



February 12, 2025

Senate Industry and Business Committee  
North Dakota Legislative Council  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

**Comments Submitted Via: Webform**

**RE: CAI Support with Amendments for SB 2394 Relating to association community bylaws and board of directors.**

Dear Chair Barta, Vice Chair Boehm, and Senators Enget, Kessel, and Klein,

On behalf of Community Associations Institute (CAI)<sup>i</sup> and approximately [50,000 North Dakotans living in 20,400 homes in nearly 1,000 community associations across the state](#), thank you for the opportunity to provide comment on [SB 2394 Relating to association community bylaws and board of directors](#).

*CAI supports the goal of SB 2394 and respectfully requests the committee consider adopting amendments to the bill to strengthen homeowner protections, provide clarity on board responsibilities, and align with model language.*

[Support with Amendments for SB 2394 Relating to association community bylaws and board of directors.](#)

CAI has been engaged in a productive dialogue with SB 2394's sponsor, Senator Wanzek, regarding potential amendment language that helps move the bill further towards the goal of creating an environment which is conducive to long-term financial planning by association boards to address key infrastructure concerns while maintaining the day-to-day activities of a community. The legislative language in SB 2394, while a solid foundation for providing the types of financial disclosures and definition of board responsibilities needed to ensure a well-run community association, can be further improved with this suggested amendment:

**Key:**

**Addition**

~~Deletion~~

A BILL for an Act to create and enact a new chapter to title 47 of the North Dakota Century Code, relating to association community bylaws and board of directors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:



SECTION 1. A new chapter to title 47 of the North Dakota Century Code is created and enacted as follows:

### Applicability

**APPLICABILITY OF AMENDMENTS TO NEW ASSOCIATIONS.** Amendments to this chapter apply to all associations except those that (1) were created prior to the effective date of this section and (2) have not subsequently amended their governing documents to provide that this chapter will apply to the community.

### ELECTION OF PREEXISTING ASSOCIATIONS TO BE GOVERNED BY THIS CHAPTER.

1. The declaration of any common interest community created before the effective date of this section may be amended to provide that this chapter will apply to the common interest community, regardless of what applicable law provided before this act was adopted.
2. Except as provided otherwise in subsection (3) of this section, an amendment to the governing documents authorized under this section must be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments and in conformity with the amendment procedures of this chapter. If the governing documents do not contain provisions authorizing amendment, the amendment procedures of this chapter apply. If an amendment grants to a person a right, power, or privilege permitted under this chapter, any correlative obligation, liability, or restriction in this chapter also applies to the person.
3. Notwithstanding any provision in the governing documents of an association that govern the procedures and requirements for amending the governing documents, an amendment under subsection 1 of this section may be made as follows:
  - (a) The board shall propose such amendment to the owners if the board deems it appropriate or if owners holding twenty percent or more of the votes in the association request such an amendment in writing to the board;
  - (b) Upon satisfaction of the foregoing requirements, the board shall prepare a proposed amendment and shall provide the owners with a notice in a record containing the proposed amendment and at least thirty days' advance notice of a meeting to discuss the proposed amendment;
  - (c) Following such meeting, the board shall provide the owners with a notice in a record containing the proposed amendment and a ballot to approve or reject the amendment;
  - (d) The amendment shall be deemed approved if owners holding at least thirty percent of the votes in the association participate in the voting process, and at least sixty-seven percent of the votes cast by participating owners are in favor of the proposed amendment.

### Definitions.

As used in this chapter:

1. "Association" means a nonprofit corporation, nonprofit limited liability company, or other entity of owners created to own or operate portions of an association community, in which membership is based upon owning or possessing an interest in real property.
2. "Board" means the board of directors with the duty of managing and governing the association.
3. "Financial disclosure" means the accounting records of the association which are kept, disclosed, and made available in accordance with this chapter.
4. "Member" means an individual owning or possessing an interest in real property governed by an association.
5. "Assessment" means the sum attributable to each unit and due to the association.
6. "Common elements" means any real estate within a planned community which is owned or leased by the association, other than a unit, and any other interests in real estate for the benefit of unit owners which are subject to the declaration.

Bylaws - Requirements.

