



Legislative Update

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Introduction/Agenda

- Solar Panels
- Marijuana
- Violations
- Corporate Transparency Act
- General Q&A/Ask the Attorney



Solar Panels

- Minn. Stat. § 500.216
- Effective August 1, 2023
- Generally: Limits some HOAs from prohibiting solar panels on roofs

Solar Panels—Applicability

- Single-family detached dwellings whose owner is the sole owner of the entire building in which the dwelling is located and who is solely responsible for the maintenance, repair, replacement, and insurance of the entire building
- Multifamily attached dwellings whose owner is the sole owner of the entire building in which the dwelling is located and who is solely responsible for the maintenance, repair, replacement, and insurance of the entire building
- **Plain English:** Single family HOAs and any HOAs where the Owner is responsible for maintaining and insuring the dwelling (roofs, siding)

Solar Panels—Actual Rule

- Notwithstanding any ... homeowners association document, ... **a private entity must not prohibit or refuse to permit the owner of a single-family dwelling to install, maintain, or use a roof-mounted solar energy system**
- **Plain English:** HOA cannot **PROHIBIT** solar panels on the roof, but they can put some limitations on them



Solar Panels—Allowable Limitations

- Require a licensed contractor do the work
- Prohibit the system from extending beyond the peak (top) of a roof and beyond the edge of the roof
- Require Owners indemnify the HOA for any damaged caused by panels/their installation
- Require Owners list HOA as additional insured on their insurance policy
- Require Owners remove the system if necessary to repair or replace something the HOA maintains
- Any regulation on non-roof solar panels



Disallowed Limitations

- Requiring something that decreases the amount of energy it generates (i.e., only panels on north side)
- Requiring something that increases the cost by 20% or more



Practical Implications

- Architectural Control Committees need to be informed
- Boards/ARCs should adopt standard provisions/requirements related to this issue (standards of what is allowed vs. not)
- Right now, only affects single family HOAs, but this may be coming for townhomes and condos in the next few years

Marijuana

- Minn. Stat. § 342
- Effective August 1, 2023/March 1, 2025
- Generally: Smoking or vaping in multifamily housing is unlawful (3/1/25) and nuisance under statute (7/1/23). Growing is allowed (max 8 plants) with some limitations

Smoking & Vaping (Units/Limited Common)

- Vaporizing or smoking of cannabis flower, cannabis products, artificially derived cannabinoids, or hemp-derived consumer products is prohibited in a multifamily housing building, **including balconies and patios** appurtenant thereto
- **Plain English:** Smoking & Vaping is prohibited in Units and Limited Common Elements. No restrictions on edibles in multifamily in the statute. Does not apply to medical

Smoking & Vaping (Common Elements)

- Associations' Boards have rule making authority over Common Elements [Minn. Stat. § 515B.3-102(a)(1)(i)]
- Can make a rule prohibiting or regulating smoking/vaping in the Common Elements (outdoor green space etc.)

Growing

- Allowed to grow up to eight cannabis plants, with no more than four being mature, flowering plants may be grown at a single residence
- Must be primary residence of person 21 or older
- If outside must be (1) enclosed; (2) locked; and (3) not visible to the public
- No restriction on growing in multifamily
- Note: flowering plants have a **VERY STRONG** odor

Growing—Implications

- Common Elements/Limited Common Elements—HOA's architectural control provisions will allow Board to create rules/prohibit
- Units—cannot prohibit absent a Declaration amendment
- Smell—flowering marijuana plants are very potent smelling

Marijuana—Nuisance

- Any **use** of adult-use cannabis flower which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property is a nuisance
- Statute defines the smell of **USE** marijuana as a nuisance so long as it annoys someone
- This applies to all property—single family homes, HOAs etc.
- Growing is probably not considered “use” due to the language of the statute
- Cooking with marijuana, however, is probably considered “use” and therefore a nuisance (it’s a smelly process)

Marijuana Nuisance—Implications

- Most Declarations prohibit “nuisances”
 - Quiet Enjoyment; Interference Prohibited. All Owners and Occupants and their guests shall have a right of quiet enjoyment in their respective Units and shall use the Property in such a manner as will not cause a nuisance, nor unduly restrict, interfere with, or impede the use of the Property by other Owners and Occupants and their guests.

