

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 605

An Act to amend and reenact §§ 54.1-2346, 54.1-2347, 54.1-2353, 55-79.74:1, 55-79.89, 55-79.90, 55-79.98, 55-79.99, 55-391.1, 55-396, and 55-399 of the Code of Virginia, relating to the Department of Professional and Occupational Regulation; common interest communities; powers of certain regulatory boards and programs.

[S 983]

Approved March 25, 2011

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2346, 54.1-2347, 54.1-2353, 55-79.74:1, 55-79.89, 55-79.90, 55-79.98, 55-79.99, 55-391.1, 55-396, and 55-399 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-2346. License required; certification of employees; renewal; provisional license.

A. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community on or after January 1, 2009, shall hold a valid license issued in accordance with the provisions of this chapter prior to engaging in such management services.

B. Unless exempted by § 54.1-2347, any person, partnership, corporation, or other entity offering management services to a common interest community without being licensed in accordance with the provisions of this chapter, shall be subject to the provisions of § 54.1-111.

C. On or after July 1, 2011, it shall be a condition of the issuance or renewal of the license of a common interest community manager that all employees of the common interest community manager who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate issued by the Board certifying the person possesses the character and minimum skills to engage properly in the provision of management services to a common interest community or shall be under the direct supervision of a certified employee of such common interest community manager. A common interest community manager shall notify the Board if a certificated employee is discharged or in any way terminates his active status with the common interest community manager.

D. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager shall obtain and maintain a blanket fidelity bond or employee dishonesty insurance policy insuring the common interest community manager against losses resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall include coverage for losses of clients of the common interest community manager resulting from theft or dishonesty committed by the officers, directors, and persons employed by the common interest community manager. Such bond or insurance policy shall provide coverage in an amount equal to the lesser of \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be \$10,000.

E. It shall be a condition of the issuance or renewal of the license of a common interest community manager that the common interest community manager certifies to the Board (i) that the common interest community manager is in good standing and authorized to transact business in Virginia; (ii) that the common interest community manager has established a code of conduct for the officers, directors, and persons employed by the common interest community manager to protect against conflicts of interest; (iii) that the common interest community manager provides all management services pursuant to written contracts with the associations to which such services are provided; (iv) that the common interest community manager has established a system of internal accounting controls to manage the risk of fraud or illegal acts; and (v) that an independent certified public accountant reviews or audits the financial statements of the common interest community manager at least annually in accordance with standards established by the American Institute of Certified Public Accountants or by any successor standard-setting authorities.

F. The Board shall issue a provisional license to any person, partnership, corporation, or other entity offering management services to a common interest community on or before December 31, 2008, who makes application for licensure prior to January 1, 2009. Such provisional license will expire on June 30, ~~2011~~ 2012, and ~~may~~ shall not be renewed. This subsection shall not be construed to limit the powers and authority of the Board.

§ 54.1-2347. Exceptions and exemptions generally.

A. The provisions of this chapter shall not be construed to prevent or prohibit:

1. An employee of a duly licensed common interest community manager from providing management services within the scope of the employee's employment by the duly licensed common interest community manager;
2. An employee of an association from providing management services for that association's common interest community;
3. A resident of a common interest community acting without compensation from providing management services for that common interest community;
4. A resident of a common interest community from providing bookkeeping, billing, or record keeping services for that common interest community for compensation, provided the *blanket* fidelity bond *or employee dishonesty policy* maintained by the association insures the association against losses resulting from theft or dishonesty committed by such person;
5. A member of the governing board of an association acting without compensation from providing management services for that association's common interest community;
6. A person acting as a receiver or trustee in bankruptcy in the performance of his duties as such or any person acting under order of any court from providing management services for a common interest community;
7. A duly licensed attorney-at-law from representing an association or a common interest community manager in any business that constitutes the practice of law;
8. A duly licensed certified public accountant from providing bookkeeping or accounting services to an association or a common interest community manager;
9. A duly licensed real estate broker or agent from selling, leasing, renting, or managing lots within a common interest community; or
10. An association, exchange agent, exchange company, managing agent, or managing entity of a time-share project registered pursuant to the Virginia Real Estate Time-Share Act (§ 55-360 et seq.) from providing management services for such time-share project.

