

## CHAPTER 82A

### MEMBERSHIP CAMPING PRACTICES

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#### 82A.01 CITATION.

This chapter may be cited as the "Membership Camping Practices Act."

**History:** *1985 c 129 s 1*

#### 82A.02 DEFINITIONS.

Subdivision 1. **Advertisement or advertising.** "Advertisement" or "advertising" means any written or printed communication or any communication transmitted on radio, television, electronic means, or similar communications media other than telephone, published in connection with the offer or sale of membership camping contracts or to induce prospective purchasers to visit or attend an offer or sales presentation.

Subd. 1a. **Advanced payment.** "Advanced payment" means any money paid in advance regardless of its descriptive nomenclature, including, but not limited to, a management fee, listing, security, or advance fee or payment.

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.

Subd. 3. **Affiliate.** "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 4. **Blanket encumbrance.** "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, judgment lien, federal or state tax lien, or any other material lien or encumbrance which secures or evidences the obligation to pay money or to sell or convey any campground located in this state, or any portion thereof, made available to purchasers by the membership camping operator, and which authorizes, permits, or requires the foreclosure or other disposition of the campground. "Blanket encumbrance" also includes the lessor's interest in a lease of a campground which is located in this state, or any portion thereof, and which is made available to purchasers by a membership camping operator. "Blanket encumbrance" does not include a lien for taxes or assessments levied by any public authority which are not yet due and payable.

Subd. 5. **Broker.** "Broker" means a person who, for a fee or other valuable consideration, resells a membership camping contract to a new purchaser on behalf of a prior purchaser or who engages in the business of buying and selling membership camping contracts. "Broker" does not include a membership camping operator or a licensed salesperson acting on behalf of a membership camping operator or a licensed broker.

Subd. 6. **Campground.** "Campground" means real property owned or operated by a membership camping operator which is available for use by purchasers of membership camping contracts. Campground does not include:

(1) a recreational camping area as defined by section 327.14, subdivision 8, if the operator of the recreational camping area does not offer or sell membership camping contracts, but rather rents or licenses camping sites on the recreational camping area for a per use fee; or

(2) a manufactured home park as defined in section 327.14, subdivision 3.

Subd. 7. **Camping site.** "Camping site" means a space on a campground designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for camping.

Subd. 8. **Commissioner.** "Commissioner" means the commissioner of commerce of the state of Minnesota or an authorized delegate.

Subd. 9. **Controlling person.** "Controlling person" of a membership camping operator means each director and officer and each owner of 25 percent or more of stock of the operator, if the operator is a corporation; and each general partner and each owner of 25 percent or more of the partnership or other interests, if the operator is a general or limited partnership or other person doing business as a membership camping operator.

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 one year a campground owned or operated by a membership camping operator and includes a membership which provides for this use.

Subd. 11. **Membership camping operator.** "Membership camping operator" or "operator" means any person, other than one that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended through December 31, 1992, that owns or operates a campground and offers or sells membership camping contracts paid for by a fee or periodic payments and has as one of its purposes camping or outdoor recreation including use of camping sites by purchasers. "Membership camping operator" does not include any person who engages in the business of arranging and selling reciprocal programs except to the extent such person owns or operates campgrounds.

Subd. 12. **Nondisturbance agreement.** "Nondisturbance agreement" means any instrument by which the holder of a blanket encumbrance agrees that:

(1) its rights in any campground located in this state made available to purchasers by the membership camping operator shall be subordinate to the rights of purchasers;

(2) the holder and all successors and assigns, and any person who acquires a campground located in this state through foreclosure or by deed in lieu of foreclosure of the blanket encumbrance, or by default or cancellation of a lease shall take the property subject to the rights of purchasers; and

(3) the holder or any successor acquiring a campground located in this state through the blanket encumbrance shall not use or cause the campground to be used in a manner which would materially prevent the purchasers from using or occupying the campground in the manner contemplated by the purchasers' membership camping contract; provided, however, the holder shall have no obligation or liability to assume the responsibilities or obligations of the membership camping operator under the membership camping contract.

