

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

S.F. No. 4138

(SENATE AUTHORS: SEEBERGER)

DATE
02/22/2024

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Introduction and first reading
Referred to Commerce and Consumer Protection

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to commerce; establishing consumer protections with respect to residential
1.3 real estate; amending Minnesota Statutes 2022, section 45.011, subdivision 1;
1.4 proposing coding for new law in Minnesota Statutes, chapters 65A; 513; repealing
1.5 Minnesota Statutes 2022, section 332.3351.

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

1.7 Section 1. Minnesota Statutes 2022, section 45.011, subdivision 1, is amended to read:

1.8 Subdivision 1. **Scope.** As used in chapters 45 to 80C, 80E to 83, 155A, 216C, 332, 332A,
1.9 332B, 345, and 359, and sections 81A.22 to 81A.37; 123A.21, subdivision 7, paragraph
1.10 (a), clause (23); 123A.25; 325D.30 to 325D.42; 326B.802 to 326B.885; 386.62 to 386.78;
1.11 471.617; ~~and 471.982;~~ and 513.80, unless the context indicates otherwise, the terms defined
1.12 in this section have the meanings given them.

1.13 Sec. 2. [65A.3025] CONDOMINIUM AND TOWNHOUSE POLICIES;

1.14 COORDINATION OF BENEFITS FOR LOSS ASSESSMENT.

1.15 (a) If a loss assessment is issued by an association, as defined under section 515B.1-103,
1.16 to an individual unit owner for a covered loss to the property listed on the policy, and if the
1.17 unit owner at the time of the loss is the owner of the property in question, the insurance
1.18 policy in force at the time of loss must pay the assessment, up to the limits provided in the
1.19 policy.

1.20 (b) If the unit owner at the time of the loss assessment is different than the unit owner
1.21 at the time of the loss, the insurance policy in force at the time of the loss assessment must
1.22 pay the assessment, up to the limit provided in the policy. The insurer may require evidence

2.1 documenting that the transfer of ownership occurred prior to the assessment before the
2.2 insurer affords coverage for the assessment.

2.3 **Sec. 3. [513.80] RESIDENTIAL REAL ESTATE SERVICE AGREEMENTS;**
2.4 **UNFAIR SERVICE AGREEMENTS.**

2.5 Subdivision 1. Definitions. (a) For purposes of this section, the following terms have
2.6 the meanings given.

2.7 (b) "County recorder" has the meaning given in section 13.045, subdivision 1.

2.8 (c) "Person" means natural persons, corporations both foreign and domestic, trusts,
2.9 partnerships both limited and general, incorporated or unincorporated associations,
2.10 companies, business entities, and any other legal entity or any other group associated in fact
2.11 although not a legal entity or any agent, assignee, heir, employee, representative, or servant
2.12 thereof.

2.13 (d) "Record" or "recording" means placement of a document or instrument in the official
2.14 county public land records.

2.15 (e) "Residential real property" means real property that is: (1) located in Minnesota; (2)
2.16 used primarily for personal, family, or household purposes; and (3) is improved by one to
2.17 four dwelling units.

2.18 (f) "Service agreement" means a contract under which a person agrees to provide services
2.19 in connection with the purchase or sale of residential real property.

2.20 (g) "Service provider" means an individual or entity that provides services to a person.

2.21 Subd. 2. Unfair service agreements; characteristics. (a) A service agreement subject
2.22 to this section is unfair if any part of the agreement provides an exclusive right to a service
2.23 provider for a term in excess of one year after the time the service agreement is entered into
2.24 and:

2.25 (1) purports to run with the land or to be binding on future owners of interests in the real
2.26 property;

2.27 (2) allows for assignment of the right to provide service without notice to and consent
2.28 of the residential real property's owner; or

2.29 (3) the service agreement is recorded or purports to create a lien, encumbrance, or other
2.30 real property security interest.

