

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 4499

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DATE
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Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to real estate; prohibiting restrictions on home day care; amending
1.3 Minnesota Statutes 2023 Supplement, sections 515B.2-103; 515B.3-102; proposing
1.4 coding for new law in Minnesota Statutes, chapter 500.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. **[500.217] RESTRICTIONS ON CHILD CARE PROHIBITIONS.**

1.7 (a) Except as otherwise provided in this section and notwithstanding any covenant,
1.8 restriction, or condition contained in a deed, security instrument, homeowners association
1.9 document, or any other instrument affecting the transfer, sale of, or an interest in real
1.10 property, a private entity must not prohibit or refuse to permit the owner of a dwelling from
1.11 providing child care under a family and group family child care provider license under
1.12 chapter 245A, and Minnesota Rules, chapter 9502.

1.13 (b) For the purposes of this section, the following terms have the meanings given:

1.14 (1) "private entity" means a homeowners association, community association, or other
1.15 association that is subject to a homeowners association document; and

1.16 (2) "homeowners association document" means a document containing the declaration,
1.17 articles of incorporation, bylaws, or rules and regulations of a common interest community,
1.18 as defined in section 515B.1-103, regardless of whether the common interest community
1.19 is subject to chapter 515B, or a residential community that is not a common interest
1.20 community.

2.1 Sec. 2. Minnesota Statutes 2023 Supplement, section 515B.2-103, is amended to read:

2.2 **515B.2-103 CONSTRUCTION AND VALIDITY OF DECLARATION AND**
2.3 **BYLAWS.**

2.4 (a) All provisions of the declaration and bylaws are severable.

2.5 (b) The rule against perpetuities may not be applied to defeat any provision of the
2.6 declaration or this chapter, or any instrument executed pursuant to the declaration or this
2.7 chapter.

2.8 (c) In the event of a conflict between the provisions of the declaration and the bylaws,
2.9 the declaration prevails except to the extent that the declaration is inconsistent with this
2.10 chapter.

2.11 (d) The declaration and bylaws must comply with sections 500.215 ~~and~~, 500.216, and
2.12 500.217.

2.13 Sec. 3. Minnesota Statutes 2023 Supplement, section 515B.3-102, is amended to read:

2.14 **515B.3-102 POWERS OF UNIT OWNERS' ASSOCIATION.**

2.15 (a) Except as provided in subsections (b), (c), (d), (e), and (f) and subject to the provisions
2.16 of the declaration or bylaws, the association shall have the power to:

2.17 (1) adopt, amend and revoke rules and regulations not inconsistent with the articles of
2.18 incorporation, bylaws and declaration, as follows: (i) regulating the use of the common
2.19 elements; (ii) regulating the use of the units, and conduct of unit occupants, which may
2.20 jeopardize the health, safety or welfare of other occupants, which involves noise or other
2.21 disturbing activity, or which may damage the common elements or other units; (iii) regulating
2.22 or prohibiting animals; (iv) regulating changes in the appearance of the common elements
2.23 and conduct which may damage the common interest community; (v) regulating the exterior
2.24 appearance of the common interest community, including, for example, balconies and patios,
2.25 window treatments, and signs and other displays, regardless of whether inside a unit; (vi)
2.26 implementing the articles of incorporation, declaration and bylaws, and exercising the
2.27 powers granted by this section; and (vii) otherwise facilitating the operation of the common
2.28 interest community;

2.29 (2) adopt and amend budgets for revenues, expenditures and reserves, and levy and
2.30 collect assessments for common expenses from unit owners;

2.31 (3) hire and discharge managing agents and other employees, agents, and independent
2.32 contractors;

3.1 (4) institute, defend, or intervene in litigation or administrative proceedings (i) in its
3.2 own name on behalf of itself or two or more unit owners on matters affecting the common
3.3 elements or other matters affecting the common interest community or, (ii) with the consent
3.4 of the owners of the affected units on matters affecting only those units;

3.5 (5) make contracts and incur liabilities;

3.6 (6) regulate the use, maintenance, repair, replacement, and modification of the common
3.7 elements and the units;

3.8 (7) cause improvements to be made as a part of the common elements, and, in the case
3.9 of a cooperative, the units;

3.10 (8) acquire, hold, encumber, and convey in its own name any right, title, or interest to
3.11 real estate or personal property, but (i) common elements in a condominium or planned
3.12 community may be conveyed or subjected to a security interest only pursuant to section
3.13 515B.3-112, or (ii) part of a cooperative may be conveyed, or all or part of a cooperative
3.14 may be subjected to a security interest, only pursuant to section 515B.3-112;

3.15 (9) grant or amend easements for public utilities, public rights-of-way or other public
3.16 purposes, and cable television or other communications, through, over or under the common
3.17 elements; grant or amend easements, leases, or licenses to unit owners for purposes authorized
3.18 by the declaration; and, subject to approval by a vote of unit owners other than declarant
3.19 or its affiliates, grant or amend other easements, leases, and licenses through, over or under
3.20 the common elements;

3.21 (10) impose and receive any payments, fees, or charges for the use, rental, or operation
3.22 of the common elements, other than limited common elements, and for services provided
3.23 to unit owners;

