

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF CONDOMINIUM:

LOCATION OF CONDOMINIUM:

NAME OF DECLARANT:

ADDRESS OF DECLARANT:

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____

AMENDED: _____

REVISED: _____

This Public Offering Statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a Public Offering Statement be given to every Purchaser in order to provide full and accurate disclosure of the significant features of the condominium units being offered. The Public Offering Statement is not intended, however, to be all-inclusive. The Purchaser should consult other sources for details not covered by the Public Offering Statement.

The Public Offering Statement summarizes information and documents furnished by the declarant to the Virginia Real Estate Board. The Board has carefully reviewed the Public Offering Statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the Public Offering Statement and the material it is intended to summarize, the latter will control.

Under Virginia Law a purchaser of a condominium unit is afforded a ten day period during which he or she may cancel the contract of sale and obtain a full refund of any sums deposited in connection with the contract. The ten day period begins running on the contract date or the date of delivery of a Public Offering Statement, whichever is later. The purchaser should inspect the condominium unit and all common areas and obtain professional advice. If the purchaser elects to cancel, he or she must deliver notice of cancellation to the declarant by hand or by United States mail, return receipt requested.

The following are violations of Virginia law and should be reported to the Virginia Real Estate Board, 3600 West Broad Street, 5th Floor, Richmond, Virginia 23230:

- a misrepresentation made in the Public Offering Statement
- an oral modification of the Public Offering Statement
- a representation that the Board has passed on the merits of the Condominium units being offered or endorses the condominium.

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PART 1
GENERAL

18 VAC 135-30-10. Purpose.

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Virginia Real Estate Board by the Horizontal Property Act, §55-79.1 et seq. of the Code of Virginia and by the Condominium Act, §55-79.39 et seq. of the Code of Virginia.

18 VAC 135-30-20. Definitions.

The definitions provided in §55-79.41 of the Code of Virginia, as they may be supplemented herein, shall apply to this chapter. The corresponding meanings assigned to certain terms by §55-79.41 of the Code of Virginia shall be applicable in this chapter.

18 VAC 135-30-30. Explanation of terms.

Each reference in this chapter to a “declarant,” “purchaser” and “unit owner” or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural and to natural persons and organizations. The term “declarant” shall refer to any successors to the persons referred to in §55-79.41 who come to stand in the same relation to the condominium as their predecessors in that they assumed rights reserved for the benefit of a declarant that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

18 VAC 135-30-40. Condominiums located outside Virginia.

A. In any case involving a condominium located outside Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of these condominium regulations, the board or its subordinate shall prescribe, by order, a substitute provision to be applicable in such case which is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words “declaration,” “bylaws,” “plats” and “plans,” when used in these condominium regulations with reference to a condominium located outside Virginia, shall refer to documents, portions of documents or combinations thereof, by whatever name denominated, which have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The words “recording” or “recordation,” when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure which, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of §55-79.40 B of the Code of Virginia.

18 VAC 135-30-50. Condominium advisory committee.

A condominium advisory committee, appointed by the board, may advise the board in the exercise of its powers and the performance of its duties under the Horizontal Property Act and the Condominium Act.

18 VAC 135-30-60. Property registration administrator.

A property registration administrator, employed and designated as such by the Director of the Department of Professional and Occupational Regulation, shall function as a subordinate of the board within the meaning of §9-6.14.4(g) of the Code of Virginia for the purpose of carrying out the routine daily operations of the board with respect to condominium regulations, including, without limitation, the entry of any orders provided for in these condominium regulations, the issuance of public reports and the administration of oaths and affirmations in connection with investigations or other proceedings. The administrator shall act as secretary of the condominium advisory committee.

PART 2
APPLICATION FOR REGISTRATION

18 VAC 135-30-70. Application for registration.

Application for registration of condominium units shall be filed at the offices of the board. The application shall contain all of the documents and information required by the standard application form.

18 VAC 135-30-80. Applications not in proper form.

Upon receipt of an application for registration not in proper form, the board shall return the application to the declarant with a statement specifying the deficiencies in its form, however, if the board has reason to believe that the application may readily be put into proper form it may retain the application and notify the declarant of the steps that must be taken to put the application in proper form.

18 VAC 135-30-90. Form of the application; submission of documents.

The board may establish specific guidelines which establish the form for preparation of the application for registration. These guidelines shall set forth reasonable requirements for paper size, binding and organization which assure uniformity in the manner disclosures are made to prospective purchasers.

18 VAC 135-30-100. Procedure upon receipt of application for registration.

A. Upon receipt of an application for registration and the fee required by §55-79.89(d) of the Code of Virginia, the board shall issue the notice of filing required by §55-79.92(a) of the Code of Virginia and shall conduct an inquiry and investigation to determine whether the prerequisites for registration set out in §55-79.91 of the Code of Virginia and 18 VAC 135-30-130 of this chapter have been met. In conducting such inquiry and investigation, the board shall take cognizance of any reliable information concerning the declarant or the condominium coming to the board's attention.

B. If any of the prerequisites for registration appear to the board not to have been met, the board may informally advise the declarant of such fact and indicate in detail the nature of the failure to meet the prerequisites.

C. If the document review conducted by the administrator reveals that the prerequisites for registration have not been met, the board shall issue the correction notification required by §55-79.92(c) Code of Virginia.

D. A request for an extension of the 60-day application period shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an

extension of definite duration. The board may grant in writing a request for an extension of the application period and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application period shall be deemed a consent to delay within the meaning of §55-79.92(a) of the Code of Virginia.

E. If the prerequisites for registration are not met within the application period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting registration as required by §55-79.92(c) of the Code of Virginia.

F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting registration.

G. At such time as the board affirmatively determines that the prerequisites for registration have been met, the board shall enter an order registering the condominium. The order shall designate the form and content of the public offering statement, substituted disclosure document or prospectus to be used and, in the case of application for registration made pursuant to 18 VAC 135-30-680 D of this chapter shall provide that previous orders designating the form and content of the public offering statement, substituted disclosure document or prospectus to be used are superseded.

18 VAC 135-30-110. Application for registration of expandable condominium.

In accordance with the practice contemplated by §55-79.74(a) of the Code of Virginia, the declarant may register all units for which development rights have been reserved.

18 VAC 135-30-120. Filing fee.

Each application shall be accompanied by a fee in an amount equal to \$35 per unit, except that the initial application fee shall be not less than \$1,750 nor more than \$3,500, and the fee for any application for registration of additional units shall be not less than \$875 nor more than \$3,500.

PART 3
REGISTRATION

18 VAC 135-30-130. Prerequisites for registration.

The following provisions are prerequisites for registration and are supplementary to the provisions of §55-79.91 of the Code of Virginia.

1. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium which is of at least as great a degree and duration as the estate to be conveyed in the condominium units.
2. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of §55-79.58 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.
3. The declarant shall have filed with the board evidence of its ability to complete all proposed improvements on the condominium. Such evidence shall consist of the commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements as are normal for loans of the type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled. In the case of a condominium located in Virginia, proposed improvements are uncompleted improvements which the declarant is affirmatively and unconditionally obligated to complete under §§55-79.58 and 55-79.67(a1) of the Code of Virginia and applicable provisions of the condominium instruments or which the declarant would be so obligated to complete, if plats and plans filed with the board in accordance with 18 VAC 135-30-140 A of this chapter were recorded. In the case of a condominium located outside of Virginia, "proposed improvements" are all uncompleted improvements which the declarant intends, without condition or limitation, to build or place on the condominium.
4. The current and planned condominium marketing activities of the declarant shall comply with 18.2-216 of the Code of Virginia, and 18 VAC 135-30-160, 18 VAC 135-30-180 and 18 VAC 135-30-190 of this chapter.

