

No: 102

WEST VIRGINIA LEGISLATURE


REGULAR SESSION, 1986

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ENROLLED

SENATE BILL NO. 102

(By Senators S. Sharpe, Cook, et al)

—•—
PASSED March 8, 1986

In Effect July 1, 1986 

ENROLLED
Senate Bill No. 102

(By SENATORS SHARPE, COOK, PALUMBO, COLOMBO, FANNING, BURDETTE
AND SHAW)

[Passed March 8, 1986; to take effect July 1, 1986.]

AN ACT to amend and reenact chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform common interest ownership act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith; remedies to be liberally administered; creation of common interest communities; adjustment of dollar amounts; applicability to new and preexisting developments; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration; leasehold common interest communities; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; exercise of development rights; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; monuments as boundaries; use of common interest for sales; easement rights; amendment of declaration; termination of common interest communities; rights of secured lenders; master

associations; merger or consolidation of common interest communities; addition of real estate; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the community; meetings; quorums; voting; proxies; tort and contract liability; conveyance or encumbrance of common elements; insurance; surplus funds; assessments for common expenses; lien for assessments; other liens affecting community; association records; association as trustee; applicability; waiver; liability for public offering statement requirements; public offering statement for common interest community subject to development rights; time shares; conversion buildings; securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion buildings; warranties; statute of limitations; effect of violation on rights of action; attorney's fees; labeling of promotional material; declarants's obligation to complete and restore; and substantial completion of units.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

CHAPTER 36B. UNIFORM COMMON INTEREST OWNERSHIP ACT.

ARTICLE 1. GENERAL PROVISIONS.

PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.

§36B-1-101. Short title.

- 1 This chapter may be cited as the "Uniform Common
- 2 Interest Ownership Act."

§36B-1-102. Applicability.

- 1 Applicability of this chapter is governed by Part II of this
- 2 article.

§36B-1-103. Definitions.

- 1 In the declaration and bylaws (section 3-106), unless

2 specifically provided otherwise or the context otherwise
3 requires, and in this chapter:

4 (1) "Affiliate of a declarant" means any person who
5 controls, is controlled by, or is under common control with a
6 declarant. A person "controls" a declarant if the person (i) is
7 a general partner, officer, director, or employer of the
8 declarant, (ii) directly or indirectly or acting in concert with
9 one or more other persons, or through one or more
10 subsidiaries, owns, controls, holds with power to vote, or
11 holds proxies representing, more than 20 percent of the
12 voting interest in the declarant, (iii) controls in any manner
13 the election of a majority of the directors of the declarant, or
14 (iv) has contributed more than 20 percent of the capital of
15 the declarant. A person "is controlled by" a declarant if the
16 declarant (i) is a general partner, officer, director, or
17 employer of the person, (ii) directly or indirectly or acting in
18 concert with one or more other persons, or through one or
19 more subsidiaries, owns, controls, holds with power to vote,
20 or holds proxies representing, more than 20 percent of the
21 voting interest in the person, (iii) controls in any manner the
22 election of a majority of the directors of the person, or (iv)
23 has contributed more than 20 percent of the capital of the
24 person. Control does not exist if the powers described in this
25 paragraph are held solely as security for an obligation and
26 are not exercised.

27 (2) "Allocated interests" means the following interests
28 allocated to each unit: (i) In a condominium, the undivided
29 interest in the common elements, the common expense
30 liability, and votes in the association; (ii) in a cooperative,
31 the common expense liability and the ownership interest
32 and votes in the association; and (iii) in a planned
33 community, the common expense liability and votes in the
34 association.

35 (3) "Association" or "unit owners' association" means
36 the unit owners' association organized under section 3-101
37 of this chapter.

38 (4) "Common elements" means (i) in a condominium or
39 cooperative, all portions of the common interest community
40 other than the units; and (ii) in a planned community, any
41 real estate within a planned community owned or leased by
42 the association, other than a unit.

43 (5) "Common expenses" means expenditures made by,

44 or financial liabilities of, the association, together with any
45 allocations to reserves.

46 (6) "Common expense liability" means the liability for
47 common expenses allocated to each unit pursuant to section
48 2-107 of this chapter.

49 (7) "Common interest community" means real estate
50 with respect to which a person, by virtue of his ownership of
51 a unit, is obligated to pay for real estate taxes, insurance
52 premiums, maintenance, or improvement of other real
53 estate described in a declaration. "Ownership of a unit"
54 does not include holding a leasehold interest of less than
55 twenty years in a unit, including renewal options.

56 (8) "Condominium" means a common interest
57 community in which portions of the real estate are
58 designated for separate ownership and the remainder of the
59 real estate is designated for common ownership solely by
60 the owners of those portions. A common interest
61 community is not a condominium unless the undivided
62 interest in the common elements are vested in the unit
63 owners.

64 (9) "Conversion building" means a building that at any
65 time before creation of the common interest community was
66 occupied wholly or partially by persons other than
67 purchasers and persons who occupy with the consent of
68 purchasers.

69 (10) "Cooperative" means a common interest
70 community in which the real estate is owned by an
71 association, each of whose members is entitled by virtue of
72 his ownership interest in the association to exclusive
73 possession of a unit.

74 (11) "Dealer" means a person in the business of selling
75 units for his own account.