B. A licensee of the Board shall comply with the Board's regulations, notwithstanding the fact that the licensee would be otherwise exempt from licensure under subsection A. Nothing in this subsection shall be construed to require a person to be licensed in accordance with this chapter if he would be otherwise exempt from such licensure.

§ 54.1-2353. Protection of the interests of associations; appointment of receiver for common interest community manager.

A. A common interest community manager owes a fiduciary duty to the associations to which it provides management services with respect to the manager's handling the funds or the records of each association. All funds deposited with the common interest community manager shall be handled in a fiduciary capacity and shall be kept in a separate fiduciary trust account or accounts in an FDIC-insured financial institution separate from the assets of the common interest community manager. The funds shall be the property of the association and shall be segregated for each depository in the records of the common interest community manager in a manner that permits the funds to be identified on an association basis. All records having administrative or fiscal value to the association that a common interest community manager holds, maintains, compiles, or generates on behalf of a common interest community are the property of the association. A common interest community manager may retain and dispose of association records in accordance with a policy contained in the contract between the common interest community manager and the association. Within a reasonable time after a written request for any such records, the common interest community manager shall provide copies of the requested records to the association at the association's expense. The common interest community manager shall return all association records that it retains and any originals of legal instruments or official documents that are in the possession of the common interest community manager to the association within a reasonable time after termination of the contract for management services without additional cost to the association. Records maintained in electronic format may be returned in such format.

B. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may submit an ex parte petition to the circuit court of the city or county wherein the common interest community manager maintains an office or is doing business for the issuance of an order authorizing the immediate inspection by and production to representatives of the petitioner of any records, documents, and physical or other evidence belonging to the subject common interest community manager. The court may issue such order without notice to the common interest community manager if the petition, supported by affidavit of the petitioner and such other evidence as the court may require, shows reasonable cause to believe that such action is required to prevent immediate loss of property of one or more of the associations to which the subject common interest community manager provides management services. The court may also temporarily enjoin further activity by the common interest community manager and take such further action as shall be necessary to conserve, protect, and disburse the funds involved, including the appointment of a receiver. The papers filed with the court pursuant to

this subsection shall be placed under seal.

C. If the Board has reasonable cause to believe that a common interest community manager is unable to properly discharge its fiduciary responsibilities to an association to which it provides management services, the Board may file a petition with the circuit court of the county or city wherein the subject common interest community manager maintains an office or is doing business. The petition may seek the following relief: (i) an injunction prohibiting the withdrawal of any bank deposits or the disposition of any other assets belonging to or subject to the control of the subject common interest community manager; and (ii) the appointment of a receiver for all or part of the funds or property of the subject common interest community manager. The subject common interest community manager shall be given notice of the time and place of the hearing on the petition and an opportunity to offer evidence. The court, in its discretion, may require a receiver appointed pursuant to this section to post bond, with or without surety. The papers filed with the court under this subsection shall be placed under seal until such time as the court grants an injunction or appoints a receiver. The court may issue an injunction, appoint a receiver, or provide such other relief as the court may consider proper if, after a hearing, the court finds that such relief is necessary or appropriate to prevent loss of property of one or more of the associations to which the subject common interest community manager provides management services.

D. In any proceeding under subsection C, any person or entity known to the Board to be indebted to or having in his possession property, real or personal, belonging to or subject to the control of the subject common interest community manager's business and which property the Board reasonably believes may become part of the receivership assets, shall be served with a copy of the petition and notice of the time and place of the hearing.

E. The court shall describe the powers and duties of the receiver in its appointing order, which may be amended from time to time. The receiver shall, unless otherwise ordered by the court in the appointing order, (i) prepare and file with the Board a list of all associations managed by the subject common interest community manager; (ii) notify in writing all of the associations to which the subject common interest community manager provides management services of the appointment, and take whatever action the receiver deems appropriate to protect the interests of the associations until such time as the associations have had an opportunity to obtain a successor common interest community manager; (iii) facilitate the transfer of records and information to such successor common interest community manager; (iv) identify and take control of all bank accounts, including without limitation trust and operating accounts, over which the subject common interest community manager had signatory authority in connection with its management business; (v) prepare and submit an accounting of receipts and disbursements and account balances of all funds under the receiver's control for submission to the court within four months of the appointment and annually thereafter until the receivership is terminated by the court; (vi) attempt to collect any accounts receivable related to the subject common interest community manager's business; (vii) identify and attempt to recover any assets wrongfully diverted from the subject common interest community manager's business, or assets acquired with funds wrongfully diverted from the subject common interest community manager's business; (viii) terminate the subject common interest community manager's business; (ix) reduce to cash all of the assets of the subject common interest community manager; (x) determine the nature and amount of all claims of creditors of the subject common interest community manager, including associations to which the subject common interest community manager provided management services; and (xi) prepare and file with the court a report of such assets and claims proposing a plan for the distribution of funds in the receivership to such creditors in accordance with the provisions of subsection F.