The agreement may be in any form or language that reasonably evidences the foregoing.

Subd. 13. **Offer.** "Offer" means every inducement, solicitation, or attempt to encourage a person to acquire a membership camping contract.

Subd. 14. **Own, owned, or ownership.** "Own," "owned," or "ownership" means to hold title, either legal or equitable, in real property.

Subd. 15. **Person.** "Person" means an individual, corporation, 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.

Subd. 16. **Purchaser.** "Purchaser" means a person who enters into a membership camping contract with a membership camping operator and obtains the right to use the campground owned or operated by the membership camping operator.

Subd. 17. **Reciprocal program.** "Reciprocal program" means any arrangements allowing purchasers to use campgrounds owned or operated by persons other than the membership camping operator with whom the purchaser has entered into a membership camping contract.

Subd. 18. **Sale or sell.** "Sale" or "sell" means entering into, or other disposition of, a membership camping contract for value. "Value" does not include any fee charged by a membership camping operator to offset the reasonable costs of transfer of a membership camping contract from an existing purchaser to a new purchaser.

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.

**History:** 1985 c 129 s 2; 1986 c 444; 1987 c 154 s 1-3; 1989 c 252 s 1; 1993 c 375 art 8 s 14

### **82A.03 REGISTRATION REQUIREMENT.**

It is unlawful for any person to offer or sell a membership camping contract in this state without meeting the requirements of this chapter.

**History:** 1985 c 129 s 3; 2014 c 222 art 1 s 17

### **82A.04** [Repealed, 2014 c 222 art 1 s 58]

**82A.05 DISCLOSURE STATEMENT.**

Subdivision 1. **Delivery.** A disclosure statement shall be delivered to each person to whom an offer is made before or concurrently with:

- (1) the first written offer other than offer by means of an advertisement; or
- (2) any payment pursuant to a sale, whichever occurs first.

Each person to whom an offer is made must be afforded a reasonable opportunity to examine the disclosure statement and must be permitted to retain the statement. The seller shall obtain a receipt, signed by the person, acknowledging that the person has received a copy of the disclosure statement prior to the execution by the purchaser of any membership camping contract. All receipts shall be kept in files which are in the possession of the membership camping operator or broker subject to inspection by the commissioner, for a period of three years from the date of the receipt.

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.

**Subd. 3. Use.** The disclosure statement shall not be used for any promotional purpose before registration of the membership camping contracts and after registration, when required to be delivered pursuant to subdivision 1, it shall be used only in its entirety. A person may not advertise or represent that the commissioner has approved or recommended the membership camping contracts or sale thereof. A portion of the disclosure statement may not be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement if the effect is to render the statement misleading or deceptive.

**Subd. 4. Contract as disclosure statement.** A membership camping contract which contains all of the information required by subdivision 2 shall be deemed to be a disclosure statement within the meaning of this section. Delivery of such a membership camping contract shall be sufficient compliance with the requirements imposed by this section for delivery of a disclosure statement.

**Subd. 5. Other law.** Any disclosure statement which complies with the requirements of any federal law or the laws of any other state requiring substantially the same disclosure of information as is required by this section, may by rule or order of the commissioner be deemed to be in full or partial compliance with this section.

Subd. 6. **Separate disclosure.** If the membership camping operator or that person's salespeople represents to a prospective purchaser that the operator plans to construct or install any amenities in the future, but the operator has not guaranteed to do so, the operator shall furnish a separate disclosure to the prospective purchaser. The separate disclosure shall be in 10-point bold type and shall state: NOTICE: PURCHASE THIS MEMBERSHIP CAMPING CONTRACT ONLY ON THE BASIS OF EXISTING AMENITIES. CONSTRUCTION OF PLANNED AMENITIES IS NOT GUARANTEED. CONSTRUCTION MAY BE DEFERRED, REVISED, OR CANCELED FOR A VARIETY OF REASONS. THE PLANNED AMENITIES FOR THIS CAMPGROUND ARE (Insert list of amenities, including estimated year of completion of each). IF THE SALESPERSON DESCRIBES A SIGNIFICANT AMENITY WHICH IS NOT ON THIS LIST, TELEPHONE COLLECT OR TOLL FREE TO (Insert headquarters telephone number) TO VERIFY THE OPERATOR'S PLAN FOR SUCH A FACILITY.

