

**"[CHAPTER 502C]
FAMILY CHILD CARE HOMES**

Section

502C-1 Definitions

502C-2 Family child care homes; authorization

" **§502C-1 Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

"Apartment" means a part of the property of a condominium project intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

"Association" means:

- (1) All of the apartment owners acting as a group in accordance with the bylaws and declaration; and
- (2) A nonprofit, incorporated, or unincorporated organization upon which responsibilities are imposed and to which authority is granted in a declaration that governs a planned community,

and includes any other governing body of a residential community with common elements and common interests.

"Common elements" or "common area" means:

- (1) The same as "common elements" as defined in section 514A-3 or 514B-3; and
- (2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

"Condominium" means the ownership of single apartments, with common elements, located on property within a condominium property regime.

"Declaration" means:

- (1) The instrument by which property is submitted to chapter 514A or 514B, as provided in those chapters, and such declaration as from time to time amended; and
- (2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

"Family child care home" means a private residence, including an apartment, unit, or townhouse, where care may be provided for three to no more than six children, who are

unrelated to the caregiver by blood, marriage, or adoption at any given time.

"Planned community" has the same meaning as set forth in section 421J-2.

"Townhouse" means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be freestanding structures, including townhouse projects that are created pursuant to chapters 514A, 514B, and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association; provided that "townhouse" shall not include any apartments or units located in a building of more than three stories.

"Unit" means a physical portion of a planned community designated for separate ownership or occupancy. [L 1999, c 242, pt of §1, §8(2); am L 2001, c 225, §3; am L 2004, c 164, §19; am L 2005, c 20, §1; am L 2008, c 28, §13]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

" **§502C-2 Family child care homes; authorization.** (a) No association of a townhouse project shall prohibit the operation of a family child care home; provided that the family child care home:

- (1) Is operated by the owner-occupant of the townhouse in which the family child care home is located;
- (2) Is operated in a ground floor unit with a ground floor entry; and
- (3) Complies with subsections (b) and (c).

An association of a townhouse project may impose on a family child care home conditions and limitations as set forth in subsection (e).

(b) Every family child care home located in a townhouse project shall give the association written notice of intent to commence operation as a family child care home no later than ninety days prior to commencing operation. Family child care homes that fail to give such written notice shall not commence operation. Any family child care home existing on July 2, 2001, shall notify the association within sixty days of July 2, 2001, if the home has not previously done so. The notification does not need to be notarized. If a family child care home commences or continues operation without providing notice within the prescribed time limit required under this section:

- (1) The association shall be absolved of any and all liability for the operation of the family child care home; and
- (2) The family child care home shall indemnify, save, and hold the association harmless from and against all claims and actions and all costs and expenses arising from the operation of the family child care home.

(c) A family child care home located in a townhouse project shall comply with the Equal Opportunity for Individuals with Disabilities Act (Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended). The family child care operator shall be responsible for all physical modifications to the premises, both within the unit and in the common areas, that are readily achievable, and that would allow for the full participation of a child or parent with a physical disability, unless other site arrangements were made and were equally effective. If modifications or improvements are required to the common elements, the operator of the family child care home shall obtain approval of the modifications or improvements from the association before undertaking any construction and the operator of the family child care home shall pay for any such modification.

For the purposes of this subsection, "readily achievable" means easily accomplishable and able to be carried out without much difficulty or expense.

(d) An association may authorize the use of an apartment or unit as a family child care home by obtaining the approval of a majority of the owners of the condominium project or planned community, where majority is defined in the association bylaws or other association documents, or by any other method specified in the association bylaws or other association documents. The family child care home authorized shall be subject to the declaration, bylaws, house rules, and any amendments pertaining to the condominium project or planned community; provided that any declaration, bylaw, or house rule provision prohibiting or limiting the use of the apartment unit for family child care purposes shall be invalid.

(e) An association may:

- (1) Impose conditions on the establishment or operation of a family child care home that are necessary for association immunity from liability under section 663-1.53, including:
 - (A) Requiring the family child care home to comply with the Americans with Disabilities Act;
 - (B) Limiting the number of apartments or units used as a family child care home to no less than one per cent, and no more than three per cent, of the

- total number of apartments or units in any townhouse project;
- (C) Limiting family child care homes that may be established to those operated by an owner-occupant; and
 - (D) Restricting family child care homes to the fourth or lower floor; and
- (2) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to:
- (A) Indemnify, hold harmless, and defend the association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home as well as to common elements that are traversed by persons going to and from the family child care home;
 - (B) Reimburse the association for the amount of any increase in the association's liability insurance premiums attributable by the insurer to the operation of the family child care home;
 - (C) Require the parent, guardian, and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the association; provided that this waiver need not be notarized; and
 - (D) Obtain liability insurance to cover the family child care home and the common elements that meets the approval of the association and that names the association as an additional named insured, for liability claims arising solely from the operation of the child care business; provided that:
 - (i) The policy limit requirement shall not exceed \$1,000,000 in coverage per provider; and
 - (ii) The liability policy of the family child care home shall be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian, or caretaker of a child subject to the care of the family child care home.

In the event that coverage for the family child care home is excluded from the association policy and an alternative source of liability coverage for the same risk or risks is unavailable, the association may

prohibit the establishment of the family child care home.

(f) Associations shall be immune from liability for the operation of the family child care home as provided under section 663-1.53. [L 1999, c 242, pt of §1, §8(2); am L 2001, c 225, §§2, 3; am L 2005, c 20, §1]