February 20, 2023

Iowa Subcommittee on Commerce
1007 East Grand Avenue, House Lounge 2
Des Moines, Iowa 50319

Re: HSB 158 – A bill for an act relating to access to unit owners associations' financial information and meeting minutes.

Position: Amend

Dear Representative Nordman, and Members of the Iowa House Subcommittee on Commerce,

My name is Phoebe E. Neseth, Esq. and I am the Director of Government and Public Affairs for the Community Associations Institute[1] representing 74.2 million Americans living in more than 358,000 communities in the United States. On behalf of the approximately 289,000 Iowans living in 120,000 homes in nearly 3,000 community associations, I respectfully come to you stating CAI's review and input of HSB 158. While CAI understands the intent of this bill, there are other approaches to these legislative changes we would like to respectfully speak with the sponsor and Committee on during the 2023 legislative session that more appropriately addresses the goal of this legislation.

CAI has submitted testimony on the Senate companion to this bill, SF 44, and is in discussions with Subcommittee member Senator Bisignano to address the following proposed amendments that we hope to address in this bill as well. CAI is in ongoing discussions with the Senate Subcommittee which heard SF 44 to amend the bill and create the best public policy for associations in the state.

CAI respectfully requests an open dialogue with Representative Nordman and the Members of the Iowa House Subcommittee on Commerce, Chairperson Lundgren, and other stakeholders to ensure Iowa adopts the best public policy possible for community associations within your state.

[1] Since 1973, Community Associations Institute (CAI) has been the leading provider of resources and information for homeowners, volunteer board leaders, professional managers, and business professionals in 358,000 homeowners associations, condominiums, and co-ops in the United States and millions of communities worldwide. With nearly 44,000 members, CAI works in partnership with 36 legislative action committees and 64 affiliated chapters within the U.S., Canada, United Arab Emirates, and South Africa, as well as with housing leaders in several other countries including Australia, Spain, Saudi Arabia, and the United Kingdom. A global nonprofit 501(c)(6) organization, CAI is the foremost authority in community association management, governance, education, and advocacy. Our mission is to inspire professionalism, effective leadership, and responsible citizenship—ideals reflected in community associations that are preferred places to call home. Visit us at www.caionline.org and follow us on Twitter and Facebook @caisocial.

Recording Keeping in Community Associations

This bill contains proposed requirements for record-keeping in community associations. While it is best practice for associations to keep both meeting and financial records, the proposed requirements set out in this bill are burdensome, unnecessary, and onerous to volunteer association boards and their managers. Requiring such burdensome, unnecessary, and onerous record-keeping would involve hours of volunteer labor and would negatively affect the organization of all owners and executive board meetings. Proper record keeping and minute taking is already an industry best practice during owner and board association meetings. Additionally, the role of these organizations would shift from important self-governance and community management to ensuring compliance with such strict standards. Currently, the best practice for association governance is to ensure that any open meetings are recorded with detailed minutes, however actions taken in executive session are purposefully kept off-record and therefore will not have minutes or records attached. In addition, the language of the bill is vague as to the requirements of records related to financials; under section 1(a), the records must be kept for the duration of the existence of the unit owners association, but under section 2, those same records are required to be kept for the immediate preceding 10 year period.

Suggested Amendments for Discussion with CAI and Subcommittee (Exhibit A):

- Define "Contract" as it relates to Section 2.1(e), "Copies of each contract to which the unit owners association has been or is currently a party."
- Define "Record" as it related to Section 2.2, "A unit owners association shall maintain all financial statements and tax returns of the unit owners association for the immediately preceding ten years."
- Strike "without a meeting" from Section 2.1(b), "Minutes of all unit owners meetings and executive board meetings, a record of all actions taken by the unit owners or the executive board without a meeting…"
- Strike ", including information indicating the vote of each executive board member present at the meeting" from Section 2.1(b), "The minutes shall also include the results of each vote taken at the meeting, including information indicating the vote of each executive board member present at the meeting, and the vote of each executive board member present shall be made public at the open session."
- Strike Section 2.1(a) to remove confusion with Section 2.2, "Detailed records of receipts and expenditures relating to the operation and administration of the unit owners association and other appropriate accounting records."
- Strike Section 3.3, "A unit owners association shall not charge a fee for providing copies of any records or documents under this section, or for supervising the inspection of such records or documents…" as this puts an undue burden on volunteers to provide these expensive copies at their cost.

