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HOUSE BILL NO. 1995

Offered January 9, 2013

Prefiled January 9, 2013

A *BILL to amend and reenact §§ 55-79.45, 55-79.58, and 55-79.61 of the Code of Virginia, relating to the Condominium Act; convertible land.*

Patron—Massie

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.45, 55-79.58, and 55-79.61 of the Code of Virginia are amended and reenacted as follows:

§ 55-79.45. How condominium may be created.

No condominium shall come into existence except by the recordation of condominium instruments pursuant to the provisions of this chapter. No condominium instruments shall be recorded unless all units located or to be located on any portion of the submitted land, other than within the boundaries of any convertible lands, are depicted on plats and plans that comply with the provisions of subsections A and B of § 55-79.58. The foreclosure of any mortgage, deed of trust, or other lien shall not be deemed, *ex proprio vigore*, to terminate the condominium. *No mortgage, deed of trust, or other lien shall be subject to the provisions of a recorded declaration unless such mortgage, deed of trust, or other lien expressly so provides.*

§ 55-79.58. Contents of plats and plans.

A. There shall be recorded simultaneously with the declaration one or more plats of survey showing the location and dimensions of the submitted land, the location and dimensions of any convertible lands within the submitted land, the location and dimensions of any existing improvements, the intended location and dimensions of any contemplated improvements which are to be located on any portion of the submitted land other than within the boundaries of any convertible lands, and, to the extent feasible, the location and dimensions of all easements appurtenant to the submitted land or otherwise submitted to this chapter as a part of the common elements. If the submitted land is not contiguous, then the plats shall indicate the distances between the parcels constituting the submitted land. The plats shall label every convertible land as a convertible land, and if there is more than one such land the plats shall label each such land with one or more letters and/or numbers different from those designating any other convertible land and different also from the identifying number of any unit. The plats shall show the location and dimensions of any withdrawable lands, and shall label each such land as a withdrawable land. The plats shall show the location and dimensions of any additional lands and shall label each such land as an additional land. If, with respect to any portion or portions, but less than all, of the submitted land, the unit owners are to own only an estate for years, the plats shall show the location and dimensions of any such portions, and shall label each such portion as a leased land. If there is more than one withdrawable land, or more than one leased land, the plats shall label each such land with one or more letters and/or numbers different from those designating any convertible land or other withdrawable or leased land, and different also from the identifying number of any unit. The plats shall show all easements to which the submitted land or any portion thereof is subject, and shall show the location and dimensions of all such easements to the extent feasible. The plats shall also show all encroachments by or on any portion of the condominium. In the case of any improvements located or to be located on any portion of the submitted land other than within the boundaries of any convertible lands, the plats shall indicate which, if any, have not been begun by the use of the phrase "(NOT YET BEGUN)," and which, if any, have been begun but have not been substantially completed by the use of the phrase "(NOT YET COMPLETED)." In the case of any units the vertical boundaries of which lie wholly or partially outside of structures for which plans pursuant to subsection B are simultaneously recorded, the plats shall show the location and dimensions of such vertical boundaries to the extent that they are not shown on such plans, and the units or portions thereof thus depicted shall bear their identifying numbers. Each plat shall be certified in a recorded document as to its accuracy and compliance with the provisions of this subsection by a licensed land surveyor, and the said surveyor shall certify in such document or on the face of the plat that all units or portions thereof depicted thereon pursuant to the preceding sentence of this subsection have been substantially completed. The specification within this subsection of items that shall be shown on the plats shall not be construed to mean that the plats shall not also show all other items customarily shown or hereafter required for land title surveys.

