

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the general business law, in relation to the physical condition of a building being converted to cooperative or condominium ownership

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (a) of subdivision 1 of section 352-e of the
2 general business law, as amended by chapter 1085 of the laws of 1968, is
3 amended to read as follows:
4 (a) It shall be illegal and prohibited for any person, partnership,
5 corporation, company, trust or association, or any agent or employee
6 thereof, to make or take part in a public offering or sale in or from
7 the state of New York of securities constituted of participation inter-
8 ests or investments in real estate, mortgages or leases, including
9 stocks, bonds, debentures, evidences of interest or indebtedness, limit-
10 ed partnership interests or other security or securities as defined in
11 section three hundred fifty-two of this article, when such securities
12 consist primarily of participation interests or investments in one or
13 more real estate ventures, including cooperative interests in realty,
14 unless and until there shall have been filed with the department of law,
15 prior to such offering, a written statement or statements, to be known
16 as an "offering statement" or "prospectus" concerning the contemplated
17 offering which shall contain the information and representations
18 required by [paragraph] PARAGRAPHS (b) AND (D) of this subdivision
19 unless the security offering is exempted hereunder or under SUBDIVISION
20 TWO OF section three hundred fifty-nine-f[, subdivision two,] of this
21 article by rule or action of the attorney general. The term "real
22 estate" as used in the paragraph shall not include mineral, oil or

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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1 timber leases or properties, or buildings, structures, land or other
2 realty housing or containing business offices or industry, owned or
3 leased by the issuer, where the issuer is not primarily engaged in the
4 business of buying and selling such building or other realty or leases
5 or interests therein. The circulation or dissemination of a non-firm
6 offer (including circulation or dissemination of a preliminary prospec-
7 tus pursuant to section ten (b) of the securities act of nineteen
8 hundred thirty-three, and the rules thereto appertaining) shall not
9 constitute making or taking part in a public offering within the meaning
10 of this section.

11 S 2. Subdivision 1 of section 352-e of the general business law is
12 amended by adding a new paragraph (d) to read as follows:

13 (D) THE PHYSICAL CONDITION OF A BUILDING BEING CONVERTED TO COOPER-
14 ATIVE OR CONDOMINIUM OWNERSHIP. THE OFFERING STATEMENT, REFERRED TO IN
15 SUBDIVISION (A) OF THIS SECTION, SHALL PROVIDE THAT THE SPONSOR OF A
16 PLAN TO CONVERT A BUILDING OR BUILDINGS TO COOPERATIVE OR CONDOMINIUM
17 OWNERSHIP SHALL CAUSE TO BE CURED (I) ALL SERIOUS VIOLATIONS OF RECORD
18 OF LOCAL OR STATE LAW OR REGULATIONS REGARDING CONDITIONS IN THE BUILD-
19 ING OR GROUNDS OF THE REAL PROPERTY WHICH IS THE SUBJECT OF THE OFFER-
20 ING, EXISTING ON THE DATE OF EFFECTIVENESS OF THE PLAN, EXCEPT THOSE
21 WHICH, IF NOT CORRECTED, WOULD NOT LEAD TO DANGEROUS OR HAZARDOUS CONDI-
22 TIONS, AS CERTIFIED BY A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER
23 RETAINED BY THE SPONSOR, AND (II) ALL DANGEROUS AND HAZARDOUS CONDITIONS
24 IN SUCH REAL PROPERTY EXISTING ON THE DATE OF EFFECTIVENESS OF THE PLAN
25 WHICH A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER RETAINED BY THE
26 SPONSOR CERTIFIES ARE NOT IN COMPLIANCE WITH APPLICABLE STATE OR LOCAL
27 LAWS OR REGULATIONS. THE OFFERING PLAN MUST FURTHER PROVIDE THAT IF ANY
28 SUCH VIOLATIONS OR RECORD REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARA-
29 GRAPH OR DANGEROUS OR HAZARDOUS CONDITIONS REFERRED TO IN SUBPARAGRAPH
30 (II) OF THIS PARAGRAPH ARE NOT CORRECTED BY THE CLOSING DATE, THE SPON-
31 SOR SHALL PLACE IN ESCROW A SUM OF MONEY WHICH IS CERTIFIED BY A REGIS-
32 TERED ARCHITECT OR PROFESSIONAL ENGINEER RETAINED BY THE SPONSOR AS
33 SUFFICIENT TO COVER THE REMAINING COST OF CORRECTION. THE SPONSOR MAY
34 EXPEND THE ESCROW MONEY TO CURE SUCH VIOLATIONS OR DANGEROUS OR HAZARD-
35 OUS CONDITIONS. IN THE EVENT THAT THE CORRECTIVE WORK IS NOT COMPLETED
36 WITHIN ONE YEAR OF THE CLOSING DATE, THE SUM IN ESCROW SHALL BE TURNED
37 OVER TO THE COOPERATIVE CORPORATION OR CONDOMINIUM BOARD OF MANAGERS AND
38 USED TO COMPLETE THE WORK. ANY ESCROW MONEY REMAINING AFTER ALL REQUIRED
39 WORK IS COMPLETED SHALL BE RETURNED TO THE SPONSOR. WHERE THE SPONSOR
40 PLACES INTO A RESERVE FUND AN AMOUNT IN EXCESS OF THAT REQUIRED BY STATE
41 AND LOCAL LAW WHICH IS SPECIFICALLY ALLOCATED AND ADEQUATE TO CURE SUCH
42 PARTICULAR VIOLATION OF RECORD OR DANGEROUS OR HAZARDOUS CONDITION, NO
43 MONEY NEEDS TO BE PLACED IN ESCROW FOR SUCH VIOLATION OR DANGEROUS OR
44 HAZARDOUS CONDITION. IF THE SUM IN ESCROW OR SPECIFICALLY ALLOCATED IN A
45 RESERVE FUND IS NOT SUFFICIENT TO CURE SUCH VIOLATIONS OF RECORD OR
46 DANGEROUS OR HAZARDOUS CONDITIONS THE SPONSOR SHALL REMAIN LIABLE TO
47 CURE SUCH VIOLATIONS OR DANGEROUS OR HAZARDOUS CONDITIONS.

48 S 3. This act shall take effect immediately and shall apply to every
49 offering statement or prospectus submitted to the attorney general on
50 and after such date and to every offering statement or prospectus
51 submitted to the attorney general which has not yet been declared effec-
52 tive.