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HOUSE BILL NO. 440

Offered January 17, 1996

A BILL to amend and reenact § 55-79.90 of the Code of Virginia, relating to the Condominium Act; public offering statement.

Patrons—Connally, Almand and Darner; Senators: Howell, Ticer and Whipple

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 55-79.90 of the Code of Virginia is amended and reenacted as follows:

§ 55-79.90. Public offering statement; condominium securities.

(a) A public offering statement shall disclose fully and accurately the characteristics of the condominium and the units therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium. The proposed public offering statement submitted to the agency shall be in a form prescribed by its rules and shall include the following:

(1) The name and principal address of the declarant and the condominium;

(2) A general narrative description of the condominium stating the total number of units in the offering; the total number of units planned to be sold and rented; the total number of units that may be included in the condominium by reason of future expansion or merger of the project by the declarant;

(3) Copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the condominium's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

(4) Copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the declarant and the managing agent or firm;

(5) A general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other state or local statute or regulation affecting the condominium;

(6) The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

(7) The significant terms of any financing offered by the declarant to the purchaser of units in the condominium;

(8) Provisions of any warranties provided by the declarant on the units and the common elements, other than the warranty prescribed by subsection (b) of § 55-79.79;

(9) A statement that the purchaser may cancel the disposition within ten days of delivery of the current public offering statement, or within ten days of the contract date of the disposition, whichever is later;

(9a) A statement of the declarant's obligation to complete improvements of the condominium which are planned but not yet begun, or begun but not yet completed. Said statement shall include a description of the quality of the materials to be used, the size or capacity of the improvements when material, and the time by which the improvements shall be completed. Any limitations on the declarant's obligation to begin or complete any such improvements shall be expressly stated;

(10) A statement listing the facilities or amenities which are defined as common elements or limited common elements in the condominium instruments, which are available to a purchaser for use. Such statement shall also include whether there are any fees or other charges for the use of such facilities or amenities which are not included as part of any assessment, and the amount of such fees or charges, if any, a purchaser may be required to pay;

(11) Additional information required by the agency to assure full and fair disclosure to prospective purchasers.

(b) The public offering statement shall not be used for any promotional purposes before registration of the condominium project and afterwards only if it is used in its entirety. No person may advertise or represent that the agency approves or recommends the condominium or disposition thereof. No portion of the public offering statement may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the agency requires it.

(c) The agency may require the declarant to alter or amend the proposed public offering statement in

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60 order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the
61 promotional plan or plan of disposition or development of the condominium may be made after
62 registration without notifying the agency and without making appropriate amendment of the public
63 offering statement. A public offering statement is not current unless all amendments are incorporated.
64 (d) If an interest in a condominium is currently registered with the Securities and Exchange
65 Commission of the United States, a declarant satisfies all requirements relating to the preparation of a
66 public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy
67 of the public offering statement filed with the Securities and Exchange Commission. An interest in a
68 condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).