3.24 (11) impose interest and late charges for late payment of assessments and, after notice
3.25 and an opportunity to be heard before the board or a committee appointed by it, levy
3.26 reasonable fines for violations of the declaration, bylaws, and rules and regulations of the
3.27 association, provided that attorney fees and costs must not be charged or collected from a
3.28 unit owner who disputes a fine or assessment and, if after the homeowner requests a hearing
3.29 and a hearing is held by the board or a committee of the board, the board does not adopt a
3.30 resolution levying the fine or upholding the assessment against the unit owner or owner's
3.31 unit;

4.1 (12) impose reasonable charges for the review, preparation and recordation of
4.2 amendments to the declaration, resale certificates required by section 515B.4-107, statements
4.3 of unpaid assessments, or furnishing copies of association records;

4.4 (13) provide for the indemnification of its officers and directors, and maintain directors'
4.5 and officers' liability insurance;

4.6 (14) provide for reasonable procedures governing the conduct of meetings and election
4.7 of directors;

4.8 (15) exercise any other powers conferred by law, or by the declaration, articles of
4.9 incorporation or bylaws; and

4.10 (16) exercise any other powers necessary and proper for the governance and operation
4.11 of the association.

4.12 (b) Notwithstanding subsection (a) the declaration or bylaws may not impose limitations
4.13 on the power of the association to deal with the declarant which are more restrictive than
4.14 the limitations imposed on the power of the association to deal with other persons.

4.15 (c) An association that levies a fine pursuant to subsection (a)(11), or an assessment
4.16 pursuant to section 515B.3-115(g), or 515B.3-1151(g), must provide a dated, written notice
4.17 to a unit owner that:

4.18 (1) states the amount and reason for the fine or assessment;

4.19 (2) for fines levied under section 515B.3-102(a)(11), specifies: (i) the violation for which
4.20 a fine is being levied and the date of the levy; and (ii) the specific section of the declaration,
4.21 bylaws, rules, or regulations allegedly violated;

4.22 (3) for assessments levied under section 515B.3-115(g) or 515B.3-1151(g), identifies:
4.23 (i) the damage caused; and (ii) the act or omission alleged to have caused the damage;

4.24 (4) states that all unpaid fines and assessments are liens which, if not satisfied, could
4.25 lead to foreclosure of the lien against the owner's unit;

4.26 (5) describes the unit owner's right to be heard by the board or a committee appointed
4.27 by the board;

4.28 (6) states that if the assessment, fine, late fees, and other allowable charges are not paid,
4.29 the amount may increase as a result of the imposition of attorney fees and other collection
4.30 costs; and

4.31 (7) informs the unit owner that homeownership assistance is available from the Minnesota
4.32 Homeownership Center.

5.1 (d) Notwithstanding subsection (a), powers exercised under this section must comply
5.2 with sections 500.215 ~~and~~, 500.216, and 500.217.

5.3 (e) Notwithstanding subsection (a)(4) or any other provision of this chapter, the
5.4 association, before instituting litigation or arbitration involving construction defect claims
5.5 against a development party, shall:

5.6 (1) mail or deliver written notice of the anticipated commencement of the action to each
5.7 unit owner at the addresses, if any, established for notices to owners in the declaration and,
5.8 if the declaration does not state how notices are to be given to owners, to the owner's last
5.9 known address. The notice shall specify the nature of the construction defect claims to be
5.10 alleged, the relief sought, and the manner in which the association proposes to fund the cost
5.11 of pursuing the construction defect claims; and

5.12 (2) obtain the approval of owners of units to which a majority of the total votes in the
5.13 association are allocated. Votes allocated to units owned by the declarant, an affiliate of the
5.14 declarant, or a mortgagee who obtained ownership of the unit through a foreclosure sale
5.15 are excluded. The association may obtain the required approval by a vote at an annual or
5.16 special meeting of the members or, if authorized by the statute under which the association
5.17 is created and taken in compliance with that statute, by a vote of the members taken by
5.18 electronic means or mailed ballots. If the association holds a meeting and voting by electronic
5.19 means or mailed ballots is authorized by that statute, the association shall also provide for
5.20 voting by those methods. Section 515B.3-110(c) applies to votes taken by electronic means
5.21 or mailed ballots, except that the votes must be used in combination with the vote taken at
5.22 a meeting and are not in lieu of holding a meeting, if a meeting is held, and are considered
5.23 for purposes of determining whether a quorum was present. Proxies may not be used for a
5.24 vote taken under this paragraph unless the unit owner executes the proxy after receipt of
5.25 the notice required under subsection (e)(1) and the proxy expressly references this notice.

5.26 (f) The association may intervene in a litigation or arbitration involving a construction
5.27 defect claim or assert a construction defect claim as a counterclaim, crossclaim, or third-party
5.28 claim before complying with subsections (e)(1) and (e)(2) but the association's complaint
5.29 in an intervention, counterclaim, crossclaim, or third-party claim shall be dismissed without
5.30 prejudice unless the association has complied with the requirements of subsection (e) within
5.31 90 days of the association's commencement of the complaint in an intervention or the
5.32 assertion of the counterclaim, crossclaim, or third-party claim.