5. The declarant shall have filed with the board: (i) a proposed public offering statement which complies with §55-79.90(a) of the Code of Virginia and 18 VAC 135-30-210 through 18 VAC 135-30-440 and 18 VAC 135-30-540 through 18 VAC 135-30-650 of this chapter and, if applicable, §55-79.94(a) of the Code of Virginia and 18 VAC 135-30-470 through 18 VAC 135-30-520 of this chapter; (ii) a substituted disclosure document which complies with 18 VAC 135-30-450 of this chapter or (iii) a prospectus which complies with 18 VAC 135-30-460 of this chapter.

18 VAC 135-30-140. Requirements for plats and plans.

A. Except as provided in subsection C hereof, improvements shall be depicted on plats filed with the application for registration exactly as the declarant has depicted or intends to depict them on the recorded plats and “(NOT YET BEGUN)” and “(NOT YET COMPLETED)” labels shall be used with respect to such improvements exactly as the declarant has used or intends to use them on the recorded plats. Copies of plats and plans as recorded by the declarant shall be filed with the board if such plats and plans are different from those filed with the application for registration.

B. The requirement of §55-79.58(b) of the Code of Virginia that plans shall show the location and dimensions of the boundaries of each unit shall be deemed satisfied, in the case of units which are identical (within normal constructions tolerances), by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.

C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of §55-79.58 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements and all improvements which the declarant intends, without condition or limitation to build or place on the condominium and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each units' location relative to established points or datum.

D. The plats and plans must bear the form of the certification statement required by §55-79.58(a) and (b) of the Code of Virginia. However, such certification may appear in a separate document to be recorded with the plats and plans. As stated in 18 VAC 135-30-130 2 of this chapter, the statement need not be executed prior to recordation.

18 VAC 135-30-150. Exemption from registration of nonresidential condominiums.

The exemption from registration of condominiums in which all units are restricted to nonresidential

use provided in §55-79.87(a) of the Code of Virginia shall not be deemed to apply to any condominium as to which there is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of these regulations includes transient occupancy.

PART 4
MARKETING

18 VAC 135-30-160. Preregistration offers prohibited.

A. No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to its registration.

B. No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act which would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18 VAC 135-30-170. Condominium marketing activities.

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail or by advertisement. A promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written or graphic. With respect to condominiums located outside of Virginia, the application of these regulations is limited to those condominiums for which contracts are executed in Virginia as required by §55-79.40 B of the Code of Virginia.

18 VAC 135-30-180. Condominium marketing standards.

A. No promise, assertion, representation or statement of fact or opinion in connection with a condominium marketing activity shall be made which is false, inaccurate or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances or features of the condominium or a condominium unit.

B. No promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of 18 VAC 135-30-130 3 of this chapter; except that, if the condominium is one for which no application for registration has been filed, there shall be no indication that an improvement will be built or placed on the condominium unless the declarant has sufficient financial assets and a bona fide intention to complete the improvement as represented.

C. No promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act which would create or

purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18 VAC 135-30-190. Offering literature.

A. Offering literature is any written promise, assertion, representation or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

B. Offering literature mailed or delivered prior to the registration of the condominium which is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

[Identification of the condominium] has not been registered by the Virginia Real Estate Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration.

C. Prior to registration a copy of every item of offering literature other than a personal communication shall be filed with the board prior to its use. A personal communication is a communication directed to a particular prospective purchaser which has not been and is not intended to be directed to any other prospective purchaser.

D. The declarant of a condominium shall provide with the application for registration a narrative description of the promotional plan for the condominium.

E. Offering literature or marketing activities violative of the Virginia Fair Housing Law, §36-96.1 et seq. of the Code of Virginia, and the Virginia Condominium Act, §55-79.52(c) of the Code of Virginia is prohibited.

F. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

18 VAC 135-30-200. Exemption from marketing regulations.

Nothing in 18 VAC 135-30-160, 18 VAC 135-30-180 A, B and C, and 18 VAC 135-30-190 shall apply in the case of a condominium exempted from registration by §55-79.87 of the Code of Virginia, or condominiums located outside of Virginia for which no contracts are to be signed in Virginia.

PART 5
PUBLIC OFFERING STATEMENT

18 VAC 135-30-210. Scope of public offering statement.

A public offering statement shall make disclosure relative to a single offering and to the entire condominium in which the condominium units being offered are located. Not more than one version of a public offering statement shall be authorized for use or used at any given time with respect to a particular condominium.

18 VAC 135-30-220. Offering defined.

As used in these condominium regulations, the word “offering” shall refer to the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

18 VAC 135-30-230. Preparation of public offering statement.

The public offering statement shall be clear and legible with pages numbered sequentially. A blank cover or a cover bearing identification information only may be used. Except as elsewhere provided, no portion of the public offering statement may be printed in larger, heavier or different color type than the remainder of the public offering statement. The first page of the public offering statement shall be prepared to conform as closely as possible to the specimen appended as Appendix A to this chapter and made a part hereof.

18 VAC 135-30-240. Nature of information to be included.

A. The provisions of §§55-79.90(a) and 55-79.94(a) of the Code of Virginia, and 18 VAC 135-30-210 through 18 VAC 135-30-720 of this chapter shall be strictly construed to promote full and accurate disclosure in the public offering statement and, thereby, to protect the interests of purchasers.

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the declarant shall disclose all other available information which may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a condominium unit. The declarant shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misinterpretation of the facts or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source which is not readily available to an ordinary purchaser. Whenever required information is not known or not reasonably

available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist which would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.

D. Disclosure shall be made of pertinent facts, events, conditions or other states of affairs which the declarant has reason to believe will occur or exist in the future or which the declarant intends to cause to occur or exist in the future. Disclosure relating to future facts, events, conditions or states of affairs shall be limited by the provisions of subsection F hereof.

E. The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination.

F. Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is ample foundation in fact for the opinion; provided, however, that this sentence shall not affect in any way the declarant's duty to set forth a projected budget for the condominium's operation.

G. Except for brief excerpts therefrom, the public offering statement shall not incorporate verbatim portions of the condominium instruments or other documents. The purchaser's attention may be directed to pertinent portions of the declaration, bylaws or other documents attached to the public offering statement which are too lengthy to incorporate verbatim.

H. Maps, photographs and drawings may be utilized in the public offering statement, provided that such utilization promotes full and accurate disclosure.

18 VAC 135-30-250. Readability.

The public offering statement shall be clear and understandable. Determinations as to compliance with the standards of this paragraph are within the exclusive discretion of the board.

18 VAC 135-30-260. Summary of important considerations.

A. Immediately following the first page and before the table of contents, the public offering statement shall include a summary of important considerations consisting of particularly noteworthy items of disclosure. Certain summary statements are required by subsection D hereof. Other summary statements may be proposed by the declarant or included by order of the board for the purpose of reinforcing the disclosure of significant information not otherwise included in the summary of important considerations. No summary statement shall be included for the sole purpose of enhancing the sales appeal of condominium units.

B. The summary shall be titled as such and shall be introduced by the following statement: "Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The narrative sections should be examined to obtain detailed information." Each summary statement

shall include a reference to pertinent portions, if any, of the public offering statement for details respecting the information summarized. Each summary statement, exclusive of any reference to other portions of the public offering statement, shall be limited to not more than three sentences except that the board may, by order, permit or require additional sentences.

C. Whenever the board finds that the significance to purchasers of certain information requires that it be disclosed more conspicuously than by regular presentation in the summary of important considerations, it may provide, by order, that a summary statement of the information shall be underscored, italicized or printed in a larger or heavier or different color type than the remainder of the public offering statement.