Uniform Common Interest Ownership Community Act (UCIOA) – Association Records (Exhibit B):

CAI advocates state legislatures around the country for the adoption of Uniform Common Interest Ownership Act (UCIOA), and strongly encourages that Iowa consider the adoption of the Uniform Common Interest Ownership Act (UCIOA), which is a basic statute for creating, managing, and

terminating condominium, planned community, and real estate cooperatives. Versions of Uniform Acts have been adopted by 23 states to date. CAI respectfully requests that this Subcommittee considers adopting language from UCIOA to align with the public policy almost half of states have adopted for their respective community associations. Language from UCIOA will better protect community association homeowners, boards, and managers within the State of Iowa and more effectively address the goals HSB 158 is attempting to accomplish.

Section 3-118 of UCIOA specifically addresses "Association Records," and includes uniform guidelines on how the Uniform Law Commission recommends records should be kept in community associations throughout the United States. As the leading organization for community associations, CAI respectfully requests a discussion with the Subcommittee and/or the Sponsor on ways SF 44 may be improved by language in Section 3-118 of the Uniform Acts where record-keeping practices are concerned.

Furthermore, CAI is extremely interested in further discussing UCIOA with the Subcommittee, Senator Green, and stakeholders of HSB 158 to build the best public policy possible for community associations in Iowa.

About CAI and the Community Association Housing Model[i]

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 44,000 members are organized in more than 60 chapters.

For more statistical data on the community association housing model in the state of Iowa, I encourage you to review the Foundation for Community Associations Research (FCAR), Fact Book: Iowa State Summary: Community Association Data and Information. Community Association Fact Book is published by FCAR and documents the history, current status, trends, and future issues of U.S. community association housing in general. The Fact Book, also provides community association information on a state-by-state basis.

For these reasons, at this time, CAI respectfully requests the sponsor and Subcommittee consider having a conversation with CAI regarding ways to exponentially improve this legislation for community associations in Iowa before it is further considered by the Subcommittee. Thank you for your continued leadership and please contact me with any questions.

Sincerely,

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CC: Senator Bisignano via Tony.Bisignano@legis.iowa.gov; Representative Shannon Lundgren via shannon.lundgren@legis.iowa.gov

Exhibit A:

HSB 158 (LSB 1053YC (2) 90)

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON COMMERCE BILL BY CHAIRPERSON LUNDGREN)

A BILL FOR

An Act relating to access to unit owners associations' financial information and meeting minutes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. **499C.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. For the purposes of this definition:

a. a person controls a declarant if the person

i. is a general partner, officer, director, or employer of the declarant;

ii. directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant;

iii. controls in any manner the election of a majority of the directors of the declarant; or

iv. has contributed more than 20 percent of the capital of the declarant;

b. person is controlled by a declarant if the declarant:

i. is a general partner, officer, director, or employer of the person;

ii. directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person;

iii. controls in any manner the election of a majority of the directors of the person; or

iv. has contributed more than 20 percent of the capital of the person; and

c. control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

2. *"Bylaws"* means the instruments, however denominated, that contain the procedures for conducting the affairs of a unit owners association or an executive board regardless of the form in which the association is organized, including any amendments to such instruments.

2. *"Common element"* means:

a. For a cooperative under chapter 499A or a horizontal property regime under chapter 499B, all portions of the common interest community other than the units.

b. For a planned community, any real estate within the planned community which is owned or leased by the unit owners association, other than a unit.

c. For all common interest communities, any other interests in real estate for the benefit of unit owners identified in the declaration.

