

# AN ASSOCIATION'S OBLIGATIONS UNDER THE MICHIGAN NONPROFIT CORPORATION ACT AND MICHIGAN CONDOMINIUM ACT

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# TOPICS OF DISCUSSION

~ THE ACTS ~

~ INSPECTION & AVAILABILITY OF BOOKS & RECORDS ~

~ RESERVES AND STATUS LETTERS ~

~ REMEDIES ~

~ MODIFICATIONS ~

~ AMENDMENTS ~

~ MEETINGS ~

~ ACTION WITHOUT MEETING ~

~ DIRECTORS ~

# THE ACTS

## MICHIGAN CONDOMINIUM ACT

- Enacted in 1978
- Substantial revisions in 2000 and 2002
- Binding on condominium associations only
- Lots of obligations on developers we will not cover

# THE ACTS

## NONPROFIT CORPORATION ACT

- Enacted in 1982
- Substantially revised in 2015
- Applies to condominium associations and HOA's

# **INSPECTION & AVAILABILITY OF BOOKS & RECORDS**

## INSPECTION AND AVAILABILITY OF BOOKS & RECORDS

### §68 OF CONDOMINIUM ACT

## **MAKE CONDOMINIUM DOCUMENTS AVAILABLE TO CO-OWNERS, MORTGAGEES AND POTENTIAL PURCHASERS**

*An association of co-owners shall keep current copies of the master deed, all amendments to the master deed, and other condominium documents for the condominium project available at reasonable hours to co-owners, prospective purchasers, and prospective mortgagees of condominium units in the condominium projects*

- ❖ Includes Master Deed, Bylaws and all Rules and Regulations
- ❖ Does not require you to make copies of these documents

## INSPECTION AND AVAILABILITY OF BOOKS & RECORDS

### §57 OF CONDOMINIUM ACT

#### INSPECTION OF ASSOCIATION BOOKS AND RECORDS



*The books, records, contracts, and financial statements concerning the administration and operation of the condominium project shall be available for examination by any of the co-owners and their mortgagees at convenient times*


- ❖ Very broad and no mention of cost
- ❖ Court in unpublished decision recently held Co-owners must have a “proper purpose” and otherwise meet provisions set forth under NPCA

## INSPECTION AND AVAILABILITY OF BOOKS & RECORDS

### §487 OF NPCA



#### ❖ Nonprofit Corporation Act

- Allows inspection of list of members and “other books and other records” if requesting member has “proper purpose”
  - Request must be in writing, must describe with reasonable particularity (1) purpose and (2) records member desires to inspect, and records sought must be directly connected with the purpose
  - Member can make copies or require Association to supply copies for “a reasonable charge... to cover costs of labor and material”
  - **Board can *adopt resolution limiting inspection if opening up records will* (1) “impair rights of privacy or free association,” or (2) “impair lawful purposes” of the corporation.**
- ✓ **Action Item:** Adopt rule regarding inspection of books and records which follows NPCA requirements and prohibits review of certain records such as individual member files 



# **DISTRIBUTION OF FINANCIAL INFORMATION**

## DISTRIBUTION OF FINANCIAL INFORMATION CONDOMINIUM ACT & NPCA



### ❖ **Nonprofit Corporation Act (§487 )**

*If requested in writing, Association must mail to member “balance sheet at the end of the preceding fiscal year; its statement of income for that fiscal year; and, if prepared by the corporation, its statement of source and application of funds for that fiscal year [i.e. an income/expense statement].”*

### ❖ **Condominium Act (§54)**

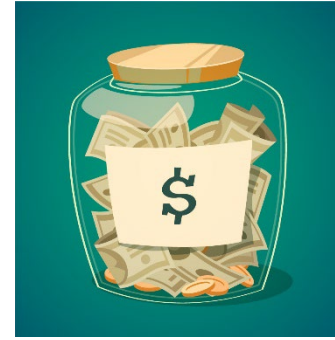
*“Shall prepare and distribute” (no written request needed) to each co-owner at least once each year a “financial statement, the contents of which shall be defined by the association.”*

- Given NPCA requirements, “financial statement” should include Association’s income/expenses statement and balance sheet as of the end of the fiscal year.