76 (12) "Declarant" means any person or group of persons
77 acting in concert who (i) as part of a common promotional
78 plan, offers to dispose of his or its interest in a unit not
79 previously disposed of or (ii) reserves or succeeds to any
80 special declarant right.

81 (13) "Declaration" means any instruments, however
82 denominated, that create a common interest community,
83 including any amendments to those instruments.

84 (14) "Development rights" means any right or
85 combination of rights reserved by a declarant in the
86 declaration to (i) add real estate to a common interest

87 community; (ii) create units, common elements, or limited
88 common elements within a common interest community;
89 (iii) subdivide units or convert units into common elements;
90 or (iv) withdraw real estate from a common interest
91 community.

92 (15) "Dispose" or "disposition" means a voluntary
93 transfer to a purchaser of any legal or equitable interest in a
94 unit, but the term does not include the transfer or release of
95 a security interest.

96 (16) "Executive board" means the body, regardless of
97 name, designated in the declaration to act on behalf of the
98 association.

99 (17) "Identifying number" means a symbol or address
100 that identifies only one unit in a common interest
101 community.

102 (18) "Leasehold common interest community" means a
103 common interest community in which all or a portion of the
104 real estate is subject to a lease, the expiration or
105 termination of which will terminate the common interest
106 community or reduce its size.

107 (19) "Limited common element" means a portion of the
108 common elements allocated by the declaration or by
109 operation of section 2-102 (2) or (4) for the exclusive use of
110 one or more but fewer than all of the units.

111 (20) "Master association" means an organization
112 described in section 2-120, whether or not it is also an
113 association described in section 3-101.

114 (21) "Offering" means any advertisement, inducement,
115 solicitation, or attempt to encourage any person to acquire
116 any interest in a unit, other than as security for an
117 obligation. An advertisement in a newspaper or other
118 periodical of general circulation, or in any broadcast
119 medium to the general public, of a common interest
120 community not located in this state, is not an offering if the
121 advertisement states that an offering may be made only in
122 compliance with the law of the jurisdiction in which the
123 common interest community is located.

124 (22) "Person" means an individual, corporation,
125 business trust, estate, trust, partnership, association, joint
126 venture, government, governmental subdivision or agency,
127 or other legal or commercial entity. In the case of a trust, the
128 corpus of which is real estate, however, "person" means the
129 beneficiary of the trust rather than the trust or the trustee.

130 (23) "Planned community" means a common interest
131 community that is not a condominium or a cooperative. A
132 condominium or cooperative may be part of a planned
133 community.

134 (24) "Proprietary lease" means an agreement with the
135 association pursuant to which a member is entitled to
136 exclusive possession of a unit in a cooperative.

137 (25) "Purchaser" means a person, other than a declarant
138 or a dealer, who by means of a voluntary transfer acquires a
139 legal or equitable interest in a unit other than (i) a leasehold
140 interest (including renewal options) of less than twenty
141 years, or (ii) as security for an obligation.

142 (26) "Real estate" means any leasehold or other estate or
143 interest in, over, or under land, including structures,
144 fixtures, and other improvements and interest that by
145 custom, usage, or law pass with a conveyance of land
146 though not described in the contract of sale or instrument of
147 conveyance. "Real estate" includes parcels with or without
148 upper or lower boundaries, and spaces that may be filled
149 with air or water.

150 (27) "Residential purposes" means use for dwelling or
151 recreational purposes, or both.

152 (28) "Security interest" means an interest in real estate
153 or personal property, created by contract or conveyance,
154 which secures payment or performance of an obligation.
155 The term includes a lien created by a mortgage, deed of
156 trust, trust deed, security deed, contract for deed, land sales
157 contract, lease intended as security, assignment of lease or
158 rents intended as security, pledge of an ownership interest
159 in an association, and any other consensual lien or title
160 retention contract intended as security for an obligation.

161 (29) "Special declarant rights" means rights reserved
162 for the benefit of a declarant to (i) complete improvements
163 indicated on plats and plans filed with the declaration
164 (section 2-109) or, in a cooperative, to complete
165 improvements described in the public offering statement
166 pursuant to section 4-103(a)(2); (ii) exercise any
167 development right (section 2-110); (iii) maintain sales
168 offices, management offices, signs advertising the common
169 interest community, and models (section 2-115); (iv) use
170 easements through the common elements for the purpose of
171 making improvements within the common interest
172 community or within real estate which may be added to the

173 common interest community (section 2-116); (v) make the
174 common interest community subject to a master association
175 (section 2-120); (vi) merge or consolidate a common interest
176 community with another common interest community of
177 the same form of ownership (section 2-121); or (vii) appoint
178 or remove any officer of the association or any master
179 association or any executive board member during any
180 period of declarant control (section 3-103(d)).

181 (30) "Time share" means a right to occupy a unit or any
182 of several units during (5) or more separated time periods
183 over a period of at least (5) years, including renewal options,
184 whether or not coupled with an estate or interest in a
185 common interest community or a specified portion thereof.

186 (31) "Unit" means a physical portion of the common
187 interest community designated for separate ownership or
188 occupancy, the boundaries of which are described pursuant
189 to section 2-105(a)(5). If a unit in a cooperative is owned by a
190 unit owner or is sold, conveyed, voluntarily or involuntarily
191 encumbered, or otherwise transferred by a unit owner, the
192 interest in that unit which is owned, sold, conveyed,
193 encumbered, or otherwise transferred is the right to
194 possession of that unit under a proprietary lease, coupled
195 with the allocated interests of that unit, and the
196 association's interest in that unit is not thereby affected.