3. *a. "Common interest community"* means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in the declaration. *"Common interest community"* includes a planned

community, a cooperative under chapter 499A, and a horizontal property regime under chapter 499B.

b. *"Common interest community"* does not include:

(1) A covenant that requires the owners of separate parcels of real estate to share costs or other obligations related to a wall, driveway, well, or other similar structure, unless all such owners consent in writing to the creation of a common interest community.

(2) Real estate described in paragraph *"a"* if all units are owned by a single owner.

4. *"Declarant"* means a person or group of persons who,

a. as the record title owner of real estate, by a declaration, creates a common interest community.

b. reserves of succeeds to any special declarant right.

5. *"Declaration"* means the instrument, however denominated, that creates a common interest community, including any amendments to the instrument.

6. *"Executive board"* means the body, regardless of name, designated in the declaration or bylaws to act on behalf of a unit owners association.

7. *"Planned community"* means a common interest community that is not solely a cooperative under chapter 499A or solely a horizontal property regime under chapter 499B, and includes property owner or homeowner associations. A cooperative under chapter 499A or a horizontal property regime under chapter 499B, however, may be part of a planned community.

8. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. [In the case of a land trust, the term means the beneficiary of the trust rather than the trust or the trustee.]

9. "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

9. *"Rule"* means a policy, guideline, restriction, procedure, or regulation, however denominated, which is not set forth in the declaration or bylaws.

10. *"Unit"* means a physical portion of a common interest community designated for separate ownership or occupancy or as otherwise defined in the statute under which the common interest community is organized, including but not limited to an apartment as defined in section 499B.2.

11. *"Unit owner"* means a declarant or other person that owns a unit, but does not include a person having an interest in a unit solely as security for an obligation. In a horizontal property regime under chapter 499B or a planned community, the declarant is the owner of a unit. In a cooperative under chapter 499A, the declarant is the owner of any unit to which an interest has been allocated until that unit has been conveyed to another person.

12. *"Unit owners association"* means an association, regardless of name, organized as a for-profit or nonprofit corporation, trust, limited liability company, partnership, unincorporated association, or any other form of

organization authorized by the laws of this state, the membership of which consists solely of unit owners except following termination of the common interest community, at which time the association shall consist of all former unit owners entitled to distributions of proceeds or their heirs, successors, or assigns.

Sec. 2. NEW SECTION. **499C.2 Records retention.**

1. A unit owners association shall retain all of the following:

a. Detailed records of receipts and expenditures relating to the operation and administration of the unit owners association and other appropriate accounting records.

b. Minutes of all unit owners meetings and executive board meetings, other than executive sessions, a record of all actions taken by the unit owners or the executive board without a meeting, and a record of all actions taken by a committee of the unit owners ~~in place of the executive board~~ on behalf of the association~~.~~ The names of unit owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast. *c.* The unit owners association's original or restated organizational documents, if required by law other than this act, bylaws including all amendments to the bylaws, and all rules and amendments to the rules currently in effect. *d.* The unit owners association's financial statements and tax returns of the association for the past three years

Its most recent annual report delivered to the secretary of state, if applicable. *e.* Copies of each contract to which the unit owners association is currently a party.

f. records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

g. ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

Sec. 3. NEW SECTION. **499C.3 Right to access —— exceptions.**

1. *a.* Except as provided under subsection 2, all records and documents retained by a unit owners association under section 499C.2 must be available for examination and copying by a unit owner or the unit owner's authorized agent during reasonable business hours or at a mutually convenient time and location upon the unit owner or the unit owner's authorized agent providing five days' notice that reasonably identifies the specific records that are being requested.

b. Except as provided under subsection 2, all records and documents retained by a unit owners association under section 499C.2 must be available for examination and copying by a bona fide prospective purchaser of a unit or the bona fide prospective purchaser's authorized agent during reasonable business hours or at a mutually convenient time and location upon the bona fide prospective purchaser or the bona fide prospective purchaser's authorized agent providing two days' notice that reasonably identifies the specific records that are being requested.