# RESERVES & STATUS LETTERS

# RESERVES

## §105 OF CONDOMINIUM ACT



### RESERVE FUND

*A reserve fund for major repairs and replacement of common elements shall be maintained by the associations of co-owners. The administrator may by rule establish minimum standards for reserve funds.*

- ❖ *Administrative rules require minimum of 10% of current budget on noncumulative basis*
- ❖ *Funds can only be used for major repairs and replacements*

# STATUS LETTERS CONDOMINIUM ACT



## STATUS LETTERS (§111)

*(2) A purchaser or grantee is entitled to a written statement from the association of co-owners setting forth the amount of unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor and the purchaser or grantee is not liable for, nor is the condominium unit conveyed or granted subject to a lien for any unpaid assessments, interest, late charges, fines, costs, and attorney fees against the seller or grantor in excess of the amount set forth in the written statement. Unless the purchaser or grantee requests a written statement from the association of co-owners as provided in this act, at least 5 days before sale, the purchaser or grantee shall be liable for any unpaid assessments against the condominium unit together with interest, costs, fines, late charges, and attorney fees incurred in the collection thereof.*

- ❖ Bylaws will often simply reference “assessments” – Statute includes more
- ❖ Additional assessments, even though permitted by Board to be paid over time, must be paid in full upon sale

# REMEDIES

## REMEDIES – MONETARY FINES

### §106 OF CONDOMINIUM ACT



## MONETARY FINES

*(c) Such other reasonable remedies the condominium documents may provide including but without limitation the levying of fines against co-owners after notice and hearing thereon and the imposition of late charges for nonpayment of assessments as provided in the condominium bylaws or rules and regulations of the condominium.*

- ❖ If not referenced in Bylaws, can adopt by rule
- ❖ Be careful on adjusting amounts
- ❖ Have hearing even if Co-owner does not show up

# REMEDIES – LIENS

## §108 OF CONDOMINIUM ACT



### LIENS

- ❖ Notice of lien must be recorded and served upon Co-owner at least 10 days before starting foreclosure
- ❖ Lien must contain legal description of property, names of Co-owners and amounts due, exclusive of interest, costs, attorney fees and future assessments



# REMEDIES – EVICTING TENANTS

## §112 OF CONDOMINIUM ACT



### EVICTING TENANTS

- ❖ For violations: Notice by certified mail to Co-owner advising of violations and providing 15 days for Co-owner to correct violations or advise they have not occurred
- ❖ In some circumstances, may be able to evict even if cured: *“If after 15 days the association of co-owners believes that the alleged breach is not cured or may be repeated,” the Association may bring an eviction action*
  - As suggested in the italicized language above, the Association can move forward with eviction despite an existing tenant violation being cured if the Association reasonably believes there will be additional breaches.
  - Evidence of an egregious violation or of multiple prior violations (supported by prior warning letters) goes a long way in proving that the Association is acting reasonably in evicting despite a potential cure.
- ❖ For nonpayment of assessments: Written notice of arrearage to tenant and demand to pay rent to Association.

# MODIFICATIONS

# MODIFICATIONS - DISABILITIES

## §47A OF CONDOMINIUM ACT

### MODIFICATIONS RELATED TO DISABILITIES

- ❖ Must allow modifications to Common Elements or Unit to facilitate access for a disabled person or alleviate conditions that could be hazardous to a disabled person.
- ❖ Applies to “those who reside in *or regularly visit* the unit”
- ❖ 60 days to review and approve plans and specifications. Failure to respond = approved
- ❖ Cannot unreasonably prevent passage by other residents or impair structural integrity.
- ❖ Must meet codes/ordinances and Co-owner must name Association as additional insured.
- ❖ After receiving notice of intent to vacate or sell, Association has 30 days to demand removal of modification at Co-owner expense.

