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

5747

2009-2010 Regular Sessions

I N A S S E M B L Y

February 19, 2009

Introduced by M. of A. V. LOPEZ -- Multi-Sponsored by -- M. of A. BRENNAN, DINOWITZ, GLICK -- read once and referred to the Committee on Housing

AN ACT to amend the general business law, in relation to the content of real estate syndication offerings

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

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

(D) (1) THE ATTORNEY GENERAL SHALL REFUSE TO ISSUE A LETTER STATING THAT THE OFFERING HAS BEEN FILED OR IN THE CASE OF AN OFFERING PLAN ALREADY ACCEPTED FOR FILING, SHALL REFUSE TO ACCEPT AN AMENDMENT TO THE PLAN UNLESS THE OFFERING STATEMENT, PROSPECTUS, PLAN OR AMENDMENT PROVIDES THAT UNTIL SUCH TIME AS LESS THAN TEN PERCENT OF THE SHARES OR COMMON INTERESTS ARE OWNED BY THE OFFEROR, THE OFFEROR SHALL: (I) POST A BOND, (II) FUND A RESERVE ACCOUNT, (III) OBTAIN AN IRREVOCABLE LETTER OF CREDIT, OR (IV) FURNISH ANOTHER FORM OF SECURITY IN A FORM ACCEPTABLE TO THE DEPARTMENT OF LAW. IF A PLAN HAS ALREADY BEEN DECLARED EFFECTIVE ON THE EFFECTIVE DATE OF THIS PARAGRAPH, AN OFFEROR WHO STILL OWNS TEN PERCENT OR MORE OF THE SHARES OR COMMON INTERESTS SHALL FURNISH THE SECURITY DESCRIBED HEREIN.

(2) THE BOND, RESERVE ACCOUNT, LETTER OF CREDIT OR OTHER SECURITY SHALL BE IN AN AMOUNT CERTIFIED AS SUFFICIENT TO COVER THE ESTIMATED COSTS OF THE OFFEROR'S OBLIGATIONS PURSUANT TO THE OFFERING PLAN OR AMENDMENT FOR A PERIOD OF THREE YEARS, INCLUDING, BUT NOT LIMITED TO, THE OFFEROR'S OBLIGATION TO PAY MAINTENANCE, COMMON CHARGES AND REAL ESTATE TAXES EQUAL TO THE AMOUNT BY WHICH THE ESTIMATED COSTS OF SUCH CHARGES FOR A THREE YEAR PERIOD EXCEED ANTICIPATED RENTAL RECEIPTS TO THE OFFEROR OR FOR SUCH THREE YEAR PERIOD, AND THE OFFEROR'S OBLIGATION TO MAKE ANY REPAIRS OR IMPROVEMENTS PROMISED IN THE OFFERING PLAN. THE COST OF THE OFFEROR'S OBLIGATION TO MAKE SUCH REPAIRS AND IMPROVEMENTS

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

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MUST BE CERTIFIED BY A REGISTERED ARCHITECT, OR PROFESSIONAL ENGINEER OR LICENSED CONTRACTOR.

(3) AN OFFEROR'S LIABILITY FOR PROMISES AND REPRESENTATIONS CONTAINED IN THE OFFERING PLAN SHALL NOT BE LIMITED BY THE PROVISION OF THIS PARAGRAPH.

(4) THE AMOUNT OF SUCH BOND, RESERVE ACCOUNT, LETTER OF CREDIT OR OTHER SECURITY SHALL BE DISCLOSED IN THE OFFERING PLAN OR AMENDMENT.

(5) THE OFFEROR SHALL MAINTAIN THE FULL AMOUNT OF SECURITY REQUIRED TO COVER THREE YEARS WORTH OF ITS OBLIGATIONS PURSUANT TO SUBPARAGRAPH TWO OF THIS PARAGRAPH UNTIL IT OWNS LESS THAN TEN PERCENT OF THE SHARES OR COMMON INTERESTS IN THE OFFERING. THE OFFEROR SHALL FILE AN AMENDMENT DISCLOSING ANY MATERIAL CHANGES IN THE AMOUNT OF SECURITY MAINTAINED IN ACCORDANCE WITH SUBPARAGRAPH TWO OF THIS PARAGRAPH.

S 2. This act shall take effect on the sixtieth day after it shall have become a law and shall apply to all plans not yet accepted for filing and to all plans already accepted for filing, except those where the offeror owns less than ten percent of the shares or common interests. Effective immediately all actions and procedures with respect to the proposed adoption, amendment, suspension or repeal of any rule or regulation necessary to the timely implementation of this act are authorized.