D. Summary statements shall be made of the substance of the following facts and circumstances, to the extent that each is applicable. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The condominium will be governed by a unit owners' association. Each unit owner will have a vote on certain decisions of the association and will be bound by all decisions of the association including those with which he disagrees.
2. Certain decisions of the unit owners' association will be made by an executive organ.
3. The expenses of operating the unit owners' association will be paid by the unit owners on the basis of a periodic budget. Each unit owner will pay a periodic assessment. A unit owner cannot reduce the amount of his assessment by refraining from use of the common elements.
4. If a unit owner fails to pay an assessment when due, the unit owners' association will have a lien against his condominium unit. Certain other penalties may be applied.
5. The declarant must pay assessments on unsold condominium units.
6. The declarant, its predecessors or principal officer has undergone a debtor's relief proceeding.
7. The declarant will retain control of the unit owners' association for an initial period.
8. A managing agent will perform the routine operations of the unit owners' association. The managing agent is related to the declarant, director or officer of the unit owners' association.
9. The declarant may rent unsold condominium units. The right of any unit owner to rent his unit is subject to restrictions.

10. The declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.
11. The right of the unit owner to resell his condominium unit is subject to restrictions.
12. The units are restricted to residential use.
13. The unit owner may not alter the structure of his unit or modify the exterior of his unit without the approval of the declarant or unit owners' association.
14. The unit owners' association will obtain certain insurance benefiting the unit owner, but the unit owner should obtain other insurance on his own.
15. The unit owner will pay real estate taxes on his condominium unit.
16. The unit owner's right to bring legal action against the declarant is limited by certain provisions of the purchase contract; specifically the contract requires the unit owner or the association to pay the attorney's fee of the declarant; requires the unit owner to waive trial by jury in any civil action against the declarant.
17. The condominium is (is not) subject to development as a time-share.
18. Marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law (Code of Virginia §36-96.1 et seq.) and the Virginia Condominium Act (Code of Virginia §55-79.52(c)).

18 VAC 135-30-270. Narrative sections.

The information to be presented in the public offering statement shall be broken down into sections in order to facilitate reading and comprehension. Certain sections are required by 18 VAC 135-30-280 through 18 VAC 135-30-430 of this chapter. Supplementary sections may be included whenever necessary to incorporate information which cannot properly be placed within one of the required sections.

Supplementary section captions which indicate the nature of the material presented thereunder shall be utilized. The sections may be set out in any order which lends itself to the organized presentation of information. Section captions may be underscored, italicized or printed in larger or heavier or different color type than the remainder of the public offering statement. A table of contents shall be utilized.

18 VAC 135-30-280. Narrative sections; condominium concept.

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered which are different from typical condominium unit

ownership.

18 VAC 135-30-290. Narrative sections; creation of condominium.

The public offering statement shall contain a section captioned “Creation of the Condominium.” The section shall briefly explain the manner in which the condominium was or will be created and shall briefly describe each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to §55-79.96 of the Code of Virginia, the section shall indicate the purchaser will receive copies of the recorded declaration and bylaws, or amendments, as appropriate, within the time provided for in the applicable statute.

18 VAC 135-30-300. Narrative sections; description of condominium.

A. The public offering statement shall contain a section captioned “Description of the Condominium.” The section shall contain a narrative description of the condominium. The description shall include statements of (i) the land area of the condominium; (ii) the number of units in the condominium; (iii) the number of units in the offering; (iv) the number of units in the condominium planned to be rented; and (v) whether at the time of registration the declarant intends to sell more than 20% of the units to persons who do not intend to occupy the units as their primary residence.

B. If the condominium is contractable, expandable or includes convertible land or space, the section shall contain a brief description of each such feature including the land area and the maximum number of units or maximum number of units per acre which may be added, withdrawn or converted, as the case may be, together with a statement of the declarant’s plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement: “The construction and development of the condominium may be abandoned or altered, at the declarant’s option, short of completion and land or buildings originally intended for condominium development may be put to other uses or sold.” In the case of a condominium including convertible land, the section shall contain the substance of the following statements: “Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium.” If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase by reason of any such conversion.

C. The section shall state whether or not the units are restricted solely to residential use and shall state where this and other use and occupancy restrictions are to be found in the condominium instruments.

18 VAC 135-30-310. Narrative section; individual units.

The public offering statement shall contain a section captioned “Individual Units.” The section shall

contain a general description of the various type units being offered, together with the dates on which substantial completion of unfinished units is anticipated. The section shall discuss what restrictions, if any, exist as to changes unit owners may make to the structure or exterior of their units, whether or not said exterior is a portion of the common elements.

18 VAC 135-30-320. Narrative sections; common elements.

A. The public offering statement shall contain a section captioned “Common Elements.” The section shall contain a general description of the common elements.

B. A statement of the anticipated completion dates of unfinished common elements shall be included except that no such statement shall be necessary with respect to common elements which are completed or expected to be substantially complete when the units are completed.

C. With respect to common elements which the declarant intends to build or place on the condominium but which are not expected to be substantially complete when units are completed, the section shall state: (i) In the case of a condominium located in Virginia, the nature, source and extent of the obligation to complete such common elements which the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§55-79.58(a) and 55-79.67(a)(1) of the Code of Virginia and applicable provisions of the condominium instruments and pursuant to §55-79.58:1 of the Code of Virginia, the declarant has filed with the Virginia Real Estate Board a bond to insure completion of improvements to the common elements which the declarant has incurred or intends to incur upon recordation of the condominium instruments; and (ii) in the case of a condominium located outside Virginia, the nature, source and extent of the obligation to complete such common elements which the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located.

D. The section shall describe any limited common elements which are assigned or which may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements which may be assigned, the section shall state the manner of such assignment or reassignment.

E. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

18 VAC 135-30-330. Narrative sections; declarant.

A. The public offering statement shall contain a section captioned “The Declarant.” The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.

B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name; (ii) length of time associated with the declarant; (iii) role in the development of the condominium; and (iv) experience in real estate development. If different from the persons immediately responsible for the development of the condominium, the principal officers of the declarant shall be identified.

C. If the declarant or its parent or predecessor organization has, during the preceding 10 years,

been adjudicated a bankrupt or has undergone any proceeding for the relief of debtors, such fact or facts shall be stated. If any of the persons identified pursuant to subsection B hereof has, during the preceding three years, been adjudicated a bankrupt or undergone any proceeding for the relief of debtors, such fact or facts shall be stated.

D. The section shall indicate any final action taken by an administrative agency or civil or criminal court which reflects adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive organ or any managing agent on behalf of such association or which has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings is one which reflects adversely upon the performance of the declarant, that disposition shall be disclosed. The board has the sole discretion to require additional disclosure of any legal proceedings where it finds such disclosure necessary to assure full and accurate disclosure.

18 VAC 135-30-340. Narrative sections; terms of offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase agreements as provided in subsections B through G hereof.

B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.

C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement: "Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

D. The section shall discuss in detail any settlement costs which are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association to be paid by a purchaser at settlement.

E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase agreement which are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase agreement in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.

F. The section shall discuss the right of the declarant to cancel a purchase agreement upon failure of the declarant to obtain purchase agreements on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.

G. The section shall set forth any provisions in the contract which require the unit owner or the association to pay the attorney's fee of the declarant or require the unit owner to waive trial by jury in any

civil action against the declarant and the section shall set forth the paragraph or section and page number of the contract where such provision is located.

18 VAC 135-30-350. Narrative sections; encumbrances.

A. The public offering statement shall contain a section captioned “Encumbrances.” The section shall include the significant terms of any encumbrances, easements, liens and matters of title affecting the condominium as provided in subsections B through I hereof.

B. Except to the extent that such encumbrances are required to be satisfied or released by §55-79.46(a) of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien or choate mechanics or materialmen’s lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall identify the lender secured or the lienholder shall state the nature and original amount of the obligation secured, shall identify the party having primary responsibility for performance of the obligation secured and shall indicate the practical effect upon unit owners of failure of said party to perform the obligation.

C. Normal easements for utilities, municipal rights-of-way and emergency access shall be described only as such, without reference to ownership, location or other details.