## MODIFICATIONS – US FLAG §56A OF CONDOMINIUM ACT

*A developer or association of co-owners 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. A developer or association of co-owners shall not enforce a prohibition in existence before the effective date of this section on or after that effective date*



# AMENDMENTS

## **AMENDMENTS**

### **§§ 90 & 91 OF CONDOMINIUM ACT**

#### **AMENDMENTS TO MASTER DEED, BYLAWS AND CONDOMINIUM PLANS**

- ❖ Material amendments require approval of 2/3 of all Co-owners entitled to vote
- ❖ Effective upon recording
- ❖ Recorded copies must be delivered to each Co-owner
- ❖ Some require approval of first mortgage companies
- ❖ What about “immaterial amendments”

## AMENDMENTS

### §§ 90 & 91 OF CONDOMINIUM ACT


#### **Most common Amendments requiring consent of first mortgage companies:**

- (a) Reallocation of maintenance, repair, replacement or decoration responsibilities from Association to Co-owner
- (b) Change in insurance on Units
- (c) Modification, imposition or removal of leasing restrictions
  - Special voting package required
  - Mortgage companies have 90 days to vote
  - Non-response is a “yes”

# MEETINGS



## MEMBER MEETINGS - ANNUAL MEETING REQUIRED UNDER §402 OF NPCA

- ❖ **Purpose:** “*elect directors and conduct any other business that may come before the meeting*”
- ❖ **Timing:**
  - Date designated in Bylaws
  - Convenient Date: if annual meeting not held on date designated in Bylaws, the “Board shall cause the meeting to be held as soon after that date as is *convenient*.”
  - **BUT No Greater than 90 Days/15 Months:** in no event can annual meeting date be greater than 90 days after designated date or, in the absence of a designated date, 15 months after last annual meeting – if not, member may bring circuit court action to compel Board to hold
    - Because member must wait 90 days from designated date, little risk holding meeting on date other than designated so long as meeting called within 90 days of that designated date
    - If designated date not preferred, however, association should amend documents to reflect preferred date/month so there is no unnecessary member objection
    - ✓ **Action Item:** amend documents to preferred meeting date and add provision permitting Board to change date for convenience 

# MEMBER MEETINGS – QUORUM

## §415 NPCA

- ❖ **Quorum Requirement:** typically specified in Bylaws, but if not, NPCA Default is Majority
- ❖ **Had Quorum, but Lost:** if withdraw of members leaves less than quorum before adjournment, remaining members in person or by proxy may continue to do business
- ❖ **Transaction of Business when No Quorum:**
  - When quorum not met, Association can't transact business (e.g. elections) except for certain procedural actions, including adjourning meeting or taking measures to obtain quorum.
  - Any business transacted at meeting where no quorum (except for the few procedural actions) including a Board election is *null and void*
- ❖ **No Requirement to Call Another Annual Meeting:** No requirement to call another annual meeting even though quorum not met as neither lack of quorum nor inability to transact business detract from fact that Bylaw and Nonprofit Corporation Act requirements that Annual Meeting be held was complied with and Annual Meeting convened
- ❖ **No Quorum at Annual Meeting - Effect on Existing Board Members:**
  - When no quorum at Annual Meeting, existing Board members remain in office until next Annual Meeting as Directors hold office until successors are *elected and hold their first meeting*

