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HOUSE BILL NO. 902

Offered January 11, 2012

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A BILL to amend and reenact §§ 55-79.54 and 55-79.61 of the Code of Virginia, relating to the Condominium Act; time limits for expansion, contraction, or conversion of condominium.

Patron—Minchew

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.54 and 55-79.61 of the Code of Virginia are amended and reenacted as follows: § 55-79.54. Contents of declaration.

(a) The declaration for every condominium shall contain the following:

(1) The name of the condominium, which name shall include the word "condominium" or be followed by the words "a condominium."

(2) The name of the city or county in which the condominium is located.

(3) A legal description by metes and bounds of the land submitted to this chapter.

(4) A description or delineation of the boundaries of the units, including the horizontal (upper and lower) boundaries, if any, as well as the vertical (lateral or perimetric) boundaries.

(5) A description or delineation of any limited common elements, other than those which are limited common elements by virtue of subsection (e) of § 55-79.50, showing or designating the unit or units to which each is assigned.

(6) A description or delineation of all common elements not within the boundaries of any convertible lands which may subsequently be assigned as limited common elements, together with a statement that (i) they may be so assigned and a description of the method whereby any such assignments shall be made in accordance with the provisions of § 55-79.57 or (ii) once assigned, the conditions under which they may be unassigned and converted to common elements in accordance with § 55-79.57.

(7) The allocation to each unit of an undivided interest in the common elements in accordance with the provisions of § 55-79.55.

(7a) A statement of the extent of the declarant's obligation to complete improvements labeled "(NOT YET COMPLETED)" or to begin and complete improvements labeled "(NOT YET BEGUN)" on plats recorded pursuant to the requirements of this chapter. Such statement shall be specific as to the type and quality of materials to be used, the size or capacity of the improvements, when material, and the time by which such improvements shall be completed.

(8) Such other matters as the declarant deems appropriate.

(b) If the condominium contains any convertible land, the declaration shall also contain the following:

(1) A legal description by metes and bounds of each convertible land within the condominium.

(2) A statement of the maximum number of units that may be created within each such convertible land.

(3) A statement, with respect to each such convertible land, of the maximum percentage of the aggregate land and floor area of all units that may be created therein that may be occupied by units not restricted exclusively to residential use.

(4) A statement of the extent to which any structure erected on any convertible land will be compatible with structures on other portions of the submitted land in terms of quality of construction, the principal materials to be used, and architectural style.

(5) A description of all other improvements that may be made on each convertible land within the condominium.

(6) A statement that any units created within each convertible land will be substantially identical to the units on other portions of the submitted land, or a statement describing in detail what other types of units may be created therein.

(7) A description of the declarant's reserved right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within each such convertible land.

Provided, that plats and plans may be recorded with the declaration and identified therein to supplement information furnished pursuant to items (1), (4), (5), (6) and (7) of this subsection, and that item (3) of this subsection need not be complied with if none of the units on other portions of the

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59 submitted land are restricted exclusively to residential use.

60 (c) If the condominium is an expandable condominium, the declaration shall also contain the  
61 following:

62 (1) The explicit reservation of an option to expand the condominium.

63 (2) A statement of any limitations on that option, including, without limitation, a statement as to  
64 whether the consent of any unit owners shall be required, and if so, a statement as to the method  
65 whereby such consent shall be ascertained; or a statement that there are no such limitations.

66 (3) A time limit, not exceeding ~~seven~~ 10 years from the recording of the declaration, upon which the  
67 option to expand the condominium shall expire, together with a statement of the circumstances, if any,  
68 which will terminate that option prior to the expiration of the time limit so specified. After the  
69 expiration of any period of declarant control reserved pursuant to subsection (a) of § 55-79.74, such time  
70 limit may be extended by an amendment to the declaration made pursuant to § 55-79.71.

71 (4) A legal description by metes and bounds of all land that may be added to the condominium,  
72 henceforth referred to as "additional land."

73 (5) A statement as to whether, if any of the additional land is added to the condominium, all of it or  
74 any particular portion of it must be added, and if not, a statement of any limitations as to what portions  
75 may be added or a statement that there are no such limitations.

