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# Sustainably united

Evaluation of the Act on  
improving the functioning  
of HOAs

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# Summary

## Rationale and objective

A substantial part of the total of 8.2 million homes in the Netherlands in early 2024 consists of buildings divided into several apartment rights by a division deed. These apartment rights can be sold separately, thus simultaneously forming a Homeowners' Association (hereafter: HOA) since 1972. As of January 1, 2022, there were more than 135 thousand owners' associations, together managing almost 1.4 million homes. On January 1, 2018, the Act on Improving the Functioning of Homeowners' Associations (hereafter and where this cannot cause confusion: the Act) came into force, with the aim of encouraging HOAs to reserve a minimum annual amount for major maintenance and to encourage making the HOA buildings more sustainable. However, there are indications that HOAs do not reserve an amount at all or reserve too little, leading to overdue maintenance and not enough sustainability measures.

HOAs consisting of at least one dwelling should have sufficient funds available for necessary (major) maintenance and repair of their buildings. In principle, they can do this in two different ways: in accordance with the plans set out in the drawn-up multi-year maintenance plan (hereafter: MJOP) or by reserving at least 0.5 per cent of the reconstruction value of the HOA building each year. Besides these two options to save, HOAs can also choose not to save any money. This is possible if so determined in the subdivision regulations, if the bank of the owner in question has issued a bank guarantee to the HOA, or if the HOA decides by a majority of at least eighty per cent (four-fifths majority) not to deposit any money in the reserve fund at all. In addition, the Act clarified the possibility of granting loans to HOAs. If an HOA obtains a loan, each owner is only liable for their own share of the loan, with any debts (and liability) passing to the new owner of the apartment right on relocation.

The purpose of the present study is to evaluate the Act, focusing on two aspects in particular: the MJOP and the provision of loans to HOAs. The problem definition of the study is twofold:

1. In what ways, for what purposes and with what effects do HOAs deploy the MJOP introduced by the Act?

2. To what extent have more loans been granted to HOAs since the introduction of the Act, and if so, to what extent have maintenance and/or sustainability measures been included and to what extent does this contribute to CO<sub>2</sub> targets?

The study was conducted along the following four lines:

1. [H2] Desk research; in which we review relevant literature, policy documents, media reports and legal proceedings.
2. [H3] HOA questionnaire; in which we draw a stratified sample of HOA members and administer and analyse a questionnaire ( $n = 811$ ).
3. [H4] WoON survey analysis; in which we analyse trends in the data on the functioning of HOAs based on three WoON surveys (2015, 2018, 2021).
4. [H5] Interviews and focus groups; where we speak to stakeholders and experts from the field in focus groups and interview individual stakeholders.

#### Desk research

We investigated various relevant sources: previous studies on HOAs, parliamentary documents, annual reports of funds that provide loans, (scientific) policy literature and media coverage. We did the latter by searching between November 2023 and 8 March 2024 on combinations of "HOA" with the bolded keywords accompanying the research questions (see section 1.2). Furthermore, we searched for court proceedings by using the public database of published judgments at [www.rechtspraak.nl](http://www.rechtspraak.nl).

Several previous studies have found that the vast majority of HOAs have an MJOP. Estimates after the Act came into effect on January 1, 2018, range between 84 and 92 per cent. This share has clearly increased compared to a decade ago; in surveys from 2010 and 2012, the share of HOAs with an MJOP was still between 35 and 50 per cent. The amount of the periodic contribution has also increased sharply in recent years: from an average of around 65 euros per month in the period 2010–2012, to 190 euros per month in 2021.

Previous research also shows that having an MJOP is dependent on HOA size: almost all large HOAs now seem to have an MJOP, while for small(er) HOAs the proportion is still somewhat lower. Earlier research also shows that the vast majority of HOAs reserve money for major maintenance in accordance with the plans set out in the MJOP, and that a minority reserve via the other options, such as reserving on the basis of 0.5 per cent of the building's reinstatement value. A relatively small proportion has no reserve fund, according to previous research.

In order to gain a better insight into legal proceedings related to the Act, the public database [www.rechtspraak.nl](http://www.rechtspraak.nl) was searched. From this, we cannot conclude how many court cases have taken place since the Act came into force. However, we did find some relevant examples of court cases about the MJOP and related topics such as the reserve fund, and the taking out of a loan by an HOA. Two rulings in which the plaintiff was an HOA member who disagreed with the HOA's decision to proceed with a loan show that the Act has ruled in favour of the HOA in taking out a loan under Article 5:126(4) of the Civil Code (hereafter: BW). Two other rulings show that the Act can be applied in proceedings on enforcing a decision about the reserve fund in dormant HOAs. On the other hand, one of these rulings shows that the court cannot provide a solution if an HOA member argues that the contribution to the reserve fund based on the MJOP is demonstrably not high enough for the required maintenance. The reserve must match the content of the MJOP, but the court does not rule on whether the content of the MJOP is sufficient for the required maintenance.