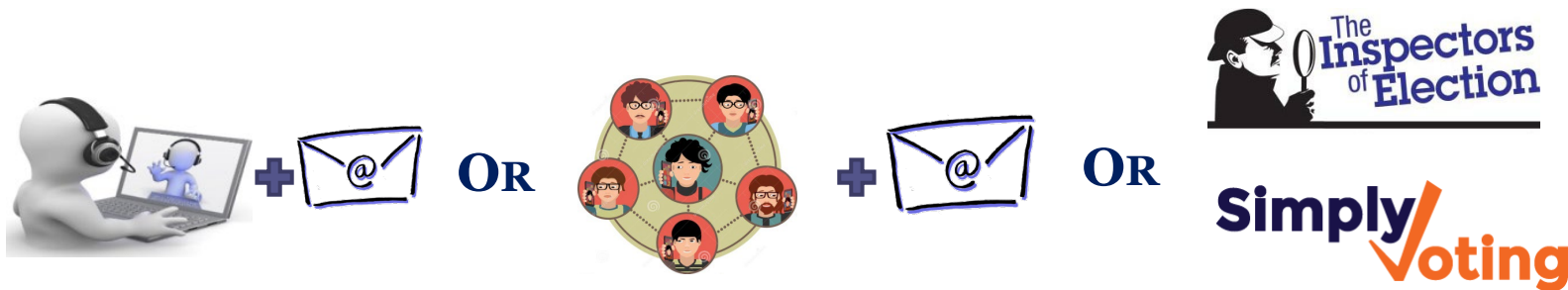
## Member Meetings - Remote Communication

### §§404 & 405 NPCA

❖ Members participating by means of remote communication are considered “present” for both voting and quorum purposes if:

1. **Verification:** reasonable measures to verify participant is member

2. **Opportunity to Participate:** submit questions, remark and vote



3. **Record:** must maintain record of vote or other action taken



✓ **Action Item:** Make sure no prohibition on member participation by remote communication 

# **ACTION WITHOUT MEETING MEMBER MEETINGS**

## **MEMBER MEETINGS - ACTION WITHOUT MEETING**

### **TYPICAL PURVIEW OF MEMBER VOTING**

- ❖ **Electing/Removing Directors**
- ❖ **Approving Special Assessments**
- ❖ **Amending Governing Documents**
  - ❖ **Approving Association Loans**
  - ❖ **Approving Assessment Increases**
  - ❖ **Approving Court Action**

## MEMBER MEETINGS - ACTION WITHOUT MEETING §§407 & 408 OF NPCA

### ❖ **Written Consents (§407 )**

- Must be in Articles
- Voting held open no longer than 90 days (presumed given requirement in §408 referenced below)

### ❖ **Ballots (§408)**

- Must be in Articles *or Bylaws*
- Voting held open between 20 and 90 days

# MEMBER MEETINGS – PROXIES

## §421 OF NPCA

- ❖ Permitted unless otherwise restricted by Articles of Incorporation or Bylaws
- ❖ Form, execution and delivery requirements for a valid proxy: (1) delivering a writing by any reasonable means, including, but not limited to, facsimile signature, to the person (2) that authorizes that person to act for the member as proxy and (3) is executed by the member (or by an authorized officer, director, employee, or agent of the member).
- ❖ Unless otherwise stated in the proxy, a general proxy is valid for 3 years
- ❖ Revocable proxies are revocable at the pleasure of the person that executes it

## **MEMBER MEETINGS – CHAIRPERSON**

### **§406 OF NPCA**

- ❖ Appointed in Bylaws, or in absence of Bylaw provision, by Board.
- ❖ Establishes order of business (unless Bylaws do) and establishes fair rules for conduct of meeting.



## **MEMBER MEETINGS – ELIGIBLE VOTERS**

### **§406 OF NPCA**

- ❖ Person in control of records must certify list of members entitled to vote at meeting and make list available for inspection
- ❖ Members must be listed in alphabetical order and have address

## MEMBER MEETINGS – ELECTION INSPECTORS

### §431 OF NPCA

- ❖ Appointed by Board in advance of meeting or by chairperson
- ❖ They are entitled to do such things as determine quorum, hear ballot challenges, collect and count votes
- ❖ Should issue written report/certification of vote

# DIRECTORS

# DIRECTORS

## §505 & OF NPCA

- ❖ Must have 3 directors, but in some instances can operate with less.
- ❖ Hold office until successor is elected or appointed and qualified.

# QUESTIONS & ANSWERS

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