

at law, damages are the consideration paid for the investment product together with interest at the legal rate to the date of disposition, costs, and reasonable attorney fees, less the value of the investment product at the date of disposition. If the advertisement advertises an investment product whose interest rate varies according to the earnings or income of the issuer and if the advertisement projects the accumulated earnings for a period longer than one year, the issuer and agent are jointly and severally liable to the purchaser for the difference in the principal and interest received by the purchaser and the principal and interest as projected in the advertisement.

Subd. 9. DENIAL, SUSPENSION, OR REVOCATION. The commissioner may by order deny, suspend, or revoke an agent's or issuer's license or may censure the licensee if the commissioner finds that: (1) the order is in the public interest; (2) the agent or issuer violated any provision of this section; and (3) the agent or issuer is licensed by the department.

Approved May 15, 1987

CHAPTER 154—H.F.No. 487

An act relating to commerce; regulating membership camping practices; prohibiting certain advertising practices; establishing escrow requirements; regulating subdivided land sales practices; prohibiting certain advertising practices; amending Minnesota Statutes 1986, sections 82A.02, subdivisions 2, 10, and 19; 82A.04, subdivision 2; 82A.09, by adding a subdivision; 82A.11, subdivision 3; and 82A.24, subdivisions 3 and 6; proposing coding for new law in Minnesota Statutes, chapters 82A and 83.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 82A.02, subdivision 2, is amended to read:

Subd. 2. **AMENITY.** "Amenity" means any major recreational building, swimming pool, utility serviced camping sites, or similar facility which is represented as available for use by purchasers now or in the future. ~~"Amenity" does not include a sportscourt or other minor facility.~~

Sec. 2. Minnesota Statutes 1986, section 82A.02, subdivision 10, is amended to read:

Subd. 10. **MEMBERSHIP CAMPING CONTRACT.** "Membership camping contract" means an agreement offered or sold within this state evidencing a purchaser's right or license to use for more than ~~three years~~ one year a campground owned or operated by a membership camping operator and includes a membership which provides for this use.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Sec. 3. Minnesota Statutes 1986, section 82A.02, subdivision 19, is amended to read:

Subd. 19. **SALESPERSON.** "Salesperson" means an individual, other than a membership camping operator or broker, who offers or sells membership camping contracts, but does not include individuals who refer persons, provided that the referring party is a current member of the campground or does not directly or indirectly receive compensation of more than \$150 per referral, does not make more than 15 referrals per year, and has entered into a referral agreement with a membership camping operator that prohibits the discussion of terms or prices of camping memberships. The practice of subcontracting referral services where referral fees are split or shared with another person is prohibited without receiving compensation of more than \$150 per referral. The limitation of \$150 per referral imposed in this subdivision herein shall increase each year by an amount equal to the increase in the United States city average consumer price index for all urban consumers issued by the United States Bureau of Labor Statistics or comparable index, should that be discontinued.

Sec. 4. Minnesota Statutes 1986, section 82A.04, subdivision 2, is amended to read:

Subd. 2. **APPLICATION CONTENTS.** The application for registration shall include:

(1) an irrevocable appointment of the commissioner to receive service of any lawful process as required by section 82A.22, subdivision 1;

(2) the name of the campground, the membership camping operator's name and the address of its principal place of business, the form, date of organization, and jurisdiction of its organization; and the name and address of each of its offices in this state;

(3) a copy of the membership camping operator's articles of incorporation, partnership agreement, or joint venture agreement as contemplated or currently in effect;

(4) the name, address, and principal occupation for the past five years of the membership camping operator and of each controlling person of the membership camping operator, and the extent and nature of each such person's interest in the membership camping operator as of a specified date within 30 days prior to the filing of the application;

(5) a statement indicating whether or not the membership camping operator, or any of the persons identified in clause (4), within the past ten years has been:

(i) convicted of a felony; or

(ii) enjoined or received any adverse administrative order relating to the sale of securities, land, or campgrounds or based on violations of any consumer

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protection statutes. If any of the above has occurred, the name of the person involved, the jurisdiction, offense, and date of the offense shall be listed;

(6) a legal description of each campground owned or operated in this state by the membership camping operator which is represented to be available for use by purchasers, and a map or maps showing the location of all campgrounds, wherever located, which are owned or operated by the membership camping operator and represented to be available for use by purchasers, and a statement identifying the existing amenities at each such campground and the planned amenities represented as to be available for use by purchasers in the future at each such campground;

(7) the states or jurisdictions in which an application for registration or similar document has been filed by the membership camping operator pursuant to any statute similar to this chapter regulating membership camping contracts and any adverse order, judgment, or decree entered against the operator in connection with membership camping contracts by any regulatory authority in any jurisdiction or by any court;