Based on annual reports of the National Heat Fund (hereafter: NWF) and Housing Development Fund for Dutch Municipalities (hereafter: SVn), there is an upward trend in terms of the number of loans granted to HOAs in 2022 and 2023 compared to 2021 and earlier. The amount of Energy Savings Loans provided by the NWF to HOAs increased from 33 million euros in 2021 to 122 million euros in 2022. This 122 million euros in 2022 is divided among 390 outstanding loans, which is still quite small in absolute numbers.

Research regarding conflicts between owners demonstrates that small HOAs seem to face this more often than large HOAs. Likewise, members of small HOAs consider dealing with neighbours as a major challenge more often than large(er) HOAs. Nearly six in 10 members of small HOAs do not consider the applicable legal obligations necessary for their HOA and prefer to arrange things among themselves in an informal manner.

The proportion of HOAs that have drawn up a sustainable multi-year maintenance plan (hereafter DMJOP) is only five per cent, according to a recent survey. Financing and increasing periodic contributions emerge in the literature as the biggest stumbling blocks when it comes to sustainability measures.

### HOA questionnaire

We administered a questionnaire by using the NIPObase panel of Verian (formerly Kantar Public). Verian uses a monthly online screening among thirty to forty thousand respondents. By using this screening process, the survey only reached suitable respondents, namely (co-)owners of an apartment (e.g. a flat, upstairs or ground floor dwelling, or maisonette)

who are members of an HOA. An additional screening question made it possible to draw the sample with the desired stratification by HOA size. We used a size class breakdown, largely in line with a Central Bureau of Statistics (hereafter CBS) survey on the numbers of HOAs in 2022: 1 to 3 dwellings, 4 to 6 dwellings, 7 to 10 dwellings, 11 to 20 dwellings, 21 to 50 dwellings and more than 50 dwellings. A total of 811 HOA members participated in the survey.

The vast majority of the respondents' HOAs have drawn up an MJOP (82%). HOA size is very important here: the larger HOAs almost always have an MJOP, but only four out of ten of the smallest HOAs have an MJOP. Moreover, the largest HOAs (more than 40 residential apartment rights) often already had an MJOP before the Act came into force, while the other HOAs more often drew it up recently. Almost all respondents see the importance of an MJOP for the HOA, only the smaller HOAs are more likely to have doubts about this. This group also reports frequently that the HOA does not need an MJOP to save enough for maintenance. A significant proportion of the MJOPs do not look ahead ten years or more and/or do not include an estimate of the total costs and/or do not allocate these costs evenly over the years – thus failing to meet three of the four legal requirements of the MJOP. By contrast, the updating of the MJOPs does go well: only eight per cent do not meet the legal requirement that the MJOP must be no more than five years old, and almost half of the MJOPs are even updated annually. Compliance with the (four) legal requirements of the MJOP generally increases with HOA size.

The vast majority of HOAs have a reserve fund (84%). Ten percent of HOAs have decided by a four-fifths majority not to deposit into the reserve fund, for two per cent of HOAs the bank of an owner who does not want to deposit has issued a bank guarantee to the HOA, and four per cent of respondents gave another reason why the HOA does not have a reserve fund. Once again, size is an important factor: in fact, the larger HOAs almost always have a reserve fund. The majority of HOAs with a reserve fund save in accordance with the MJOP (large HOAs significantly more often) and around one in seven save 0.5 per cent of the reconstruction value of the HOA building (small HOAs significantly more often).

An important caveat concerning findings on the MJOP, reserve fund and savings is that there is a possibility that some of the respondents may not be as well informed about the ins and outs of the HOA and these topics. Fourteen per cent of respondents with a reserve fund indicated that they did not know how savings are made within their own HOA (in accordance with MJOP, 0.5 per cent reconstruction value or in an alternative way). This is an indication of how large this group *might be*.



The small reported number of loans provided to HOAs in the survey since the Act came into force (57) were used about equally often for maintenance and renovation (or a combination of both). The largest provider of these loans, according to respondents, are banks. Only one in 10 respondents indicated a need for a future loan for maintenance and/or preservation.