D. Easements reserved to the declarant to facilitate conversion, expansion or sales shall be briefly described.

E. Easements reserved to the declarant or to unit owners’ association or its representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.

F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.

G. Covenants, servitudes or other devices which create an actual or potential restriction on the right of any unit owner to use and enjoy his unit or any portion of the common elements other than limited common elements shall be briefly described.

H. Any matter of title which is not otherwise required to be disclosed by the provisions of this section and which has or may have a substantial adverse impact upon unit owners’ interests in the condominium shall be described. Under normal circumstances, an easement for encroachments and an easement running in favor of unit owners for ingress and egress across the common elements shall be deemed not to have a substantial adverse impact upon unit owners’ interest in the condominium.

I. The section need not include any information required to be disclosed by 18 VAC 135-30-300 C, 18 VAC 135-30-310, or 18 VAC 135-30-360 of this chapter.

18 VAC 135-30-360. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association and which affect the unit owners' right to resell, lease or otherwise transfer an interest in his condominium unit.

18 VAC 135-30-370. Narrative sections; unit owners' association.

A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through J hereof.

B. The section shall state in summary fashion the functions of the unit owners' association.

C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive organ, officers and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of their election or appointment; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.

D. The section shall describe the allocation of voting power among the unit owners.

E. The section shall discuss any retention by the declarant of control over the unit owners' association.

F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive organ or an officer of the unit owners' association. The duration of any management agreement shall be stated.

G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

H. Rules and regulations of the units owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations shall not be discussed except as required by other provisions of these condominium regulations. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the authority to interpret condominium instruments, rules and regulations or other operative provisions.

J. Unless required to be disclosed by 18 VAC 135-30-350, subsection E, of this chapter, any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated: (i) a unit may be entered without notice to the unit owner; (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner; and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.

18 VAC 135-30-380. Narrative sections; surrounding area.

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium. The section may indicate the existence and proximity of community facilities available to unit owners.

18 VAC 135-30-390. Narrative sections; financial matters.

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit, excluding certain taxes, in the manner provided in subsections B through I hereof.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair and replacement of various portions of the condominium: (i) common expenses apportioned among and assessed to all of the condominium units pursuant to §55-79.83(c) of the Code of Virginia or similar law or condominium instrument provision (referred to elsewhere in these regulations as "regular common expenses"); (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to §55-79.83(a) and (b) of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by their owners.

C. A projected budget shall be prepared showing regular common expenses to be assessed for the first year of the condominium's operation or, if different, the latest year for which projections are available; provided, however, that in no event shall the year for which the budget is projected have commenced more than six months prior to the date application for registration is filed. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention thereto. The section shall describe the manner in which the projected budget is established.

D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable: "A unit owner cannot obtain a reduction of the regular common expenses assessed against his unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures and for contingencies, if any.

F. The section shall describe provisions for special assessments to be levied in the event that budgeted assessments provide insufficient funds for operation of the unit owners' association.

G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to §55-79.83(a) and (b) of the Code of Virginia or similar law or condominium instrument provisions.

H. The section shall indicate any fee, rental or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in §§55-79.84(h) and 55-79.85 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.

I. The section shall discuss the effect of failure of a unit owner to pay when due assessments levied against his condominium unit. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond conditioned on the payment of assessments filed with the board in accordance with §55-79.84:1 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement: "The unit owners' association may obtain payment of overdue assessments by foreclosure of the lien resulting in a forced sale of the condominium unit or by suing the unit owner."

18 VAC 135-30-400. Narrative sections; insurance.

The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit which increase its value beyond the limits of coverage provided in the unit owners' association's policy, and (iii) liability coverage will not insure against liability arising from an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall indicate any conditions imposed by the condominium instruments or rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or rules and regulations.

18 VAC 135-30-410. Narrative sections; taxes.

A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or proposed taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges and other special assessments.

B. With respect to real property taxes, the section shall state the tax rate currently in effect. The section shall also state a procedure or formula by means of which the taxes may be estimated.

C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied.

18 VAC 135-30-420. Narrative sections; governmental approval.

The public offering statement shall contain a section captioned “Governmental Approval.” The section shall discuss approval of a site plan and issuance of a building permit by appropriate governmental authorities. The section shall also discuss compliance with all zoning ordinances, building codes, housing codes and similar laws affecting the condominium.

18 VAC 135-30-430. Narrative sections; warranties.

The public offering statement shall contain a section captioned “Warranties.” The section shall describe any warranties provided by or through the declarant on the units or the common elements. If any such warranty is different from the warranty provided by §55-79.79(b) of the Code of Virginia or a similar applicable law, the section shall include the substance of the following statement: “Nothing contained in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty.”

18 VAC 135-30-440. Documents to be included.

Copies of the following documents shall be attached as exhibits to the public offering statement: (i) the declaration; (ii) the bylaws; (iii) the projected budget; (iv) rules and regulations of the unit owners’ association; (v) any management contract; (vi) any lease of recreational areas; and (vii) any similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium. Other pertinent documents may be attached to the public offering statement including, without limitation, a purchase agreement, a certificate of warranty, a warranty limitation agreement and a depiction of unit layouts.

18 VAC 135-30-450. Documents from other jurisdictions.

A. A substituted disclosure document is a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this paragraph in order to fulfill the disclosure requirements established for public offering statements by §55-79.90(a) and, if applicable, §55-79.94(a) of the Code of Virginia. A substituted disclosure document shall not be employed in the case of a condominium located in Virginia.

B. The substituted disclosure document shall be prepared by deleting from the original disclosure document: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgement of receipt or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information

which is untrue, inaccurate or misleading with respect to marketing, offers or disposition of condominium units in Virginia.

C. The substituted disclosure document shall incorporate all information not otherwise included which is necessary to effect fully and accurately the disclosures required by §55-79.90(a) and, if applicable, §55-79.94(a) of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature which is different from the definitions provided in §55-79.41 of the Code of Virginia or which, for any other reason, may confuse purchasers in Virginia. Any information not required by §§55-79.90(a) and 55-79.94(a) of the Code of Virginia may be deleted, provided that such deletion does not render the required information misleading.

D. The first page of the substituted disclosure document shall be prepared to conform as closely as possible to the specimen appended as Appendix A to these regulations and made a part hereof. The three blanks in the first sentence of the third paragraph of the specimen shall be completed by insertion of the following information: (i) the designation by which the original disclosure document is identified in the jurisdiction pursuant to whose laws it was prepared; (ii) the governmental agency of such other jurisdiction with which the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. No portion of the substituted disclosure document may be underscored, italicized or printed in larger, heavier or different color type than the remainder of the substituted disclosure document, except: (i) as required by subsection D hereof; (ii) as required or permitted in the original disclosure document by the laws of the jurisdiction pursuant to which it was prepared; and (iii) as provided by order of the board in cases in which it finds that the significance to purchasers of certain information requires that such information be disclosed more conspicuously than by regular presentation in the substituted disclosure document.

F. The provisions of §§55-79.88(c), 55-79.90, and 55-79.94(a) of the Code of Virginia and 18 VAC 135-30-210, 18 VAC 135-30-230, 18 VAC 135-30-240, 18 VAC 135-30-250, 18 VAC 135-30-440 and 18 VAC 135-30-450 of this chapter shall apply to substituted disclosure documents in the same manner and to the same extent that they apply to public offering statements.

18 VAC 135-30-460. Condominium securities.

A prospectus used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by 18 VAC 135-30-440 of this chapter. Such prospectus shall be deemed to satisfy all of the disclosure requirements of 18 VAC 135-30-260 through 18 VAC 135-30-440 and Part VII of this chapter. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18 VAC 135-30-500, subsections C and D, 18 VAC 135-30-510 and 18 VAC 135-30-520 of this chapter to be disclosed in public offering statements for conversion condominiums. The provisions of §55-79.88(c) of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

PART 6
CONVERSION CONDOMINIUMS

18 VAC 135-30-470. Public offering statement for conversion condominium; general instructions.

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18 VAC 135-30-210 through 18 VAC 135-30-460 and Part VII of this chapter. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned "Description of the Condominium," "Terms of the Offering" and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18 VAC 135-30-490 through 18 VAC 135-30-520 of this chapter.