1. The **association:** ~~operation of an association must be governed by the articles of incorporation and the bylaws.~~

(a) shall adopt and may amend bylaws and may adopt and amend rules;

(b) shall adopt and may amend budgets, may collect regular assessments and special assessments for common expenses from unit owners, and may invest funds of the association.

~~2. The association shall adopt bylaws upon formation to govern the management and regulation of the association.~~ The bylaws of an association shall:

a. Adopt and describe the form of the board, including the powers, duties, and manner of selection and removal.

b. Provide for member meetings.

c. Provide for a written inquiry process for members, ~~under which the board shall issue a response to any inquiry within thirty days.~~ with a reasonable response time from the board.

- d. Require the adoption of an annual budget **in accordance with this chapter.**
  - e. Require the adoption of a formal reserve fund.
  - f. Require financial disclosures and compiled financial statements under generally accepted accounting principles.
  - g. Require a member to carry adequate insurance to cover the replacement cost of all exterior and interior structures under member ownership.
  - h. Provide for a method of amending the bylaws.
3. An association shall consult legal counsel at least once every seven years to ensure the association's compliance with this chapter and the bylaws and to review the bylaws.
4. Financial disclosures and statements must be made available to a member upon request.
- 5. An association may charge a reasonable fee for providing copies of any records under this section.**

#### Board - Duties.

- 1. The board must consist of at least three members and shall meet at least quarterly. Notice of a meeting must be given in the manner provided under section 10 - 33 - 68.
- ~~2. The board shall adopt the annual budget at least fourteen days before the start of the association's fiscal year. The annual budget must include:
  - a. Estimated revenues;
  - b. Detailed and classified expenses, including expenses for:
    - (1) Maintenance;
    - (2) Insurance; and
    - (3) Taxes; and
  - c. Reserve accounts for capital expenditures and deferred maintenance.~~
- 2. The executive board, at least annually, shall adopt a proposed budget for the common interest community for consideration by the unit owners. Not later than [30] days after adoption of a proposed budget, the executive board shall provide to all the unit owners a summary of the budget, including any reserves, and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the board shall set a date not less than 10 days or more than 60 days**

after providing the summary for a meeting of the unit owners to consider ratification of the budget.

Unless at that meeting a majority of all unit owners or any larger number specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

2a. The executive board, at any time, may propose a special assessment. The assessment is effective only if the executive board follows the procedures for ratification of a budget and the unit owners do not reject the proposed assessment.

3. The board shall manage a formal reserve fund to provide for necessary capital expenditures and deferred maintenance costs for all real property elements under association ownership. The account or accounts shall be kept separate from the association's operating funds, and the board shall not use or borrow from the reserves to fund the association's operating expenses, provided that this restriction shall not affect the association's authority to pledge the replacement reserves as security for a loan to the association.

The amount to be reserved must be calculated using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of a deferred item. The association shall adjust replacement reserve assessments annually to reflect adjustments needed for inflation, changes in estimates, or extension of the useful life of a reserve item caused by deferred maintenance. Capital expenditure and deferred maintenance accounts must include, at a minimum, funds for purposes of:

- a. Roof replacement;
- b. Exterior and interior building painting and maintenance;
- c. Pavement resurfacing; and
- d. Any other item that has a deferred maintenance expense or replacement cost that exceeds ten thousand dollars.

4. The board shall obtain the signature of at least two board members for any expenditure of the board over ten thousand dollars.

5. The board shall maintain adequate insurance to cover the replacement cost for all ~~real property common elements~~ held by the association. ~~Insurance must be updated annually to adjust for inflation.~~

6. The board association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

7. The board shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the

executive board, or unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. The unit owners may discuss at a special meeting a matter not described in the notice under subsection 8 but may not take action on the matter without the consent of all unit owners.

8. An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. The notice of any meeting must state the time, date and place of the meeting and the items on the agenda, including:

(A) a statement of the general nature of any proposed amendment to the declaration or bylaws;

(B) any budget changes; and

(C) any proposal to remove an officer or member of the executive board.

9. Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

10. A meeting of unit owners is not required to be held at a physical location if:

(A) the meeting is conducted by a means of communication that enables owners in different locations to communicate in real time to the same extent as if they were physically present in the same location; and

(B) the declaration or bylaws do not require that the owners meet at a physical location.

11. Meetings must be open to the unit owners except during executive sessions. The executive board and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(A) consult with the association's attorney concerning legal matters;



(B) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(C) discuss labor or personnel matters;

(D) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(E) prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate the privacy of any person.

This amendment was drafted using language and concepts from the 2021 version of the Uniform Common Interest Ownership Act (UCIOA), as well as successful statutory language in Washington State and Minnesota. UCIOA's language was designed by the Uniform Law Commission to be easily adopted by any state that seeks to do so and CAI, as outlined in the [Support for the Uniform Acts Public Policy](#), supports and recommends consideration of appropriate portions of UCIOA where adoption of the entire act is not appropriate to address a particular policy question. UCIOA's language was crafted to give associations flexibility to respond to the unique needs of a community while providing a uniform foundation for associations to thrive. Critically, the amendment language also does not force every existing association to adopt new governing document language, instead creating a mechanism for associations to opt in to the new requirements, and respecting those associations which do not wish to engage in the time-consuming, and at times expensive, process of amending existing governing documents.

On a final note, this legislation pairs well with SB 2229, which this committee helped send to the House for further discussion. Disclosure documents play a critical role in association financial accountability for both new and existing homeowners, and the information for the required financial disclosure documents will have to be gathered from the financial documents required under CAI's proposed amendment language.

We hope the comments provided in this letter are helpful to the Committee and will assist in promoting public policy that is sensible for North Dakotans living in one of the Peace Garden State's community associations. Please feel free to contact CAI to discuss the proposed amendments to SB 2394 or any legislation impacting community associations and their residents in North Dakota.

Respectfully,



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#### <sup>1</sup>[About CAI and the Community Association Housing Model](#)

CAI is the only international membership organization dedicated to the community association model of homeownership. CAI members are homeowners, association board members, managing agents and business partners who work tirelessly to improve the community association model of housing. CAI members have a keen focus on homeowner and board member education, development and enforcement of best practices and ethical standards, and raising standards through credentialing and continuing education requirements for community association professionals. CAI's more than 47,000 members are organized in more than 64 chapters.

CAI represents the interest of homeowners, community association management companies and business that support the more than 77.1 million Americans who live in a homeowners' association, planned community or condominium. Approximately 30% of the housing stock today is in a community association, also known as condominium, homeowners association, and housing cooperative. Community association housing plays a critical role in meeting housing needs in a time of tight state and local budgets.

#### [Role & Benefit Community Association Housing](#)

Emerging in the 1970s, community association housing was a means to address issues of land use and limited resources at the state and local level for housing development. HOAs and condominiums allowed for affordable and efficient construction of housing while concurrently limited the financial impact of such development on local and state governments. The investment in community infrastructure including roads, retention ponds, parks, club houses and amenities are borne by developers and the ongoing cost of maintenance is supported by assessments paid by residents of the community association. Amenities and infrastructure are driven by market considerations and the result is a vast array of communities that provide consumers with an array of choices in housing and lifestyles.

When purchasing a home in a community association, a resident enters a contractual arrangement which obligates them to pay assessments to their association, which is governed by a board elected by the residents. Such communities, through deed restrictions and adopted rules have provisions to enhance and maintain the property values of homes in the community. The benefits of such communities accrue to both residents, taxpayers, and local business. First, homes in community associations are worth at minimum, 5% more than homes in a traditional community. This directly benefits the purchaser, but also the larger jurisdiction through enhanced property taxes resulting from this value premium. Additionally, community association residents assess themselves to maintain the infrastructure and amenities in their community, costs that would otherwise fall on state or local governments.

More importantly, community associations provide residents with an accessible opportunity for civic involvement. Community Associations are governed by their residents, who elect representatives to serve on a board of directors. This provides a level of local governance that residents find highly responsive to their needs. 86% of association residents rate their experience as positive or neutral, and 82% believe their elected boards strive to serve the best interests of their community. In total, more than 2.5 million Americans demonstrate their civic commitment by service on a community association board each year.