

CHAPTER 82A

MEMBERSHIP CAMPING PRACTICES

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82A.04 APPLICATION FOR REGISTRATION.

[For text of subd 1, see M.S.1994]

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 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, 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) 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;

(15) a financial statement of the membership camping operator as of the end of the membership camping operator's most recent fiscal year, prepared by an independent public accountant and certified by the camping operator; and, if the fiscal year end of the membership camping operator is in excess of 180 days prior to the date of filing the application, a financial statement, which may be unaudited, as of a date within 180 days of the date of application;

(16) 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;

(17) 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;

(18) 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;

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

(20) 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;

(21) 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; and

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

[For text of subs 3 and 4, see M.S.1994]

History: 1995 c 233 art 2 s 56

82A.05 DISCLOSURE STATEMENT.

[For text of subd 1, see M.S.1994]

Subd. 2. Contents. A disclosure statement shall include the following information:

(1) the name, principal address, and telephone number of the membership camping operator and of its offices in this state;

(2) a brief description of the membership camping operator's experience in the membership camping business, including the number of years the membership camping operator has been in the membership camping business;

(3) a brief description of the campgrounds owned or operated by the membership camping operator and represented as available for use by purchasers, including identification of the amenities then available for use by purchasers, whether amenities will be available to nonpurchasers and, if so, the price to nonpurchasers therefor;

(4) a statement of whether or not the operator has obtained a bond, deposited funds in an escrow account, obtained an irrevocable letter of credit, or provided any other assurance securing the cost of the amenities which are represented as planned to be constructed or installed in the future for use by purchasers and, if so, the identity of the amenities and the year in which completion is estimated to occur;

(5) a description of the nature of the purchaser's title to, interest in, or right or license to use the campgrounds and amenities;

(6) a description of the membership camping operator's ownership of, or other right to use, the campground and amenities represented to be available for use by purchasers, together with a brief description of any material blanket or other material encumbrance on the campground, and the material provisions of any agreements which materially restrict a purchaser's use of the property, and a statement of the consequences to purchasers in the event of any conveyances of the campgrounds or foreclosure or other adverse action which can be taken with respect to the encumbrances;

(7) a statement or summary of what required material discretionary land use permits, the issuance of which is in the discretion of the issuing governmental authority, have not been obtained for each campground located in this state, and a description of the conditions that must be met to obtain the permits that have not yet been obtained;

(8) a summary and copy of the articles, bylaws, rules, restrictions, or covenants regulating the purchaser's use of each campground and amenities on each campground in this state, including a statement of whether and how the articles, bylaws, rules, restrictions, or covenants may be changed; provided that the foregoing need not include any rules adopted in response to unique local or immediate needs if the rules are posted at the campground;

(9) a description of all payments required of a purchaser under a membership camping contract, including initial fees and any further fees, charges or assessments, together with any provisions for changing the payments;

(10) a description of any restraints on the transfer of membership camping contracts;

(11) a statement of the assistance, if any, that the membership camping operator will provide to the purchaser in the resale of membership camping contracts;

(12) a description of the policies of the membership camping operator relating to the availability of camping sites and whether reservations are required;

(13) a description of the membership camping operator's right to change or withdraw from use all or a material portion of the campgrounds or amenities and the extent to which the operator is obligated to replace campgrounds or amenities withdrawn;

(14) a description of any grounds for forfeiture of a membership camping contract;

(15) a statement of the person's right to cancel the membership camping contract as provided in section 82A.11;

(16) a statement describing all material terms and conditions of any reciprocal program represented to be available to purchasers, including whether the purchaser's participation in the reciprocal program is dependent upon the continued participation of the membership camping operator in the reciprocal program and whether the membership camping operator reserves the right to terminate the participation; and

(17) such additional information as may be reasonably required by the commissioner to assure full and fair disclosure of all material facts to prospective purchasers.

[For text of subs 3 to 6, see M.S.1994]

History: 1995 c 233 art 2 s 56

82A.11 SALES CONTRACT; RESCISSION.

[For text of subs 1 and 2, see M.S.1994]

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 five 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.

[For text of subs 4 to 7, see M.S.1994]

History: 1995 c 68 s 6

82A.111 ESCROW REQUIREMENT.

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 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 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.

[For text of subs 3 to 5, see M.S.1994]

History: 1995 c 202 art 1 s 25

82A.14 UNFAIR PRACTICES.