(8) a statement of the condition of the title to the campground owned or operated in this state by the membership camping operator and represented to be available for use by purchasers, including all encumbrances, deed restrictions, and covenants applicable thereto with data as to recording, as of a specified date within 30 days prior to the date of application, by a title opinion of a licensed attorney; or by a title insurance policy, naming the operator or lender as beneficiaries and issued by an insurance company authorized to do business in this state, or by any evidence of title acceptable to the commissioner;

(9) copies of the instruments by which the membership camping operator's interest in the campgrounds in this state was acquired;

(10) copies of all recorded or unrecorded instruments, known to the membership campground operator, that evidence blanket encumbrances that materially adversely affect the campgrounds in this state;

(11) if there is a blanket encumbrance which materially adversely affects the campgrounds located in this state, a legal description of the encumbrance, and a description of the steps taken to protect purchasers, in accordance with section 82A.14, clause (1), in case of failure to discharge the lien or encumbrance;

(12) evidence showing compliance with the zoning and other applicable environmental or land use laws, ordinances, and rules affecting the use of the campgrounds located in this state;

(13) a statement of the existing and planned provisions for the following with respect to campgrounds located in this state:

- (i) purchasers' access to the campgrounds;
- (ii) the availability of sewage disposal facilities and other public utilities,

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including but not limited to water, electricity, gas, and telephone facilities in the campgrounds;

(iii) the proximity of community fire and police protection;

(iv) a statement of the amenities which will be represented to purchasers as guaranteed to be constructed or installed, whether the operator will be responsible for their cost, installation and maintenance and an estimated cost of and schedule for completion of the same; provided that the estimated completion dates need not be more precise than the year in which completion is estimated to occur, and may be extended for the period of any delays caused by or deferred due to the occurrence of events such as acts of God, strikes, and other causes outside the reasonable control of the membership camping operator; and assurance that such amenities will be completed by filing a bond or irrevocable letter of credit, depositing funds in an escrow account, or such other provision as the commissioner may by order allow. The amount of the bond or escrow account shall be reduced monthly in proportion to the amount paid for completion of the amenities during such period. The bond, letter of credit, or escrow account shall be issued or held by a bank or insurance or surety company authorized to do business in this state;

(v) a statement of the amenities to be represented to purchasers as planned for construction and installation, but not guaranteed, whether the operator will be responsible for their costs, installation, and maintenance, and an estimated cost of and schedule for completion of the same; provided that the estimated completion dates need not be more precise than the year in which completion is estimated to occur and may be extended for the period of any delays caused by or deferred due to the occurrence of events such as acts of God, strikes, and other causes outside the reasonable control of the membership camping operator;

(14) a copy of each item of advertising materials which has been prepared for public distribution in this state after January 1, 1986. Advertising material for off-site distribution which is pictorial in nature, other than site and conceptual plans which are labeled as such, shall be limited to a depiction of the actual on-site condition of the campgrounds or other areas that are material to the offer or sale of membership camping contracts pursuant to this registration; site and conceptual plans shall disclose which facilities are and are not currently in existence;

(15) the proposed disclosure statement as required by section 82A.05, subdivision 1, and the proposed separate disclosure, if applicable, as required by section 82A.05, subdivision 6;

(16) a financial statement of the membership camping operator as of the end of the membership camping operator's most recent fiscal year, audited by an independent certified public accountant; and, if the fiscal year end of the membership camping operator is in excess of 120 days prior to the date of filing the application, a financial statement, which may be unaudited, as of a date within 120 days of the date of application;

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(17) a statement of the applicable material permits, other than building permits, not yet obtained but required to be obtained from various federal, state, and local agencies to operate the campground in this state, stating which have been applied for. If any permit has been refused, the reasons for the refusal and the effect the refusal will have on subsequent development of the campgrounds must be disclosed;

(18) a copy of each type of membership camping contract to be sold in this state, the purchase price of each type and, if the price varies, the reason for the variance;

(19) the number of membership camping contracts proposed to be sold at each campground located in this state and a statement describing the method used to determine the number;

(20) rules of general applicability governing use and occupancy of the campgrounds; but not including any temporary or emergency rules, or any rules adopted in response to unique local or immediate needs;

(21) copies of applications for and contracts with any reciprocal program entity in which the membership camping operator is to participate and represents as available for use by purchasers;

(22) information concerning purchase or lease costs, rules, forms, and any fees, other than the initial membership fee and annual dues, which are required for purchaser usage of in-park trailers, recreational vehicles, tents, or other overnight accommodations, provided by or through the membership camping operator, for purchasers as an alternative to using the purchaser's own mobile accommodations;

(23) any additional information the commissioner reasonably deems appropriate to administer the provisions of this chapter.

