

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 560

An Act to amend and reenact §§ 55-79.58, 55-79.58:1, 55-79.62, 55-79.90, and 55-374 of the Code of Virginia, relating to the Condominium Act; conveyance of units not yet completed.

[H 2534]

Approved March 27, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-79.58, 55-79.58:1, 55-79.62, 55-79.90, and 55-374 of the Code of Virginia are amended and reenacted as follows:

§ 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 contains or constitutes all or part of any unit or units, and which is located on any portion of the submitted land other than within the boundaries of any convertible lands. The plans shall show the location and dimensions of the vertical boundaries of each unit to the extent that such boundaries lie within or coincide with the boundaries of such structures, and the units or portions thereof thus depicted shall bear their identifying numbers. In addition, each convertible space thus depicted shall be labelled a convertible space. The horizontal boundaries of each unit having horizontal boundaries shall be identified on the plans with reference to established datum. Unless the condominium instruments expressly provide otherwise, it shall be presumed that in the case of any unit not wholly contained within or constituting one or more such structures, the horizontal boundaries thus identified extend, in the case of each such unit, at the same elevation with regard to any part of such unit, lying outside of such structures, subject to the following exception: In the case of any such unit which does not lie over any other unit other than basement units, it shall be presumed that the lower horizontal boundary, if any,

of that unit lies at the level of the ground with regard to any part of that unit lying outside of such structures. The plans shall be certified on their face or in another recorded document as to their accuracy and compliance with the provisions of this subsection by a licensed architect, licensed engineer or licensed land surveyor, and the said architect, engineer or land surveyor shall certify on the plans or in the recorded document that all units or portions thereof depicted thereon have been substantially completed.

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

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

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

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

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

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

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

~~B.~~ C. All bonds required herein shall be executed by a surety company authorized to transact business in the Commonwealth of Virginia or by such other surety as is satisfactory to the Board.

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

§ 55-79.62. Conversion of convertible spaces.

(a) The declarant may convert all or any portion of any convertible space into one or more units and/or common elements, including, without limitation, limited common elements, subject to any restrictions and limitations which the condominium instruments may specify. Any such conversion shall be deemed to have occurred at the time of the recordation of appropriate instruments pursuant to subsection (b) hereof and subsection B of § 55-79.58.

(b) Simultaneously with the recording of plats and plans pursuant to subsection ~~D~~ E of § 55-79.58, the declarant shall prepare, execute, and record an amendment to the declaration describing the conversion. Such amendment shall assign an identifying number to each unit formed out of a convertible space and shall allocate to each unit a portion of the undivided interest in the common elements appertaining to that space. Such amendment shall describe or delineate the limited common elements formed out of the convertible space, showing or designating the unit or units to which each is assigned.

(c) If all or any portion of any convertible space is converted into one or more units in accordance with this section, the declarant shall prepare and execute, and record simultaneously with the amendment to the declaration, an amendment to the bylaws. The amendment to the bylaws shall reallocate votes in the unit owners' association, rights to future common profits, and liabilities for future common expenses

not specially assessed, all as in the case of the subdivision of a unit in accordance with subsection D of § 55-79.70.

(d) Any convertible space not converted in accordance with the provisions of this section, or any portion or portions thereof not so converted, shall be treated for all purposes as a single unit until and unless it is so converted, and the provisions of this chapter shall be deemed applicable to any such space, or portion or portions thereof, as though the same were a unit.

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

(a) 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) 1. The name and principal address of the declarant and the condominium;
(2) 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) 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) 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) 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) 6. The significant terms of any encumbrances, easements, liens and matters of title affecting the condominium;

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

(8) 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) 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) 10. 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;

11. *If the units in the condominium are being subjected to a time-share instrument pursuant to § 55-367, the information required to be disclosed by § 55-374;*

(10) 12. 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) 13. A statement of any limitation on the number of persons who may occupy a unit as a dwelling; and

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

(b) 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) C. The agency may require the declarant to alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers, and no change in the substance of the promotional plan or plan of disposition or development of the condominium may be made after registration without notifying the agency and without making appropriate amendment of the public offering statement. A public offering statement is not current unless all amendments are incorporated.

(d) D. If an interest in a condominium is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a

public offering statement in this chapter if he delivers to the purchaser and files with the agency a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a condominium is not a security under the provisions of the Securities Act (§ 13.1-501 et seq.).