F. Upon the court's approval of the receiver's report referenced in subsection E, at a hearing after such notice as the court may require to creditors, the receiver shall distribute the assets of the common interest community manager and funds in the receivership first to clients whose funds were or ought to have been held in a fiduciary capacity by the subject common interest community manager, then to the receiver for fees, costs, and expenses awarded pursuant to subsection G, and thereafter to the creditors of the subject common interest community manager, and then to the subject common interest community manager or its successors in interest.

G. A receiver appointed pursuant to this section shall be entitled, upon proper application to the court in which the appointment was made, to recover an award of reasonable fees, costs, and expenses. If there are not sufficient nonfiduciary funds to pay the award, then the shortfall shall be paid by the Common Interest Community Management Information Recovery Fund as a cost of administering the Fund pursuant to ~~§ 55-530~~ § 55-530.1, to the extent that the said Fund has funds available. The Fund shall have a claim against the subject common interest community manager for the amount paid.

H. The court may determine whether any assets under the receiver's control should be returned to the subject common interest community manager.

I. If the Board shall find that any common interest community manager is insolvent, that its merger into another common interest community manager is desirable for the protection of the associations to which such common interest community manager provides management services, and that an emergency exists, and, if the board of directors of such insolvent common interest community manager shall approve a plan of merger of such common interest community manager into another common interest

community manager, compliance with the requirements of § 13.1-718 shall be dispensed with as to such insolvent common interest community manager and the approval by the Board of such plan of merger shall be the equivalent of approval by the holders of more than two-thirds of the outstanding shares of such insolvent common interest community manager for all purposes of Article 12 (§ 13.1-715.1 et seq.) of Chapter 9 of Title 13.1. If the Board finds that a common interest community manager is insolvent, that the acquisition of its assets by another common interest community manager is in the best interests of the associations to which such common interest community manager provides management services, and that an emergency exists, it may, with the consent of the boards of directors of both common interest community managers as to the terms and conditions of such transfer, including the assumption of all or certain liabilities, enter an order transferring some or all of the assets of such insolvent common interest community manager to such other common interest community manager, and no compliance with the provisions of §§ 13.1-723 and 13.1-724 shall be required, nor shall §§ 13.1-730 through 13.1-741 be applicable to such transfer. In the case either of such a merger or of such a sale of assets, the Board shall provide that prompt notice of its finding of insolvency and of the merger or sale of assets be sent to the stockholders of record of the insolvent common interest community manager for the purpose of providing such shareholders an opportunity to challenge the finding that the common interest community manager is insolvent. The relevant books and records of such insolvent common interest community manager shall remain intact and be made available to such shareholders for a period of 30 days after such notice is sent. The Board's finding of insolvency shall become final if a hearing before the Board is not requested by any such shareholder within such 30-day period. If, after such hearing, the Board finds that such common interest community manager was solvent, it shall rescind its order entered pursuant to this subsection and the merger or transfer of assets shall be rescinded. But if, after such hearing, the Board finds that such common interest community manager was insolvent, its order shall be final.

J. The provisions of this chapter are declared to be remedial. The purpose of this chapter is to protect the interests of associations adversely affected by common interest community managers who have breached their fiduciary duty. The provisions of this chapter shall be liberally administered in order to protect those interests and thereby the public's interest in the quality of management services provided by Virginia common interest community managers.

§ 55-79.74:1. Books, minutes and records; inspection.

