

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 55-374 of the Code of Virginia, relating to the Virginia Real Estate Time-Share Act; public offering statement; multisite registration.

[H 901]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 55-374 of the Code of Virginia is amended and reenacted as follows:

§ 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 material 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 20 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 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; and

g. If the developer utilizes the possibility of reverter, a statement to that effect referring the purchaser to the reverter deed for an explanation thereof.

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.

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

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

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

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

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

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

72 11. Any restraints on alienation of any number or portion of any time-shares.

73 12. A description of the insurance coverage provided for the benefit of time-share owners.

74 13. The extent to which financial arrangements, if any, have been provided for completion of any
75 incomplete but promised time-share unit or common element being then offered for sale, including a
76 statement of the developer's obligation to complete the promised units and common elements comprising
77 the time-share project that have not begun, or begun but not yet completed.

78 14. The extent to which a time-share unit may become subject to a tax or other lien arising out of
79 claims against other owners of the same unit.

80 15. The name and address of the managing entity for the project.

81 16. Copies of the project instrument and the association's articles of incorporation and bylaws, each
82 of which may be a supplement to the public offering statement.

83 17. Any services that the developer provides or expense it pays and that it expects may become at
84 any subsequent time a time-share expense of the owners, and the projected time-share expense liability
85 attributable to each of those services or expenses for each time-share.

86 18. A description of the terms of the deposit escrow requirements, including a statement that deposits
87 may be removed from escrow at the termination of the cancellation period.

88 19. A description of the facilities, if any, provided by the developer to the association in a time-share
89 estate project for the management of the project.

90 20. Any other information required by the Board to assure full and fair meaningful disclosure to
91 prospective purchasers.

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

96 1. A statement of whether membership or participation in the program is voluntary or mandatory;

97 2. The name and address of the exchange company together with the names of its top three officers
98 and directors;

99 3. A statement of whether the exchange company or any of its top three officers, directors, or holders
100 of a 10 percent or greater interest in the exchange company has any interest in the developer, managing
101 entity or the time-share project;

102 4. A statement that the purchaser's contract with the exchange company is a contract separate and
103 distinct from the purchaser's contract with the developer; and

104 5. A brief narrative description of the procedure whereby exchanges are conducted.

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

107 1. A specific statement of the amount of any initial or special fee, if any, due from the purchaser of
108 a time-share on or before settlement of the purchase contract and the basis of such fee occasioned by
109 the fact that the project is a conversion time-share project;

110 2. Information on the actual expenditures, if available, made on all repairs, maintenance, operation,
111 or upkeep of the building or buildings within the last three years. This information shall be set forth in a
112 tabular manner within the proposed budget of the project. If such building or buildings have not been
113 occupied for a period of three years then the information shall be set forth for the period during which
114 such building or buildings were occupied;

115 3. A description of any provisions made in the budget for reserves for capital expenditures and an
116 explanation of the basis for such reserves occasioned by the fact that the project is a conversion
117 time-share project, or, if no provision is made for such reserves, a statement to that effect; and

118 4. A statement of the present condition of all structural components and major utility installations in
119 the building, which statement shall include the approximate dates of construction, installations, and
120 major repairs as well as the expected useful life of each such item, together with the estimated cost, in
121 current dollars, of replacing each such component.

122 D. In the case of a conversion project, the developer shall give at least 90 days' notice to each of the
123 tenants of the building or buildings which the developer intends to submit to the provisions of this
124 chapter. During the first 60 days of such 90-day period, each of these tenants shall have the exclusive
125 right to contract for the purchase of a time-share from the unit he occupies, but only if such unit is to
126 be retained in the conversion project without substantial alteration in its physical layout. Such notice
127 shall be hand delivered or sent by first-class mail, return receipt requested, and shall inform the tenants
128 of the developer's intent to create a conversion project. Such notice may also constitute the notice to
129 terminate the tenancy as provided for in § 55-222, except that, despite the provisions of § 55-222, a
130 tenancy from month to month may only be terminated upon 120 days' notice as set forth herein when
131 such termination is in regard to the creation of a conversion project. If, however, a tenant so notified
132 remains in possession of the unit he occupies after the expiration of the 120-day period with the
133 permission of the developer, in order to then terminate the tenancy, such developer shall give the tenant
134 a further notice as provided in § 55-222.

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

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

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

149 G. In the case of a time-share project located outside the Commonwealth, (i) *the developer may*
150 *amend the public offering statement to reflect any additions or deletions of a time-share project to the*
151 *existing time-share program registered in the Commonwealth, and (ii) similar disclosure statements*
152 *required by other situs laws governing time-sharing may be acceptable alternative disclosure statements.*

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

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

162 I. The public offering statement may be in any format, including a compact disc, provided the
163 prospective buyer has available for review, along with ample time for any questions and answers, a copy
164 of the public offering statement prior to his execution of a contract.