



Co-Owner Requests for Association Records

Cummings Property Management, Inc.

May 9, 2018



Two Laws Apply:

- ▶ The Michigan Condominium Act
 - ▶ The Michigan Nonprofit Corporation Act
- 



The Condominium Act has **two** provisions:

- ▶ The Michigan Condominium Act
 - ▶ MCL §559.157: 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.
 - ▶ MCL §559.168: 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.



... books, records, contracts, and financial statements ...

- ▶ **Books** – co-owner account ledgers, checkbook
- ▶ **Records** – If you keep a copy of it, it's a record. Board minutes, etc.
- ▶ **Contracts** – lawn contract, snow contract, asphalt pavement contract, roofing contract, etc.
- ▶ **Financial Statements** – Accountant's annual review or audit, annual budget, profit and loss, etc.



...condominium documents...

- ▶ MCL §559.103(10): “Condominium documents” means the master deed, recorded pursuant to this act, and **any other instrument referred to** in the master deed or bylaws which affects the rights and obligations of a co-owner in the condominium.



...any other instruments...

- ▶ Master Association Documents
 - ▶ Easements / Rights of Way
 - ▶ Declarations of Restrictions
 - ▶ Rules and Regulations
- 



available for examination ... at convenient
times

OR

... at reasonable hours ...

- ▶ Does examination mean
 - ▶ copying?
 - ▶ Scanning?
 - ▶ Photographing with a cell phone?



Convenient or reasonable for who?



Are there penalties for non-compliance?

- ▶ None ... YET.
- ▶ Senate Bill 914 (2018)



The Michigan Nonprofit Corporation Act

- ▶ MCL §450.2487(1): If requested in writing by a ... member, a corporation shall mail to the ... member its **balance sheet** as 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.
- ▶ Implicit is the requirement that the corporation *prepare* a balance sheet and a statement of income each year.



It gets worse:

- ▶ MCL §450.2487(2): Any shareholder or member of record of a corporation that is organized on a stock or membership basis, in person or by attorney or other agent, may during regular business hours inspect for any proper purpose the corporation's stock ledger, a list of its shareholders or members, and its other books and records, if the shareholder or member gives the corporation written demand describing with reasonable particularity the purpose of the inspection and the records the shareholder or member desires to inspect, and the records sought are directly connected with the purpose. As used in this subsection, "proper purpose" means a purpose that is reasonably related to a person's interest as a shareholder or member. A shareholder or member must deliver a demand under this subsection to the corporation at its registered office in this state or at its principal place of business. If an attorney or other agent is the person seeking to inspect the records, the demand must include a power of attorney or other writing that authorizes the attorney or other agent to act on behalf of the shareholder or member.



And worse:

- ▶ MCL §450.2487(3): If a corporation does not permit an inspection required under subsection (2) within 5 business days after a demand is received under subsection (2), or imposes unreasonable conditions on the inspection, the shareholder or member may apply to the circuit court for the county in which the principal place of business or registered office of the corporation is located for an order to compel the inspection.



And still worse:

- ▶ MCL §450.2487(5): If the court orders inspection of the records demanded under subsection (3) or (4), it shall also order the corporation to pay the shareholder's, member's, or director's costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder, member, or director to inspect the records demanded.



A request must:

- ▶ Be made by a member
 - ▶ Be in writing
 - ▶ Have a proper purpose
 - ▶ Describe the purpose of the inspection
 - ▶ Describe the records the member wishes to inspect
 - ▶ Be delivered to the resident agent
 - ▶ Be delivered to the registered office
- 



If inspection is to be by an attorney or agent:

- ▶ It must include a power of attorney or other writing that authorizes the attorney or agent to act on behalf of the member



Who is a member?

- ▶ MCL §559.106(1): “Co-owner” means a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, who owns a condominium unit within the condominium project.
- ▶ “Membership in the corporation shall be established by acquisition of fee simple title to a unit in the condominium....” (typical provision in a condominium association’s Articles of Incorporation).
- ▶ Co-owner = member



What does “in writing” mean?

