

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 372

An Act to amend and reenact §§ 55-337, 55-342, 55-347, 55-374.1 and 59.1-321 of the Code of Virginia and to repeal §§ 55-339, 55-340, 55-340.1, 55-345, 55-346, 55-348 and 55-350 of the Code of Virginia, relating to the Subdivided Land Sales Act.

[S 318]

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-337, 55-342, 55-347, 55-374.1 and 59.1-321 of the Code of Virginia are amended and reenacted as follows:

§ 55-337. Definitions.

When used in this chapter, unless the context otherwise requires:

1. "Agent" means any person who represents or acts for or on behalf of a developer in the disposition of any lot or lots in a subdivision; but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

2. "Blanket encumbrance" means a trust, deed, mortgage, judgment or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land in toto comprising the subdivision to be offered and sold or leased or affecting more than ten lots or parcels of such lands, or an agreement affecting more than ten lots or parcels of such lands by which the developer holds said subdivision under option, contract, sale or trust agreement. The term shall not include mechanics' liens, taxes or assessments levied by a public authority, or easements granted to public utilities or governmental agencies for the purpose of bringing services to the lot or parcel within the subdivision.

~~3. "Board" means the Real Estate Board, or its designated subordinate.~~

~~4.~~ 3. "Developer" means any person who offers, directly or indirectly, for disposition, any lots in a subdivision, but shall not include a trustee under a deed of trust securing an indebtedness or other obligation who sells lots within such subdivision under foreclosure proceedings provided the purpose in so doing is not to evade the provisions of this chapter.

~~5.~~ 4. "Subdivision" means:

a. Any subdivision of land into one hundred or more lots, whether contiguous or not, where any lots therein are, from July 1, 1978, sold or disposed of, by land sales installment contracts, and pursuant to a common promotional plan, where lot purchasers within said subdivision have use of and access to the facilities and amenities within such subdivision for which the said lot owners are assessed on a regular or special basis for the use and enjoyment thereof.

b. Any existing subdivision of land of thirty or more lots wherein the developer has concluded its sales effort for a period of six consecutive months and has transferred to the association described in subdivision A 1 of § 55-344 all the title, control, and maintenance responsibilities of the common areas and common facilities.

~~6.~~ 5. "Disposition" or "sale" means any lease, assignment or exchange or any interest in any lot which is a part of or included in a subdivision.

~~7.~~ 6. "Offer" means any inducement, solicitation, media advertisement or attempt performed by or on behalf of a developer which has as its objective the disposition of a lot or lots in a subdivision.

~~8.~~ 7. "Person" means any individual, corporation, government or governmental agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

~~9.~~ 8. "Purchaser" means a person who acquires or attempts to acquire any lot or lots in a subdivision.

~~10.~~ 9. "Lot" means any unit, parcel, division, or piece of land or interest in land except utility easements if such interest carries with it the exclusive right to use a specific portion of property.

~~11.~~ 10. "Land sales installment contract" means any installment contract for the sale or disposition of land whereby the purchaser does not receive a deed conveying the property purchased until part or all installment payments have been made as called for in the contract and record title to said property remains in another pending full performance of the contract.

§ 55-342. Blanket encumbrances.

A. It shall be unlawful for any developer or agent to sell or lease lots in a subdivision that is subject to a blanket encumbrance unless the blanket encumbrance or effective supplemental agreement contains a release provision permitting legal title to individual lots or other interest contracted for to be obtained free and clear of the blanket encumbrance. Nothing herein shall be construed to limit the conditions upon which such release may be premised or the modification or amendment of such release provision as to (i) any purchaser other than a purchaser under an installment sales contract; or (ii) purchasers under installment sales contracts which are executed subsequent to the recordation of the amendment or

modification.

B. Unless blanket encumbrance release provisions provide that the lien of the blanket encumbrance is subordinate to the rights of persons purchasing from the developer or agent and that those purchasers have the unconditional right to obtain legal title or other interest contracted for free and clear of the blanket encumbrance upon compliance with the terms and conditions of the purchase or lease, it shall be unlawful for a developer or agent to sell or lease lots unless one of the following conditions is complied with:

1. Any earnest money deposit or advance or other payment made by the purchaser on account of the purchase of a lot is placed in an escrow account ~~meeting the requirement of the Board and fully protecting which fully protects~~ the interest of the purchaser until either:

a. Fee title or other interest contracted for is conveyed to the purchaser free and clear of the blanket encumbrance; or

b. Either the developer or purchaser defaults under the contract and a final determination as to the dispersal of sums paid is made by either a court of competent jurisdiction ~~or by the Board~~; or

c. The developer voluntarily orders the return of the money to the purchaser. Such escrow shall be held in a trust account maintained in a federally insured depository located in the Commonwealth of Virginia.