2. Records and documents retained by a unit owners association under section 499C.2 may be withheld from inspection and copying to the extent that the records or documents concern any of the following:

a. Personnel, salary, or medical information relating to specific individuals.

b. contracts, leases, and other commercial transactions that are currently under negotiation to purchase or provide goods or services.

c. existing or potential litigation, mediation, arbitration, or governmental administrative proceedings.

d. existing or potential matters involving federal, state, or local administrative proceedings or other formal proceedings before a government tribunal for enforcement of the declaration, bylaws, or rules.

e. Communications with the unit owners association attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine.

f. Information that if disclosed would violate another provision of law.

g. Records directly related to the personal, health, or financial information of a unit owner if the person requesting the records is not the unit owner that is the subject of the records.

h. records of an executive session of the executive board; or

i. individual unit files other than those of the requesting owner.

3. A unit owners association may charge a reasonable fee for providing copies of any records or documents under this section, or for supervising the inspection of such records or documents.

4. The right to inspect records under this section includes the right to copy records by photocopying or other means and includes the right to receive copies through an encrypted electronic transmission, if available, upon request of the requester.

5. A unit owners association shall not be obligated to compile or synthesize information

6. Information or records obtained under this section shall not be used for commercial purposes.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to access to unit owners associations' financial information and meeting minutes.

Under the bill, a unit owners association is an organization of unit owners in a common interest community, including a planned community, a cooperative under Code chapter 499A, or a horizontal property regime under Code chapter 499B. The bill requires unit owners associations (association) to retain certain records and documents (records) as specified in the bill.

All records retained by an association must be available for examination and copying by a unit owner or the unit owner's authorized agent during reasonable business hours or at a mutually convenient time and location upon five days' notice that reasonably identifies the specific records being requested. All records retained by an association must also be available for examination and copying by a bona fide prospective purchaser of a unit or the prospective purchaser's authorized agent upon two days' notice. Records that may be excluded from being made available for examination and copying are detailed in the bill.

An association is prohibited from charging a fee for either copies of the records or for supervising the inspection of the records. The right to inspect records includes the right to copy records by photocopying or other means and to receive copies via encrypted electronic transmission, if available. An association is not obligated to compile or synthesize records, and the bill prohibits the records from being used for commercial purposes.

Exhibit B:

SECTION 3-118. ASSOCIATION RECORDS.

(a)An association must retain the following:
(1)detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2)minutes of all meetings of its unit owners and executive board other than executive sessions, a record of all actions taken by the unit owners or executive board without a meeting, and a record of all actions taken by a committee in place of the executive board on behalf of the association;

(3)the names of unit owners in a form that permits preparation of a list of the names of all owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4)its original or restated organizational documents, if required by law other than this [act], bylaws and all amendments to them, and all rules currently in effect;

(5)all financial statements and tax returns of the association for the past three years;
(6)a list of the names and addresses of its current executive board members and officers;

(7)its most recent annual report delivered to the [Secretary of State], if any;

(8)financial and other records sufficiently detailed to enable the association to comply with Section 4-109;
(9)copies of current contracts to which it is a party;
(10)records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and
(11)ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b)Subject to subsections (c) and (d), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1)during reasonable business hours or at a mutually convenient time and location; and

(2)upon [five] days' notice in a record reasonably identifying the specific records of the association requested.
(c)Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1)personnel, salary, and medical records relating to specific individuals;

(2)contracts, leases, and other commercial transactions to purchase or provide goods or services, currently being negotiated;

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

(4)existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;
(5)communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
(6)information the disclosure of which would violate law other than this [act];
(7)records of an executive session of the executive board; or

(8)individual unit files other than those of the requesting owner.

(d)An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e)A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner.

(f)An association is not obligated to compile or synthesize information.

