposed language which allows “reasonable fees” in line with other provision of Minnesota law.

Further, a lifetime cap on fines for a repeated violation creates a perverse incentive, allowing a willful unit owner to treat the cap as a predictable "cost of doing business." Once the cap is reached, the HOA is left with no recourse but costly legal action. While we recognize the value of caps for individual violations, we urge the Committee to reconsider the lifetime cap. Proposed language can be found in our attached redlined version of the bill (Lines 13.18-13.20; 14.12-14.20).

v. The bill seeks to introduce legal fee caps, but shifting costs to the entire community is not the solution and will lead to more lawsuits.

An association's fiduciary duties require it to retain legal counsel when necessary. Current law expressly allows associations to assess reasonable attorney fees and costs incurred in collecting assessments or enforcing governing documents against a unit owner. See § 515B.3-115(e)(4); § 515B.3-1151(e)(4). This policy ensures that legal costs resulting from a single unit owner's actions are not unfairly shifted to the entire community.

There is certainly room for guardrails on how these fees are assessed. However, much like collection services, this bill will not reduce the need for legal counsel—but it will shift the financial burden. Instead of the responsible unit owner covering the costs of enforcement, the entire community will be forced to absorb them.

Under the new bill, there is language to avoid unit owners being charged legal fees simply for "inquiry" about applicable rules or as retaliation for asserting a unit owner's rights under the governing documents. We support this as not only a guardrail, but best practices to encourage participation in the HOA. See § 515B.3-125; § 515B.3-116(e).

With that in mind, terms like "inquiry" and "retaliation" must be better defined. In both cases, boards must retain the ability to recover costs incurred in defending against lawsuits by unit owners or enforcing governing documents, as required by law. Failing to except these contradicts existing provisions and will inevitably discourage boards from responding to inquiries or properly defending themselves, ultimately weakening association governance.

Even when legal fees can expressly be assessed back to a given unit owner's unit, the current bill seeks to cap those fees. For standard enforcement and collection work, the bill proposes a cap of $1,500. See § 515B.3-125; § 515B.3-116(e). Further, the bill proposes a $1,000 limit on legal fees for a foreclosure by advertisement (without a lawsuit). See 515B.3-116(h).

These caps were undoubtedly intended to protect unit owners facing financial hardship or innocent disputes. However, when a unit owner fails to pay their fees, the costs are inevitably shifted to all other owners, which is both unfair and inconsistent with MCIOA.

There is certainly room for additional guardrails on legal fees. The bill introduces numerous exclusions, including prohibiting fees during inquiries and meet-and-confer sessions. Rather

than imposing rigid caps, we urge the Committee to adopt a "notice and reasonableness" standard, similar to those used in other areas of law when awarding legal fees. This approach would provide a safeguard within MCIOA, allowing unit owners to challenge excessive fees and obtain reductions when fees are improperly assessed, ensuring fairness without undermining an association's ability to enforce its obligations. Proposed language can be found in our attached redlined version of the bill (Lines 54.14-54.26).

We care deeply about Minnesota HOAs and the homeowners who call them home. While we support new legislation, we are concerned that unintended consequences could place added strain on the very unit owners this bill aims to protect. For struggling communities, a sharp rise in costs could lead to financial distress, dissolution, or even bankruptcy. I would welcome the opportunity to discuss these concerns with any member of the Committee. Please feel free to contact me at any time.

Very truly yours,

SMITH JADIN JOHNSON, PLLC

Finn S. Jacobsen
Attorney at Law