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**RESPONDING TO A MEMBER'S REQUEST TO REVIEW AND INSPECT  
YOUR ASSOCIATION'S BOOKS AND RECORDS**

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Member requests to review and inspect an association's records and books are a fairly typical occurrence and should not be a reason to panic, but such requests should be dealt with in a prompt and orderly fashion for reasons explained in this article. Some members are just generally interested in the ongoing management and administration of the association and want to keep a closer eye on the details. Unfortunately, in other cases, you may have a member with an axe to grind and whose intent may ultimately be to try and find some error or oversight to justify their allegations against the association. Regardless of the intent behind these review and inspection requests, it is of utmost importance that the association address them and respond accordingly. How an Association responds and reacts to these requests may ultimately save it a great deal of time and headaches later on. Therefore, it is a good idea for your association to develop a response protocol that addresses these requests both in terms of the language of the Michigan Condominium Act, Michigan's Nonprofit Corporation Act, and the language of your governing documents.

Most governing documents contain a short paragraph that only address a member's ability and right to inspect its records in a very general and opaque manner. Often, they simply say that a Member is entitled to inspect the records and books and that the inspection must occur during reasonable working hours. There is no established procedure or other guidance provided by these governing documents which may lead to indecision and confusion regarding how an association is to properly respond and act upon these requests. If you are part of a condominium association, the Michigan Condominium Act, specifically, MCL 559.157, doesn't shed much additional light on the subject. It merely states that 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. The Michigan Administrative Code is equally vague. Rule 559.504 only states that the right of inspection of the books by co-owners may be limited to a reasonable time and place specified in the bylaws. Condominium associations should also be aware that the MCL 559.154(5) of the Condominium Act does require that the condominium's bylaws include a provision that the association must prepare and distribute a financial statement to each co-owner at least once per year.

With the 2015 changes to the Nonprofit Corporation Act, there has been some clarification of the obligations for both the requesting member as well as a non-profit community association. Keep in mind that almost all condominium and homeowners' associations are non-profit corporations and thus subject to that Act. First, a member can request in writing a copy of the balance sheet for the preceding fiscal year, statement of income, and any statement of source and application of funds for the fiscal year in writing, and the association is obligated to mail out a copy to that member.

If the member is looking for more information and a more in-depth review of the books and records of the association, they need to give written demand to the association with that request. The Nonprofit Corporation Act doesn't define what constitutes a written demand, so it is possible that an email could fall within the scope of a writing. Therefore, until a court finds that an email demand does not constitute a "written demand", associations should treat them as if they were received in traditional letter format. The written demand must describe with reasonable particularity the purpose of the inspection and the records the member desires to inspect, and how those particular records are directly connected with the purpose. "Proper purpose" is generically defined as a purpose that is reasonably related to a persons' interest as a shareholder or member. The written demand must be delivered to the registered office or its principal place of business. If the demand is from an attorney on behalf of a member, it must include a power of attorney or other written authorization from the member giving the attorney the right to act on their behalf.

Upon receipt of any such written demand, the corporation is required to permit the inspection **within five (5) business days**, and furthermore, cannot impose unreasonable conditions on the inspection. It is not clear whether this means the records have to actually be accessible within this five (5) business day period, or whether the corporation need only respond affirmatively within this time period. Until a court answers that question, associations should permit access within this time period. Otherwise, the association risks the possibility that the member will file a lawsuit in the local Circuit Court requesting an order to compel the requested inspection. Perhaps most disconcerting to an association whom finds itself having been taken to court, is the possibility that the association would be responsible for the member's costs and reasonable attorney fees if the court compels the inspection.

Another issue that arises consistently when a record inspection is being requested is the ability of the member to receive or make copies of the documents. MCL 450.2487 (9)(b) clarifies that the member's right to inspect records does include the right to copy and make extracts from the records of the corporation, and if reasonable, require the corporation to supply said copies. The member can bring their own equipment for the copying, or if they require the assistance of the association, the association may require them to pay a reasonable charge for copies of the requested documents. The statute is silent on any costs associated with gathering documents or providing a monitor for the inspection.

One other interesting note about the 2015 change to the Nonprofit Corporation Act is that it does allow a corporation through provisions in its Articles of Incorporation, Bylaws, or a Board Resolution to disallow members from being able to inspect the Association's records if there is a good faith determination that one of the following applies:

- The inspection would impair the privacy rights or free association of the members.
- The inspection would impair the Association's lawful purpose.
- The inspection is not in the best interests of the Association.

At the same time, any association whom tries to amend its documents to prevent these inspections needs to provide a reasonable manner for its members to communicate with all other members regarding the election of directors and other affairs of the Corporation. Ultimately, questions remain as to how some of the relevant provisions of the Condominium Act, that are broader in scope, are tempered by the more specific requirements set forth in the Nonprofit Corporation Act. Condominium associations are governed by both the Condominium Act and the Nonprofit Corporation Act. Ultimately, it may come down to a court decision as to which of the two Act's language addressing these document review and inspections supersedes the other.