Marijuana Nuisance—Best Practices

- Send update to Owners re: marijuana bill explaining that as multifamily housing, smoking and vaping is prohibited
- Take any complaints seriously and send violations consistent with Rule enforcement procedures. Keep a good paper trail
- For complaints lodged, Board will need to know (1) when alleged violation occurred and (2) who was the violator. If an Owner complains that they “smell” smoke, can’t send violation to every Owner. However, a general “reminder” email blast may help paper the file in case of nuisance lawsuit



Violations

- Effective January 1, 2024
- Creates additional Due Process rights for homeowners under MCIOA
- Requires Boards to provide formal documentation and information related to violations

Violations—Fines

- Any fine and certain assessments must be accompanied by dated, written notice to the Owner that includes 7 specific pieces of information
- If the Association misses any of these pieces of information/requirements, Courts will likely find that the fine/assessment is unenforceable

Violation Fines—Requirements

- (1) states the amount and reason for the fine or assessment;
- (2) for fines levied under section 515B.3-102(a)(11) **[VIOLATION OF GOVERNING DOCUMENTS]**, specifies: (i) the violation for which a fine is being levied and the date of the levy; and (ii) the specific section of the declaration, bylaws, rules, or regulations allegedly violated;
- (3) for assessments levied under section 515B.3-115(g) or 515B.3-1151(g) **[DAMAGE TO COMMON ELEMENTS OR A UNIT]**, identifies: (i) the damage caused; and (ii) the act or omission alleged to have caused the damage;
- (4) states that all unpaid fines and assessments are liens which, if not satisfied, could lead to foreclosure of the lien against the owner's unit;
- (5) describes the unit owner's right to be heard by the board or a committee appointed by the board;
- (6) states that if the assessment, fine, late fees, and other allowable charges are not paid, the amount may increase as a result of the imposition of attorney fees and other collection costs; and
- (7) informs the unit owner that homeownership assistance is available from the Minnesota Homeownership Center

Violations—Hearings

- If a hearing is conducted, there are two possible outcomes (1) fine waived; or (2) fine upheld. Under the new law, changes to both
- If fine waived, the Association is prohibited from assessing legal fees
- If fine is upheld, Board must adopt a formal resolution (written), upholding the fine

Violations—Practical Advice

- FOLLOW PROPER PROCEDURES!
 - Update standard violation letters
 - Create resolution to uphold fines where appeal hearing occurs
- Attorneys (certainly SJJ) will be requesting copies of violation letters and resolutions (if there was an appeal) if we are asked to collect on a Unit and there are fines on the ledger. If the documentation doesn't follow the law, we will advise the Association it cannot collect those fines



The Corporate Transparency Act—WHAT?

- Federal Law
- Department of Treasury
- Requires register of certain information for many corporations

The Corporate Transparency Act—WHAT?

- Register:
 - Name and address of business
 - Name, address, DOB, Identifying number (license, passport) of “Beneficial Owner”
- Beneficial Owner
 - Owns 25%
 - Exercises substantial control (Board members)



The Corporate Transparency Act—WHY?

- Money Laundering
- Terrorism



The Corporate Transparency Act—WHO?

- Most corporations
- Minnesota HOAs are nonprofit corporations
- As of today, likely applies to all HOAs



The Corporate Transparency Act—WHEN?

- New HOAs—within 90 days of formation
- Existing HOAs—current deadline is January 1, 2025

The Corporate Transparency Act—WHERE?

- www.fincen.gov/boi



The Corporate Transparency Act

- If nothing changes, in January 2025, HOAs will have to register information of “beneficial owners” (Board members)
- Watch for updates and prepare for January 1, 2025
 - *National Small Business United v. Yellen*

Thank You!