197 (32) "Unit owner" means a declarant or other person
198 who owns a unit, or a lessee of a unit in a leasehold common
199 interest community whose lease expires simultaneously
200 with any lease, the expiration or termination of which will
201 remove the unit from the common interest community, but
202 does not include a person having an interest in a unit solely
203 as security for an obligation. In a condominium or planned
204 community, the declarant is the owner of any unit created
205 by the declaration. In a cooperative, the declarant is treated
206 as the owner of any unit to which allocated interests have
207 been allocated (section 2-107) until that unit has been
208 conveyed to another person.

§36B-1-104. Variation by agreement.

1 Except as expressly provided in this chapter, provisions
2 herein may not be varied by agreement, and rights
3 conferred may not be waived. A declarant may not act
4 under a power of attorney, or use any other device, to evade

5 the limitations or prohibitions of this chapter or the
6 declaration.

§36B-1-105. Separate titles and taxation.

1 (a) In a cooperative, unless the declaration provides that
2 a unit owner's interest in a unit and its allocated interests is
3 real estate for all purposes, that interest is personal
4 property. (That interest is subject to the provisions of all
5 homestead exemptions from taxation provided by law, even
6 if it is personal property.)

7 (b) In a condominium or planned community:

8 (1) If there is any unit owner other than a declarant,
9 each unit that has been created, together with its interest in
10 the common elements, constitutes for all purposes a
11 separate parcel of real estate.

12 (2) If there is any unit owner other than a declarant,
13 each unit must be separately taxed and assessed, and no
14 separate tax or assessment may be rendered against any
15 common elements for which a declarant has reserved no
16 development rights.

17 (c) Any portion of the common elements for which the
18 declarant has reserved any development right must be
19 separately taxed and assessed against the declarant, and
20 the declarant alone is liable for payment of those taxes.

21 (d) If there is no unit owner other than a declarant, the
22 real estate comprising the common interest community may
23 be taxed and assessed in any manner provided by law.

§36B-1-106. Applicability of local ordinances, regulations and building codes.

1 (a) A building code may not impose any requirement
2 upon any structure in a common interest community which
3 it would not impose upon a physically identical
4 development under a different form of ownership.

5 (b) In condominiums and cooperatives, no zoning,
6 subdivision, or other real estate use law, ordinance, or
7 regulation may prohibit the condominium or cooperative
8 form of ownership or impose any requirement upon a
9 condominium or cooperative which it would not impose
10 upon a physically identical development under a different
11 form of ownership.

12 (c) Except as provided in subsections (a) and (b) of this

13 section, the provisions of this chapter do not invalidate or
14 modify any provision of any building code, zoning,
15 subdivision, or other real estate use law, ordinance, rule, or
16 regulation governing the use of real estate.

§36B-1-107. Eminent domain.

1 (a) If a unit is acquired by eminent domain, or part of a
2 unit is acquired by eminent domain, leaving the unit owner
3 with a remnant that may not practically or lawfully be used
4 for any purpose permitted by the declaration, the award
5 must include compensation to the unit owner for that unit
6 and its allocated interests, whether or not any common
7 elements are acquired. Upon acquisition, unless the decree
8 otherwise provides, that unit's allocated interests are
9 automatically reallocated to the remaining units in
10 proportion to the respective allocated interests of those
11 units before the taking, and the association shall promptly
12 prepare, execute and record an amendment to the
13 declaration reflecting the reallocations. Any remnant of a
14 unit remaining after part of a unit is taken under this
15 subsection is thereafter a common element.

16 (b) Except as provided in subsection (a), if part of a unit
17 is acquired by eminent domain, the award must compensate
18 the unit owner for the reduction in value of the unit and its
19 interest in the common elements, whether or not any
20 common elements are acquired. Upon acquisition, unless
21 the decree otherwise provides, (i) that unit's allocated
22 interests are reduced in proportion to the reduction in the
23 size of the unit, or on any other basis specified in the
24 declaration and (ii) the portion of the allocated interests
25 divested from the partially acquired unit are automatically
26 reallocated to that unit and to the remaining units in
27 proportion to the respective allocated interests of those
28 units before the taking, with the partially acquired unit
29 participating in the reallocation on the basis of its reduced
30 allocated interests.

31 (c) If part of the common elements is acquired by
32 eminent domain, the portion of the award attributable to
33 the common elements taken must be paid to the association.
34 Unless the declaration provides otherwise, any portion of
35 the award attributable to the acquisition of a limited
36 common element must be equally divided among the

37 owners of the units to which that limited common element
38 was allocated at the time of acquisition.

39 (d) The court decree must be recorded in every county in
40 which any portion of the common interest community is
41 located.

**§36B-1-108. Supplemental general principles of law
applicable.**

1 The principles of law and equity, including the law of
2 corporations and unincorporated associations, the law of
3 real property, and the law relative to capacity to contract,
4 principal and agent, eminent domain, estoppel, fraud,
5 misrepresentation, duress, coercion, mistake, receivership,
6 substantial performance, or other validating or
7 invalidating cause supplement the provisions of this
8 chapter, except to the extent inconsistent with this chapter.

§36B-1-109. Construction against implicit repeal.