(g) Information provided pursuant to this section may not be used for commercial purposes.

Comment

1. There are two significant policy issues connected with the association's records: first, what records the association must retain, and second, who has access to those records. The 2008 amendments address both.

The original version of Section 3-118 dealt with these matters in a minimalist way. Regarding records maintenance, the first sentence of 3-118 required only that the association maintain those records needed to comply with Section 4-109 – that is , the obligation to provide a resale certificate. This minimum requirement was far less expansive than the provisions of, for example, the Revised Model Non-Profit Corporation Act; it plainly did not address the significant issues of records maintenance that have arisen since UCIOA was first promulgated 25 years ago.

Section 3-118 was similarly superficial regarding issues of records access; it mandated simply that 'all' records of the association be 'reasonably available for examination by any unit owner or his authorized agent' – leaving questions as to whether the word reasonable" modified 'all

…records' as well as "available", and leaving unanswered the large range of issues that courts and legislatures have struggled with in this field over the last quarter century.

1. The 2008 amendments replace the "minimalist" provisions of UCIOA Section 3-118 with provisions generally consistent with the cognate provisions of the Revised Model Nonprofit Corporation Act, supplemented by specific provisions from other more modern State enactments and proposals in the homes association field. In this latter regard, the amendments, for example, authorize a unit owner to have access to a mailing list of unit owners, although the association may retain the right to mail materials to unit owners at their last known addresses, in order to maintain the unit owners' privacy; and (ii) insure that minutes of all meetings must be kept.
3. Section 3-118(a) outlines the records that the Association must retain. The subsection generally avoids any substantive requirements as to how the Association's financial records are to be maintained, relying simply on the obligation to retain "detailed records of receipts" and "appropriate accounting records", "all financial statements and tax returns for the past 3 years" and, as in the original Act, "financial and other records sufficiently detailed to enable the association" to provide a resale certificate under Section 4-109." The Act rejects any proposal that it require records to be maintained in accordance with "generally accepted accounting principles"; there are simply too many associations for which that would be an unnecessary and burdensome requirement.

4. The rules of various Bar associations make it imprudent for this Act to characterize the files of an attorney representing the association as property of the association and thereafter to assert that those files are nevertheless exempt from disclosure. For that reason, the Act does not address the status of an attorney's records, but section 3-118(c)(5) does make clear that communications with the association's attorney will generally be exempt from disclosure.
5. Many associations, especially smaller ones, may not have a complete set of records going back to the first organization of the association. This may be attributable to many reasons, and often are not the fault of the association or its current leadership. For example, the original declarant may not keep adequate records or may have failed to turn them over at transition. Managers may fail to turn records over when their contracts expire or are terminated. In either of these cases, the cost of suing to obtain the missing records is prohibitive, or certainly out of proportion to the loss or inconvenience caused by the missing documents. In many smaller communities, the minutes and other non-financial records are kept by a volunteer officer of the association. If someone dies, is taken ill or moves away, the records are often lost. While this reality may impede the practical realization of the requirements in this Act, a goal of the section would be that over time, those "ancient" records may become of less practical importance in older associations, while newer associations will be guided by the requirements of this Section to adopt sound record keeping practices from the outset.

6. Subsection 3-118(b)(i) permits the parties to agree on a mutually acceptable time and place for the inspection of the records. If they do not agree, the subsection provides that the inspection shall take place "during reasonable business hours or at a mutually convenient time and location." Another concern has to do with smaller self-managed associations where the records may be kept by a unit owner who works during the day. If the volunteer treasurer cannot easily leave his or her job during the day to meet with a unit owner, it may be unreasonable to insist that the unit owner, or the unit owner's attorney or accountant, have the power to make the treasurer take a day off from work.

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[i] 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 into 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. 93% of association residents rate their experience as positive, and 88% believe their elected boards strive to serve the best interests of their community. In total, more than 1.6 million Americans demonstrate their civic commitment by service on a community association board each year.