The separate disclosure shall be delivered to each person to whom an offer is made before or concurrently with:

- (1) the first written offer other than offer by means of an advertisement; or
- (2) any payment pursuant to a sale, whichever is first.

The seller shall obtain a receipt, signed by the person, acknowledging that the person has received a copy of the separate disclosure required herein prior to the execution by the purchaser of any membership camping contract. All receipts shall be kept in files which are in the possession of the membership camping operator or broker subject to inspection by the commissioner for a period of three years from the date of the receipt.

**History:** 1985 c 129 s 5; 1985 c 248 s 70; 1986 c 444; 1995 c 233 art 2 s 56; 2014 c 222 art 2 s 7

## 82A.06 EXEMPTIONS.

Subdivision 1. **Total transactional exemptions.** The following transactions are exempt from the provisions of this chapter:

- (1) an offer, sale, or transfer by any one person of not more than one membership camping contract in any 12-month period; unless the offer, sale, or transfer is effected by or through a broker;
- (2) an offer or sale by a government or governmental agency;
- (3) a bona fide pledge of a membership camping contract; and
- (4) any transaction which the commissioner by rule or order exempts as not being within the purposes of this chapter and the registration of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of purchasers.

Subd. 2. [Repealed, 2014 c 222 art 1 s 58]

*[See Note.]*

**History:** 1985 c 129 s 6; 1986 c 444; 2013 c 135 art 1 s 5; 2014 c 222 art 2 s 8

**NOTE:** Subdivision 2 was also amended by Laws 2014, chapter 222, article 2, section 8, to read as follows:

"Subd. 2. **Partial transactional exemptions.** The following transactions are exempt from the provisions of sections 82A.03; 82A.05; 82A.07; 82A.11, subdivision 4; and 82A.14: any sale which is made to a person who is not then physically present in this state, and any offer which invites an offeree to attend a sales presentation in another state if:

(1) the offeror has given at least ten days prior written notice to the commissioner of its intention to offer or sell membership camping contracts to residents of this state pursuant to this exemption and paid a fee of \$50;

(2) the offeror has demonstrated that the sales presentation will be made, and the sale will be consummated, in a state which specifically regulates the offer and sale of membership camping contracts;

(3) the offeror has demonstrated that it will deliver a disclosure statement to offerees who are residents of this state which contains substantially the same or greater disclosure as is required by section 82A.05; and

(4) the offeror has filed a consent to service of process pursuant to section 82A.22."

**82A.07** [Repealed, 2014 c 222 art 1 s 58]

**82A.08** [Repealed, 2014 c 222 art 1 s 58]

**NOTE:** Subdivision 1 was also amended by Laws 2014, chapter 222, article 2, section 9, to read as follows:

"Subdivision 1. **Requirement.** During the period a registration is effective, the membership camping operator shall file an annual report in a format the commissioner may reasonably prescribe. Every annual report shall be due by the 120th day following the end of the operator's fiscal year, unless extended in writing by the commissioner for good cause. The annual report shall:

(1) specify the aggregate number of membership camping contracts sold in this state pursuant to the registration or any amendment thereof;

(2) specify the number of membership camping contracts and aggregate dollar amount of all sales of membership camping contracts in this state by the membership camping operator since the date the registration became effective, or since the last annual report was filed with the commissioner, whatever date is later;

(3) specify any exemption from registration claimed for any sale described in clause (2);

(4) include an audited or unaudited financial statement consisting of a balance sheet for the membership camping operator's last fiscal year end and an income statement for the 12 months next preceding the date of the balance sheet, both prepared by an independent certified public accountant; and

(5) provide such other information as the commissioner may by rule or order reasonably require to administer the provisions of this chapter, including but not limited to, audited financial statements."

