

096669784

HOUSE BILL NO. 1900

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 54.1-2351 and 54.1-2352 of the Code of Virginia, relating to the Common Interest Community Board; powers; hearings.

Patrons—Watts, Scott, J.M. and Sickles

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:**1. That §§ 54.1-2351 and 54.1-2352 of the Code of Virginia are amended and reenacted as follows:**

§ 54.1-2351. General powers and duties of Board concerning associations.

A. The Board may adopt, amend, and repeal rules and regulations and issue orders consistent with and in furtherance of the objectives of this chapter, but the Board may not intervene in the internal activities of an association except to the extent necessary to prevent or cure violations of this chapter or of the chapter pursuant to which the association is created. The Board may prescribe forms and procedures for submitting information to the Board.

B. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders, the Board without prior administrative proceedings may bring suit in the appropriate court to enjoin that act or practice or for other appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law exists.

C. The Board may intervene in any action or suit involving a violation by a declarant or a developer of a time-share project of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders.

D. The Board may accept grants-in-aid from any governmental source and may contract with agencies charged with similar functions in this or other jurisdictions in furtherance of the objectives of this chapter.

E. The Board may cooperate with agencies performing similar functions in this and other jurisdictions to develop uniform filing procedures and forms, uniform disclosure standards, and uniform administrative practices, and may develop information that may be useful in the discharge of the Board's duties.

F. In issuing any cease and desist order the Board shall state the basis for the adverse determination and the underlying facts.

G. Without limiting the remedies that may be obtained under this chapter, the Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of this section and may institute proceedings in equity to enjoin any person, partnership, corporation, or any other entity violating this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 21 (§ 55-360 et seq.), or 24 (§ 55-424 et seq.) of Title 55, or any of the Board's regulations or orders. Such proceedings shall be brought in the name of the Commonwealth by the Board in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

H. The Board may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529 of not more than \$1,000 per violation against any person who violates any provision of this section. In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation. No monetary penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The penalty may be sued for and recovered in the name of the Commonwealth.

I. The Board, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), may assess a monetary penalty to be paid to the Common Interest Community Management Information Fund established pursuant to § 55-529 of not more than \$1,000 against any person who files one or more complaints with the Board or the Common Interest Community Ombudsman established pursuant to § 55-530 that the Board in its sole discretion determines to be without merit or filed with the intent to harass or intimidate any person or entity.

§ 54.1-2352. Cease and desist orders.

A. The Board may issue an order requiring the governing board of the association to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the Board will carry out the purposes of this chapter, if the Board determines after notice and hearing that the

INTRODUCED

HB1900

59 governing board of an association has:

60 1. Violated any statute or regulation governing the association regulated pursuant to this chapter,
61 including engaging in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.),
62 21 (§ 55-360 et seq.), 24 (§ 55-424 et seq.), or 26 (§ 55-508 et seq.) of Title 55, or any of the Board's
63 regulations or orders;

64 2. Failed to register as an association or to file an annual report as required by statute or regulation;

65 3. Materially misrepresented facts in an application for registration or an annual report; or

66 4. Willfully refused to furnish the Board information or records required or requested pursuant to
67 statute or regulation.

68 B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed
69 by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the
70 temporary cease and desist order, the Board shall give notice of the proposal to issue a temporary cease
71 and desist order to the person. Every temporary cease and desist order shall include in its terms a
72 provision that upon request a hearing will be held promptly to determine whether or not it becomes
73 permanent.

74 C. Any hearing held by the Board pursuant to this section shall be conducted within the planning
75 district in which the association is located.