An anticipated side effect of the Act was improvement in the overall maintenance of HOA buildings, as HOAs should have to reserve (more) for maintenance and have better access to loans after the Act comes into force. The state of maintenance is generally good, with only five per cent indicating poor or moderate maintenance. Also, the respondents' HOAs often meet the legal requirements of HOAs, such as registration with the Chamber of Commerce (hereafter: KvK), holding an annual general members' meeting (hereafter: ALV), having a separate bank account, and the like. This also increases with HOA size.

Payment arrears and (legal) conflicts occasionally occur. Between 20 and 30 per cent of respondents have had to deal with this at some point within the HOA. (Legal) conflicts are more common among the larger(er) HOAs in the sample. Recent (legal) conflicts, which took place in the last five years, appear to have a multitude of reasons (e.g. the cost of incurred damages).

Most respondents consider sustainability (very) important for the HOA. Here, there is a clear dichotomy between larger HOAs (where this share is higher) and the smallest HOAs (where this share is lower). Obstacles mentioned remarkably often have to do with financing energy-saving measures. The cost thus appears to be the biggest stumbling block in the path to sustainability in HOA buildings.

### Analysis of WoON survey data

In this part of the research project, we map the situation of HOAs prior to, during and after the introduction of the Act by analysing trends in the data from the longitudinal Residential Research Netherlands (hereafter: WoON). This is a large nationally-representative survey commissioned by the Ministry of the Interior and Kingdom Relations (hereafter: BZK) that occurs every three years. This study uses data from WoON 2015, 2018 and 2021 in order to map the functioning of HOAs before, during and after the introduction of the Act, focusing on developments between 2018 and 2021. In doing so, we look at both direct effects and potential side effects. Furthermore, we look at whether the effects differ by the size of HOA. Finally, we zoom in on HOAs in the four largest municipalities (G4: Amsterdam, Rotterdam, The Hague and Utrecht), where small HOAs are more common.

In summary, based on the analysis of the WoON survey, we can say that, since the introduction of the Act in 2018, the functioning of HOAs has generally improved slightly in 2021 on indicators related to conditions for maintenance. Indeed, by 2021, more HOAs have an MJOP and reserve fund, as well as an annual HOA and joint insurance. Interestingly, by 2021, HOAs report less frequently that they have a joint account or a KvK registration. Small HOAs, particularly prevalent in the G4, had improved on all six of these outcomes in 2021 compared to 2018.

All four of the studied side effects (satisfaction with the home, satisfaction with the living environment, social cohesion and appreciation for maintenance) showed an overall increase between 2018 and 2021. Broken down by subgroup, an increase was visible among medium-sized HOAs and among HOAs in non-G4 municipalities. For HOAs in other size classes and HOAs in G4 municipalities, some side effects increased while others decreased. The most notable change was a decrease in appreciation for maintenance of the building among HOAs in G4 municipalities, possibly caused by a more stringent judgment given the general increased focus on maintenance and sustainability.

Central to this study is the question of how the functioning of HOAs improved between 2018 and 2021. The comparison with 2015 for different HOA size classes was complicated by a different questioning of HOA size at the time. For 2021, corona may have both caused a lower response rate on WoON and affected the answering of the items. Finally, any effects may not be sufficiently visible when comparing data from 2018 with those from 2021, both due to any early anticipation of and later adaptation to the introduction of the Act.

All in all, based on this analysis of the WOoN survey, it can be assumed that the functioning of HOAs improved slightly after the introduction of the Act. This improvement was most apparent in small HOAs, which are particularly prevalent in G4 municipalities. This is also visible in the side effects studied, especially in terms of satisfaction with the living environment and social cohesion. In reaching these conclusions, however, we cannot automatically assume a causal effect of the introduction of the Act, as other factors may have contributed to the developments we highlighted in this study.

### Interviews and focus groups

In four focus discussions with 23 experts and stakeholders and interviews with six HOA managers and six HOA members, several conclusions emerge. First, participants agree that the number of HOAs with an MJOP has increased since the Act came into force and that this is a positive development, as the MJOP is an effective tool for HOAs to clearly outline the



maintenance needed for a future period. In practice, however, there are big differences in the quality of the MJOPs due to a lack of form requirements. More attention is needed on what constitutes a good MJOP in addition to the four requirements currently prescribed in the Act (such as the minimum update frequency). Opinions are divided regarding the option to set aside 0.5 per cent of the rebuilding value annually and regarding the so-called *escapes*, such as deciding by a four-fifths majority not to save. In addition, it is especially seen as undesirable if larger HOAs (would) not have an MJOP.

