

OFFICE OF CHARITABLE AND REGULATORY PROGRAMS

Health Clubs in Virginia - what you should know before you join a gym

Registration Requirements

Health Clubs in Virginia are required to register with the Office of Charitable and Regulatory Programs (OCRCP), and comply with the provisions of the Virginia Health Club Act (Act).

What is a "Health Club?"

The Act defines a **health club** as "any person, firm, corporation, organization, club or association whose primary purpose is to engage in the sale of memberships in a program consisting primarily of physical exercise with exercise machines or devices, or whose primary purpose is to engage in the sale of the right or privilege to use exercise machines or devices."

Within the context of the Act, the term health club does not include the following: (i) bona fide nonprofit organizations, including, but not limited to, the YMCA, YWCA, or similar organizations whose functions as health clubs are only incidental to their overall functions and purposes; (ii) any private club owned and operated by its members; (iii) any organization primarily operated for the purpose of teaching a particular form of self-defense such as judo or karate; (iv) any facility owned or operated by the United States; (v) any facility owned or operated by the Commonwealth of Virginia or any of its political subdivisions; (vi) any nonprofit public or private school, college or university; (vii) any club providing tennis or swimming facilities located in a residential planned community or subdivision, developed in conjunction with the development of such community or subdivision, and deriving at least eighty percent of its membership from residents of such community or subdivision; and (viii) any facility owned and operated by a private employer exclusively for the benefit of its employees, retirees, and family members and which facility is only incidental to the overall functions and purposes of the employer's business and is operated on a nonprofit basis.

Important Definitions:

"Comparable alternate facility" means a health club facility that is reasonably of the kind, in nature and quality, to the health club facility originally contracted, whether such facility is in the same location but owned by a different health club or is at another location of the same health club (facility is sold to new ownership who maintains same services in same location, or contracts are transferred to a different facility owned by same ownership of health club that is closing).

"Initiation fee" means a nonrecurring fee charged at or near the beginning of a health club membership, and includes all fees or charges not part of the monthly fee." These nonrecurring charges include initiation or registration fees, security card charges, account setup fees, etc.

What You Should Know About Your Contract

All health club contracts must be in writing and the member must be given a copy of the agreement at the time the contract is executed.

The contract must clearly state the beginning and ending dates of the initial term of the contract and must separately identify any initiation fees charged.

No health club contract may be sold for a period of longer than thirty-six months, including any renewal period EXCEPT under the following provisions:

- Any initiation fee does not exceed ten times the initial monthly fee.
- All payments for health club services, other than the initiation fee, are collected as monthly fees on a monthly basis.
- After an initial term of not more than twelve months, either party may cancel the health club contract upon not more than thirty days' notice.
- The monthly fee is never reduced below eighty percent of the monthly fee at the time the contract is initially executed.

Any club accepting money in excess of the prorated monthly fee for the month when the contract is initially executed plus one month's fees, and/or accepts any initiation fee in excess of \$125, must post a bond or letter of credit which may be used to reimburse eligible members in the event the club goes out of business.

Any club which does not post a bond or letter of credit must include a statement in their contracts which reads as follows: **"This club is not permitted, pursuant to the Virginia Health Club Act, to accept any initiation fee in excess of one hundred twenty five (\$125) dollars or any payment for more than the prorated monthly fee for the month when the contract is initially executed plus one full month in advance."**

Health clubs selling contracts on a prepayment basis (prior to club opening) must disclose in the contract the date on which the club will open. This date must not be more than 12 months from the signing of the contract. Consumers are entitled to a refund after the date specified if the facility does not open.

Buyer's Right to Cancel

Every health club contract for the sale of health club services may be cancelled under the following circumstances, without penalty:

- If the member wishes to cancel the contract, the member may cancel by making or delivering written notice to the health club. The notice must say the member does not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be delivered or mailed to the health club address indicated on the contract. If canceled within three business days, the member will be entitled to a refund of all monies paid.
- The member may also cancel the contract if the club goes out of business or relocates and fails to provide comparable alternate facilities within five driving miles of the location designated in the contract.
- The member may also cancel if the member becomes physically unable to use a substantial portion of the health club services for 30 or more consecutive days, and the member's estate may cancel in the event of the member's death. The member must prove the inability to use a substantial portion of the health club services by a doctor's, physician's assistant's or nurse practitioner's certificate, and the health club may also require that the member submit to a physical examination, within 30 days of the notice of

cancellation, by a doctor, physician's assistant or nurse practitioner agreeable to the member and the health club. The cost of the examination shall be borne by the health club. If the member cancels after the three business days, the health club may retain or collect a portion of the contract price equal to the proportionate value of the services or use of facilities the member has already received. Any refund due to the member shall be paid within 30 days of the effective date of cancellation.

A health club may independently offer cancellation provisions for reasons such as relocation, military deployment, or job loss. These provisions are not guaranteed by the Act, and such cancellations are not always without penalty.

It is important for every consumer entering into a health club contract to read the entire contract and seek clarification on any part the consumer does not understand. The contract will have specific points as to cancellation procedures and requirements, which if not followed as directed, will prevent the member from cancelling the contract and possibly incurring additional charges. There may also be automatic renewal agreements that will extend the contract to a month to month contract if not cancelled at the end of the initial term.

For additional information or to verify if a health club is registered with OCRP, you may contact Sandy Harrington, Investigator at sandy.harrington@vdacs.virginia.gov or by phone at 804.225.4601.