§ 55-374. Public offering statement.

A. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a contract for the purchase of a time-share, a copy of the current public offering statement about which the time-share relates. The public offering statement shall fully and accurately disclose the characteristics of the time-share project registered under this chapter and such time-share offered, and shall make known to each prospective purchaser all material circumstances affecting such time-share project. A developer need not make joint disclosures concerning two or more time-share projects owned by the developer or any related entity unless such projects are included in the same time-share program and marketed jointly at any of the time-share projects. The proposed public offering statement shall be filed with the Board, and shall be in a form prescribed by its regulations. The public offering statement may limit the information provided for the specific time-share project to which the developer's registration relates. The public offering statement shall include the following only to the extent a given disclosure is applicable; otherwise no reference shall be required of the developer or contained in the public offering statement:

1. The name and principal address of the developer and the time-share project registered with the Board about which the public offering statement relates, including:

a. The name, principal occupation and address of every director, partner, limited liability company manager, or trustee of the developer;

b. The name and address of each person owning or controlling an interest of twenty percent or more in each time-share project registered with the Board;

c. The particulars of any indictment, conviction, judgment, decree or order of any court or administrative agency against the developer or managing entity for violation of a federal, state, local or foreign country law or regulation in connection with activities relating to time-share sales, land sales, land investments, security sales, construction or sale of homes or improvements or any similar or related activity;

d. The nature of each unsatisfied judgment, if any, against the developer or the managing entity, the status of each pending suit involving the sale or management of real estate to which the developer, the managing entity, or any general partner, executive officer, director, limited liability company manager, or majority stockholder thereof, is a defending party, and the status of each pending suit, if any, of significance to any time-share project registered with the Board; and

e. The name and address of the developer's agent for service of any notice permitted by this chapter.

2. A general description of the time-share project registered with the Board and the units and common elements promised available to purchasers, including without limitation, the developer's estimated schedule of commencement and completion of all promised and incomplete units and common elements.

3. As to all time-shares offered by the developer:

a. The form of time-share ownership offered in the project registered with the Board;

b. The types, duration, and number of units and time-shares in the project registered with the Board;

c. Identification of units that are subject to the time-share program;

d. The estimated number of units that may become subject to the time-share program;

e. Provisions, if any, that have been made for public utilities in the time-share project including water, electricity, telephone, and sewerage facilities;

f. A description of each incidental benefit and each alternative purchase which is registered with the Board and offered by the developer including all rights the purchaser acquires, all obligations undertaken thereby, and all other significant characteristics of such benefits; and

g. A statement to the effect of whether or not the developer has reserved the right to add to or delete from the time-share program a time-share project or any incidental benefit or alternative purchase that has been registered with the Board.

4. In a time-share estate program, a copy of the annual report or budget required by § 55-370.1, which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are registered with the Board, the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is less than \$250,000, a current audited balance sheet and where the developer's net worth exceeds such amount, a statement by such developer that its equity in the time-share program exceeds that amount.

6. Any initial or special fee due from the purchaser at settlement together with a description of the purpose and method of calculating the fee.

7. A description of any liens, defects, or encumbrances affecting the time-share project and in particular the time-share offered to the purchaser.

8. A general description of any financing offered by or available through the developer.

9. A statement that the purchaser has a nonwaivable right of cancellation, referring such purchaser to that portion of the contract in which such right may be found.

10. If the time-share interest in a condominium unit may be conveyed before that unit is certified as substantially complete in accordance with § 55-79.58, a statement of the developer's obligation to complete the unit. Such statement shall include the approximate date by which the condominium unit shall be completed, together with the form and amount of the bond filed in accordance with subsection B of § 55-79.58:1.