## **82A.09 ADVERTISING.**

Subdivision 1. [Repealed, 1988 c 493 s 7]

Subd. 2. **Restrictions.** No person shall publish or cause to be published in this state any advertisement concerning any membership camping contract after the commissioner has found that the advertisement contains any statement that is false or misleading, or omits to make any statement necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and has so notified the person by written order. The order may be issued without prior notice or hearing. Up to 30 days after the issuance of the order, the person desiring to use the advertisement may in writing request a hearing on the order. Upon receipt of a written request, the matter shall be set for hearing to commence within 15 days after the receipt unless the person making the request consents to a later date. After the hearing, which shall be conducted in accordance with the provisions of chapter 14, the commissioner shall, by written order, either affirm, modify, or vacate the order.

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;

(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.

(4) Site and conceptual plans which do not disclose which facilities are and are not currently in existence.

(5) Pictorial advertising material for off-site distribution, other than site and conceptual plans which are labeled as such, which depicts more than the actual on-site condition of the campgrounds or other areas that are material to the offer or sale of membership camping contracts.

**History:** 1985 c 129 s 9; 1987 c 154 s 5; 1988 c 493 s 2; 2014 c 222 art 1 s 18; art 2 s 10

#### **82A.10 INSPECTION OF RECORDS.**

All records of a membership camping operator and broker and their agents pertaining to the advertising or sale of membership camping contracts in this state shall be maintained by the membership camping operator or broker at that person's principal place of business and shall there be subject to inspection by the commissioner during normal business hours.

**History:** 1985 c 129 s 10; 2014 c 222 art 1 s 19

#### **82A.11 SALES CONTRACT; RESCISSION.**

Subdivision 1. **Writing.** Every membership camping contract shall be in writing.

Subd. 2. [Repealed, 2014 c 222 art 1 s 58]

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.

Subd. 4. **Labeling of contract.** Each membership camping contract shall be prominently labeled and captioned that it is a document taken in connection with a sale of membership camping contracts under this chapter.

Subd. 5. **Notice.** Each membership camping contract shall contain the following notice which shall be in at least 10-point type, stating:

"You are entitled to rescind this agreement for any reason within five business days from the day you actually receive a legible copy of this document signed by all parties. The rescission must be in writing and sent by certified mail to the membership camping operator along with this agreement and any membership card issued to you or your family at the address stated in this document. Upon rescission, you will receive a refund of all money paid within 30 days after the membership camping operator receives notice of your rescission."

The operator or broker may impose a fee of not more than \$25 for processing of a rescission. If the operator or broker does so, it shall add the following clause to the notice: "provided that the membership

camping operator (or broker, if the seller is a broker) may retain a processing fee of \$.....," and insert the amount of the charge to be imposed.

In the event the membership camping contract is sold by a broker or the broker's salesperson, the above notice shall be modified to substitute the name of the broker for "membership camping operator."

Subd. 6. **Effective date.** Rescission occurs when the purchaser gives written notice of rescission, whether or not the membership camping contract or any membership card accompanies the notice, to the membership camping operator or the broker at the address stated in the contract. Notice of rescission, if given by mail, is effective when the purchaser deposits a certified letter properly addressed and postage prepaid in a mailbox. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the membership camping contract.

Subd. 7. **Nonwaiver.** No act of a purchaser shall be effective to waive the right to rescind as provided in this section.

Subd. 8. **Cancellation by heir.** A membership camping contract that may be transferred by descent or devise must provide that the heir or devisee may cancel the contract. Cancellation of the contract relieves the heir or devisee of any further obligations under the contract.