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59 B. There shall also be recorded, simultaneously with the declaration, plans of every structure which
60 contains or constitutes all or part of any unit or units, and which is located on any portion of the
61 submitted land other than within the boundaries of any convertible lands. The plans shall show the
62 location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie
63 within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted
64 shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labeled a
65 convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be
66 identified on the plans with reference to established datum. Unless the condominium instruments
67 expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained
68 within or constituting one or more such structures, the horizontal boundaries thus identified extend, in
69 the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of
70 such structures, subject to the following exception: In the case of any such unit which does not lie over
71 any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any,
72 of that unit lies at the level of the ground with regard to any part of that unit lying outside of such
73 structures. The plans shall be certified on their face or in another recorded document as to their accuracy
74 and compliance with the provisions of this subsection by a licensed architect, licensed engineer or
75 licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in
76 the recorded document that all units or portions thereof depicted thereon have been substantially
77 completed. *However, a certification that all units or portions thereof depicted on the plans have been*
78 *substantially completed shall not be required at the time of recordation if a completion bond has been*
79 *filed in compliance with subsection B of § 55-79.58:1 and remains in full force and effect until all units*
80 *designated on the convertible land are certified as substantially complete by a licensed architect,*
81 *licensed engineer, or licensed land surveyor.*

82 C. When converting all or any portion of any convertible land, or adding additional land to an
83 expandable condominium, the declarant shall record, with regard to any structures on the land being
84 converted, or added, either plats of survey conforming to the requirements of subsection A and plans
85 conforming to the requirements of subsection B, or certifications, conforming to the certification
86 requirements of said subsections, of plats and plans previously recorded pursuant to § 55-79.59.

87 D. Notwithstanding the provisions of subsection A and B, a time-share interest in a unit which has
88 been subjected to a time-share instrument pursuant to § 55-367 may be conveyed prior to substantial
89 completion of that unit if (i) a completion bond has been filed in compliance with subsection B of
90 § 55-79.58:1 and remains in full force and effect until the unit is certified as substantially complete in
91 accordance with subsections A and B and (ii) the settlement agent or title insurance company insuring
92 the time-share estate in the unit certifies to the purchaser in writing, based on information provided by
93 the Common Interest Community Board, that the bond has been filed with the Common Interest
94 Community Board.

95 E. When converting all or any portion of any convertible space into one or more units and/or limited
96 common elements, the declarant shall record, with regard to the structure or portion thereof constituting
97 that convertible space, plans showing the location and dimensions of the vertical boundaries of each unit
98 and/or limited common elements formed out of such space. Such plans shall be certified as to their
99 accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer
100 or licensed land surveyor.

101 F. For the purposes of subsections A, B, and C, all provisions and requirements relating to units shall
102 be deemed equally applicable to limited common elements. The limited common elements shall be
103 labeled as such, and each limited common element depicted on the plats and plans shall bear the
104 identifying number or numbers of the unit or units to which it is assigned, if it has been assigned,
105 unless the provisions of subsection (e) of § 55-79.50 make such designations unnecessary.

106 **§ 55-79.61. Conversion of convertible lands.**

107 A. The declarant may convert all or any portion of any convertible land into one or more units
108 and/or limited common elements subject to any restrictions and limitations which the condominium
109 instruments may specify. Any such conversion shall be deemed to have occurred at the time of the
110 recordation of appropriate instruments pursuant to subsection B of this section and subsection C of
111 § 55-79.58.

112 B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55-79.58, the
113 declarant shall prepare, execute, and record an amendment to the declaration describing the conversion.
114 Such amendment shall assign an identifying number to each unit formed out of a convertible land and
115 shall reallocate undivided interests in the common elements in accordance with subsection (b) of
116 § 55-79.56. Such amendment shall describe or delineate the limited common elements formed out of the
117 convertible land, showing or designating the unit or units to which each is assigned.

118 C. All convertible lands shall be deemed a part of the common elements except for such portions
119 thereof as are converted in accordance with the provisions of this section. Until the expiration of the
120 period during which conversion may occur or until actual conversion, whichever occurs first, the

121 declarant alone shall be liable for real estate taxes assessed against the convertible land and any
122 improvements thereon and all other expenses in connection with that real estate, and no other unit owner
123 and no other portion of the condominium shall be subject to a claim for payment of those taxes or
124 expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible
125 land and any improvements thereon shall inure to the declarant. No such conversion shall occur after 10
126 years from the recordation of the declaration, or such shorter period of time as the declaration may
127 specify. *If a completion bond has been filed in accordance with subsection B of § 55-79.58:1 before the*
128 *expiration of the time limits imposed by this section, then the time limit to complete the units shall be*
129 *deemed satisfied for so long as the bond remains in effect.*

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