A. The declarant, the managing agent, the unit owners' association, or the person specified in the bylaws of the association shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the maintenance and repair expenses of the common elements and any other expenses incurred by or on behalf of the association. Subject to the provisions of subsections B, C and D, upon request, any unit owner shall be provided a copy of such records and minutes. All financial books and records shall be kept in accordance with generally accepted accounting practices.

B. Subject to the provisions of subsection C, all books and records kept by or on behalf of the unit owners' association, including, but not limited to, the unit owners' association membership list, addresses and aggregate salary information of unit owners' association employees, shall be available for examination and copying by a unit owner in good standing or his authorized agent so long as the request is for a proper purpose related to his membership in the unit owners' association, and not for pecuniary gain or commercial solicitation. This right of examination shall exist without reference to the duration of membership and may be exercised (i) only during reasonable business hours or at a mutually convenient time and location and (ii) upon five days' written notice reasonably identifying the purpose for the request and the specific books and records of the unit owners' association requested.

C. Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and contract purchasers to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if such books and records concern:

1. Personnel matters relating to specific, identified persons or a person's medical records;
2. Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
3. Pending or probable litigation. Probable litigation means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party;
4. Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated pursuant to § 55-513 by the executive organ;
5. Communications with legal counsel which relates to subdivisions 1 through 4 or which is protected by the attorney-client privilege or the attorney work product doctrine;
6. Disclosure of information in violation of law;
7. Meeting minutes or other confidential records of an executive session of the executive organ held pursuant to subsection C of § 55-79.75;
8. Documentation, correspondence or management or executive organ reports compiled for or on behalf of the unit owners' association or the executive organ by its agents or committees for

consideration by the executive organ in executive session; or

9. Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

D. Prior to providing copies of any books and records, the unit owners' association may impose and collect a charge, reflecting the reasonable costs of materials and labor, not to exceed the actual costs thereof.

§ 55-79.89. Application for registration; fee.

A. The application for registration of the condominium shall be filed as prescribed by the agency's regulations and shall contain the following documents and information:

1. An irrevocable appointment of the agency to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative *if nonresidents of the Commonwealth*;

2. The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the condominium by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the form, date, and jurisdiction or organization; and the address of each of its offices in this Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant or the condominium as of a specified date within 30 days of the filing of the application;

5. A statement, in a form acceptable to the agency, of the condition of the title to the condominium project including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer or director of the applicant or owner, or by other evidence of title acceptable to the agency;

6. Copies of the instruments which will be delivered to a purchaser to evidence his interest in the unit and of the contracts and other agreements which a purchaser will be required to agree to or sign;

7. Copies of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or a part of the condominium;

8. A statement of the zoning and other governmental regulations affecting the use of the condominium, including the site plans and building permits and their status, and also of any existing tax and existing or proposed special taxes or assessments which affect the condominium;

9. A narrative description of the promotional plan for the disposition of the units in the condominium;

10. Plats and plans of the condominium that comply with the provisions of § 55-79.58 other than the certification requirements thereof, and which show all units and buildings containing units to be built anywhere within the submitted land other than within the boundaries of any convertible lands, except that the agency may establish by regulation or order requirements in lieu of the provisions of § 55-79.58 for plats and plans of a condominium located outside this Commonwealth;

11. The proposed public offering statement;

12. Any bonds required to be posted pursuant to the provisions of this chapter; and

13. Any other information, including any current financial statement, which the agency by its regulations requires for the protection of purchasers.

B. If the declarant registers additional units to be offered for disposition in the same condominium he may consolidate the subsequent registration with any earlier registration offering units in the condominium for disposition under the same promotional plan.

C. The declarant shall immediately report any material changes in the information contained in an application for registration.

D. Each application shall be accompanied by a fee in an amount established by the agency pursuant to § 54.1-113. All fees shall be remitted by the agency to the State Treasurer, and shall be placed to the credit of the Common Interest Community Management Information Fund established pursuant to § 55-529.

§ 55-79.90. Public offering statement; condominium securities.

