S T A T E O F N E W Y O R K

447

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:

Section 1. Paragraph (a) of subdivision 1 of section 352-e of the general business law, as amended by chapter 1085 of the laws of 1968, is amended to read as follows:

(a) It shall be illegal and prohibited for any person, partnership, corporation, company, trust or association, or any agent or employee thereof, to make or take part in a public offering or sale in or from the state of New York of securities constituted of participation interests or investments in real estate, mortgages or leases, including stocks, bonds, debentures, evidences of interest or indebtedness, limited partnership interests or other security or securities as defined in section three hundred fifty-two of this article, when such securities consist primarily of participation interests or investments in one or more real estate ventures, including cooperative interests in realty, unless and until there shall have been filed with the department of law, prior to such offering, a written statement or statements, to be known as an "offering statement" or "prospectus" concerning the contemplated offering which shall contain the information and representations required by [paragraph] PARAGRAPHS (b) AND (D) of this subdivision unless the security offering is exempted hereunder or under SUBDIVISION TWO OF section three hundred fifty-nine-f[, subdivision two,] of this article by rule or action of the attorney general. The term "real 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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timber leases or properties, or buildings, structures, land or other realty housing or containing business offices or industry, owned or leased by the issuer, where the issuer is not primarily engaged in the business of buying and selling such building or other realty or leases or interests therein. The circulation or dissemination of a non-firm offer (including circulation or dissemination of a preliminary prospectus pursuant to section ten (b) of the securities act of nineteen hundred thirty-three, and the rules thereto appertaining) shall not constitute making or taking part in a public offering within the meaning of this section.

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

(D) THE PHYSICAL CONDITION OF A BUILDING BEING CONVERTED TO COOPERATIVE OR CONDOMINIUM OWNERSHIP. THE OFFERING STATEMENT, REFERRED TO IN SUBDIVISION (A) OF THIS SECTION, SHALL PROVIDE THAT THE SPONSOR OF A PLAN TO CONVERT A BUILDING OR BUILDINGS TO COOPERATIVE OR CONDOMINIUM OWNERSHIP SHALL CAUSE TO BE CURED (I) ALL SERIOUS VIOLATIONS OF RECORD OF LOCAL OR STATE LAW OR REGULATIONS REGARDING CONDITIONS IN THE BUILDING OR GROUNDS OF THE REAL PROPERTY WHICH IS THE SUBJECT OF THE OFFERING, EXISTING ON THE DATE OF EFFECTIVENESS OF THE PLAN, EXCEPT THOSE WHICH, IF NOT CORRECTED, WOULD NOT LEAD TO DANGEROUS OR HAZARDOUS CONDITIONS, AS CERTIFIED BY A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER RETAINED BY THE SPONSOR, AND (II) ALL DANGEROUS AND HAZARDOUS CONDITIONS IN SUCH REAL PROPERTY EXISTING ON THE DATE OF EFFECTIVENESS OF THE PLAN WHICH A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER RETAINED BY THE SPONSOR CERTIFIES ARE NOT IN COMPLIANCE WITH APPLICABLE STATE OR LOCAL LAWS OR REGULATIONS. THE OFFERING PLAN MUST FURTHER PROVIDE THAT IF ANY SUCH VIOLATIONS OR RECORD REFERRED TO IN SUBPARAGRAPH (I) OF THIS PARAGRAPH OR DANGEROUS OR HAZARDOUS CONDITIONS REFERRED TO IN SUBPARAGRAPH (II) OF THIS PARAGRAPH ARE NOT CORRECTED BY THE CLOSING DATE, THE SPONSOR SHALL PLACE IN ESCROW A SUM OF MONEY WHICH IS CERTIFIED BY A REGISTERED ARCHITECT OR PROFESSIONAL ENGINEER RETAINED BY THE SPONSOR AS SUFFICIENT TO COVER THE REMAINING COST OF CORRECTION. THE SPONSOR MAY EXPEND THE ESCROW MONEY TO CURE SUCH VIOLATIONS OR DANGEROUS OR HAZARDOUS CONDITIONS. IN THE EVENT THAT THE CORRECTIVE WORK IS NOT COMPLETED WITHIN ONE YEAR OF THE CLOSING DATE, THE SUM IN ESCROW SHALL BE TURNED OVER TO THE COOPERATIVE CORPORATION OR CONDOMINIUM BOARD OF MANAGERS AND USED TO COMPLETE THE WORK. ANY ESCROW MONEY REMAINING AFTER ALL REQUIRED WORK IS COMPLETED SHALL BE RETURNED TO THE SPONSOR. WHERE THE SPONSOR PLACES INTO A RESERVE FUND AN AMOUNT IN EXCESS OF THAT REQUIRED BY STATE AND LOCAL LAW WHICH IS SPECIFICALLY ALLOCATED AND ADEQUATE TO CURE SUCH PARTICULAR VIOLATION OF RECORD OR DANGEROUS OR HAZARDOUS CONDITION, NO MONEY NEEDS TO BE PLACED IN ESCROW FOR SUCH VIOLATION OR DANGEROUS OR HAZARDOUS CONDITION. IF THE SUM IN ESCROW OR SPECIFICALLY ALLOCATED IN A RESERVE FUND IS NOT SUFFICIENT TO CURE SUCH VIOLATIONS OF RECORD OR DANGEROUS OR HAZARDOUS CONDITIONS THE SPONSOR SHALL REMAIN LIABLE TO CURE SUCH VIOLATIONS OR DANGEROUS OR HAZARDOUS CONDITIONS.

S 3. This act shall take effect immediately and shall apply to every offering statement or prospectus submitted to the attorney general on and after such date and to every offering statement or prospectus submitted to the attorney general which has not yet been declared effective.