Sec. 5. Minnesota Statutes 1986, section 82A.09, is amended by adding a subdivision to read:

Subd. 3. SPECIFIC PROHIBITIONS. The following devices or sales presentations, and the use of those devices or presentations, are deceptive or misleading practices:

(1) An advertisement that offers travel, accommodations, gifts, meals, or entertainment published to induce prospective purchasers to visit a campground or attend a sales presentation and that:

(i) does not prominently set forth all eligibility requirements;

(ii) describes offers of travel, accommodations, gifts, meals, or entertainment as "prizes," "awards," or by words of similar import or describes prospective purchasers as "winners" or by words of similar import;

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(iii) contains the words "free" or "no obligation" or similar terms unless the offer is unequivocally without conditions;

(iv) states or implies that prospective purchasers have been specially selected;

(v) does not specifically state that gifts will be provided at the time the prospective purchaser visits the campground or attends the sales presentation;

(vi) does not disclose on its face page the retail market value of the travel, accommodations, gifts, meals, or entertainment provided. For purposes of this subclause, "retail market value" means: the retail price the item sells for in Minnesota; or if the item is not sold in Minnesota, the retail price the item sells for in states contiguous to Minnesota; or if the item is not sold in Minnesota or in a state contiguous to this state, the retail price the item sells for anywhere in the United States;

(vii) does not specifically and prominently disclose that the purpose of the offer of travel, accommodations, gifts, meals, or entertainment is to induce prospective purchasers to visit a campground or attend a sales presentation where they will be encouraged to purchase a membership camping contract;

(viii) does not completely disclose rules and procedures if travel, accommodations, gifts, meals, or entertainment are offered through a "sweepstakes," "giveaway," or similar contest;

(ix) does not specifically disclose the odds, as a fraction, using a common denominator, of a prospective purchaser's receiving each gift if the gift is offered through a "sweepstakes," "giveaway," or similar contest; or

(x) does not clearly and prominently state that gifts may be given to persons outside the state if the advertisement is part of a national advertising campaign.

(2) An advertisement that does not prominently disclose the name, address, and phone number of the membership camping operator on whose behalf the advertisement is distributed.

(3) An advertisement prepared on the stationery of a person other than the membership camping operator that creates a likelihood of confusion, misunderstanding, or deception.

Sec. 6. Minnesota Statutes 1986, section 82A.11, subdivision 3, is amended to read:

Subd. 3. **RIGHT OF RESCISSION.** A purchaser has an unconditional right to rescind any membership camping contract, or revoke any offer, at any time prior to or within three business days after the date the purchaser actually receives a legible copy of the binding contract. Predating of a document does not affect the time in which the right to rescind may be exercised.

Sec. 7. [82A.111] ESCROW REQUIREMENT.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subdivision 1. GENERALLY. All funds received by a broker, membership camping operator, or salesperson in connection with the offer or sale of a membership camping contract must be deposited immediately upon receipt in an escrow account maintained by the broker or membership camping operator for that purpose in a bank or an industrial loan and thrift company with deposit liabilities designated by the broker or membership camping operator. The funds must remain in the escrow account, for the benefit of the purchaser, until the expiration of the purchaser's right of rescission as set forth in section 82A.11, subdivision 3. The depository bank must be a Minnesota bank, trust company, or savings and loan association, or a foreign bank which authorizes the commissioner to examine its records of these deposits upon demand by the commissioner. The industrial loan and thrift company must be organized under chapter 53.

Subd. 2. MEMBERSHIP CAMPING DUES. A membership camping operator or the operator's salesperson shall deposit all membership dues received in an escrow account in a Minnesota bank, trust company, or savings and loan association, a foreign bank which authorizes the commissioner to examine its records of these deposits upon demand by the commissioner, or an industrial loan and thrift company organized under chapter 53 with deposit liabilities. In any calendar year, total dues to be deposited in the escrow may not exceed an amount approved by the commissioner as reasonably needed for that calendar year's maintenance budget submitted by the operator. The operator may draw funds from the escrow as needed provided that funds are expended for purposes identified by the budget.

Subd. 3. COMMINGLING FUNDS. A broker, membership camping operator, or salesperson shall deposit only funds specified in subdivisions 1 and 2 in an escrow account and shall not commingle personal funds or other funds in an escrow account; except that a broker, membership camping operator, or salesperson may deposit and maintain a sum not to exceed \$100 in an escrow account from personal funds, which sum must be specifically identified and used to pay service charges relating to the escrow account.

Subd. 4. TRUST ACCOUNT RECORDS. Each broker and membership camping operator shall maintain and retain records of all escrowed funds and escrow accounts.