Here are a few recommendations that may assist your association in developing a more efficient and standardized process when responding to a Member's demand to review and inspect the records:

1. **Store or maintain your Records in a single secure and easily accessible location.** This is a proactive recommendation that may ensure a faster and more efficient response to future demands for review and inspections. It is a good idea to have the books, records, financial statements, contracts, bids, and any other records concerning the administration of your association available in one location that is relatively easy to access. If your association has retained a management company, having them maintain and store these records in a safe, secure and dry location can simplify the process of retrieving any documents responsive to a member's demand. If the records and books are being stored electronically, then an adequate back-up should be maintained as well. If the documents that are sought to be reviewed are spread amongst many different locations, it may prove very difficult to respond within that short five (5) business day requirement.
2. **Establish a location where inspections will be held.** This recommendation coincides with the first recommendation. If your association maintains the records in a single secure location, then it would also make sense that the inspection take place at that same location or nearby where it is convenient for both the member and the keeper of the records as well. If your association has retained a management company, where these records are stored, then it makes sense to have the member appear at the management company's location in order to conduct the review. The management company already has the records available and it shouldn't take a great deal of effort or time to make them available to the member. If your association doesn't have a management company, look for other places that may be

able to accommodate the inspection itself. A public library may be a suitable location, especially if they have private rooms that can be utilized for this purpose.

3. **Adopt a policy preventing inspection of certain records.** Associations should take advantage of the fact that the Non-Profit Corporation Act provides that a resolution of the board of directors may place limitations on a member's right to inspect the corporation's books and records upon a good faith determination that the inspection would impair the rights of privacy or free association of the members or would impair the lawful purposes of the corporation. Therefore, the Board of Directors should consider adopting a policy that would, for example, disallow members from being able to review records such as another member's account, ledger and financial information, the meeting minutes from an executive session of a board meeting, and other types of privileged documentation and communication. Access to these types of records would very likely constitute an impairment of another member's rights of privacy or free association, or could impair the lawful purposes of the corporation.
4. **Review the demand upon receipt immediately.** As soon as a member's demand to review and inspect the records is received, it should be evaluated to determine whether it complies with the Non-Profit Corporation Act language, and what the appropriate response should be. Some questions to ask are whether the request was made with reasonable particularity? Is the request being made for a proper purpose? If the board and its management company have concerns regarding these aspects of the demand, they can seek advice from its legal counsel to assist them with these determinations. The association should really attempt to have this review done as quickly as possible in order to comply with the five business day deadline.
5. **Initiate a dialogue with the Member.** It is a good idea to immediately respond to the member as soon as possible and let them know that the demand has been received, is being reviewed, and that a response will be sent to them shortly. Oftentimes, the member is reasonable and understands that it is not necessarily practical to expect the inspection to take place within five (5) business days of the request having been made. If the member feels that their request is not being ignored, but that it may take a reasonable amount of additional time to occur, they are less apt to take additional action against your association. When responding to the member about the inspection itself, it may also be a good idea to provide a number of dates and times where the inspection can occur, and leave it up to them to choose what is most convenient for them. This will also reduce the chances that the member will claim that the association is attempting to deny them their right and ability to inspect the records and books.
6. **Do not allow inspections of privileged communications and records that could violate a member's right to privacy.** There are certain types of records and documents that we would not recommend that an association produce for inspection unless a court has ordered them to do so. Otherwise, an association may invite additional liability upon itself if it releases documents to a member that could infringe on another member's right to privacy.

It would not be to anyone's benefit if a member's delinquent account information or payment information were handed out to other members during a records inspection. There are few occurrences that can be imagined where there is a proper purpose for that member to review another member's private financial information. Another example of the type of records that we would recommend your association not produce for inspection unless ordered to do so by a court would be privileged records such as attorney-client communication in those instances where there is ongoing litigation between a member and the association. As previously mentioned, the Nonprofit Corporation Act allows a board to adopt policies that would prevent the inspection of records when they may impair a member's right of privacy or free association, or could impair the lawful purposes of the corporation. It would be extremely beneficial to your association when faced with document inspection demands if they have already adopted a policy regarding document inspections as mentioned in recommendation #3. Associations should take advantage of the authority granted to them in the Non-Profit Corporation Act to protect itself and avoid producing documents that could harm them unnecessarily.

Books and Records reviews and inspections are likely occurrences for every association. Yet, they don't have to be an overwhelmingly stressful or combative experience for your association and the member making the request. If your association follows the recommendations set forth in this article and creates an efficient and standardized process to respond to these types of requests, this should spare both the association and the member time, money, and possibly even their sanity.

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