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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 4. REAL ESTATE [10000 - 11506] (*Division 4 added by Stats. 1943, Ch. 127.)*

PART 2. REGULATION OF TRANSACTIONS [11000 - 11288] (*Part 2 added by Stats. 1943, Ch. 127.)*

CHAPTER 2. The Vacation Ownership and Time-Share Act of 2004 [11210 - 11288] (*Chapter 2 added by Stats. 2004, Ch. 697, Sec. 14.)*

ARTICLE 5. Powers, Investigation, and Enforcement [11280 - 11288] (*Article 5 added by Stats. 2004, Ch. 697, Sec. 14.)*

11280. (a) Except as specifically provided in this section, the regulation of time-share plans and exchange programs is an exclusive power and function of the state. A unit of local government may not regulate time-share plans or exchange programs.

(b) Notwithstanding subdivision (a), no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, or building code or other real estate use law, ordinance, or regulation.

(*Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.*)

11281. The commissioner may adopt, repeal, or amend forms and regulations that are necessary to effectuate the intent of the Legislature in carrying out this chapter. These forms and regulations and any order, permit, decision, demand, or requirement issued by the commissioner shall be in writing and adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(*Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.*)

11282. The commissioner may investigate the actions or qualifications of any person or persons holding or claiming to hold a public report under this chapter.

(*Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.*)

11283. (a) Whenever the commissioner determines from available evidence that a person has done any of the following, the commissioner may order the person to desist and refrain from those acts and omissions or from the further sale or lease of interests in the time-share plan until the condition has been corrected:

(1) The person has violated or caused the violation of any provision of this chapter or the regulations pertaining thereto.

(2) The person has violated or caused a violation of Section 17537, 17537.1, 17537.2, or 17539.1, in advertising or promoting the sale of time-share interests.

(3) The person has failed to fulfill representations or assurances with respect to the time-share plan or the time-share offering upon which the department relied in issuing a public report.

(4) The person has failed to inform the department of material changes that have occurred in the time-share or time-share offering that have caused the public report to be misleading or inaccurate or which would have caused the department to deny a public report if the conditions had existed at the time of issuance.

(b) Upon receipt of such an order, the person or persons to whom the order is directed shall immediately discontinue activities in accordance with the terms of the order.

(c) Any person to whom the order is directed may, within 30 days after service thereof upon him or her, file with the commissioner a written request for hearing to contest the order. The commissioner shall, after receipt of a request for hearing, assign the matter to the Office of Administrative Hearings to conduct a hearing for findings of fact and determinations of the issues set forth in the order. If the hearing is not commenced within 15 days after receipt of the request for hearing, or on the date to which continued with the

agreement of the person requesting the hearing, or if the decision of the commissioner is not rendered within 30 days after completion of the hearing, the order shall be deemed to be vacated.

(d) Service and proof of service of an order issued by the commissioner pursuant to this section may be made in a manner and upon those persons as prescribed for the service of summons in Article 3 (commencing with Section 415.10), Article 4 (commencing with Section 416.10), and Article 5 (commencing with Section 417.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11284. Notwithstanding any other provisions of this chapter or of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the commissioner may negotiate agreements with registrants and applicants resulting in disciplinary consent orders. The consent order may provide for any form of discipline provided for in this chapter. The consent order shall provide that it is not entered into as a result of any coercion by the commissioner. The consent order shall be accepted by signature or rejected by the commissioner in a timely manner.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11285. An action for damages or for injunctive or declaratory relief for a violation of this chapter may be brought by any time-share interest owner or association against the developer, seller, or marketer of time-share interests, an escrow agent, or the managing entity. Relief under this section does not exclude other remedies provided by law.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Section operative July 1, 2005, pursuant to Section 11288.)

11286. (a) It shall be unlawful for any person to make, issue, publish, deliver, or transfer as true and genuine any public report that is forged, altered, false, or counterfeit, knowing it to be forged, altered, false, or counterfeit or to cause to be made or participate in the making, issuance, delivery, transfer, or publication of a public report with knowledge that it is forged, altered, false, or counterfeit.

(b) Any person who violates subdivision (a) is guilty of a public offense punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) The penalty provided by this section is not an exclusive penalty, and does not affect any other penalty, relief, or remedy provided by law.

(Amended by Stats. 2011, Ch. 15, Sec. 23. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11287. Any person who violates Section 11226, 11227, 11234, 11244, 11245, or 11283, is guilty of a public offense punishable by a fine not to exceed ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code or in a county jail not exceeding one year, or by both the fine and imprisonment.

(Amended by Stats. 2011, Ch. 15, Sec. 24. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

11288. This chapter shall take effect on July 1, 2005.

(Added by Stats. 2004, Ch. 697, Sec. 14. Effective January 1, 2005. Note: This section prescribes a delayed operative date for Chapter 2, commencing with Section 11210.)