18 VAC 135-30-480. Public offering statement for conversion condominium; special definitions.

As used in this paragraph and in 18 VAC 135-30-490 through 18 VAC 135-30-520 of this chapter:

"Class of physical assets" means two or more physical assets which are substantially alike in function, manufacture, date of construction or installation and history of use and maintenance.

"Expected useful life" means the estimated number of years from the date on which such estimate is made until the date when, because of the effects of time, weather, stress or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Major utility installation" means a utility installation or portion thereof which is a common element or serves more than one unit.

"Physical asset" is a generic term and means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Replacement cost" means the expenditure which would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of removing the physical asset to be replaced, of obtaining its replacement and of erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit and/or common element and in which a defect would reduce the stability or safety of all or a part of the structure below accepted standards or restrict the normal intended use of all or a part of the structure.

“Structural defect” shall have the meaning given in §55-79.79(b) of the Code of Virginia.

18 VAC 135-30-490. Description of conversion condominium.

In addition to the information required by 18 VAC 135-30-300 of this chapter, the section captioned “Description of the Condominium” shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances which bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

18 VAC 135-30-500. Financial matters; conversion condominium.

A. The provisions for capital reserves described in the section captioned “Financial Matters” shall be supplemented by the information set forth in subsections B and C hereof.

B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an expected useful life which is stated as being within a range of years pursuant to 18 VAC 135-30-520 E of this chapter shall be deemed to be 10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit which would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

C. The section shall state the amount of capital reserves which will be accumulated by the unit owners’ association during the period of declarant’s control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense assessments, such fact shall be stated.

D. The actual expenditures made over a three-year period on operation, maintenance, repair or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to 18 VAC 135-30-390 C of this chapter. Distinction shall be made between expenditures which would have constituted regular common expenses and expenditures which would have been borne by unit owners individually if the property had been converted to condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period,

expenditure information shall be set forth for the maximum period the property was occupied. The “Financial Matters” section shall direct the purchaser’s attention to the expenditure information.

18 VAC 135-30-510. Present condition of conversion condominium.

A. The section captioned “Present Condition of the Condominium” shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets: (i) in the condominium; (ii) within a distinctly identifiable portion of the condominium; or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets which was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or portion thereof has been repaired, altered, improved or replaced subsequent to its construction or installation unless the approximate date, nature and extent of such repair, alteration, improvement or replacement is also stated.

B. Subject to the exceptions provided in subsections D, E and F hereof, the section captioned “Present Condition of the Condominium” shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.

C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party or parties by whom present condition was ascertained and shall indicate the relationship of such party or parties to the declarant.

D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F hereof applies, such statement shall include a separate reference to the present condition of any physical asset within the class which is significantly different from the present condition indicated for the class generally.

E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.

F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.

18 VAC 135-30-520. Replacement requirements in conversion condominium.

A. Subject to the exceptions provided in subsections B and H hereof, the section captioned “Replacement Requirements” shall state the expected useful lives of all physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.

B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class which is significantly shorter than the expected useful life indicated for the class generally.

C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.

D. Subject to the exceptions provided in subsections E and H hereof, the section captioned “Replacement Requirements” shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.

E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the replacement cost of any physical asset within the class which is significantly greater than the replacement cost indicated for the representative member of the class.

F. Distinction shall be made between replacement costs which will be common expenses and replacement costs which will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser’s attention shall be directed to the “Financial Matters” section for an indication of the amount of the former type or replacement costs.

G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.

H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure which have both (i) the same expected useful lives and (ii) replacement costs which will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne

by unit owners individually.

18 VAC 135-30-530. Notice to tenants.

No notice to terminate a tenancy provided for by §55-79.94(b) of the Code of Virginia shall be given prior to the registration of the condominium unit as to which the tenancy is to be terminated.

PART 7
TIME-SHARE CONDOMINIUMS

18 VAC 135-30-540. Public offering statement for time-share condominiums; general instructions.

This Part VII of the Condominium Regulations applies to those property developments in which purchasers are offered both condominium and time-share interests. The developer of a time-share condominium shall prepare one public offering statement which complies with the requirements of this Part VII even though the developer may be required to register under both the Condominium Act (§55-79.39 et seq. of the Code of Virginia) and Real Estate Time-Share Act (§55-360 et seq. of the Code of Virginia).

The public offering statement for a time-share condominium shall conform in all respects to the requirements of 18 VAC 135-30-210 and 18 VAC 135-30-230 through 18 VAC 135-30-460 of this chapter. In addition, the public offering statement for a time-share condominium shall (i) contain special disclosures in the narrative sections captioned "Condominium Concept," "Description of Condominium," "Declarant," "Terms of Offering," "Encumbrances," "Unit Owners' Association," "Financial Matters," "Insurance," and "Taxes," and (ii) contain a narrative section entitled "Exchange Program."

18 VAC 135-30-550. Summary of important considerations.

In addition to the information required by 18 VAC 135-30-260 of this chapter in the case of a time-share program, summary statements shall be made of the substance of the following facts and circumstances. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The time-share program will [will not] be governed by a time-share owners' association.
2. Decisions affecting the time-share project will be made by the developer.
3. Each time-share owner cannot reduce the amount of his assessment by refraining from use of his time-share or the projects' facilities.
4. If a time-share owner fails to pay an assessment when due, the developer may impose certain sanctions or penalties, including the forfeiture of the time-share.
5. The developer, its principals, officers, directors, partners, or trustees have undergone [a debtor's relief proceeding].
6. A managing agent may perform routine operations for the operation, maintenance and upkeep of the time-share project, as determined by

the developer. The managing agent is [affiliated with] the [developer, or a director or officer thereof].

7. The developer may rent on a transient basis, unsold time-shares. The right of a time-share use owner to rent his time-share is subject to [restrictions].
8. The right of a time-share owner to resell his time-share is subject to restrictions].
9. The time-shares are restricted to residential use.
10. The time-share owner may not alter the structure or exterior of the unit in which his time-share is located.
11. The developer will obtain certain insurance benefiting the time-share use owner, but the time-share use owner should obtain additional insurance on his own.
12. The time-share owner may be required to pay applicable taxes imposed on the project similar in scope and design to taxes applicable to hotels, motels or other transient type accommodations.
13. Marketing and sale of time-shares will be conducted in accordance with Virginia Fair Housing Law (§36-96.1 et seq. of the Code of Virginia).
14. A time-share purchaser is required to make certain disclosures to purchasers in the resale of his time-share.

18 VAC 135-30-560. Condominium concept; time-share condominium.

In addition to the information required by 18 VAC 135-30-280 of this chapter, this section shall consist of discussion of the time-share form of ownership and shall include a detailed explanation of the type of time-share arrangement employed in the project.

18 VAC 135-30-570. Description of condominium; time-share condominium.

In addition to the information required by 18 VAC 135-30-300 of this chapter, this section shall consist of a general description of the time-share program, the units, amenities and type of time-shares being made available to purchasers. The section shall include, without limitation, statements indicating:

1. The land area of the time-share project;
2. The number of units in the project;
3. The number of units in the project to be organized on a time-share basis;

4. An identification of units that are subject to time-sharing and the type of time-shares being offered;
5. The duration of the time-shares;
6. The different types of units available;
7. Provisions, if any, that have been made for public utilities in the time-share project, including water, electricity, telephone, and sewerage facilities;
8. Restrictions, if any, as to what changes a time-share owner may make to his unit in which his time-share is located; and
9. Whether or not the units are restricted solely to residential use.

