

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 55.1-2208 and 55.1-2217 of the Code of Virginia, relating to Virginia Real Estate Time-Share Act; alternative purchases.

[S 969]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-2208 and 55.1-2217 of the Code of Virginia are amended and reenacted as follows: § 55.1-2208. Instruments.

A. In order to create a time-share program for a time-share estate project, the developer shall execute a time-share instrument prepared and executed in accordance with this chapter and record it in the clerk's office where such time-share project is located. The time-share instrument shall contain the following:

1. The name of the time-share project, which shall include or be followed by a qualifying adjective or term outlined in § 55.1-2205;

2. The name of the locality and the state or situs in which the time-share project is situated;

3. The legal description, street address, or other description sufficient to identify the time-share project;

4. A legally sufficient description of the real estate constituting the time-share project;

5. A statement of the form of time-share program, i.e., whether it is a time-share estate or time-share use;

6. Identification of time periods by letter, name, number, or combination thereof;

7. Identification of time-shares and, where applicable, the method by which additional time-shares may be created or withdrawn;

8. The formula, fraction, or percentage of the common expenses and any voting rights assigned to each time-share;

9. Any restrictions on the use, occupancy, enjoyment, alteration, or alienation of time-shares;

10. The ownership interest, if any, in personal property available to time-share owners;

11. The program by which the managing entity, if any, will provide management of the project;

12. The period for which units are designated and committed to the time-share program and the property classification of the units at the expiration of such period;

13. Any provision for amending the time-share instrument;

14. A description of the events, including condemnation and damage or destruction, upon which the time-share program may or shall be terminated before the expiration of its full term and the consequences of such termination, including the manner in which the time-share project or the proceeds from the disposition of such project shall be held or distributed among owners;

15. A statement of whether or not the developer reserves the right to add to or delete any incidental benefit; *and*

16. A statement of whether or not the developer reserves the right to add to or delete any alternative purchase; *and*

~~17. Such other matters as the developer deems appropriate.~~

B. In order to create a time-share program for a time-share use project, the developer shall (i) execute and record a time-share instrument as required by subsection A or (ii) execute a time-share instrument that takes the form of and is a part of the contract that contains the information required by subsection A.

C. If the developer explicitly reserves the right to develop additional time-shares, the time-share instrument shall also contain the following:

1. A legally sufficient description of all land that may be added to the time-share project, which shall be referred to as "additional land";

2. A statement outlining the order in which portions of the additional land may be subjected to the exercise of each development right or a statement that no assurances are made in that regard;

3. A statement of the time limit upon which the option to develop shall expire, together with a statement of the circumstances, if any, that will terminate that option prior to the expiration of the specified time limit;

4. A statement of the maximum number of units that may be added to the time-share project, if known, or, if the maximum number of units that may be added to the time-share project is not known, a statement to that effect; *and*

ENROLLED

SB969ER

5. A statement of the property classification of the additional land if the developer fails to exercise the development rights as reserved in the time-share instrument.

§ 55.1-2217. Public offering statement.

A. Prior to the execution of a contract for the purchase of a time-share, the developer shall prepare and distribute to each prospective purchaser a copy of the current public offering statement regarding the time-share program. The public offering statement shall (i) fully and accurately disclose the material characteristics of the time-share program registered under this chapter and such time-share offered and (ii) make known to each prospective purchaser all material circumstances affecting such time-share program. 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 that a given disclosure is applicable:

1. The name and principal address of the developer, 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 included in the registration;

c. The particulars of any indictment, conviction, judgment, 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 action 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 action, if any, of significance to any time-share project included in the registration; 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 projects included in the time-share program. The description shall include the address of each time-share project, the units, and common elements for each project promised available to purchasers, including the developer's estimated schedule of commencement and completion of all promised and incomplete time-share units and common elements.

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

a. The form of time-share ownership offered in the time-share program;

b. The types, duration, and number of units and time-shares in the time-share program;

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

d. The estimated number of time-share 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; ~~and~~

g. *A statement of whether the developer will offer any alternative purchase; and*

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

4. In a time-share estate program, a copy of the annual report or budget required by § 55.1-2213, which copy may take the form of an exhibit to the public offering statement. In the case where multiple time-share projects are included in the time-share program, the copy or exhibit may be in summary form.

5. In a time-share use program where the developer's net worth is no more 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 condominium unit is certified as substantially complete in accordance with § 55.1-1920, a statement of the developer's obligation to complete the condominium 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 § 55.1-1921.

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

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

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 that the time-share project comprises that have not begun or that have begun but have not yet been completed.

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.

15. The name and address of the managing entity for each project in the time-share program.

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

17. Any services that the developer provides or expense it pays and that 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.

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.

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.

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 § 55.1-2219 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 10 percent or greater interest in the exchange company has any interest in the developer, the managing entity, or the time-share program;

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 by which 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 any building in the time-share project within the last three years. This information shall be set forth in a tabular manner within the proposed budget of the project. If any such building has not been occupied for a period of three years, the information shall be set forth for the period during which such building was 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 time-share project, the developer shall give at least 90 days' notice to each of the tenants of any building that the developer intends to submit to the provisions of this chapter. During the first 60 days of such 90-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 time-share 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 time-share project. Such notice may also constitute the notice to terminate the tenancy as provided for in § 55.1-1410, except that, despite the provisions of § 55.1-1410, a tenancy from month to month may only be terminated upon 120 days' notice as set forth in this subsection when such termination is in regard to the creation of a conversion time-share 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 § 55.1-1410.

The developer of a conversion time-share project shall, in addition to the requirements of § 55.1-2239, include with the application for registration a copy of the notice required by this subsection and a certified statement that such notice fully complies with the provisions of this subsection shall be, at the time of the registration, mailed or delivered to each of the tenants in any building for which registration is sought.

E. The developer shall amend the public offering statement to reflect any material change in the time-share program. 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 of such benefits ~~or purchases~~ 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 prepare and distribute a public offering statement for each time-share program offered or one public offering statement for all time-share programs offered.

G. The developer shall amend the public offering statement to reflect any addition of a time-share project to, or removal of a time-share project from, the existing time-share program.

H. In the case of a time-share project located outside the Commonwealth, similar disclosure statements required by other situs laws governing time-sharing may be accepted by the Board as alternative disclosure statements to satisfy the requirements of this section.

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