2.31 (b) The following are not unfair service agreements under this section:

3.1 (1) a home warranty or similar product that covers the cost of maintaining a major home
3.2 system or appliance for a fixed period;

3.3 (2) an insurance contract;

3.4 (3) a mortgage loan or a commitment to make or receive a mortgage loan;

3.5 (4) an option or right of refusal to purchase a residential real property;

3.6 (5) a declaration of any covenants, conditions, or restrictions created in the formation
3.7 of a homeowners association, a group of condominium owners, or other common interest
3.8 community or an amendment to the covenants, conditions, or restrictions;

3.9 (6) a maintenance or service agreement entered by a homeowners association in a
3.10 common interest community;

3.11 (7) a security agreement governed by chapter 336 that relates to the sale or rental of
3.12 personal property or fixtures; or

3.13 (8) a contract with a gas, water, sewer, electric, telephone, cable, or other utility service
3.14 provider.

3.15 (c) This section does not impair any lien right granted under Minnesota law or that is
3.16 judicially imposed.

3.17 Subd. 3. **Recording prohibited.** (a) A person is prohibited from: (1) presenting or
3.18 sending an unfair service agreement or notice or memorandum of an unfair service agreement
3.19 to any county recorder to record; or (2) causing an unfair service agreement or notice or
3.20 memorandum of an unfair service agreement to be recorded by a county recorder.

3.21 (b) If a county recorder records an unfair service agreement, the county recorder does
3.22 not incur liability.

3.23 (c) If an unfair service agreement is recorded, the recording does not create a lien or
3.24 provide constructive notice to any third party, bona fide purchaser, or creditor.

3.25 Subd. 4. **Unfair service agreements unenforceable.** A service agreement that is unfair
3.26 under this section is unenforceable and does not create a contractual obligation or relationship.
3.27 Any waiver of a consumer right, including a right to trial by jury, in an unfair service
3.28 agreement is void.

3.29 Subd. 5. **Unfair service agreements; solicitation.** Encouraging any consumer to enter
3.30 into an unfair service agreement by any service provider constitutes an unfair method of
3.31 competition and an unfair or deceptive act or practice under section 82.81, subdivision 12,
3.32 paragraph (c).

4.1 Subd. 6. **Enforcement authority.** (a) This section may be enforced by the attorney
4.2 general under section 8.31, except that any private cause of action brought under section
4.3 8.31 is subject to the limitation under subdivision 7, paragraph (d).

4.4 (b) The commissioner of commerce may enforce this section with respect to a service
4.5 provider's real estate license.

4.6 Subd. 7. **Remedies** (a) A consumer that is party to an unfair service agreement related
4.7 to residential real property or a person with an interest in the property that is the subject of
4.8 that agreement may bring an action in district court in the county where the property is
4.9 located to obtain a declaratory judgment that the agreement is unenforceable and to recover
4.10 any other damages, costs, and attorney fees as may be proven.

4.11 (b) If an unfair service agreement or a notice or memorandum of an unfair service
4.12 agreement is recorded against any residential real property, any judgment obtained under
4.13 this section, after being certified by the clerk having custody of the unfair service agreement
4.14 or notice or memorandum of the unfair service agreement, may be recorded and indexed
4.15 against the real property encumbered or clouded by the unfair service agreement.

4.16 (c) The remedies provided under this section are not exclusive and do not reduce any
4.17 other rights or remedies a party may have in equity or in law.

4.18 (d) No private action may be brought under this section more than two years after the
4.19 date the term printed in the unfair service agreement expires.

4.20 **Sec. 4. REPEALER.**

4.21 Minnesota Statutes 2022, section 332.3351, is repealed.

332.3351 EXEMPTION FROM LICENSURE.

A collection agency shall be exempt from the licensing and registration requirements of this chapter if all of the following conditions are met:

- (1) the agency is located in another state that regulates and licenses collection agencies, but does not require a Minnesota collection agency to obtain a license to collect debts in the agency's state if the agency's collection activities are limited in the same manner;
- (2) the agency's collection activities are limited to collecting debts not incurred in this state from consumers located in this state; and
- (3) the agency's collection activities in Minnesota are conducted by means of interstate communications, including telephone, mail, electronic mail, or facsimile transmission.