18 VAC 135-30-580. Declarant/developer; time-share condominium.

In addition to the information required by 18 VAC 135-30-330 of this chapter, the following information shall be stated with regard to every director, partner or trustee of the declarant/developer: (i) name and address; and (ii) principal occupation. The name and address of each person owning or controlling an interest of 20% or more in the time-share project shall also be indicated.

18 VAC 135-30-590. Terms of offering; time-share condominium.

In addition to the information required by 18 VAC 135-30-340, subsection A of this chapter, this section shall set forth provisions with respect to the purchaser's right to cancel his purchase contract. Such disclosure shall be consistent with the applicable statutory provision, §§55-79.88(c) or 55-376 of the Code of Virginia. Special escrow requirements of §55-375 of the Code of Virginia shall be likewise described in this section.

18 VAC 135-30-600. Encumbrances; time-share condominium.

In addition to the information required by 18 VAC 135-30-350 of this chapter, regardless of the form of time-share project, the section shall describe 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. The section shall discuss the consequences that the filing of federal tax liens would have on the project.

18 VAC 135-30-610. Unit owners' association; time-share condominium.

A. In addition to the information required by 18 VAC 135-30-370 of this chapter, this section shall contain either a section captioned "Administration of Time-Share Estate Program" or a section captioned "Administration of Time-Share Use Program", depending upon the form of time-shares being offered by the developer. The section shall discuss the manner in which the time-share program will be

governed and administered.

B. "Administration of time-share estate program".

1. The section shall describe the functions and the organization's structure of the time-share estate owners' association formed pursuant to the Virginia Nonstock Corporation Act. The description shall indicate:
 - (a) the existence or provisions for a board of directors and officers;
 - (b) the manner of their election or appointment;
 - (c) the assignment or delegation of responsibility for performance of the functions of the unit owners' association; and
 - (d) those items outlined in §55-368 numbered 2 through 10, of the Code of Virginia.
2. The section shall describe the allocation of voting power among the time-share estate owners and will explain how votes will be cast. Any provision in the time-share instruments for regular meetings of the estate owners shall be mentioned.
3. The significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share shall be stated. A brief narrative statement of the effect of each of any such agreement shall be included.
4. Rules and regulations for the use, enjoyment, and occupancy of units, and the authority to promulgate and amend such rules shall be discussed. Included shall be a description of the method, if any, to be employed to assign or reserve occupancy periods for the time-share owners. Methods for providing alternate use periods or monetary compensation to a time-share owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation shall be discussed.
5. Any standing committees established or to be established to perform functions of the time-share estate owners' association shall be discussed. Such committees include, without limitation, executive committees, architectural control committees and committees having the authority to interpret time-share instruments or rules and regulations.
6. Any power of the developer or of the time-share estate owners' association to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated:

- (a) a unit may be entered without notice to the time-share owners;
 - (b) the developer or representatives of the time-share estate owners' association are empowered to take actions or perform work in a unit without the consent of the unit owners; and
 - (c) the time-share owners may be required to bear the costs of actions so taken or work so performed.
7. The section shall describe any routine janitorial procedures that are to occur between occupancy periods of time-share owners, as well as any maintenance program that is to take place on an annual or semi-annual basis.
8. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the developer or a member of the board of directors or an officer of the time-share estate owners' association. The duration of any management agreement shall be stated.
9. The section shall discuss any retention by the developer of control over the time-share estate owners' association. The association's power to pass special assessments against and raise the annual assessments of the time-share owners upon the termination of the developer control shall also be discussed.

C. "Administration of time-share use program". The section shall provide the information required by §55-371 of the Code of Virginia.

18 VAC 135-30-620. Financial matters; time-share condominium.

A. In addition to the information required by 18 VAC 135-30-390 of this chapter, this section shall contain either a section captioned "Finances of Time-Share Estate Ownership" or a section captioned "Finances of Time-Share Use Ownership", depending upon the form of time-share development used in the projects. The section shall discuss the expenses incident to the ownership of a time-share in the manner provided in subsections B through H hereof.

B. The section shall describe the nature of the costs and expenses of operating the time-share program and shall distinguish between those to be paid by the developer and those to be paid by the time-share owners. The section shall explain how the responsibilities for payment of operating costs will be apportioned among the time-share owners. In the case of a time-share estate program, this section shall describe and distinguish between developer expenses and time-share estate occupancy expenses, as well as the meaning of the "Developer Control Period" as outlined in §55-369 of the Code of Virginia, and when it commences and ends. Mention shall be made of the developer's right to collect a periodic fee from the time-share estate owner for the payment of the latter expenses; the method of apportionment

between time-share estate owners shall be explained.

C. The section shall contain a statement describing any current or expected fees or charges to be paid by time-share owners for the use and enjoyment of any facilities related to the project. This shall include, without limitation, any fee attributable to the use of recreational facilities mentioned in any of the time-share documents or during the marketing activities.

D. The section shall contain a statement describing the extent to which financial arrangements, if any, have been provided for completion of any time-share unit offered for sale.

E. The section shall describe any services which the developer provides or expenses it pays which may become at any subsequent time a time-share expense of the time-shares, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

F. The section shall contain the latest annual balance sheet and a projected budget for the program for one-year after the date of the first transfer to a purchaser. After that one-year period, a current budget shall be included in lieu of the projected budget and annual balance sheet mentioned above. All budgets shall be accompanied by a statement indicating the name of the preparer of the budget, and a statement explaining all budgetary assumptions concerning occupancy and inflation. All budgets must include, without limitation: (i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements; and (ii) a statement of any other reserves. If the project is a time-share estate project and if the developer control period has not ended, the budget shall also include: (i) the projected common expense liability for all time-share owners; (ii) the projected common expense liability by category of expenditures; and (iii) a statement of the amount included in the budget reserved for repairs to and refurbishing of the project and the replacement of the personalty situated therein.

G. The "Finances of Time-Share Use Ownership" section shall, where the developer's equity in the project is less than \$250,000, include a current audited financial statement disclosing the developer's net worth. Such statement shall specifically state the amount of equity in the project.

H. The section shall discuss the effect of failure of a time-share owner to pay when due the assessments, fees or charges levied against his time-share. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments including the lien authorized by §55-370 B of the Code of Virginia, and for the acceleration of unpaid assessments.

18 VAC 135-30-630. Insurance; time-share condominium.

In addition to the information required by 18 VAC 135-30-400 of this chapter, this section shall describe the insurance coverage provided for the benefit of time-share owners. Included shall be a discussion of the comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of units by time-share estate owners or time-share use owners or their guests. It shall be made clear that in the case of a time-share estate project the costs associated with this liability insurance will be borne by the developer during the developer control period, and thereafter, the costs will be assumed by the time-share estate owners' association; and that in the case of a time-share use project, the costs associated with securing and maintaining such insurance

shall be borne by the developer.

Depending on the time-share organization employed by the developer, §§55-368(7) or 55-371(7) of the Code of Virginia shall be included in this discussion.

18 VAC 135-30-640. Taxes; time-share condominium.

In addition to the information required by 18 VAC 135-30-410 of this chapter, this section shall describe all existing or proposed taxes to be levied against time-shares individually including, without limitation, real property taxes, transient taxes and other special assessments.

18 VAC 135-30-650. Exchange program; time-share condominium.

The public offering statement shall contain a section captioned “Exchange Program”, if, at the time of purchase of a time-share, the purchaser is permitted or required to become a member of or a participant in an exchange program. An “exchange program” is a program offered by the developer or an independent exchange agent for the exchange of occupancy rights with the owners of time-shares of other time-share projects. This section shall contain the information required by §55-374 B of the Code of Virginia.