No membership camping operator shall:

(1) sell or offer to sell any membership camping contract with respect to a campground located in this state which is subject to a blanket encumbrance unless;

(i) each person holding an interest in a blanket encumbrance shall have executed and delivered a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located; or

(ii) a bond or irrevocable letter of credit has been issued, or cash or a certified check in an amount sufficient to cover payment of all amounts secured by the blanket encumbrance has been deposited, in the name of the state for the benefit and protection of purchasers of membership camping contracts and subject to terms as approved by the commissioner. Any interest accruing on amounts held in the account shall be payable, as and when earned, to the membership camping operator. Any bond shall be executed by an insurance company authorized to do business in this state, which has sufficient net worth to satisfy the indebtedness and which has given consent to be sued in this state. Any irrevocable letter of credit shall be issued by a bank or savings association which has sufficient net worth to satisfy the indebtedness and which has given its consent to be sued in this state. The bond, cash, certified check, or irrevocable letter of credit shall be in an amount which is not less than 110 percent of the remaining principal balance of every indebtedness or obligation secured by a blanket encumbrance affecting the campground. The bond or agreement accompanying the cash, certified check, or irrevocable bank letter of credit shall provide for the payment of all amounts secured by the blanket encumbrance, including costs, expenses, and legal fees of the lien holder, if for any reason the blanket encumbrance is enforced. The bond, cash, certified check, or letter of credit may be reduced periodically in proportion to the reductions in the amount secured by the blanket encumbrance; or

(iii) the lender providing the major hypothecation loan to the membership camping operator (the "hypothecation lender"), and having a lien on or security interest in the membership camping operator's interest in the campground, shall have executed and delivered a nondisturbance agreement and recorded the agreement in the real estate records of the county in which the campground is located in this state. Each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed, delivered, and recorded an instrument stating that the person shall give the hypothecation lender notice of, and at least 30 days' opportunity to cure, any default under the blanket encumbrance which entitles the person to foreclose upon the campground. The instrument shall state that the notice and opportunity to cure shall be given before the person commences any foreclosure action affecting the campground and in accordance with the instrument. The hypothecation lender shall have guaranteed that it will cure or arrange for the cure of the default. Any holder of a blanket encumbrance inferior to the hypothecation lender who acquires the campground in foreclosure shall take the campground subject to the hypothecation lender's nondisturbance agreement. For purposes of this provision, a "hypothecation lender" is any lender extending a loan or line of credit to a membership camping operator secured by all or substantially all of the contract receivables arising from the membership camping operator's sale of membership camping contracts in this state. For purposes of this provision, "lender" means an insurance company or a federally or state chartered bank, savings association, any other lending institution, the deposits of which are guaranteed or insured, by a federal agency, or any other person which has sufficient net worth to pay the obligations pursuant to this section if there are no reasonable grounds to believe that the lender will not be able to pay these obligations in the future; or

(iv) the operator can provide an alternative plan acceptable to the commissioner;

(2) sell any campground which is located in this state and available for use by purchasers, unless:

(i) the membership camping operator sells the campground to a person who takes the campground subject to all rights and interests of purchasers, and contractually agrees not to compromise the rights and interests of purchasers in regard to future conveyances of, or encumbrances placed on the campground;

(ii) the membership camping operator immediately substitutes for the use of purchasers another campground which is in the same general area and is at least as desirable for the purpose of camping and outdoor recreation as the previous campground. For purposes of this

provision, "same general area" means a location within a 50-mile radius of the previous campground; or

(iii) the membership camping operator immediately substitutes for the use of purchasers another campground and the substitution is approved by two-thirds of all existing purchasers;

(3) substitute any campground located in this state and available for use by purchasers with a different campground, unless the substituted campground is in the same general area and is at least as desirable for the purpose of camping and outdoor recreation as the previous campground. For purposes of this provision, "same general area" means a location within a 50-mile radius of the previous campground;

(4) sell membership camping contracts with respect to any campground located in this state that is not owned by the membership camping operator or leased by the membership camping operator for a lease term at least equal to the term of the membership camping contract with respect to the campground;

(5) fail to disclose the circumstances, if any, under which any reciprocal program that has been offered as an inducement to purchasers may be terminated;

(6) materially modify any campground rules or regulations or modify purchasers' rights to or the scope and nature of an amenity in a manner which significantly degrades or diminishes the material rights of any purchaser without prior notice to purchasers resident in this state; or materially adversely modify any material campground rules or regulations or materially adversely modify purchaser's rights to or the scope and nature of an amenity in a manner which the purchaser proves:

(i) significantly degrades or diminishes any material rights of that purchaser; and

(ii) has no compensating benefit to any other purchaser or groups of purchasers;

(7) terminate or provide for termination of a membership camping contract, except for good cause. "Good cause" shall mean failure of the purchaser to substantially or consistently comply with reasonable requirements imposed by the membership camping contract and campground rules and regulations;

(8) terminate a membership camping contract without first giving written notice setting forth all reasons for the termination to the purchaser at least 30 days prior to the termination becoming effective;

(9) increase a purchaser's membership dues after the sale of a contract in such a manner as to result in an increase thereof greater than whichever of the following increases is higher:

(i) the actual increase in costs of services or improvements for which the membership dues are imposed; or

(ii) 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 such other federally prepared consumer price index or wage earner index as reasonably selected by the operator in its discretion;

(10) require purchaser to certify the absence of any misrepresentation or other violation of this chapter provided, however, that a purchaser's acknowledgment of receipt of a copy of the membership camping contract shall not be deemed to constitute such a certification;

(11) require the purchaser to waive the right to assert against the membership camping operator or any assignee any claim or defense the purchaser may have against the membership camping operator under the membership camping contract; or

(12) materially and repeatedly fail to maintain a campground in this state in the manner contractually agreed upon.

History: 1995 c 202 art 1 s 25