- ▶ MCL §450.2106(6): "Electronic transmission" or "electronically transmitted" means any form of communication that meets all of the following:
 - ▶ (a) It does not directly involve the physical transmission of paper.
 - ▶ (b) It creates a record that may be retained and retrieved by the recipient.
 - ▶ (c) It may be directly reproduced in paper form by the recipient through an automated process.
- ▶ MCL §450.2143(2): If a notice is required or permitted by this act to be given in writing, electronic transmission is written notice.



“Written” includes:

- ▶ Traditional handwritten or typewritten letter.
 - ▶ E-mail
 - ▶ Fax
 - ▶ Probably not a text
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“Proper Purpose”

- MCL §450.2487(3): "Proper purpose" means a purpose that is reasonably related to a person's interest as a shareholder or member.



Three **unpublished** Michigan Court of Appeals Decisions:

- ▶ *Vidolich v Saline Northview Condominium Association*, December 5, 2017
- ▶ *Hammoud v Advent Home Medical, Inc.*, February 27, 2018
- ▶ *Bafna v Brynmawr Condominium Association*, April 19, 2018



What does “Unpublished” mean?

- ▶ MCR 7.215(C)(1): “an unpublished opinion is not precedentially binding under the rule of **stare decisis**.”
- ▶ Under the doctrine of **stare decisis**, principles of law deliberately examined and decided by a court of competent jurisdiction should not be lightly departed.
- ▶ In plain English: a published opinion *is* binding on a lower court; an unpublished opinion *is not* binding on a lower court.



Vidolich

This matter arises out of an ongoing dispute between Vidolich, a unit owner in the Northview Condominium, and the Saline Northview Condominium Association (the Association). Vidolich was a member of the Association's board until he resigned over a procedural dispute, and he was the Association's website designer and operator until he deleted the website and replaced it with what he concedes was a "gripe site" when the Association wished to take control of the website itself. Thereafter, Vidolich contends that he has made numerous efforts to vindicate the legal rights of condominium members, ensure that the Association follows the law, obtain outstanding payments for website hosting and services, and gain access to various records; the Association contends that Vidolich has waged a tireless vendetta of harassment and antagonism. We find the Association's description of events far more persuasive after reviewing the record, and we agree with the trial court that Vidolich's claims are without merit, some without even arguable merit. We affirm the dismissal of his various claims, and we remand for further proceedings.

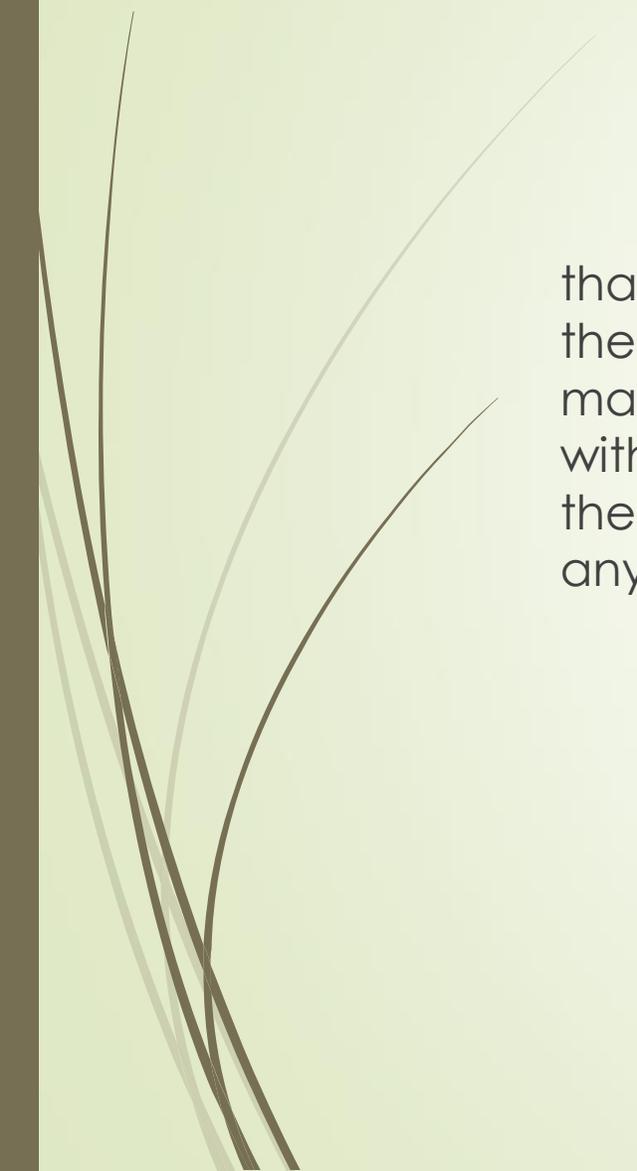
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- “Of note, MCL 450.2487(2) and (3) explicitly condition a right to examine records on having a “proper purpose” for so doing. The Condominium bylaws and MCL 559.157(1) do not, but because legally vindicating a frivolous or vexatious request would at least theoretically be impossible, **we think that a “proper purpose” is nevertheless an implicit condition of making any such request to examine records.** Additionally, our courts have recognized a stockholder’s common-law right to inspect corporate records for a proper purpose, noting that a proper purpose **might include** raising doubts whether corporate affairs had been properly conducted by the directors or management but **would not include** requests to satisfy idle curiosity or aid a blackmailer **or** mere speculation of mismanagement. “[internal quotation marks and citation omitted; emphasis added]