**History:** 1985 c 129 s 11; 1987 c 154 s 6; 1995 c 68 s 6; 1996 c 439 art 3 s 10; 1998 c 254 art 1 s 17

#### **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. 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. [Repealed, 2014 c 222 art 1 s 58]

**History:** 1987 c 154 s 7; 1995 c 202 art 1 s 25; 2014 c 222 art 1 s 20

### **82A.12 ENFORCEMENT; POWERS OF COMMISSIONER.**

Subdivision 1. **Generally.** The commissioner may issue a cease and desist order and may issue an order denying, suspending, or revoking any registration, amendment renewal, or exemption if the commissioner finds any of the following:

(1) that the membership camping operator or registrant or any controlling person thereof has materially or intentionally violated or failed to comply with any provision of this chapter or any rule or order of the commissioner;

(2) that the offer or sale of the membership camping contract has constituted or would constitute a material misrepresentation to purchasers, or has operated or would operate as a fraud or deceit upon purchasers;

(3) that the membership camping operator or registrant or any controlling person, agent, or employee thereof, is engaging or about to engage in false, fraudulent, or deceptive practices in connection with the offer and sale of a membership camping contract;

(4) that the membership camping operator or registrant or any controlling person or employee thereof, has engaged in any fraudulent or deceptive practice, whether or not in connection with the offer and sale of membership camping contracts, and the involvement of the person in the business of the membership camping operator or registrant creates a substantial risk of harm to prospective purchasers;

(5) that the financial condition of the membership camping operator materially adversely affects, or would materially adversely affect, the ability of the membership camping operator such that there is a reasonable likelihood that the membership camping operator will not be able to substantially fulfill its obligations under the membership camping contract, and no other financial security or assurance is provided by the membership camping operator to fulfill the obligations;

(6) that the membership camping operator's or registrant's enterprise or method of business with respect to the operation of a campground in this state includes or would include activities which are illegal or not in conformance with applicable statutes, ordinances, or regulations of any governmental entity; and

(7) that the membership camping operator or controlling person, agent, or employee thereof, has failed faithfully to perform any stipulation or agreement made with the commissioner.

Subd. 2. **Hearing on order.** If the commissioner finds that there are reasonable grounds to believe that, unless an order is issued promptly, there is an immediate and significant risk of harm to purchasers, the commissioner may issue an order under subdivision 1 without a prior hearing. Upon the entry of such an order, the commissioner shall promptly serve a copy of the order upon the subject membership camping operator or other person. The order shall state the reasons for its issuance and shall either order a hearing, which shall be set for no later than 20 days from the date of the order, or specify that upon the written request of the membership camping operator, or other person, the matter will be set for hearing within 15 days after receipt of the request; provided that with the consent of the membership camping operator, or other person, a hearing may be held subsequent to the expiration of either period specified herein. If no hearing is requested within 30 days of service of the order and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or

ordered, the commissioner, after notice and hearing in accordance with the provisions of chapter 14, shall affirm, modify, or vacate the order.

Subd. 3. **Order to show cause.** If there are not grounds to employ the procedure prescribed in subdivision 2, the commissioner may issue an order to show cause setting a hearing on a date not later than ten days after its entry and requiring a membership camping operator or other person to appear and show cause why a cease and desist order should not be issued, or why an order denying, suspending, or revoking a registration, amendment, or exemption should not be issued. The order to show cause shall give reasonable notice of the time and place for hearing thereon, which shall be within ten days after entry of the order, unless the respondent agrees otherwise, and shall state the reasons for the entry of the order. The hearing shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require.

Subd. 4. **Burden of proof.** In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

Subd. 5. **Investigations.** The commissioner may make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. For purposes of any investigation or proceeding under this chapter, the commissioner or any person designated by the commissioner may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, setting forth the facts and circumstances concerning the matter to be investigated; administer oaths or affirmations, and upon the commissioner's own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence. Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the commissioner may apply to the district court for an order to compel compliance.

**History:** 1985 c 129 s 12; 1986 c 444; 2014 c 222 art 1 s 21

### 82A.13 PROHIBITED PRACTICES.

Subdivision 1. **Untrue statements filed in documents.** No person shall make or cause to be made any untrue statement of a material fact in an application or other document filed with the commissioner.

Subd. 2. **Fraud.** No person shall, in connection with the offer or sale of any membership camping contract, directly or indirectly:

- (1) employ any device, scheme, or artifice to defraud;
- (2) make any untrue statement of a material fact, or omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or
- (4) accept an advance payment for services rendered by an agent in connection with the resale of a membership camping contract.

