

2585

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

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  
23 timber leases or properties, or buildings, structures, land or other

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

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

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

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

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