76 (6) A statement as to whether portions of the additional land may be added to the condominium at  
77 different times, together with any limitations fixing the boundaries of those portions by legal  
78 descriptions setting forth the metes and bounds thereof and/or regulating the order in which they may be  
79 added to the condominium.

80 (7) A statement of any limitations as to the locations of any improvements that may be made on any  
81 portions of the additional land added to the condominium, or a statement that no assurances are made in  
82 that regard.

83 (8) A statement of the maximum number of units that may be created on the additional land. If  
84 portions of the additional land may be added to the condominium and the boundaries of those portions  
85 are fixed in accordance with item (6) of ~~this subsection~~, the declaration shall also state the maximum  
86 number of units that may be created on each such portion added to the condominium. If portions of the  
87 additional land may be added to the condominium and the boundaries of those portions are not fixed in  
88 accordance with item (6) of ~~this subsection~~, then the declaration shall also state the maximum number of  
89 units per acre that may be created on any such portion added to the condominium.

90 (9) A statement, with respect to the additional land and to any portion or portions thereof that may  
91 be added to the condominium, of the maximum percentage of the aggregate land and floor area of all  
92 units that may be created thereon that may be occupied by units not restricted exclusively to residential  
93 use.

94 (10) A statement of the extent to which any structures erected on any portion of the additional land  
95 added to the condominium will be compatible with structures on the submitted land in terms of quality  
96 of construction, the principal materials to be used, and architectural style, or a statement that no  
97 assurances are made in those regards.

98 (11) A description of all other improvements that will be made on any portion of the additional land  
99 added to the condominium, or a statement of any limitations as to what other improvements may be  
100 made thereon, or a statement that no assurances are made in that regard.

101 (12) A statement that any units created on any portion of the additional land added to the  
102 condominium will be substantially identical to the units on the submitted land, or a statement of any  
103 limitations as to what types of units may be created thereon, or a statement that no assurances are made  
104 in that regard.

105 (13) A description of the declarant's reserved right, if any, to create limited common elements within  
106 any portion of the additional land added to the condominium, and/or to designate common elements  
107 therein which may subsequently be assigned as limited common elements, in terms of the types, sizes,  
108 and maximum number of such elements within each such portion, or a statement that no assurances are  
109 made in those regards.

110 Provided, that plats and plans may be recorded with the declaration and identified therein to  
111 supplement information furnished pursuant to items (4), (5), (6), (7), (10), (11), (12) and (13) of ~~this~~  
112 ~~subsection~~, and that item (9) of ~~this subsection~~ need not be complied with if none of the units on the  
113 submitted land are restricted exclusively to residential use.

114 (d) If the condominium is a contractable condominium, the declaration shall also contain the  
115 following:

116 (1) The explicit reservation of an option to contract the condominium.

117 (2) A statement of any limitations on that option, including, without limitation, a statement as to  
118 whether the consent of any unit owners shall be required, and if so, a statement as to the method  
119 whereby such consent shall be ascertained; or a statement that there are no such limitations.

120 (3) A time limit, not exceeding ~~seven~~ 10 years from the recording of the declaration, upon which the

121 option to contract the condominium shall expire, together with a statement of the circumstances, if any,  
122 which will terminate that option prior to the expiration of the time limit so specified.

123 (4) A legal description by metes and bounds of all land that may be withdrawn from the  
124 condominium, henceforth referred to as "withdrawable land."

125 (5) A statement as to whether portions of the withdrawable land may be withdrawn from the  
126 condominium at different times, together with any limitations fixing the boundaries of those portions by  
127 legal descriptions setting forth the metes and bounds thereof and/or regulating the order in which they  
128 may be withdrawn from the condominium.

129 (6) A legal description by metes and bounds of all of the submitted land to which the option to  
130 contract the condominium does not extend.

131 Provided, that plats may be recorded with the declaration and identified therein to supplement  
132 information furnished pursuant to items (4), (5) and (6) of this subsection, and that item (6) of this  
133 subsection shall not be construed in derogation of any right the declarant may have to terminate the  
134 condominium in accordance with the provisions of § 55-79.72:1.

135 (e) If the condominium is a leasehold condominium, then with respect to any ground lease or other  
136 leases the expiration or termination of which will or may terminate or contract the condominium, the  
137 declaration shall set forth the city or county wherein the same are recorded and the deed book and page  
138 number where the first page of each such lease is recorded; and the declaration shall also contain the  
139 following:

140 (1) The date upon which each such lease is due to expire.

