

March 12, 2025

Chairperson Lindsay Port

CC: Members of the Housing & Homelessness Prevention Committee

3213 Minnesota Senate Building

St. Paul, Minnesota 55155

RE: SF 1750 “A Bill Relating to Common Interest Communities (CICs)”

Dear Chairwoman Port, Vice Chair Boldon, and Members of the Committee,

On behalf of SoHo Lofts Association, CIC NO 1679, we are writing to provide comments regarding SF 1750, “A Bill Relating to Common Interest Communities.” As introduced, this bill would modify elements regarding the governance of CICs both prospectively and retrospectively. While we applaud efforts to codify CIC and homeowner protections, various aspects of the bill will have severe consequences to the ability of CICs to conduct business as well as unit owners to afford the ongoing costs of homeownership.

We respectfully submit the following comments on behalf of our CIC as well as our collective unit owners.

Proposed Article 1, Section 1 [325E.68] Property Management

We offer support of CIC and homeowner protections regarding conflicts of interest property management firms may have in recommending solutions to property management including maintenance, repairs, and related services.

We encourage the committee to reconsider Subdivision 5 regarding property management firms’ ability to seek remuneration for collection of CIC fees and fines. While we applaud the goal of homeowner protections, CICs should retain the ability to ‘opt-in’ to such remuneration – even if remuneration is restricted to only the cost or reasonable costs of administration by the property management firm. The unintended consequence of subdivision 5 is the reallocation of administrative costs back to CICs and therefore homeowners through CIC dues. Assessing fees directly to those committing infractions is paramount to homeowner accountability and adherence to governing documents. We urge the committee to reconsider this subdivision given other protections to homeowners under Article 2, Section 13. [515B.3-122] Requirements to Meet and Confer.

In lieu, options including a Peer Review committee comprised of non-CIC Board members would offer a reasonable, no cost opportunity to ensure independent review of fees, fines, and administrative costs.

Article 2, Section 3. MN Statutes 2024, Section 515B.2-119 Termination of Common Interest Community

The elimination of approval by 80% of first mortgagees is a positive development and one that perpetually hamstring CICs in not only their ability to terminate a CIC but also their ability to modify governing documents inclusive of declarations and by-laws. However, the failure to regulate mortgagees within this section will create unintended consequences by virtue of banks and mortgage companies ceasing to underwrite CICs and therefore extend mortgages and refinancing.

It is currently difficult to attract mortgagees to lend to CICs and respective unit owners. Absent additional regulation in banking laws and regulations regarding an obligation to lend and/or offer protections to mortgagees upon the dissolution of CICs, the ability to secure financing for CICs and unit owners will be impaired. Codifying banking and/or CIC regulations relating to mortgagees' ability to 'call mortgages' due and payable within a reasonable period following dissolution of a CIC is recommended.

Furthermore, clarity is required whether codification of these regulations require CICs to modify governing documents, with legal counsel, and file with county Recorders incurring the costs of compliance or whether statute alone overrides existing language in CIC Declarations. We encourage the latter to avoid the significant costs to CICs to undertake legal representations and county filing costs to comply.

Article 2, Section 4. MN Statutes 2024, Section 515B.3-102 Powers & Duties of Unit Owners Association

The proposal under subsection (a)(1) for plain language explanations of governing documents including Declarations and Articles of Incorporation are costly and expensive likely requiring regulatory sub-guidance and significant costs for legal counsel to draft such documents on behalf of CICs. These costs must balance the reasonable utility of plain-language documents when the legalese of the documents themselves continue to take precedence over any misunderstanding of homeowner's use of plain language documents. Furthermore, plain language documents for Articles of Incorporation are meaningless compared to the Declaration and By-Laws themselves.

We urge a commonsense approach to plain language that mitigates creation and maintenance costs of plain language documents borne by all homeowners. Leveraging the legal expertise of state government within the Office of the Attorney General to promulgate plain language documents upon analyzing registered governing documents filed with county Recorders, provides a reasonable alternative in conjunction with the Attorney General's existing CIC educational materials balancing the utility and use of such documents by unit owners vs. the costs of creation and maintenance by CICs. CICs bear the cost of state and local income taxes and using those tax dollars to support CICs in this approach is justified.

Under subsection (a)(11) we applaud limiting the abusive practices of property management and CIC entities in relation to fines and fees. However, we encourage an amendment to the proposed regulations that allows for the full cost of administrative expenses should they exceed the thresholds as outlined. This safe harbor is imperative to ensure the costs are not borne by the CIC and all homeowners vs. those responsible for the assessment of fines, delinquent payments, and/or assessments including special assessments.