Subd. 3. [Repealed, 2014 c 222 art 1 s 58]

**History:** 1985 c 129 s 13; 1989 c 252 s 3; 2013 c 135 art 1 s 6; 2014 c 222 art 1 s 22

#### **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 lienholder, 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;

(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:** 1985 c 129 s 14; 1986 c 444; 1995 c 202 art 1 s 25; 2014 c 222 art 1 s 23

### **82A.15 PRESERVATION OF PURCHASER'S CLAIMS AND DEFENSES.**

Any assignee of a membership camping contract or obligation relating to membership camping contracts shall be subject to all claims and defenses of the purchaser against the membership camping operator arising from the sale, notwithstanding any agreement to the contrary. An assignee who takes assignment of the membership camping contract without assumption of any obligations thereunder shall have no obligation or liability to assume the obligations or responsibilities of the membership camping operator under the membership camping contract. The assignee's liability under this section shall not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The rights of the purchaser under this subdivision can only be asserted as a matter of defense to or set off against a claim by the assignee.

**History:** 1985 c 129 s 15

**82A.16** [Repealed, 2013 c 135 art 1 s 10]

**82A.17** [Repealed, 2013 c 135 art 1 s 10]

### **82A.18 ENFORCEMENT; PENALTIES AND REMEDIES.**

Subdivision 1. **Civil action.** Whenever the commissioner has reasonable cause to believe that any person has engaged or is about to engage in any act or practice constituting a violation of any provisions of this chapter or any rule or order thereunder, the commissioner may, in addition to all other remedies, institute on behalf of the state of Minnesota a civil action seeking appropriate relief. In addition to all other penalties and remedies provided by this chapter, whether administrative or judicial in nature, the courts of this state shall have jurisdiction to grant such temporary, interlocutory, or permanent injunctive relief as is necessary to prevent and restrain violations of this chapter and may upon a proper showing appoint a receiver for the property, assets, business, and affairs of a membership camping operator.

Subd. 2. **Civil penalty.** Any person who materially or repeatedly violates section 82A.03, 82A.05, 82A.09, 82A.13, or 82A.14 shall be subject to a fine of not more than \$1,000 for each violation provided, however, that the total recovery arising from the same failure to comply, but involving different purchasers, shall be limited to \$5,000. A fine authorized by this subdivision may be imposed in a civil action brought by the attorney general on behalf of the state of Minnesota, and shall be deposited into the state treasury.

Subd. 3. [Repealed, 2014 c 222 art 1 s 58]

**History:** 1985 c 129 s 18; 1986 c 444; 2013 c 135 art 1 s 7

### **82A.19 CIVIL LIABILITY.**

Subdivision 1. **Generally.** A person who violates any provision of section 82A.05, 82A.13, or 82A.14 or any rule or order thereunder shall be liable to the purchaser who may sue for actual damages caused thereby, for rescission, or other relief as the court may deem appropriate.

Subd. 2. **Joint and several liability.** Every person who materially aids in the act or a violation of section 82A.05, 82A.13, or 82A.14 is also liable jointly and severally with and to the same extent as the person, directly committing the violation unless the person who would otherwise be liable hereunder had no knowledge of or reasonable grounds to know of the existence of the facts by reason of which the liability is alleged to exist.

Subd. 3. **Costs and disbursements.** The prevailing party, in any suit authorized under this section or brought pursuant to section 82A.11, may recover costs and disbursements plus reasonable attorney's fees, in addition to any other relief granted.

Subd. 4. **Remedies additional.** The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Subd. 5. **Limitations on actions.** An action shall not be commenced pursuant to this section later than three years from the date the person enters into the contract.

**History:** 1985 c 129 s 19

### **82A.20 RULES AND OPINIONS.**

Subdivision 1. **Rulemaking power.** The commissioner may adopt rules to carry out the provisions of this chapter. For the purpose of rules and forms, the commissioner may classify membership camping contracts, persons, or matters within the commissioner's jurisdiction, and prescribe different requirements for different classes insofar as they are consistent with this chapter. Rules shall be adopted in accordance with chapter 14, and shall not be inconsistent with the provisions of this chapter.