141 (2) A statement as to whether any land and/or improvements will be owned by the unit owners in  
142 fee simple, and if so, either (a) a description of the same, including without limitation a legal description  
143 by metes and bounds of any such land, or (b) a statement of any rights the unit owners shall have to  
144 remove such improvements within a reasonable time after the expiration or termination of the lease or  
145 leases involved, or a statement that they shall have no such rights.

146 (3) A statement of the rights the unit owners shall have to redeem the reversion or any of the  
147 reversions, or a statement that they shall have no such rights.

148 Provided, that after the recording of the declaration, no lessor who executed the same, and no  
149 successor in interest to such lessor, shall have any right or power to terminate any part of the leasehold  
150 interest of any unit owner who makes timely payment of his share of the rent to the person or persons  
151 designated in the declaration for the receipt of such rent and who otherwise complies with all covenants  
152 which, if violated, would entitle the lessor to terminate the lease. Acquisition or reacquisition of such a  
153 leasehold interest by the owner of the reversion or remainder shall not cause a merger of the leasehold  
154 and fee simple interests unless all leasehold interests in the condominium are thus acquired or  
155 reacquired.

156 (f) Wherever this section requires a legal description by metes and bounds of land that is submitted  
157 to this chapter or that may be added to or withdrawn from the condominium, such requirement shall be  
158 deemed satisfied by any legally sufficient description and shall be deemed to require a legally sufficient  
159 description of any easements that are submitted to this chapter or that may be added to or withdrawn  
160 from the condominium, as the case may be. In the case of each such easement, the declaration shall  
161 contain the following:

162 (1) A description of the permitted use or uses.

163 (2) If less than all of those entitled to the use of all of the units may utilize such easement, a  
164 statement of the relevant restrictions and limitations on utilization.

165 (3) If any persons other than those entitled to the use of the units may utilize such easement, a  
166 statement of the rights of others to utilization of the same.

167 (g) Wherever this section requires a legal description by metes and bounds of land that is submitted  
168 to this chapter or that may be added to or withdrawn from the condominium, an added requirement shall  
169 be a separate legally sufficient description of all lands in which the unit owners shall or may be tenants  
170 in common or joint tenants with any other persons, and a separate legally sufficient description of all  
171 lands in which the unit owners shall or may be life tenants. No units shall be situated on any such  
172 lands, however, and the declaration shall describe the nature of the unit owners' estate therein. No such  
173 lands shall be shown on the same plat or plats showing other portions of the condominium, but shall be  
174 shown instead on separate plats.

175 § 55-79.61. Conversion of convertible lands.

176 A. The declarant may convert all or any portion of any convertible land into one or more units  
177 and/or limited common elements subject to any restrictions and limitations which the condominium  
178 instruments may specify. Any such conversion shall be deemed to have occurred at the time of the  
179 recordation of appropriate instruments pursuant to subsection B of this section and subsection C of  
180 § 55-79.58.

181 B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55-79.58, the

182 declarant shall prepare, execute, and record an amendment to the declaration describing the conversion.  
183 Such amendment shall assign an identifying number to each unit formed out of a convertible land and  
184 shall reallocate undivided interests in the common elements in accordance with subsection (b) of  
185 § 55-79.56. Such amendment shall describe or delineate the limited common elements formed out of the  
186 convertible land, showing or designating the unit or units to which each is assigned.

187 C. All convertible lands shall be deemed a part of the common elements except for such portions  
188 thereof as are converted in accordance with the provisions of this section. Until the expiration of the  
189 period during which conversion may occur or until actual conversion, whichever occurs first, the  
190 declarant alone shall be liable for real estate taxes assessed against the convertible land and any  
191 improvements thereon and all other expenses in connection with that real estate, and no other unit owner  
192 and no other portion of the condominium shall be subject to a claim for payment of those taxes or  
193 expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible  
194 land and any improvements thereon shall inure to the declarant. No such conversion shall occur after  
195 ~~seven~~ 10 years from the recordation of the declaration, or such shorter period of time as the declaration  
196 may specify.