PART 8
POST-REGISTRATION PROVISIONS

18 VAC 135-30-660. Material change defined.

As used in 18 VAC 135-30-670 through 18 VAC 135-30-700 of this chapter, “material change” means a change which renders inaccurate, incomplete or misleading, any information or document disclosed in or attached to a public offering statement whose form and content are designated for use pursuant to 18 VAC 35-30-100 G or 18 VAC 135-30-680 B of this chapter. Without limiting the generality of the preceding sentence, a material change shall be whenever (i) information or a document required to be disclosed in or attached to a public offering statement but not so disclosed or attached by reason of its previous unavailability or nonexistence becomes available or comes into existence and (ii) a new budget is adopted.

18 VAC 135-30-670. Amendment of public offering statement.

A. Prior to or upon the occurrence of a material change, the declarant shall amend the public offering statement to disclose the modified or additional information or to include the modified or additional document, as the case may be. The declarant may amend the public offering statement other than in connection with a material change.

B. Amendment of the public offering statement may be accomplished in any intelligible manner and, to the extent that strict compliance with any of the provisions of these regulations governing the form of presentation of information in the public offering statement would be unduly burdensome, the declarant may deviate therefrom in amending the public offering statement, provided that (i) no such deviation shall be more extensive than is necessary and appropriate under the circumstances; (ii) the requirements of 18 VAC 135-30-230 and 18 VAC 135-30-280 of this chapter are strictly observed and (iii) the presentation of information in the amended public offering statement is organized so as to facilitate reading and comprehension. Nothing contained herein shall authorize a deviation from strict compliance with a provision of these regulations governing the substance of disclosure in the public offering statement. If any information has become inaccurate or misleading by reason of the material change and is not deleted from the public offering statement in connection with its amendment, such fact shall be clearly noted.

C. Correction of spelling, grammar, omission or other similar errors not affecting the substance of a public offering statement shall not be deemed an amendment of the public offering statement for the purposes of these regulations; provided, however, that the declarant shall file with the board a copy of a public offering statement so corrected.

18 VAC 135-30-680. Filing of amended public offering statement.

A. The declarant shall promptly file with the board a copy of an amended public offering statement. Unless subsection D hereof applies, the declarant shall, as part of such filing, update the

application for registration on file with the board either by filing a new application or by advising the board of changes in the information contained in a previously filed application or file new or substitute documents.

In the case of a public offering statement (i) amended other than in connection with a material change or (ii) presumed current pursuant to 18 VAC 135-30-700 of this chapter, the filing shall indicate the date of amendment.

B. Unless subsection D hereof applies, the board shall issue a notice of filing within five business days following receipt in proper form of the materials required by subsection A hereof. The board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with 18 VAC 135-30-670 of this chapter. At such time as the board affirmatively determines that the amendment complies with 18 VAC 135-30-670 of this chapter, but not later than the 30th day following issuance of the notice of filing, it shall enter an order designating the amended form and content of the public offering statement to be used. Such order shall provide that previous orders designating the form and content of the public offering statement for use are superseded.

C. If the board determines, pursuant to subsection B hereof, that an amendment to the public offering statement does not comply with 18 VAC 135-30-670 of this chapter, it shall immediately, but in no event later than the 30th day following issuance of the notice of filing enter an order declaring the amendment not in compliance with 18 VAC 135-30-670 of this chapter and specifying the particulars of such noncompliance. In the case of a public offering statement amended other than in connection with a material change, the order shall relate back to the date of amendment. If neither of the orders provided for by this subsection and subsection B hereof are entered within the time allotted, the amendment shall be deemed to comply with 18 VAC 135-30-670 of this chapter, except that the 30-day period may be extended in the manner provided for extension of the correction period by 18 VAC 135-30-100, subsection D of this chapter. The declarant may, at any time correct and refile an amended public offering statement; provided, however, that if an order of noncompliance has been entered with respect to the amendment, all of the provisions of subsections A and B hereof and this subsection shall apply to such refiling.

D. If the material change which resulted in amendment of the public offering statement was an expansion of the condominium or the formation of units out of convertible land or convertible space, the declarant shall file a complete application for registration of the additional units, provided, that no such application need be filed for units previously registered. Such application for registration shall be subject to all of the provisions of 18 VAC 135-30-70 through 18 VAC 135-30-150 of this chapter and the board shall observe the procedures of 18 VAC 135-30-100 of this chapter in regard to the application. Documents then on file with the board and not changed in connection with the creation of additional units need not be refiled, provided that the application indicates that such documents are unchanged.

E. In each case in which an amended document is filed pursuant to this paragraph and the manner of its amendment is not apparant on the face of the document, the declarant shall provide an indication of the manner and extent of amendment.

18 VAC 135-30-690. Current public offering statement.

A. A public offering statement is current if its form and content are designated for use pursuant to 18 VAC 135-30-100 G or 18 VAC 135-30-680 B of this chapter and remains current so long as no

material change occurs and any amendment of the public offering statement other than in connection with a material change is made in compliance with 18 VAC 135-30-670 of this chapter.

B. A public offering statement ceases to be current upon the occurrence of a material change and, subject to the exception provided in 18 VAC 135-30-700 of this chapter, does not thereafter become current unless and until (i) it is amended pursuant to 18 VAC 135-30-670 of this chapter and (ii) the board, with respect to such amendment, enters an order pursuant to 18 VAC 135-30-100 G or 18 VAC 135-30-680 B or fails to enter, within the times allotted therefor, any of the orders provided for by 18 VAC 135-30-100 E and G or 18 VAC 135-30-680 B and C.

C. If the board determines that the public offering statement amended other than in connection with a material change fails to comply with 18 VAC 135-30-670 of this chapter that public offering statement ceases to be current as of the date of amendment. Such cessation shall be affected retroactively by the board's entry of an order of noncompliance and nothing contained herein shall limit the declarant's right to use the public offering statement as current prior to the entry of an order of noncompliance. The public offering statement does not thereafter become current unless and until it is corrected and refiled and the board, with respect to such amendment, enters an order pursuant to 18 VAC 135-30-680 B of this chapter or fails to enter either of the orders provided for by 18 VAC 135-30-680 B or C of this chapter.

D. Upon issuance of a public offering statement amended because of the occurrence of a change that materially and adversely affects the purchaser's bargain, that was caused by the declarant or any agent or affiliate of the declarant, and of the possibility of which the purchaser was not forewarned in the public offering statement given him pursuant to §55-79.88(2) of the Code of Virginia, then the purchaser's 10-day rescission right afforded by §55-79.88(2) of the Code of Virginia is renewed. The declarant shall deliver the public offering statement so amended and give the purchaser notice of his renewed rescission right as required by 18 VAC 135-30-710 of this chapter.

18 VAC 135-30-700. Certain amended public offering statements presumed current.

A. A public offering statement amended by the declarant to disclose any material change which is an aspect or result of the orderly development of the condominium or the normal functioning of the unit owners' association shall be presumed current immediately upon its amendment, subject, however, to the condition that the board shall subsequently determine that the amendment was made in compliance with 18 VAC 135-30-670 of this chapter. An amended public offering statement presumed current pursuant to this subsection shall be referred to elsewhere in these regulations as a presumptively current public offering statement.

B. The declarant shall file with the board a copy of a presumptively current public offering statement and all of the provisions of 18 VAC 135-30-680 of this chapter shall apply to such filing except that, in addition: (i) filing shall be made not later than 10 business days following the occurrence of the material change which necessitated the amendment, and (ii) the filing shall indicate the declarant's plans, if any, to deliver the presumptively current public offering statement to purchasers pursuant to §55-79.88(c) of the Code of Virginia.