Subd. 2. **Opinions.** The commissioner, upon request and upon payment of a fee of \$50, may honor requests for interpretive opinions relating to this chapter.

**History:** 1985 c 129 s 20; 1986 c 444

### **82A.21 SCOPE.**

The provisions of this chapter concerning offers and sales of membership camping contracts apply when an offer or sale is made in this state.

For the purpose of this chapter, an offer or sale is made in this state when a sales presentation is made in this state. An offer or sale is also made in this state, whether or not either party is then present in this state, when:

(1) the offer originates from this state and is intended to induce the offeree to attend a sales presentation in this state; or



(2) the offer is directed by the offeror to this state, received by the offeree in this state and is intended to induce the offeree to attend a sales presentation in this or another state.

An offer or sale is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or a radio or television program originating outside this state is received in this state.

**History:** *1985 c 129 s 21*

#### **82A.22 SERVICE OF PROCESS.**

Subdivision 1. [Repealed, 2014 c 222 art 1 s 58]

Subd. 2. **Appointment of commissioner.** When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter, or any rule or order thereunder, and personal jurisdiction over this person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner or the commissioner's successor to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person which grows out of that conduct and which is brought under this chapter or any rule or order thereunder, with the same force and validity as if served on the person personally. Service under this section shall be made in compliance with section 45.028, subdivision 2.

Subd. 3. [Repealed, 2014 c 222 art 1 s 58]

**History:** *1985 c 129 s 22; 1986 c 444; 1992 c 564 art 2 s 14,15; 2014 c 222 art 1 s 24*

#### **82A.23 WAIVERS VOID.**

Any condition, stipulation, or provision purporting to bind any person acquiring any membership camping contract to waive compliance with any provision of this chapter or any rule or order thereunder is void.

**History:** *1985 c 129 s 23*

#### **82A.24 ADMINISTRATION.**

Subdivision 1. **Generally.** This chapter shall be administered by the commissioner of commerce.

Subd. 2. **Responsibilities of department.** It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not generally available to the public. Nothing in this chapter authorizes the commissioner or any of the commissioner's officers or employees to disclose any confidential information except among themselves or to other administrators or regulatory authorities, or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates any privilege or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's officers or employees.

Subd. 3. **Public documents.** All applications and other documents filed with the commissioner under this chapter shall be open to public inspection in accordance with rules prescribed by the commissioner.

The commissioner may publish information filed with the commissioner or obtained by the commissioner if, in the judgment of the commissioner, the action is in the public interest.

Subd. 4. **Document filing.** A document is filed when it is received by the commissioner.

Subd. 5. [Repealed, 2014 c 222 art 1 s 58]

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. Any copy so certified is admissible in evidence under section 600.13.

Subd. 7. **Service of orders.** Orders of the commissioner shall be served by mailing a copy by certified mail to the most recent address of the recipient of the order as it appears in the files of the commissioner. Subpoenas shall be served in the same manner as provided in civil actions in the district courts.

**History:** 1985 c 129 s 24; 1986 c 444; 1987 c 154 s 8,9

#### **82A.25 CRIMINAL PENALTIES.**

Any person who willfully violates section 82A.13 or any order of the commissioner pursuant thereto of which that person has notice, may be fined not more than \$5,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of the offenses shall not bar prosecution or conviction for any other offense.

**History:** 1985 c 129 s 25; 2014 c 222 art 1 s 25

#### **82A.26 NONAPPLICABILITY OF CERTAIN LAW.**

Membership camping contracts registered pursuant to this chapter are exempt from the provisions of chapter 83. To the extent that salespersons and licensed brokers engage in the offer or sale of membership camping contracts, those brokers and salespersons are exempt from the licensing requirements of chapter 82.

**History:** 1985 c 129 s 26; 2014 c 222 art 1 s 26