1 This chapter being a general act intended as a unified
2 coverage of its subject matter, no part of it shall be
3 construed to be impliedly repealed by subsequent
4 legislation if that construction can reasonably be avoided.

§36B-1-110. Uniformity of application and construction.

1 This chapter shall be applied and construed so as to
2 effectuate its general purpose to make uniform the law with
3 respect to the subject of this chapter among states enacting
4 it.

§36B-1-111. Unconscionable agreement or term of contract.

1 (a) The court, upon finding as a matter of law that a
2 contract or contract clause was unconscionable at the time
3 the contract was made, may refuse to enforce the contract,
4 enforce the remainder of the contract without the
5 unconscionable clause, or limit the application of any
6 unconscionable clause in order to avoid an unconscionable
7 result.

8 (b) Whenever it is claimed, or appears to the court, that
9 a contract or any contract clause is or may be
10 unconscionable, the parties, in order to aid the court in
11 making the determination, must be afforded a reasonable
12 opportunity to present evidence as to:

13 (1) The commercial setting of the negotiations;

14 (2) Whether a party has knowingly taken advantage of
15 the inability of the other party reasonably to protect his
16 interests by reason of physical or mental infirmity,
17 illiteracy, inability to understand the language of the
18 agreement, or similar factors;

19 (3) The effect and purpose of the contract or clause; and

20 (4) If a sale, any gross disparity, at the time of
21 contracting, between the amount charged for the property
22 and the value of that property measured by the price at
23 which similar property was readily obtainable in similar
24 transactions. A disparity between the contract price and the
25 value of the property measured by the price at which similar
26 property was readily obtainable in similar transactions
27 does not, of itself, render the contract unconscionable.

§36B-1-112. Obligation of good faith.

1 Every contract or duty governed by this chapter imposes
2 an obligation of good faith in its performance or
3 enforcement.

§36B-1-113. Remedies to be liberally administered.

1 (a) The remedies provided by this chapter shall be
2 liberally administered to the end that the aggrieved party is
3 put in as good a position as if the other party had fully
4 performed. However, consequential, special or punitive
5 damages may not be awarded except as specifically
6 provided in this chapter or by other rule of law.

7 (b) Any right or obligation declared by this chapter is
8 enforceable by judicial proceeding.

§36B-1-114. Adjustment of dollar amounts.

1 (a) From time to time the dollar amounts specified in
2 sections 1-203 and 4-101(b)(7) must change, as provided in
3 subsections (b) and (c), according to and to the extent of
4 changes in the Consumer Price Index for Urban Wage
5 Earners and Clerical Workers: United States City Average,
6 All Items 1967=100, compiled by the Bureau of Labor
7 Statistics, United States Department of Labor, (the
8 "Index"). The Index for December, 1979, which was 230, is
9 the Reference Base Index.

10 (b) The dollar amounts specified in sections 1-203 and
11 4-101(b)(7), and any amount stated in the declaration
12 pursuant to those sections, must change July 1 of each year
13 if the percentage of change, calculated to the nearest whole
14 percentage point, between the Index at the end of the
15 preceding year and the Reference Base Index is ten percent
16 or more, but

17 (i) The portion of the percentage change in the Index in
18 excess of a multiple of ten percent must be disregarded and
19 the dollar amounts shall change only in multiples of ten
20 percent of the amounts appearing in this chapter on the date
21 of enactment;

22 (ii) The dollar amounts must not change if the amounts
23 required by this section are those currently in effect
24 pursuant to this chapter as a result of earlier application of
25 this section; and

26 (iii) In no event may the dollar amounts be reduced
27 below the amounts appearing in this chapter on the date of
28 enactment.

29 (c) If the Index is revised after December, 1979, the
30 percentage of change pursuant to this section must be
31 calculated on the basis of the revised Index. If the revision
32 of the Index Changes the Reference Base Index, a revised
33 Reference Base Index must be determined by multiplying
34 the Reference Base Index then applicable by the rebasing
35 factor furnished by the Bureau of Labor Statistics. If the
36 Index is superseded, the index referred to in this section is
37 the one represented by the Bureau of Labor Statistics as
38 reflecting most accurately changes in the purchasing power
39 of the dollar for consumers.

PART II. APPLICABILITY.

§36B-1-201. Applicability to new common interest communities.

1 Except as provided in sections 1-202 and 1-203, this
2 chapter applies to all common interest communities created
3 within this state after the effective date of this chapter. The
4 provisions of chapter fifty-three, acts of the Legislature,
5 one thousand nine hundred sixty-three, chapter one
6 hundred twenty-nine, acts of the Legislature, one thousand
7 nine hundred eighty, and chapter thirty-eight, acts of the

8 Legislature, one thousand nine hundred eighty-four, do not
9 apply to common interest communities created after the
10 effective date of this chapter.

§36B-1-202. Same; exception for small cooperatives.

1 If a cooperative contains only units restricted to
2 nonresidential use, or contains no more than twelve units
3 and is not subject to any development rights, it is subject
4 only to sections 1-106, (applicability of local ordinances,
5 regulations, and building codes) and 1-107 (eminent
6 domain) of this chapter, unless the declaration provides
7 that the entire chapter is applicable.

§36B-1-203. Same; exception for small and limited expense liability planned communities.