The lack of clear quality requirements for the MJOP makes it difficult for supervisors to determine when an MJOP is deficient, leaving judges, for example, with nothing to test against in legal proceedings. Another general conclusion is that, in practice, there is little supervision of the functioning of HOAs.

Supervision of compliance with the Act is structured in such a way that it has to be arranged internally – by the HOAs themselves. There are no external supervisors, such as, for example, an independent authority, the municipality or banks, to oversee the amounts that HOAs set aside or check whether the plans set out in an MJOP are actually realised. Stakeholders and experts suggest that supervision might have to come more from banks and mortgage lenders. The lack of supervision combined with a lack of formal requirements of the MJOP makes enforcement of the Law particularly difficult.

More loans are being taken out since the introduction of the Act (via SVn and NWF), but in absolute numbers, these are still very few. A major reason for this is a lack of parties willing to provide these loans to HOAs. In practice, Dutch banks provide almost no loans to HOAs – the German bank TEN31 does, which raises some concerns among stakeholders due to the limited formation of dossiers about the HOAs and the uncertainty of future interest rates.

Opinions are divided on the usefulness and necessity of a DMJOP, partly because it is not clear what such a DMJOP should look like. Several interview participants would prefer more attention to be paid to improving the quality requirements of the DMJOP first. Furthermore, there are many questions about the feasibility of a legally mandated DMJOP, as an HOA is only legally obliged to *maintain* the common parts of the property for preservation, and not for *sustainability*. A DMJOP therefore ignores the – limited – current legal obligation of an HOA. The trade associations are critical of the introduction of a DMJOP, but would like to see HOAs gain more insight into what (legally required) sustainability measures they need to take regarding the climate goals towards 2050.

Furthermore, the point is repeatedly made that HOAs should not be obliged to undertake more sustainability measures than (ground-level) homeowners where no HOA is active. Thus, should a DMJOP be introduced for HOAs, it should be based on the (future) legally required sustainability measures applicable to all owners, so that a DMJOP would be feasible and enforceable. The proposal to only add certain sustainability measures to the existing MJOP – and not prepare a separate DMJOP – also comes up in several interviews. It is frequently mentioned in the interviews that owners already often do not (want to or cannot) save enough for an MJOP, let alone a mandatory DMJOP in addition to that. HOAs are already regularly confronted by members' financial limits when saving for an MJOP – this problem will be exacerbated if compulsory savings for sustainability are added on top. From the interviews with HOA members, it emerges above all that a convincing business case is important when it comes to sustainability, with other HOA members being the easiest to convince of mandatory and cost-saving sustainability measures.

### Conclusion

The various studies in this research project indicate that the vast majority of HOAs have a reserve fund and/or an MJOP (large HOAs more often than small HOAs), and that this has increased since the Act came into effect. Furthermore, the consensus from the focus discussions and interviews is that there is less concern about the quantity of HOAs with an MJOP, but more concern about the quality of MJOPs. Our survey shows that a substantial part of the MJOPs do not meet the current four requirements of an MJOP, such as looking ahead ten years or more or evenly allocating the costs over the years.

The overall conclusion is that since the Act came into effect, HOAs have taken out more loans for maintenance and sustainability measures (or a combination of both), and that there is less resistance among HOAs to take out a loan because HOA members are only liable for their own part. Our survey shows that a small proportion of respondents' HOAs had taken out a loan from a bank. However, the interviews and focus discussions indicated that Dutch banks generally do not provide loans to HOAs, but some foreign banks do (mainly TEN31).

The impression of stakeholders and experts is that legal cases about reserving an amount with an MJOP do not occur often, because the judge has nothing to assess due the lack of formal requirements for an MJOP. We indeed found an example of a published case on [www.rechtspraak.nl](http://www.rechtspraak.nl) confirming that it was not contrary to the Act for an MJOP to reserve an amount which is demonstrably too low for the required maintenance of the HOA building. However, we did find examples of legal cases that show that the Act can be used to enable

the HOA to take out a loan, and to force dormant HOAs to make a decision about their reserve fund.

Other recent research showed that only a small proportion of HOAs have a DMJOP, although the majority considers it important that the home is energy efficient. The results from our survey also indicate that most HOA members find sustainability (very) important, but that the cost is an obstacle to implementing sustainability measures. The various participants in the interviews and focus discussions are critical of the introduction of a DMJOP, partly due to the financial limits that HOAs already regularly encounter. They would prefer to see more attention paid to the formal requirements of the MJOP, which can also (in the future) include legally required sustainability measures, provided this also applies to owners who are not part of an HOA.