Article 2, Section 5. MN Statutes 2024, Section 515B.3-103 Board of Directors, Officers, & Declarant Control

Like the plain language standards outlined in Article 2, Section 4. MN Statutes 2024, Section 515B.3-102 Powers & Duties of Unit Owners Association, we encourage amendments to these regulations imposing the duty upon CICs under subsection (a)(1) and (a)(2) to provide a publication of the roles, rights, and responsibilities of a director and the Board should be balanced against the costs of compliance and utility and use of such publications to Directors and Boards.

We urge a commonsense approach to plain language that mitigates creation and maintenance costs of such publications borne by all homeowners. Leveraging the legal expertise of state government within the Office of the Attorney General to promulgate common, plain language publications provides a reasonable alternative in conjunction with the Attorney General's existing CIC educational materials balancing the utility and use of such documents vs. the costs of creation and maintenance. CICs bear the cost of state and local income taxes and using those tax dollars to support CICs in this approach is justified.

Article 2, Section 6. MN Statutes 2024, Section 515B.3-106 Bylaws; Annual Report

Under sub-section (a), like Article 2, Section 3. MN Statutes 2024, Section 515B.2-119 Termination of Common Interest Community, we request clarity be provided regarding the role of mortgagees as well as requirements to incur CIC legal and filing costs upon approval of any changes to bylaws. We propose the role of mortgagees be removed from the equation to align with Article 2, Section 3. MN Statutes 2024, Section 515B.2-119 Termination of Common Interest Community. We further request bylaws require a 'supermajority' of at least 60% of unit owners to approve a change in bylaws (less than the 80% of unit owners required to amend the Declaration).

This approach helps ensure continuity in governing documents helping ensure level-handed CIC governance and unit owner understanding. Many CICs experience moderate turnover in unit ownership, so requiring a reasonable super-majority to modify governing documents protects the interests of both current and prospective unit owners while minimizing the administrative burden of CICs to disclose pending changes in governing documents inclusive of bylaws and declarations. This approach provides a common sense protection against 'activist' interests among unit owners and Boards.

Article 2, Section 7. MN Statutes 2024, Section 515B.3-107 Upkeep of Common Interest Community

While generally supportive of the section, we recommend under subsection (e) the procedure by which CICs are expected to set forth requirements in CIC governing documents. In lieu of incurring significant costs to secure legal counsel and filing costs with county Recorders, we encourage regulatory guidance minimizing the costs of compliance. Similar to our comments under other sections of proposed regulations, we encourage the legislature to delegate to the Attorney General the duty of drafting 'boiler plate' amendments to CIC bylaws that can easily be adopted by CICs without a need to draft and file such amendments through the use of legal counsel and filings with county Recorder offices.

In relation to subsection (g) we encourage additional language restricting a work vehicle to not only infringing on another unit owners property/curtilage but also all limited common elements and common elements including but not limited to drive lanes and right ways to prevent abuse of the regulation particularly in parking garages.

Article 2, Section 9. MN Statutes 2024, Section 515B.3-110 Voting; Proxies

We strongly encourage removal of subsection (b) restricting votes to no more than 20% by proxy for any single vote. Attendance of unit owners at annual meetings and/or any other Board meeting, is notoriously difficult to achieve a quorum. This regulation would neuter the ability of CICs to conduct association business and meet other regulatory standards as set forth in law regarding annual meetings as well as CIC governing documents without substantial incurrence of additional administrative costs to encourage and obtain in-person attendance at meetings.

With strong regulatory guidance already captured under separate sections of this regulatory framework, particularly in relation to administration of annual meetings, this threshold is unnecessary to the protection of unit owner interests.

Article 2, Section 10. MN Statutes 2024, Section 515B.3-115 Assessments for Common Expenses; CIC Created Before August 10, 2010

In relation to subsection (e)(4) and the imposition of attorney fees and related costs limited to \$1,500, we strongly object due to the unique nature of each situation. An arbitrary cap unnecessarily handcuffs CICs while rewarding poor behavior and delay tactics frequently used by opposing counsel and/or unit owners to avoid financial accountability. The limit is arbitrary with no backing or research regarding the reasonable costs to CICs for recovery of legal fees and administration and fails to recognize the inflationary factors of such costs over time.