2. Title to the subdivision is held in trust under a trust agreement ~~acceptable to the Board~~ until a proper release is obtained and legal title or other interest contracted for is conveyed to the purchaser.

3. ~~A bond, or irrevocable letter of credit payable to the Commonwealth of Virginia and issued by a bank authorized to do business in this Commonwealth is furnished to the Board in such amount, form and terms as are acceptable to the Board. The bond or letter of credit shall provide for the return of all moneys paid or advanced by any purchaser or lessee for or on account of the purchase or lease of any lot if a proper release from the blanket encumbrance is not obtained. However, should it be determined by the Board that the purchaser or lessee by reason of default or otherwise is not entitled to the refund of all or part of the sums paid or advanced, then the bond or letter of credit shall be exonerated to such extent.~~

C. ~~[Repealed.]~~

D. ~~In lieu of the other requirements of this section, the Board may accept a certificate from another state positively evidencing that comparable requirements have been met in that state and that the interests of purchasers, regardless of domicile, are fully protected.~~

§ 55-347. Penalties.

Any person violating any of the provisions of §§ ~~55-339 55-341~~ through 55-344 ~~or § 55-350, or any order issued pursuant to § 55-346~~ shall be guilty of a Class 2 misdemeanor. At the discretion of the court, any imprisonment may be rendered to run concurrently with imprisonment rendered or imposed by any court for violation of any law similar to the provisions of this chapter.

§ 55-374.1. Certain advertising practices regulated.

A. Any offering which includes a gift or prize must disclose therein, with the same prominence as such offer:

1. The retail value of each gift or prize;

2. The approximate odds against any given person obtaining each gift or prize if all persons to whom the advertisement is disseminated do what is necessary to qualify for the award of the gift or prize;

3. If the number of gifts or prizes to be awarded is limited, a statement of the number of gifts or prizes to be awarded;

4. All rules, terms, requirements, and conditions which must be fulfilled before a prospective purchaser may claim any gift or prize, including whether the prospective purchaser is required to attend a sales presentation in order to receive the gift or prize;

5. The date upon which the offer expires; and

6. A statement to the effect that the offer is being made for the purpose of soliciting the purchase of time-shares.

B. Any gift or prize offered in connection with an offering shall be delivered to the prospective purchaser no later than the day the purchaser attends a sales presentation, if required, and if not, on the day the purchaser appears to claim it, whether or not he purchases a time-share. In the event the supply of gifts or prizes is exhausted at the time required for delivery, the developer shall give the prospective purchaser a written, unconditional promise to deliver such gift or prize no later than thirty days from the date required for delivery. If such gift or prize is not obtainable, the developer shall deliver an item of equal or greater value.

C. The offering of any product registered with the Board is exempt from the Virginia Travel Club Act (§ 59.1-445 et seq.), the Virginia Condominium Act (§ 55-79.39 et seq.), *and* the Virginia Securities Act (§ 13.1-501 et seq.); ~~and the Subdivided Land Sales Act (§ 55-336 et seq.).~~ If any provision of this section is in conflict with the provisions in the Prizes and Gifts Act (§ 59.1-415 et seq.), the provisions of the Prizes and Gifts Act shall control.

§ 59.1-321. Exemption from registration under other acts.

Any membership camping operator registered with the Commissioner under this chapter shall not be

required to register or comply with the terms and requirements of the following:

1. ~~The Subdivided Land Sales Act (§ 55-336 et seq.).~~
 2. ~~The Virginia Condominium Act (§ 55-79.39 et seq.).~~
 3. ~~2. The Virginia Real Estate Time-Share Act (§ 55-360 et seq.).~~
 4. ~~3. The Virginia Securities Act (§ 13.1-501 et seq.).~~
- 2. That §§ 55-339, 55-340, 55-340.1, 55-345, 55-346, 55-348 and 55-350 of the Code of Virginia are repealed.**