C. A board order declaring that an amendment which resulted in a presumptively current public offering statement is not in compliance with 18 VAC 135-30-670 of this chapter shall render ineffective

the presumption that the public offering statement is current. In that event, the public offering statement shall be deemed to have ceased being current upon the occurrence of the material change which necessitated the amendment. Nothing contained herein shall limit the declarant's right to use a presumptively current public offering statement prior to entry of the order of noncompliance. A presumptively current public offering statement also ceases being current upon the declarant's failure to file within the time provided in subsection B hereof, but such cessation shall have no retroactive effect. A presumptively current public offering statement which ceases to be current pursuant to this subsection does not thereafter become current unless and until it is filed or refiled with the board pursuant to 18 VAC 135-30-680 of this chapter and the board, with respect to such public offering statement, enters an order pursuant to 18 VAC 135-30-100 G or 18 VAC 135-30-680 B of this chapter or fails to enter, within the times allotted therefor, any of the orders provided for in 18 VAC 135-30-100 E and G or 18 VAC 135-30-680 B and C of this chapter.

18 VAC 135-30-710. Public offering statement not current; notification of purchasers.

The declarant shall notify every purchaser to whom has been delivered a public offering statement which was subsequently determined not to have been current at the time of its delivery. Such notification shall indicate that any contract for disposition of a condominium unit may be cancelled unless and until the declarant complies with the provisions of §55-79.88(c) of the Code of Virginia. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

18 VAC 135-30-720. Annual report by declarant.

Prior to filing the annual report required by §55-79.93 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such public offering statement is current, the declarant shall so certify in the annual report and include a copy thereof in the report. If such public offering statement is not current, the declarant shall amend the public offering statement and the annual report shall, in that event, consist of a filing complying with the requirements of 18 VAC 135-30-680 of this chapter. In addition, the annual report shall indicate the number of condominium units (i) conveyed, (ii) under contract for disposition, (iii) being rented by the declarant and (iv) still being offered. The annual report shall indicate the status of declarant's control retained pursuant to §55-79.74 of the Code of Virginia. The annual report may be in any form suitable for compliance with the provisions of this paragraph and §55-79.93 of the Code of Virginia.

18 VAC 135-30-730. Provisions applicable to substituted disclosure document; prospectus.

A. The provisions of 18 VAC 135-30-660 through 18 VAC 135-30-720 of this chapter shall apply to a substituted disclosure document in the same manner and to the same extent that they apply to public offering statements.

B. The provisions of 18 VAC 135-30-660 through 18 VAC 135-30-700 of this chapter shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18 VAC 135-30-460 of this chapter is required or permitted. The body of the

prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall enter an order designating the form and content of the prospectus to be used and providing that previous orders designating the form and content of the prospectus for use are superseded. A prospectus is current so long as it is effective under applicable securities law and the information and documents attached thereto are current under the provisions of 18 VAC 135-30-690 and 18 VAC 135-30-700 of this chapter. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18 VAC 135-30-680 of this chapter.

C. The provisions of 18 VAC 135-30-710 of this chapter shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.

D. In an annual report involving a prospectus the declarant shall comply with all of the provisions of 18 VAC 135-30-720 of this chapter applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

PART 9
HORIZONTAL PROPERTY REGIMES

18 VAC 135-30-740. Horizontal property regime; special definitions.

The definitions provided in §55-79.2 of the Code of Virginia, as they may be supplemented herein, shall apply to 18 VAC 135-30-740 through 18 VAC 135-30-800 of this chapter. A condominium established in Virginia prior to July 1, 1974 shall be referred to in 18 VAC 135-30-740 through 18 VAC 135-30-800 of this chapter as a “horizontal property regime.”

18 VAC 135-30-750. Horizontal property regime; provisions applicable.

A horizontal property regime and board action with respect thereto shall be subject to:

1. All of the provisions of 18 VAC 135-30-10 through 18 VAC 135-30-120 of this chapter; and,
2. All of the provisions of 18 VAC 135-30-160 through 18 VAC 135-30-190 except 18 VAC 135-30-180 B of this chapter, provided that each reference therein to registration shall be deemed to refer also to the issuance of a final public report.

18 VAC 135-30-760. Notice of intention.

A developer shall notify the board of its intention to offer apartments in a horizontal property regime in Virginia by completing and filing at the offices of the board a notice of intention containing substantially all of the information and documents required by the standard notice of intention. The notice of intention may request issuance of a preliminary, final, substitute or supplementary public report.

18 VAC 135-30-770. Inspection by board.

Upon receipt of a notice of intention requesting issuance of a final, substitute or supplementary public report the board shall determine whether an inspection of the horizontal property regime is necessary. If the board determines that inspection is necessary, it shall so notify the developer within 10 days following receipt of the notice of intention. The developer shall pay an inspection fee of \$75 plus the reasonable expenses of first class travel incurred in such inspection. The duty of conducting the inspection and preparing the public report is delegated to the property registration administrator. Inspection fees shall be placed to the credit of the special fund established by §55-79.31 of the Code of Virginia.

18 VAC 135-30-780. Public report.

Five copies of each public report issued by the board shall be furnished to the developer without charge. Additional copies may be secured by the developer at its own expense. A developer shall not represent or cause a purchaser to believe that the board's issuance of a public report is an approval of any horizontal property regime. The public report shall be used only in its entirety. The developer shall not cause any portion of a public report to be underscored, italicized or printed in larger, heavier or different color type than the remainder of the public report unless the original issued by the board is so prepared.

18 VAC 135-30-790. Supplementary public report.

A. Whenever, following the first filing of a notice of intention with the board, a material change in the setup, value or use of a horizontal property regime occurs, the developer shall so notify the board. If the board has issued a final, substitute or supplementary public report relative to the horizontal property regime, the notification provided for in the preceding sentences shall be accomplished by the filing of a notice of intention requesting issuance of a supplementary report. Previously issued final, substitute or supplementary public reports shall not be delivered to purchasers following the occurrence of a material change in the setup, use or value of the horizontal property regime.

B. For the purposes of this paragraph, a material change in the setup, use or value of a horizontal property regime shall include, without limitation, a change in the number of apartments, a change in the land area, a change in the percentage of ownership of the common elements by any co-owner including the developer as owner of unsold apartments, a change in common elements constituting amenities and a change of the developer whereby a party other than the developer identified in the most recently issued public report succeeds to the rights and interests of such original developer in the horizontal property regime. Upon the request of a developer in a specific case, the board shall determine whether a particular change constitutes a material change in the setup, use or value; provided, however, that the presentation of information to the board in connection with such request shall not relieve the developer of any requirement for filing a notice of intention in the event that the board determines that a material change in the setup, use or value has occurred or will occur.

C. Upon receipt of a notice of intention filed pursuant to this paragraph, the board shall issue a supplementary public report and the developer shall deliver a true copy thereof to all purchasers who have executed but not settled contracts for acquisition of an apartment in the horizontal property regime.

D. The developer may amend a final, substitute or supplementary public report to reflect changes not constituting material changes in the setup, value or use, provided that a copy thereof is filed with the board prior to its delivery to any prospective purchaser.

18 VAC 135-30-800. Horizontal property regime constituting conversion condominium.

A. A notice of intention requesting issuance of a final public report on a horizontal property regime which is a conversion condominium shall have attached thereto the information required by 18 VAC 135-30-500 B, C and D, 18 VAC 135-30-510 and 18 VAC 135-30-520 of this chapter to be disclosed in public offering statements for conversion condominiums. Such information shall be prepared by the developer and submitted in a form suitable for presentation in the final public report. The board

shall make any revisions in such information as are necessary to effect full compliance with the applicable regulations and shall incorporate the information into the final public report.

B. A notice of intention requesting issuance of a final public report on a horizontal property regime which is a conversion condominium shall have attached thereto a copy of the notice to be given to tenants pursuant to §55-79.94(b) of the Code of Virginia. The declarant shall certify that such notice to tenants shall be, at the time of issuance of the final public report, mailed or delivered to each of the tenants in the building or buildings in the horizontal property regime. No such notice shall be mailed or delivered to a tenant prior to the issuance of the final public report on the horizontal property regime.