A. A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules *and regulations* and shall include the following:

1. The name and principal address of the declarant and the condominium;

2. A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

3. Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the

condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

4. Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

5. A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

7. The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

8. Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection B of § 55-79.79;

9. A statement that the purchaser may cancel the disposition within ten days of delivery of the current public offering statement, or within ten days of the contract date of the disposition, whichever is later;

10. A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

11. If the units in the condominium are being subjected to a time-share instrument pursuant to § 55-367, the information required to be disclosed by § 55-374;

12. A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling;

14. A statement setting forth any restrictions, limitation, or prohibition on the right of a unit owner to display the flag of the United States, including, but not limited to reasonable restrictions as to the size, place, and manner of placement or display of such flag; and

15. Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

B. The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

§ 55-79.98. General powers and duties of the Common Interest Community Board.

(a) A. The agency shall prescribe reasonable rules *and regulations* which shall be adopted, amended or repealed in compliance with law applicable to the administrative procedure of agencies of government. The rules *and regulations* shall include but not be limited to provisions for advertising standards to assure full and fair disclosure; provisions for operating procedures; and other rules *and regulations* as are necessary and proper to accomplish the purpose of this chapter.

(b) B. The agency by rule or by an order, after reasonable notice and hearing, may require the filing of advertising material relating to condominiums prior to its distribution.

(c) C. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the agency, with or without prior administrative proceedings may bring an action in the circuit court of the city or county in which any portion of the condominium is located to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon proper showing, injunctive relief of temporary restraining orders shall be granted. The agency is not required to post a bond in any court proceedings

or prove that any other adequate remedy at law exists.

(e1) D. With respect to any lawful process served upon the agency pursuant to the appointment made in accordance with subdivision A 1 of § 55-79.89, the agency shall forthwith cause the same to be sent by registered or certified mail to any of the principals, officers, directors, partners, or trustees of the declarant listed in the application for registration at the last address listed in such application or any annual report.

(e4) E. The agency may intervene in any suit involving the declarant. In any suit by or against a declarant involving a condominium, the declarant shall promptly furnish the agency notice of the suit and copies of all pleadings.

(e) F. The agency may:

(1) 1. Accept registrations filed in other states or with the federal government;

(2) 2. Contract with similar agencies in this Commonwealth or other jurisdictions to perform investigative functions;

(3) 3. Accept grants in aid from any governmental source.

(f) G. The agency shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform public offering statements, advertising standards, rules and common administrative practices.

§ 55-79.99. Investigations and proceedings.

A. Whenever the agency receives a written complaint which appears to state a valid claim, the agency shall make necessary public or private investigations in accordance with law within or outside of this Commonwealth to determine whether any declarant, its agents, employees or other representatives have violated or are about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules, *regulations* and forms hereunder. The agency may also in like manner and with like authority investigate written complaints against persons other than the declarant, its agents, employees or other representatives.

B. For the purpose of any investigation or proceeding under this chapter, the agency or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party shall subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the agency may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

§ 55-391.1. Application for registration.

A. The application for registration shall be filed in a form prescribed by the Board's regulations and shall include the following:

1. An irrevocable appointment to the Board to receive service of process in any proceeding arising under this chapter against the developer or the developer's agent *if nonresidents of the Commonwealth*;

2. The states or jurisdictions in which an application for registration or similar document has been filed and any adverse order, judgment, or decree entered in connection with the time-share project by the regulatory authorities in each jurisdiction or by any court;

3. The applicant's name, address, and the organizational form, including the date, and jurisdiction under which the applicant was organized, and the address of its principal office and each of its sales offices in the Commonwealth;

4. The name, address, and principal occupation for the past five years of every officer of the applicant or person occupying a similar status or performing similar functions, and the extent and nature of his interest in the applicant or the time-share project as of a specified date within thirty days of the filing of the application;

5. A statement, in a form acceptable to the Board, of the condition of the title to the time-share project including encumbrances as of a specified date within thirty days of the date of application by a title opinion of a licensed attorney not a salaried employee, officer or director of the applicant or owner, or by other evidence of a title acceptable to the Board;

6. A copy of the instruments which will be delivered to a purchaser to evidence his interest in the time-share and copies of the contracts and other agreements which a purchaser will be required to agree or to sign;

7. A copy of any management agreements, employment contracts or other contracts or agreements affecting the use, maintenance or access of all or any part of the time-share project;

8. A statement of the zoning and other governmental regulations affecting the use of the time-share, including the site plans and building permits and their status, any existing tax and existing or proposed special taxes or assessments which affect the time-share;

9. A narrative description of the promotional plan for the disposition of the time-shares;

10. The proposed public offering statement and its exhibits;

11. Any bonds required to be posted pursuant to the provisions of this chapter;
12. The time-share owners' annual report or budget required by § 55-370.1 to the extent available;
13. A description of each product the developer seeks to register with the Board; and
14. Any other information which the Board believes necessary to assure full and fair disclosure.