At its heart, the development of legal rights such as this one [to request records] has always been for the purpose of providing people with tools to maintain order and decorum, not to provide people with swords with which to create chaos and harm. Vidolich's right to inspect the Association's records is therefore not an absolute one under any cited authority.



It is, in short, unambiguous even without resorting to a credibility judgment that Vidolich had no proper purpose in making his record requests.... Vidolich therefore does not have a right, under any authority he cites, to inspect or make extracts of those records, and the Association would have been entirely within its rights to deny Vidolich outright. Instead, the evidence indicates that the Association made commendable efforts to accommodate Vidolich anyway.





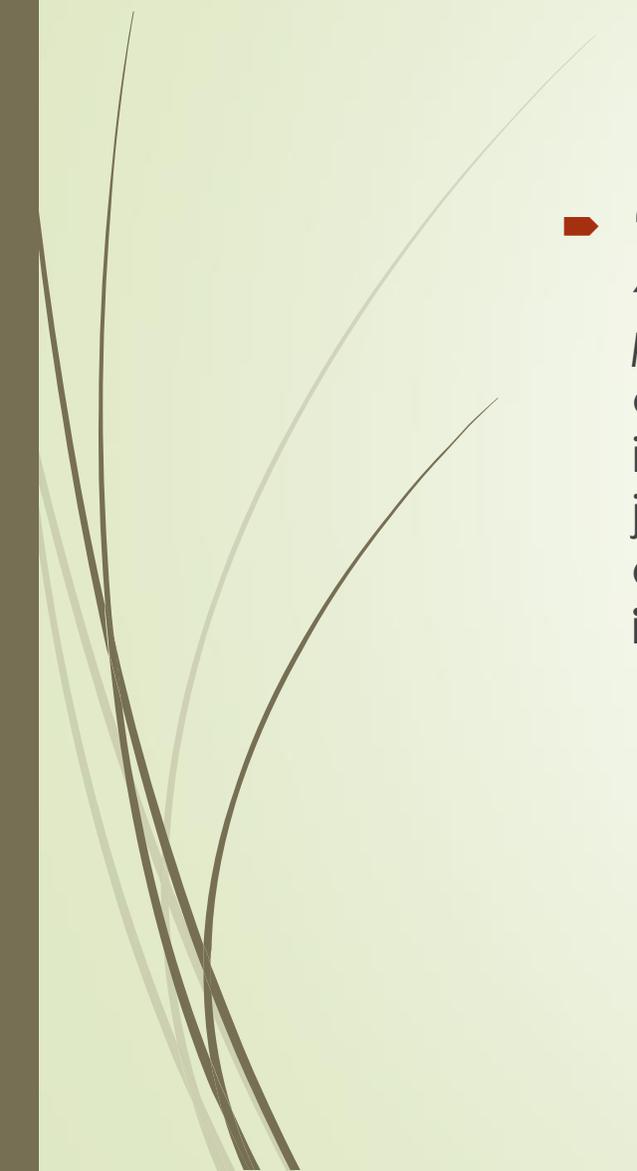
Hammoud

- ▶ Business Corporation Act, not Nonprofit Corporation Act, but the provisions are almost identical. MCL §450.1487 ⇔ MCL §450.2487.
- ▶ “Plaintiff Amanda Hammoud owns 400 shares of defendant Advent Home Medical, Inc. stock. Advent refused Hammoud’s record review request and Hammoud sought a court order compelling production of the material. Advent vigorously resisted, contending that Hammoud gained her shares through fraud, threats, and duress. ... Carlia Cichon is Advent’s president and Hammoud’s mother. Advent is a closely held, family-owned corporation. In 2011, Cichon transferred 400 shares of Advent stock to Hammoud, representing 40% of the total shares. Although Cichon and Hammoud bitterly disagree about the reasons for the stock transfer, the fact of the transfer is undisputed.”



No purpose required to be stated for *balance sheet* as at the end of the preceding fiscal year, its *statement of income* for the fiscal year, and, if prepared, its *statement of source and application of funds* for the fiscal year.



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- “We hold that a **proper purpose** for inspection of corporate records under § 487 is one that is in [1] *good faith*, [2] *seeks information bearing upon protection of the shareholder’s interest* and that of other shareholders in the corporation, and is [3] *not contrary to the corporation’s interests*. Although idle curiosity or mere speculation of mismanagement are insufficient to justify an inspection, **we do not believe that the Legislature intended in enacting §487 to erect a formidable obstacle for shareholders in seeking an inspection of corporate records.**” [emphasis and numbering added]



“The distilled version is: a shareholder who has a genuine, good faith interest in the corporation’s welfare or her own as a shareholder is entitled to inspect those corporate books that bear on her concerns.”

The court granted all of Hammoud’s request for records, because she had stated a proper purpose.