1 If a planned community:
2 (1) Contains no more than twelve units and is not
3 subject to any development rights; or
4 (2) Provides, in its declaration, that the annual average
5 common expense liability of all units restricted to
6 residential purposes, exclusive of optional user fees and any
7 insurance premiums paid by the association, may not
8 exceed \$100, as adjusted pursuant to section 1-115
9 (adjustment of dollar amounts) it is subject only to sections
10 1-105 (separate titles and taxation) 1-106 (applicability of
11 local ordinances, regulations and building codes) and 1-107
12 (eminent domain) unless the declaration provides that this
13 entire chapter is applicable.

§36B-1-204. Applicability to preexisting common interest communities.

1 (a) Except as provided in section 1-205, Same;
2 exception for small preexisting cooperatives and planned
3 communities, sections 1-105 (separate titles and taxation),
4 1-106 (Applicability of local ordinances, regulations and
5 building codes), 1-107 (Eminent domain), 2-103
6 (Construction and validity of declaration and bylaws),
7 2-104 (Description of units), 2-121 (Merger or consolidation
8 of common interest communities), 3-102(a)(1) through (6)
9 and (11) through (16) (Powers of unit owners' association),
10 3-111 (Tort and contract liability), 3-116 (Lien for
11 assessments), 3-118 (Association records), 4-109 (Resales of
12 units), and 4-117 (Effect of violation on rights of action;

13 attorney's fees), and section 1-103 (Definitions) to the
14 extent necessary in construing any of those sections, apply
15 to all common interest communities created in this state
16 before the effective date of this chapter; but those sections
17 apply only with respect to events and circumstances
18 occurring after the effective date of this chapter and do not
19 invalidate existing provisions of the declaration, bylaws or
20 plats or plans of those common interest communities.

21 (b) The provisions of chapter one hundred fifty-three,
22 Acts of the Legislature, one thousand nine hundred sixty-
23 three, chapter one hundred twenty-nine, Acts of the
24 Legislature, one thousand nine hundred eighty, or of
25 chapter thirty-eight, Acts of the Legislature, one thousand
26 nine hundred eighty-four, do not apply to condominiums or
27 other common interest communities created after the
28 effective date of this chapter and do not invalidate any
29 amendment to the declaration, rules, bylaws, plats and
30 plans and code of regulations of any condominium or
31 common interest community created before the effective
32 date of this chapter if the amendment would be permitted
33 by this chapter. The amendment must be adopted in
34 conformity with the procedures and requirements specified
35 by those instruments and by chapter one hundred fifty-
36 three, acts of the Legislature, one thousand nine hundred
37 sixty-three. If the amendment grants to any person any
38 rights, powers or privileges permitted by this chapter, all
39 correlative obligations, liabilities and restrictions in this
40 chapter also apply to that person.

41 (c) This chapter does not apply to condominiums or
42 units located outside this state, but the public offering
43 statement provisions, (sections 4-102 through 4-109) apply
44 to all contracts for the disposition thereof signed in this
45 state by any party unless exempt under section 4-101(b).

46 (d) The provisions of this chapter shall apply to all
47 condominiums or common interest communities to the
48 extent such provisions conflict or are inconsistent with the
49 provisions of chapter one hundred fifty-three, acts of the
50 Legislature, one thousand nine hundred sixty-three:
51 *Provided*, That the provisions of this chapter shall not
52 modify, limit or nullify any rights, duties or obligations
53 created or existing under any declaration, bylaws or plats
54 or plans of condominiums created in this state before the
55 effective date of this chapter.

§36B-1-205. Same; exception for small preexisting cooperatives and planned communities.

1 If a cooperative or planned community created within
2 this state before the effective date of this chapter contains
3 no more than twelve units and is not subject to any
4 development rights, it is subject only to sections 1-105
5 (separate titles and taxation), 1-106 (applicability of local
6 ordinances, regulations and building codes), and 1-107
7 (eminent domain) unless the declaration is amended in
8 conformity with applicable law and with the procedures
9 and requirements of the declaration to take advantage of
10 the provisions of section 1-206, in which case all the
11 sections enumerated in section 1-204 apply to that
12 cooperative or planned community.

§36B-1-206. Same; amendments to governing instruments.

1 (a) In the case of amendments to the declaration, bylaws
2 or plats and plans of any common interest community
3 created before the effective date of this chapter:

4 (1) If the result accomplished by the amendment was
5 permitted by law prior to this chapter, the amendment may
6 be made either in accordance with that law, in which case
7 that law applies to that amendment, or it may be made
8 under this chapter; and

9 (2) If the result accomplished by the amendment is
10 permitted by this chapter, and was not permitted by law
11 prior to this chapter, the amendment may be made under
12 this chapter.

13 (b) An amendment to the declaration, bylaws or plats
14 and plans authorized by this section to be made under this
15 chapter must be adopted in conformity with applicable law
16 and with the procedures and requirements specified by
17 those instruments. If an amendment grants to any person
18 any rights, powers or privileges permitted by this chapter,
19 all correlative obligations, liabilities and restrictions in this
20 chapter also apply to that person.

§36B-1-207. Applicability to nonresidential planned communities.

1 This chapter does not apply to a planned community in
2 which all units are restricted exclusively to nonresidential
3 use unless the declaration provides that the chapter does

4 apply to that planned community. This chapter applies to a
5 planned community containing both units that are
6 restricted exclusively to nonresidential use and other units
7 that are not so restricted, only if the declaration so provides
8 or the real estate comprising the units that may be used for
9 residential purposes would be a planned community in the
10 absence of the units that may not be used for residential
11 purposes.

**ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON
INTEREST COMMUNITIES.**

§36B-2-101. Creation of common interest communities.

1 (a) A common interest community may be created
2 pursuant to this chapter only by recording a declaration
3 executed in the same manner as a deed and, in a
4 cooperative, by conveying the real estate subject to that
5 declaration to the association. The declaration must be
6 recorded in every county in which any portion of the
7 common interest community is located and must be indexed
8 in the grantee's index in the name of the common interest
9 community and the association and in the grantor's index in
10 the name of each person executing the declaration.

11 (b) In a condominium, a declaration or an amendment to
12 a declaration, adding units may not be recorded unless (i) all
13 structural components and mechanical systems of all
14 buildings containing or comprising any units thereby
15 created are substantially completed in accordance with the
16 plans, as evidenced by a recorded certificate of completion
17 executed by an independent registered engineer, surveyor
18 or architect.

§36B-2-102. Unit boundaries.

1 Except as provided by the declaration:

2 (1) If walls, floors or ceilings are designated as
3 boundaries of a unit, all lath, furring, wallboard,
4 plasterboard, plaster, paneling, tiles, wallpaper, paint,
5 finished flooring and any other materials constituting any
6 part of the finished surfaces thereof are a part of the unit,
7 and all other portions of the walls, floors or ceilings are a
8 part of the common elements.

9 (2) If any chute, flue, duct, wire, conduit, bearing wall,
10 bearing column or any other fixture lies partially within

11 and partially outside the designated boundaries of a unit,
12 any portion thereof serving only that unit is a limited
13 common element allocated solely to that unit, and any
14 portion thereof serving more than one unit or any portion of
15 the common elements is a part of the common elements.

16 (3) Subject to paragraph (2), all spaces, interior
17 partitions and other fixtures and improvements within the
18 boundaries of a unit are a part of the unit.

19 (4) Any shutters, awnings, window boxes, doorsteps,
20 stoops, porches, balconies, patios and all exterior doors and
21 windows or other fixtures designed to serve a single unit,
22 but located outside the unit's boundaries, are limited
23 common elements allocated exclusively to that unit.

**§36B-2-103. Construction and validity of declaration and
bylaws.**

1 (a) All provisions of the declaration and bylaws are
2 severable.

3 (b) The rule against perpetuities does not apply to
4 defeat any provision of the declaration, bylaws, rules or
5 regulations adopted pursuant to section 3-102(a)(1).

6 (c) In the event of a conflict between the provisions of
7 the declaration and the bylaws, the declaration prevails
8 except to the extent the declaration is inconsistent with this
9 chapter.

10 (d) Title to a unit and common elements is not rendered
11 unmarketable or otherwise affected by reason of an
12 insubstantial failure of the declaration to comply with this
13 chapter. Whether a substantial failure impairs
14 marketability is not affected by this chapter.

§36B-2-104. Description of units.

1 A description of a unit which sets forth the name of the
2 common interest community, the recording data for the
3 declaration, the county in which the common interest
4 community is located, and the identifying number of the
5 unit, is a legally sufficient description of that unit and all
6 rights, obligations and interests appurtenant to that unit
7 which were created by the declaration or bylaws.

§36B-2-105. Contents of declaration.

1 (a) The declaration must contain:

2 (1) The names of the common interest community and
3 the association and a statement that the common interest
4 community is either a condominium, cooperative or
5 planned community;

6 (2) The name of every county in which any part of the
7 common interest community is situated;

8 (3) A legally sufficient description of the real estate
9 included in the common interest community;

10 (4) A statement of the maximum number of units that
11 the declarant reserves the right to create;

12 (5) In a condominium or planned community, a
13 description of the boundaries of each unit created by the
14 declaration, including the unit's identifying number or, in a
15 cooperative, a description, which may be by plats or plans,
16 of each unit created by the declaration, including the unit's
17 identifying number, its size or number of rooms and its
18 location within a building if it is within a building
19 containing more than one unit;

20 (6) A description of any limited common elements, other
21 than those specified in section 2-102(2) and (4), as provided
22 in section 2-109(b)(10) and, in a planned community, any
23 real estate that is or must become common elements;

24 (7) A description of any real estate, except real estate
25 subject to development rights, that may be allocated
26 subsequently as limited common elements, other than
27 limited common elements specified in section 2-102(2) and
28 (4), together with a statement that they may be so allocated;

29 (8) A description of any development rights (section
30 1-103(14)) and other special declarant rights (section
31 1-103(29)) reserved by the declarant, together with a legally
32 sufficient description of the real estate to which each of
33 those rights applies, and a time limit within which each of
34 those rights must be exercised;

35 (9) If any development right may be exercised with
36 respect to different parcels of real estate at different times,
37 a statement to that effect together with (i) either a statement
38 fixing the boundaries of those portions and regulating the
39 order in which those portions may be subjected to the
40 exercise of each development right or a statement that no
41 assurances are made in those regards, and (ii) a statement as
42 to whether, if any development right is exercised in any

43 portion of the real estate subject to that development right,
44 that development right must be exercised in all or in any
45 other portion of the remainder of that real estate;

46 (10) Any other conditions or limitations under which
47 the rights described in paragraph (8) may be exercised or
48 will lapse;

49 (11) An allocation to each unit of the allocated interests
50 in the manner described in section 2-107;

51 (12) Any restrictions (i) on use, occupancy and
52 alienation of the units, and (ii) on the amount for which a
53 unit may be sold or on the amount that may be received by a
54 unit owner on sale, condemnation or casualty loss to the
55 unit or to the common interest community or on
56 termination of the common interest community;

57 (13) The recording data for recorded easements and
58 licenses appurtenant to or included in the common interest
59 community or to which any portion of the common interest
60 community is or may become subject by virtue of a
61 reservation in the declaration; and

62 (14) All matters required by section 2-106, 2-107, 2-108,
63 2-109, 2-115, 2-116 and 3-103(d).