- ~~10-11.~~ 11. Any restraints on alienation of any number or portion of any time-shares.
- ~~11-12.~~ 12. A description of the insurance coverage provided for the benefit of time-share owners.
- ~~12-13.~~ 13. The extent to which financial arrangements, if any, have been provided for completion of any incomplete but promised time-share unit or common element being then offered for sale, including a statement of the developer's obligation to complete the promised units and common elements comprising the time-share project which have not begun, or begun but not yet completed.
- ~~13-14.~~ 14. The extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit.
- ~~14-15.~~ 15. The name and address of the managing entity for the project.
- ~~15-16.~~ 16. Copies of the project instrument and the association's articles of incorporation and bylaws, each of which may be a supplement to the public offering statement.
- ~~16-17.~~ 17. Any services which the developer provides or expense it pays and which it expects may become at any subsequent time a time-share expense of the owners, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.
- ~~17-18.~~ 18. A description of the terms of the deposit escrow requirements, including a statement that deposits may be removed from escrow at the termination of the cancellation period.
- ~~18-19.~~ 19. A description of the facilities, if any, provided by the developer to the association in a time-share estate project for the management of the project.
- ~~19-20.~~ 20. Any other information required by the Board to assure full and fair meaningful disclosure to prospective purchasers.

B. If any prospective purchaser is offered the opportunity to subscribe to or participate in any exchange program, the public offering statement shall include as an exhibit or supplement, the disclosure document prepared by the exchange company in accordance with § 55-374.2 and a brief narrative description of the exchange program which shall include the following:

- 1. A statement of whether membership or participation in the program is voluntary or mandatory;
- 2. The name and address of the exchange company together with the names of its top three officers and directors;
- 3. A statement of whether the exchange company or any of its top three officers, directors, or holders of a ten percent or greater interest in the exchange company has any interest in the developer, managing entity or the time-share project;
- 4. A statement that the purchaser's contract with the exchange company is a contract separate and distinct from the purchaser's contract with the developer; and
- 5. A brief narrative description of the procedure whereby exchanges are conducted.

C. The public offering statement of a conversion time-share project shall also include the following, which may take the form of an exhibit to the public offering statement:

- 1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by the fact that the project is a conversion time-share project;
- 2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation, or upkeep of the building or buildings within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If such building or buildings have not been occupied for a period of three years then the information shall be set forth for the period during which such building or buildings were occupied;
- 3. A description of any provisions made in the budget for reserves for capital expenditures and an explanation of the basis for such reserves occasioned by the fact that the project is a conversion time-share project, or, if no provision is made for such reserves, a statement to that effect; and
- 4. A statement of the present condition of all structural components and major utility installations in the building, which statement shall include the approximate dates of construction, installations, and major repairs as well as the expected useful life of each such item, together with the estimated cost, in current dollars, of replacing each such component.

D. In the case of a conversion project, the developer shall give at least ninety days' notice to each of the tenants of the building or buildings which the developer intends to submit to the provisions of this chapter. During the first sixty days of such ninety-day period, each of these tenants shall have the exclusive right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to be retained in the conversion project without substantial alteration in its physical layout. Such notice shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants of the developer's intent to create a conversion project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55-222, except that, despite the provisions of § 55-222, a tenancy from month to month may only be terminated upon 120 days' notice as set forth

herein when such termination is in regard to the creation of a conversion project. If, however, a tenant so notified remains in possession of the unit he occupies after the expiration of the 120-day period with the permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant a further notice as provided in § 55-222.

The developer of a conversion project, shall, in addition to the requirements of § 55-391.1, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice which fully complies with the provisions of this subsection shall be, at the time of the registration of the conversion project, mailed or delivered to each of the tenants in the building or buildings for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program or time-share project. If the developer has reserved in the time-share instrument the right to add to or delete incidental benefits or alternative purchases, the addition or deletion thereof shall not constitute a material change. Prior to distribution, the developer shall file with the Board the public offering statement amended to reflect any material change.

F. The Board may at any time require a developer to alter or supplement the form or substance of the public offering statement to assure full and fair disclosure to prospective purchasers. A developer may, in its discretion, prepare and distribute a public offering statement for each product offered or one public offering statement for all products offered.

G. In the case of a time-share project located outside this Commonwealth, similar disclosure statements required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.

H. The developer shall prepare and distribute to each prospective purchaser prior to the execution of a purchase contract for a registered alternative purchase, a copy of the public offering statement about which such alternative purchase relates. The public offering statement shall fully and accurately disclose the characteristics of such alternative purchase. The public offering statement for an alternative purchase shall be filed with the Board and shall be in a form prescribed by its regulations.

The public offering statement for an alternative purchase need not contain any information about the time-share project, time-share program or the time-shares offered by the developer which was initially offered to such purchaser by the developer. If the developer so elects, the public offering statement for an alternative purchase is not required to have any exhibits.