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SENATE BILL NO. 1086

Offered January 9, 2019

Prefiled December 18, 2018

A BILL to amend and reenact §§ 55-396 and 55-399 of the Code of Virginia and to repeal § 55-399.1 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act; Common Interest Community Board; administrative proceedings.

Patron—Cosgrove

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That §§ 55-396 and 55-399 of the Code of Virginia are amended and reenacted as follows:****§ 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 reseller or an agent of a developer or reseller 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 in writing~~ 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~~ *Prior to issuing the* temporary cease and desist order, the Board, ~~by registered mail or other personal written service~~, shall give notice of the ~~issuance proposal to issue a temporary cease and desist order~~ to the developer or the reseller. 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

INTRODUCED

SB1086

59 to such finding of fact as prescribed in this subsection; and

60 *c. A provision that upon request a hearing will be held promptly to determine whether or not the*
61 *cease and desist order shall become permanent.*

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

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

69 G. If it appears that any person has engaged, is engaging, or is about to engage in any act or practice
70 in violation of this chapter or any of the Board's rules, regulations or orders applicable thereto, the
71 Board, without prior administrative proceedings, may bring suit in the circuit court of the city or county
72 in which any portion of the time-share project is located to enjoin that act or practice or for other
73 appropriate relief. The Board is not required to post a bond or prove that no adequate remedy at law
74 exists.

75 H. Upon request of a time-share owner, the Board shall, in accordance with subsection B of
76 § 55-382, issue its determination whether compliance with § 55-375 or 55-386 has occurred.

77 **§ 55-399. Proceedings and investigations.**

78 A. *All proceedings of the Board under this chapter shall be conducted in accordance with the*
79 *Administrative Process Act (§ 2.2-4000 et seq.).*

80 B. The Board may:

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

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

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

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

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

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

103 2. That § 55-399.1 of the Code of Virginia is repealed.