64 (b) The declaration may contain any other matters the
65 declarant considers appropriate.

§36B-2-106. Leasehold common interest communities.

1 (a) Any lease, the expiration or termination of which
2 may terminate the common interest community or reduce
3 its size, must be recorded. Every lessor of those leases in a
4 condominium or planned community shall sign the
5 declaration. The declaration must state:

6 (1) The recording data for the lease;

7 (2) The date on which the lease is scheduled to expire;

8 (3) A legally sufficient description of the real estate
9 subject to the lease;

10 (4) Any right of the unit owners to redeem the reversion
11 and the manner whereby those rights may be exercised or a
12 statement that they do not have those rights;

13 (5) Any right of the unit owners to remove any
14 improvements within a reasonable time after the expiration
15 or termination of the lease or a statement that they do not
16 have those rights; and

17 (6) Any rights of the unit owners to renew the lease and

18 the conditions of any renewal or a statement that they do
19 not have those rights.

20 (b) After the declaration for a leasehold condominium
21 or leasehold planned community is recorded, neither the
22 lessor nor the lessor's successor in interest may terminate
23 the leasehold interest of a unit owner who makes timely
24 payment of a unit owner's share of the rent and otherwise
25 complies with all covenants which, if violated, would
26 entitle the lessor to terminate the lease. A unit owner's
27 leasehold interest in a condominium or planned community
28 is not affected by failure of any other person to pay rent or
29 fulfill any other covenant.

30 (c) Acquisition of the leasehold interest of any unit
31 owner by the owner of the reversion or remainder does not
32 merge the leasehold and fee simple interests unless the
33 leasehold interests of all unit owners subject to that
34 reversion or remainder are acquired.

35 (d) If the expiration or termination of a lease decreases
36 the number of units in a common interest community, the
37 allocated interests must be reallocated in accordance with
38 section 1-107(a) as if those units had been taken by eminent
39 domain. Reallocations must be confirmed by an amendment
40 to the declaration prepared, executed and recorded by the
41 association.

§36B-2-107. Allocation of allocated interests.

1 (a) The declaration must allocate to each unit:

2 (i) In a condominium, a fraction or percentage of
3 undivided interests in the common elements and in the
4 common expenses of the association, (section 3-115(a)) and
5 a portion of the votes in the association;

6 (ii) In a cooperative, an ownership interest in the
7 association, a fraction or percentage of the common
8 expenses of the association (section 3-115(a)) and a portion
9 of the votes in the association; and

10 (iii) In a planned community, a fraction or percentage of
11 the common expenses of the association (section 3-115(a))
12 and a portion of the votes in the association.

13 (b) The declaration must state the formulas used to
14 establish allocations of interests. Those allocations may not
15 discriminate in favor of units owned by the declarant or an
16 affiliate of the declarant.

17 (c) If units may be added to or withdrawn from the
18 common interest community, the declaration must state the
19 formulas to be used to reallocate the allocated interests
20 among all units included in the common interest
21 community after the addition or withdrawal.

22 (d) The declaration may provide: (i) That different
23 allocations of votes shall be made to the units on particular
24 matters specified in the declaration; (ii) for cumulative
25 voting only for the purpose of electing members of the
26 executive board; and (iii) for class voting on specified issues
27 affecting the class if necessary to protect valid interests of
28 the class. A declarant may not utilize cumulative or class
29 voting for the purpose of evading any limitation imposed on
30 declarants by this chapter nor may units constitute a class
31 because they are owned by a declarant.

32 (e) Except for minor variations due to rounding, the sum
33 of the common expense liabilities and, in a condominium,
34 the sum of the undivided interests in the common elements
35 allocated at any time to all the units must each equal one if
36 stated as a fraction or one hundred percent if stated as a
37 percentage. In the event of discrepancy between an
38 allocated interest and the result derived from application of
39 the pertinent formula, the allocated interest prevails.

40 (f) In a condominium, the common elements are not
41 subject to partition and any purported conveyance,
42 encumbrance, judicial sale or other voluntary or
43 involuntary transfer of an undivided interest in the
44 common elements made without the unit to which that
45 interest is allocated is void.

46 (g) In a cooperative, any purported conveyance,
47 encumbrance, judicial sale or other voluntary or
48 involuntary transfer of an ownership interest in the
49 association made without the possessory interest in the unit
50 to which that interest is related is void.

§36B-2-108. Limited common elements.

1 (a) Except for the limited common elements described
2 in section 2-102(2) and (4), the declaration must specify to
3 which unit or units each limited common element is
4 allocated. An allocation may not be altered without the
5 consent of the unit owners whose units are affected.