We strongly encourage the removal of an arbitrary cap on legal fees and costs, with regulations that instead focus on CICs responsibility to incur 'reasonable' attorney fees commensurate to legal industry norms and practice. Attorneys must abide by high standards outlined by the Minnesota Bar and Judiciary offering unit owner protections through no/low-cost conciliation court. Section 14 [515B.3-125] Legal Fees; Notice Required also provides unit owners all the information they need to make informed decisions.

We encourage similar amendments to Article 2, Section 11. MN Statutes 2024, Section 515B.3-115 Assessments for Common Expenses; CIC Created on or After August 10, 2010.

Article 2, Section 12. MN Statutes 2024, Section 515B.3-116 Lein for Assessments

We strenuously encourage modifications to proposed regulations that protect not only unit owners but also the CICs who must, under law, manage the financial obligations of the CIC on behalf of all unit owners.

We applaud well intentioned protection of unit owners, but subsection (h) encourages unit owners to abuse the \$5,000 limit on CICs ability to foreclose. As CIC Boards can attest, unit owners abuse governing documents and state and local laws to their benefit. Particularly among small CICs, an inability to collect \$5,000 can be catastrophic to the administration of CIC including securing and paying for high-risk items including master insurance policies, critical maintenance, and other unexpected challenges. Even one unit owner's abuse can cause long-term damage to meeting financial reserves and related duties that affect the ability for the CIC to secure mortgagee underwriting and the ability for unit owners to refinance mortgages.

We encourage amendments to this subsection to apply only to fines to prevent potential abuse by CICs and their management companies. These are discretionary funds CICs should never rely upon and can be abused. Preservation of CICs use of foreclosure for unpaid assessments and fees, including reasonable attorney fees, must be preserved to ensure compliant administration of CIC budgets and proper governance for all unit owners. This is the same manner taxation is to the administration of state and local government. Failure to do so encourages every unit owner to allow unpaid assessments, etc. to go on forever with no recourse to the CIC with all unit owners bearing the consequences of the CICs inability to pay and secure master insurance policies, address infrastructure deterioration and potential safety concerns, address health and welfare standards (e.g., rodent or insect infestations), and even potential death of unit owners and their visitors due to negligence of maintenance.

Like subsection (h) we also encourage the removal of the monetary limits of foreclosure outlined in subsection 4 for similar reasons. Modifying to reasonable costs is a judicious approach to addressing the interest of both CICs and unit owners. Section 14 [515B.3-125] Legal Fees; Notice Required also provides unit owners all the information they need to make informed decisions.

Article 2, Section 15. MN Statutes 2024, Section 515B.4-102 Disclosure Statement; General Provisions; CIC Created Before August 1, 2010

We urge the removal of subsection (a)(21) specific to the plain language requirements in alignment with our feedback under Article 2, Section 4. MN Statutes 2024, Section 515B.3-102 Powers & Duties of Unit Owners Association as well as Article 2, Section 5. MN Statutes 2024, Section 515B.3-103 Board of Directors, Officers, & Declarant Control.

We urge similar removal under companion Section 16. MN Statutes 2024, Section 515B.4-1021 Disclosure Statement; General Provisions; CIC Created On or After August 1, 20210.

Article 2, Section 17. MN Statutes 2024, Section 515B.4-107 Resale of Units

We urge the removal of subsection (a)(1) specific to the plain language requirements in alignment with our feedback under Article 2, Section 4. MN Statutes 2024, Section 515B.3-102 Powers & Duties of Unit Owners Association; Article 2, Section 5. MN Statutes 2024, Section 515B.3-103 Board of Directors, Officers, & Declarant Control; and Article 2, Section 15. MN Statutes 2024, Section 515B.4-102 Disclosure Statement; General Provisions; CIC Created Before August 1, 2010

Article 3, Section 1. MN Statutes 2024, Section 394.25, Subdivision 11. Homeowners Associations

Housing affordability and more so home ownership continues to be threatened by economic inflation as well as local and state government rules and regulations. Local government preferences for CICs to secure preferential means of homeowner governance, conveyance of local fees and reimbursements for utilities, and similar governmental undertakings continue to make homeownership unattainable while increasing costs for current unit owners.

We support the addition of this subdivision as it is crucial to avoid legal and administrative costs outlined under other sections of these regulations.

We support similar language under companion Section 2 [462.3577] Municipalities; Homeowners Associations.

On behalf of the SoHo Lofts Association, CIC NO 1679, we thank you for your thoughtful approach to regulation of CICs and the opportunity to share our concerns regarding the cost and utility of regulation against the protection of CICs and unit owners alike.

Sincerely,

The Board of SoHo Lofts Association
CIC NO 1679
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C/O – Board Treasurer
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