

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 467

An Act to amend and reenact §§ 54.1-2352, 55-79.100, 55-396, and 55-500 of the Code of Virginia, relating to the Common Interest Community Board; enforcement; issuance of compliance orders.

[H 1962]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-2352, 55-79.100, 55-396, and 55-500 of the Code of Virginia are amended and reenacted as follows:

§ 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 governing board of an association has:

1. Violated any statute or regulation of the Board governing the association regulated pursuant to this chapter, including engaging in any act or practice in violation of this chapter, Chapter 4.2 (§ 55-79.39 et seq.), 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 regulations or orders;

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

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

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

B. If the Board makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary *order to cease and desist* ~~order~~ *or to take such affirmative action as may be deemed appropriate by the Board*. Prior to issuing the temporary *cease and desist* order, the Board shall give notice of the proposal to issue a temporary *cease and desist* order to the person. Every temporary *cease and desist* order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

§ 55-79.100. Cease and desist orders.

(a) If the agency determines after notice and hearing that a person has:

(1) Violated any provision of this chapter;

(2) Directly or through an agent or employee knowingly engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of a unit;

(3) Made any substantial change in the plan of disposition and development of the condominium subsequent to the order of registration without notifying the agency;

(4) Disposed of any units which have not been registered with the agency; or

(5) Violated any lawful order or rule of the agency;

it may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the agency will carry out the purposes of this chapter.

(b) If the agency makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary *order to cease and desist* ~~order~~ *or to take such affirmative action as may be deemed appropriate by the agency*. Prior to issuing the temporary *cease and desist* order, the agency shall give notice of the proposal to issue a temporary *cease and desist* order to the person. Every temporary *cease and desist* order shall include in its terms a provision that upon request a hearing will be held promptly to determine whether or not it becomes permanent.

§ 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 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 *order to cease and desist* ~~order or to take such affirmative action as may be deemed appropriate by the agency~~. 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 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~~ 15 days from the date such temporary ~~cease and desist~~ order is effective, to determine whether ~~or not a~~ ~~cease and desist~~ *an* order as called for in the ~~immediately preceding subsection~~ *subdivision 1* 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~~ 15 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 or if a reseller has not registered 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 or the registration of a reseller upon determination that such developer, reseller, or agent thereof has failed to comply with a cease and desist order issued by the Board affecting the developer's time-share program or the reseller.

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.

§ 55-500. Cease and desist order.

If the agency determines, after notice and hearing, that any person has disseminated or caused to be disseminated orally or in writing any false or misleading promotional materials in connection with a cooperative, or that any person has otherwise violated any provision of this chapter or the agency's rules, regulations or orders, the agency may issue an order to cease and desist from that conduct ~~to comply with the provisions of this chapter and the agency's rules, regulations and orders, or to take affirmative action to correct conditions resulting from that conduct or failure to comply or to take such affirmative action as may be appropriate to the agency~~.