Bafna

“This case arises out of a dispute involving plaintiff’s requests to view certain records kept by defendant. Plaintiff clearly has a long list of perceived grievances against defendant.... Plaintiff alleged that he had repeatedly asked defendant to permit him to inspect records ... and that defendant had denied his requests. Plaintiff alleged that defendant’s acts violated the association bylaws and MCL 559.157....



“Plaintiff made multiple requests to inspect various records held by defendant, but **there is no evidence that plaintiff had any reason for his numerous record inspection requests other than asserting what he apparently believes is an unlimited right to inspect all of defendant’s records according to his own whim. However, we do not believe that plaintiff’s right to inspect defendant’s records is unlimited.** In this case, it would still be correct to grant summary disposition in defendant’s favor because plaintiff has not demonstrated that he had a “proper purpose” for obtaining such a broad record inspection under MCL 450.2487, which is contained within the Nonprofit Corporation Act, MCL 450.2101 et seq., and the lower court record in this case indicates that defendant is a Michigan nonprofit corporation. Plaintiff’s “idle curiosity or mere speculation of mismanagement” are not sufficient to establish a “proper purpose” that would justify a record inspection.”



Takeaways:

- ▶ If a co-owner requests last fiscal years' balance sheet, statement of income, or (if you have one) statement of source and application of funds, GIVE IT TO THEM, no questions asked.
- ▶ If a co-owner makes a specific request for other records and states a plausible purpose that relates to the records requested, PROVIDE THEM.
- ▶ If a co-owner makes a demand to review records without stating a proper purpose, you can deny the request.
- ▶ If a co-owner makes a demand in bad faith, you can deny the request.



Can you withhold anything?

- ▶ Attorney-client or accountant-client privileged communications
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Senate Introduced Bill 914 of 2018 (Amends MCL §559.157)

Closely follows the Nonprofit Corporation Act (proper purpose, writing, resident agent/registered office, power of attorney, etc.)

Introduces explicit exceptions not stated in Nonprofit Corp. Act:

- Attorney-client privilege or attorney work-product doctrine
- Executive session board meeting minutes
- Social security numbers, bank account numbers, credit card numbers
- Board can by resolution restrict documents if (1) would impair the rights of privacy or free association of members, (2) impair lawful purposes of association, or (3) not in the best interests of the association.



Thank you for attending!

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