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HOUSE BILL NO. 2218

Offered January 11, 2013

A BILL to amend and reenact §§ 55-79.45, 55-79.58, 55-79.58:1, 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, 55-79.58:1, 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.

B. There shall also be recorded, simultaneously with the declaration, plans of every structure which

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

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

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

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

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

105 **§ 55-79.58:1. Bond to insure completion of improvements.**

106 A. The declarant shall file with the Common Interest Community Board a bond entered into by the
107 declarant in the sum of 100 percent of the estimated cost of completion, to the extent of the declarant's
108 obligation as stated in the declaration, of all improvements to the common elements of the condominium
109 labeled in the plat or plats as "(NOT YET COMPLETED)" or "(NOT YET BEGUN)" located upon
110 submitted land and which the declarant reasonably believes will not be substantially complete at the time
111 of conveyance of the first condominium unit. Such bond shall be conditioned upon the faithful
112 performance of the declarant's obligation to complete said improvements in strict conformity with the
113 plans and specifications for the same as described in the declaration.

114 B. The declarant shall file with the Common Interest Community Board a bond entered into by the
115 declarant in the sum of 100 percent of the estimated cost of completion of a unit in which a time-share
116 or other interest is conveyed before the unit has been certified as substantially complete in accordance
117 with subsections A and B of § 55-79.58. The bond required by this subsection shall be conditioned upon
118 the faithful performance of the declarant's obligation to complete said improvements in strict conformity
119 with the plans and specifications for the same as described in the declaration.

120 C. All bonds required herein shall be executed by a surety company authorized to transact business

121 in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

122 D. The Board may promulgate reasonable regulations which govern the return of bonds submitted in
123 accordance with this section.

124 **§ 55-79.61. Conversion of convertible lands.**

125 A. The declarant may convert all or any portion of any convertible land into one or more units
126 and/or limited common elements subject to any restrictions and limitations which the condominium
127 instruments may specify. Any such conversion shall be deemed to have occurred at the time of the
128 recordation of appropriate instruments pursuant to subsection B of this section and subsection C of
129 § 55-79.58.

130 B. Simultaneously with the recording of plats and plans pursuant to subsection C of § 55-79.58, the
131 declarant shall prepare, execute, and record an amendment to the declaration describing the conversion.
132 Such amendment shall assign an identifying number to each unit formed out of a convertible land and
133 shall reallocate undivided interests in the common elements in accordance with subsection (b) of
134 § 55-79.56. Such amendment shall describe or delineate the limited common elements formed out of the
135 convertible land, showing or designating the unit or units to which each is assigned.

136 C. All convertible lands shall be deemed a part of the common elements except for such portions
137 thereof as are converted in accordance with the provisions of this section. Until the expiration of the
138 period during which conversion may occur or until actual conversion, whichever occurs first, the
139 declarant alone shall be liable for real estate taxes assessed against the convertible land and any
140 improvements thereon and all other expenses in connection with that real estate, and no other unit owner
141 and no other portion of the condominium shall be subject to a claim for payment of those taxes or
142 expenses, and unless the declaration provides otherwise, any income or proceeds from the convertible
143 land and any improvements thereon shall inure to the declarant. No such conversion shall occur after 10
144 years from the recordation of the declaration, or such shorter period of time as the declaration may
145 specify. *If a completion bond is filed in accordance with subsection B of § 55-79.58:1, then the time*
146 *limit to complete the units shall be deemed satisfied for so long as the bond remains in effect.*