Subd. 5. NOTICE OF TRUST ACCOUNT STATUS. The names of the banks and industrial loan and thrift companies and the escrow account numbers used by a broker must be provided to the commissioner at the time of application for the broker's license, and those used by the membership camping operator must be provided to the commissioner at the time of application for registration of the membership camping contract. Every broker or membership camping operator shall immediately report to the commissioner any change of escrow account status including changes in banks and industrial loan and thrift companies, account numbers, or additional accounts in the same or other banks and industrial loan and thrift companies. A broker or membership camping operator shall not close an existing escrow account without giving ten days written notice to the commissioner.

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Sec. 8. Minnesota Statutes 1986, section 82A.24, subdivision 3, is amended to read:

Subd. 3. **PUBLIC DOCUMENTS.** All applications and other documents filed with the commissioner under this chapter; ~~except for loan or real estate agreements and building plans and specifications which have not otherwise been made public by the membership camping operator;~~ shall be open to public inspection in accordance with rules prescribed by the commissioner. ~~Loan or real estate agreements and building plans and specifications which have not otherwise been made public by the operator shall be classified as protected nonpublic data or private data on individuals.~~ The commissioner may publish information filed with the commissioner or obtained by the commissioner if, in the judgment of the commissioner, ~~such~~ the action is in the public interest.

Sec. 9. Minnesota Statutes 1986, section 82A.24, subdivision 6, is amended to read:

Subd. 6. **COPIES.** The commissioner upon request shall furnish to any person at a reasonable charge photostatic or other copies, certified under the seal of office if certification is requested, of any entry in the register or any order or other document on file in the commissioner's office ~~except for documents not available to the public pursuant to subdivision 3.~~ Any copy so certified is admissible in evidence under section 600.13.

Sec. 10. **[83.45] ADVERTISING; SPECIFIC PROHIBITIONS.**

The following devices or sales presentations, and the use of those devices or presentations are deceptive or misleading practices:

(1) An advertisement that offers travel, accommodations, gifts, meals, or entertainment published to induce prospective purchasers to visit a subdivision or attend a sales presentation and that:

(i) does not prominently set forth all eligibility requirements;

(ii) describes offers of travel, accommodations, gifts, meals, or entertainment as "prizes," "awards," or by words of similar import or describes prospective purchasers as "winners" or by words of similar import;

(iii) contains the words "free" or "no obligation" or similar terms unless the offer contained in the advertisement is unequivocally without conditions;

(iv) states or implies that prospective purchasers have been specially selected;

(v) does not specifically state that gifts will be provided at the time the prospective purchaser visits the subdivision or attends the sales presentation;

(vi) does not disclose on its face page the retail market value of the travel, accommodations, gifts, meals, or entertainment provided. For purposes of this paragraph, "retail market value" means: the retail price the item sells for in Minnesota; or if the item is not sold in Minnesota, the retail price the item

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sells for in states contiguous to Minnesota; or if the item is not sold in Minnesota or in any state contiguous to this state, the retail price the item sells for anywhere in the United States;

(vii) does not specifically and prominently disclose that the purpose of the offer of travel, accommodations, gifts, meals, or entertainment is to induce prospective purchasers to visit a subdivision or attend a sales presentation where they will be encouraged to purchase subdivided land;

(viii) does not completely disclose rules and procedures if travel, accommodations, gifts, meals, or entertainment are offered through a "sweepstakes," "giveaway," or similar contest;

(ix) does not specifically disclose the odds, as a fraction, using a common denominator, of a prospective purchaser's receiving each gift if the gift is offered through a "sweepstakes," "giveaway," or similar contest; or

(x) does not clearly and prominently state that gifts may be given to persons outside the state if the advertisement is part of a national advertising campaign.

(2) An advertisement that does not prominently disclose the name, address, and phone number of the subdivider on whose behalf the advertisement is distributed.

(3) An advertisement prepared on the stationery of a person other than the subdivider which creates a likelihood of confusion, misunderstanding, or deception.

Approved May 15, 1987

CHAPTER 155—H.F.No. 755

An act relating to the metropolitan government; authorizing municipalities in the metropolitan area to adopt ordinances related to aircraft noise; proposing coding for new law in Minnesota Statutes, chapter 473.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [473.192] AIRCRAFT NOISE ATTENUATION.

Subdivision 1. CITATION. This section may be cited as the "Metropolitan Area Aircraft Noise Attenuation Act."

Subd. 2. DEFINITIONS. For purposes of this section, "metropolitan area" has the meaning given it in section 473.121, subdivision 2. "Aviation policy plan" means the plan adopted by the metropolitan council pursuant to section 473.145. "Municipality" has the meaning provided by section 462.352, subdivision 2.

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