

March 7, 2021

The Honorable Zack Stephenson  
Chair, Commerce Finance and Policy  
St. Paul, Minnesota 55144

**RE: HF 2084 Homeowners' Associations; attorney fees and assessments governing provisions modified**

Dear Chair Stephenson and Honorable Committee Members,

I am writing to express my support for the above-referenced bill.

MN515B provides broad powers to Homeowner's Associations (HOAs) when it comes to assessing and collecting fees and fines from homeowners. HOAs are typically administered by a Board of Directors (Board) comprised of homeowners from within the Association.

This Board has the authority under MN515B to assess fees and fines against their neighbors, to file a lien on their neighbor's home for fees, fines, and attorney fees, and to foreclose that lien on their neighbor's home by advertising in the local paper.

The entire process, from creation of the fine/fee to foreclosure on the property takes place without any governmental or judiciary oversight.

**Attorney fees can be added to the lien, rapidly escalating the cost required to satisfy the lien until it is many times the original assessment and beyond the ability of the homeowner to pay.**

No recourse is available to a homeowner who disputes the amount of the lien other than expensive litigation against the HOA, which can defend itself with insurance-funded lawyers and also by levying a special assessment to all homes in the Homeowners' Associations.

The proposed changes included in HF2084 provide needed protections for homeowners by limiting attorney fees and foreclosure costs that can be demanded to satisfy an HOA lien.

However, more protections are needed with respect to the power of HOAs to collect fines.

The ability to demand payment of fines to satisfy a lien still provides a mechanism by which attorney fees can be effectively demanded to satisfy a lien.

**The category of "fines" can include a wide range of charges and can include recovery of expenses such as attorney fees or many other arbitrary fees at the Board's discretion.**

As an example of the arbitrary nature of fees, Exhibit A shows modifications to the rules of our HOA, the Gladstone Neighborhoods' Association, that were recently adopted by our Board.

In the new Gladstone Rule number 7, the Board has granted itself the power to fine homeowners an arbitrary amount for speech that is deemed unproductive by the Board.

Further, Gladstone Rule 7 provides that any such fine shall become a lien against the offending homeowner's property. These modifications were ratified by the Gladstone Board outside of an open meeting and without discussion among the homeowners.

Besides the obvious risk to free speech and home ownership illustrated by Exhibit A, there is also a risk to property values in general when rules such as this are provided to prospective buyers in the neighborhood.

**When MN515B was created, nobody envisioned that HOA powers would be used to limit free speech, and few people would agree to live in a neighborhood where their home could be taken from them because the Board disagreed with something they said.**

I thank the House of Representatives for taking on this important topic on behalf of Minnesota homeowners, and I look forward to positive changes to MN515B to protect home ownership in Minnesota.

Sincerely,



Todd DeJournett

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# Exhibit A

## RESOLUTION OF THE BOARD OF DIRECTORS THE GLADSTONE NEIGHBORHOOD ASSOCIATION, INC.

This Resolution of the Board of Directors of The Gladstone Neighborhood Association, Inc., (the "Association") is made this 7 day of February 2023.

**WHEREAS**, the Association is a common interest community that operates pursuant to its governing documents, including its Declaration of Covenants, Easements, Conditions and Restrictions, dated October 26, 1995 and filed for record in the Office of the County Recorder for Hennepin County, Minnesota on October 31, 1995 as Document Number 6494818, as amended (the "Declaration"), its Bylaws (the "Bylaws"), and its Articles of Incorporation (together, the "Governing Documents"); and

**WHEREAS**, Sections 11.4 and 11.5 of the Declaration grant the Association, acting through its Board of Directors, the right to adopt Rules and Regulations regulating the property within the Association and to exercise any other right or privilege reasonably implied from the existence of any right or privilege allowed under the Declaration or Bylaws; and

**WHEREAS**, Section 6.4(a) of the Bylaws grants the Board of Directors the power to adopt, amend and revoke any Rules and Regulations not inconsistent with the Governing Documents, and to exercise all powers and authority vested in or delegated to the Association which is not expressly reserved to the owners by law or by the Governing Documents; and

**WHEREAS**, the Board of Directors finds it necessary and in the best interest of the Association to adopt certain procedures, policies and Rules and Regulations related to conduct and behavior of owners at meetings of the membership and meetings of the Board of Directors ("Association Meetings"); and

**WHEREAS**, pursuant to the authority delegated to the Board of Directors under the Governing Documents and Minnesota law, the Board of Directors now seeks to amend the Association's Rules and Regulations to address conduct of owners at Association Meetings.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Directors of The Gladstone Neighborhood Association, Inc., hereby adopts the following resolution:

1. The Association's Rules and Regulations shall be updated to include the additional Section 7.0 of the Rules and Regulations, and to add applicable fines and penalties for violations of all current Rules and Regulations contained in Exhibit A, attached hereto.
2. The updated Rules and Regulations shall be distributed to the members of the Association and become effective ten (10) days after distribution.
3. Except as expressly stated herein, all other Rules and Regulations of the Association shall remain in full force and effect.

Krista Johnson

Board Member

Bruce J. Lane

Board Member

Cynthia Schmidt

Board Member

Don A. [Signature]

Board Member

Matt [Signature]

Board Member

## EXHIBIT A



## Gladstone Neighborhoods' Association, Inc.

### Rules and Regulations

#### INTRODUCTION

The governing documents of our Association are the Declaration, Bylaws, and the Rules and Regulations. By accepting a deed to a Lot in our Association, each Owner covenants to comply with the governing documents.

The Board may fine for any violation, and convert it into a lien or foreclosure, as allowed by the covenants and state law.