B. The developer shall immediately report to the Board any material changes in the information contained in an application for registration.

C. Nothing shall prevent a developer from registering with the Board a time-share project where construction is yet to begin, or if begun, is not yet complete.

§ 55-396. General powers and duties of Board.

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. The Board may prescribe forms and procedures for submitting information to the Board.

B. 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.

C. 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.

D. 1. If the Board determines after legal notice and opportunity for hearing that a developer or agent of developer has:

a. Made any representation in any document or information filed with the Board which is false or misleading;

b. Engaged or is engaging in any unlawful act or practice;

c. Disseminated or caused to be disseminated orally, or in writing, any false or misleading promotional materials in connection with a time-share program;

d. Concealed, diverted, or disposed of any funds or assets of any person in a manner impairing rights of purchasers of time-shares in the time-share program;

e. Failed to perform any stipulation or agreement made to induce the Board to issue an order relating to that time-share program;

f. Otherwise violated any provision of this chapter or any of the Board's rules and regulations or orders; or

g. Disposed of any time-share in a project without first complying with the requirements of this chapter, it may issue an order requiring the developer 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.

2. If the Board makes a finding of fact at a hearing that the public interest will be irreparably harmed by delay in issuing an order, as prescribed in subdivision 1 of this subsection, it may issue a temporary cease and desist order. With the issuance of a temporary cease and desist order, the Board, by registered mail or other personal written service, shall give notice of the issuance to the developer. Every temporary cease and desist order shall include in its terms:

a. A provision clearly stating the reasons for issuing such cease and desist order, the date of the hearing on its issuance, and the nature and extent of the facts and findings on which the order was based;

b. A provision that a hearing by the Board may be held, after due notice but not more than fifteen days from the date such temporary cease and desist order is effective, to determine whether or not a cease and desist order as called for in the immediately preceding subsection shall be issued;

c. A provision that such temporary cease and desist order may remain in full force for a period of not more than fifteen days from the date of its issuance or the date on which the Board has determined that an order as prescribed in subdivision 1 of this subsection is to be issued, whichever shall occur first; and

d. A provision that a failure to comply with such temporary cease and desist order will be a violation of this chapter. The Board shall not issue more than one temporary cease and desist order with reference to such finding of fact as prescribed in this subsection.

E. The Board may also issue a cease and desist order if the developer has not registered the time-share program as required by this chapter.

F. The Board, after notice and hearing, may issue an order revoking the registration of the developer's time-share program upon determination that such developer or agent thereof has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program.

G. 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 or any of the Board's rules, *regulations* or orders applicable thereto, the Board, without prior administrative proceedings, may bring suit in the circuit court of the city or county in which any portion of the time-share project is located 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.

H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of § 55-382, issue its determination whether compliance with § 55-375 or 55-386 has occurred.

§ 55-399. Investigations.

A. The Board may:

1. Make necessary public or private investigations within or outside this Commonwealth to determine whether any person has violated or is about to violate any provision of this chapter or any rule, regulation, or order issued hereunder, or to aid in the enforcement of this chapter in prescribing rules, *regulations* and forms hereunder;

2. Require or permit any person to file a statement in writing, under oath or otherwise as the Board determines, as to all facts and circumstances concerning the matter to be investigated.

B. For the purpose of any investigation or proceeding under the chapter, the Board may administer oaths or affirmations, and upon such motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

C. Any proceeding or hearing of the Board under this chapter, wherein witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter is to be produced to ascertain material evidence, shall take place within the County of Henrico and such proceeding shall be held before the Board sitting in regular session, but not less frequently than monthly.

D. Upon failure to obey a subpoena or to answer questions propounded by the Board, and upon reasonable notice to all persons affected thereby, the Board may apply to the Circuit Court of the County of Henrico for an order compelling compliance.

E. Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

2. That an emergency exists and this act is in force from its passage.