#### 1.0 ARCHITECTURAL CONTROL

Any external change or repair to a property including but not limited to; grade, landscaping, lighting, structural changes, driveway, pools, roofing, stucco, siding, tree addition/removal, house color, fencing, decks, compost containers, antenna (radio, satellite, or television), and additions must be approved through the Project Approval Request Process (PAR) prior to the initiation of construction.

Please note that this process requires about two weeks to complete once it is received by the Association.

##### 1.1 Fences

1. Lot boundary line fencing of any length or location is prohibited.
2. Fences required for swimming pools will be allowed and must surround the minimum area necessary to secure the pool.
3. Any fence that is permitted will be limited to (a) split rail fencing; (b) wrought iron, steel or high-quality aluminum wrought iron replicas; (c) natural cedar or red wood; or (d) chain-link coated to blend into the background.

The Board may assess a \$40 per day fine for any violation. The association may charge applicable attorney, and construction fees for violations not corrected within 1 month of notice of the violation.

## **1.2 Outbuildings**

1. The Association's preference is to limit the number of outbuildings.
2. Outbuildings that will be allowed should not be visible from the streets be as invisible as possible from Gladstone neighbors.
3. Outbuilding exteriors must match the home exterior, including roof pitch, roofing, shingles, soffit, fascia, and color.

The Board may assess a \$40 per day fine for any violation. The association may charge applicable attorney, and construction fees for violations not corrected within 1 month of notice of the violation.

## **1.3 Yard Waste and Composting Facilities**

Yard waste must be contained in a Compost Container, collected by a licensed collector, or removed from the property immediately. Uncontained yard waste is not permitted in yards or outlots.

To be considered for approval, a Compost Container must meet the following requirements:

1. It must be screened from public view.
2. It must be kept clean and free of anything on its exterior, including but not limited to, lawn equipment, bags and yard tools.
3. It must comply with the City of Maple Grove ordinances.

The Board may assess a \$25 per day fine for any violation. Dumping yard waste in outlots is subject to an additional fine of \$25 per day. The association may charge applicable removal fees for violations not corrected within 1 week of notice of the violation.

## **2.0 SIGNS**

No sign of any kind shall be displayed in the public view on any Lot within Gladstone, except one sign of not more than two square feet advertising a property for sale.

The Board may assess a \$25 per day fine for any violation.

## **3.0 TRASH**

Trash, garbage or other waste shall be kept in an appropriate sanitary container. Equipment for storage or disposal of such material shall be kept screened from public view, except during the day of collection.

The Board may assess a \$25 per day fine for any violation.

#### **4.0 TEMPORARY PARKING**

Recreational equipment, including but not limited to; travel trailers, pickup campers, coaches, motorized dwellings, trailers, snowmobiles, fish houses, ATVs, or boats, shall not be kept or stored outdoors on the property for any period exceeding forty-eight (48) hours.

The Board may assess a \$25 per day fine for any violation. The association may charge applicable attorney, towing, and storage fees for equipment not appropriately stored within 1 month of notice of the violation.

#### **5.0 TEMPORARY POSTED EVENT INFORMATION**

An Owner may post temporary event information limited to real estate open houses, yard sales, association sponsored events, and parties. The posting of the information is allowed only during the hours of the event and must be removed as soon as possible after the event.

The Board may assess a \$25 per day fine for any violation.

#### **6.0 VOTING RIGHTS AND BOARD MEMBERSHIP**

An Owner with an outstanding account balance due with the Association will not be invited nor allowed to cast a vote, nor will they be allowed to be seated as a Board Member.

#### **7.0 CONDUCT AND DECORUM AT MEETINGS**

- a) All owners shall act in a courteous, respectful and professional manner when attending Association meetings or when engaging in any Association related interactions, including contacting the Association's management company or Board of Directors. Use of vulgar language, profanity or engaging in personal attacks is prohibited.
- b) Owners may only engage or participate in Board meetings when the Board of Directors solicits feedback from Owners on agenda items or during an open forum. No owner shall disrupt, or attempt to disrupt, an Association meeting, interject in Board discussions, or raise issues not properly on the floor of a Board meeting.
- c) Any item for consideration that has been previously discussed at an Association meeting or voted on by the Board of Directors is final, unless included on the agenda by the Board of Directors. Owners shall not repeatedly raise duplicative issues or make requests which have already been decided or addressed at a meeting. This behavior takes unnecessary time and prevents the Association from conducting its business and addressing agenda items.
- d) Proposed agenda items may be submitted prior to a Board meeting for consideration and inclusion on the agenda. Owners shall not prevent the Board of Directors from discussing agenda items. Discussion of items not on the agenda or properly on the floor of a Board meeting is prohibited.

- e) In the event of a violation of paragraphs (a)-(d) herein, an Owner shall first be provided a warning, verbal or written, that the conduct violates the Association's Rules and Regulations. If further violation(s) continue, the Association's Board of Directors may (i) remove the Owner from the meeting; and/or (ii) levy a fine against the Owner's Lot in an amount deemed reasonable based on the type of violation, frequency of violations, or whether or not the violation was intentional or malicious. The Association also reserves the right to exercise any other right or remedy allowed pursuant to its Governing Documents or Minnesota law. Any fine levied pursuant to this paragraph shall be levied as a special assessment pursuant to Sections 13.1 and 13.3 of the Association's Declaration and all such assessments shall be the personal obligation of the Lot Owner as of the date such assessment was levied and shall be a lien of the Association on the Lot, together with all other amounts due pursuant to the Declaration.

The Board may assess a \$50, or greater, fine per violation.