6 (b) Except as the declaration otherwise provides, a

7 limited common element may be reallocated by an
8 amendment to the declaration executed by the unit owners
9 between or among whose units the reallocation is made. The
10 persons executing the amendment shall provide a copy
11 thereof to the association, which shall record it. The
12 amendment must be recorded in the names of the parties
13 and the common interest community.

14 (c) A common element not previously allocated as a
15 limited common element may be so allocated only pursuant
16 to provisions in the declaration made in accordance with
17 section 2-105(a)(7). The allocations must be made by
18 amendments to the declaration.

§36B-2-109. Plats and plans.

1 (a) Plats and plans are a part of the declaration and are
2 required for all common interest communities except
3 cooperatives. Separate plats and plans are not required by
4 this chapter if all the information required by this section is
5 contained in either a plat or plan. Each plat and plan must
6 be clear and legible and contain a certification that the plat
7 or plan contains all information required by this section.

8 (b) Each plat must show:

9 (1) The name and a survey or general schematic map of
10 the entire common interest community;

11 (2) The location and dimensions of all real estate not
12 subject to development rights or subject only to the
13 development right to withdraw and the location and
14 dimensions of all existing improvements within that real
15 estate;

16 (3) A legally sufficient description of any real estate
17 subject to development rights, labeled to identify the rights
18 applicable to each parcel;

19 (4) The extent of any encroachments by or upon any
20 portion of the common interest community;

21 (5) To the extent feasible, a legally sufficient
22 description of all easements serving or burdening any
23 portion of the common interest community;

24 (6) The location and dimensions of any vertical unit
25 boundaries not shown or projected on plans recorded
26 pursuant to subsection (d) and that unit's identifying
27 number;

28 (7) The location with reference to an established datum
29 of any horizontal unit boundaries not shown or projected on

30 plans recorded pursuant to subsection (d) and that unit's
31 identifying number;

32 (8) A legally sufficient description of any real estate in
33 which the unit owners will own only an estate for years,
34 labeled as "leasehold real estate";

35 (9) The distance between noncontiguous parcels of real
36 estate comprising the common interest community;

37 (10) The location and dimensions of limited common
38 elements, including porches, balconies and patios, other
39 than parking spaces and the other limited common
40 elements described in sections 2-102(2) and (4); and

41 (11) In the case of real estate not subject to development
42 rights, all other matters customarily shown on land surveys.

43 (c) A plat may also show the intended location and
44 dimensions of any contemplated improvement to be
45 constructed anywhere within the common interest
46 community. Any contemplated improvement shown must
47 be labeled either "MUST BE BUILT" or "NEED NOT BE
48 BUILT".

49 (d) To the extent not shown or projected on the plats,
50 plans of the units must show or project:

51 (1) The location and dimensions of the vertical
52 boundaries of each unit and that unit's identifying number;

53 (2) Any horizontal unit boundaries, with reference to an
54 established datum and that unit's identifying number; and

55 (3) Any units in which the declarant has reserved the
56 right to create additional units or common elements
57 (section 2-110(c)), identified appropriately.

58 (e) Unless the declaration provides otherwise, the
59 horizontal boundaries of part of a unit located outside a
60 building have the same elevation as the horizontal
61 boundaries of the inside part and need not be depicted on
62 the plats and plans.

63 (f) Upon exercising any development right, the
64 declarant shall record either new plats and plans necessary
65 to conform to the requirements of subsections (a), (b) and (d)
66 or new certifications of plats and plans previously recorded
67 if those plats and plans otherwise conform to the
68 requirements of those subsections.

69 (g) Any certification of a plat or plan required by this
70 section or section 2-101(b) must be made by an independent
71 (registered) surveyor, architect or engineer.

§36B-2-110. Exercise of development rights.

1 (a) To exercise any development right reserved under
2 section 2-105(a)(8), the declarant shall prepare, execute and
3 record an amendment to the declaration (section 2-117) and
4 in a condominium or planned community comply with
5 section 2-109. The declarant is the unit owner of any units
6 thereby created. The amendment to the declaration must
7 assign an identifying number to each new unit created, and,
8 except in the case of subdivision or conversion of units
9 described in subsection (b), reallocate the allocated
10 interests among all units. The amendment must describe
11 any common elements and any limited common elements
12 thereby created and, in the case of limited common
13 elements, designate the unit to which each is allocated to
14 the extent required by section 2-108 (Limited common
15 elements).

16 (b) Development rights may be reserved within any real
17 estate added to the common interest community if the
18 amendment adding that real estate includes all matters
19 required by section 2-105 or 2-106, as the case may be, and,
20 in a condominium or planned community, the plats and
21 plans include all matters required by section 2-109. This
22 provision does not extend the time limit on the exercise of
23 development rights imposed by the declaration pursuant to
24 section 2-105(a)(8).

25 (c) Whenever a declarant exercises a development right
26 to subdivide or convert a unit previously created into
27 additional units, common elements or both:

28 (1) If the declarant converts the unit entirely to common
29 elements, the amendment to the declaration must reallocate
30 all the allocated interests of that unit among the other units
31 as if that unit had been taken by eminent domain (section
32 1-107); and

33 (2) If the declarant subdivides the unit into two or more
34 units, whether or not any part of the unit is converted into
35 common elements, the amendment to the declaration must
36 reallocate all the allocated interests of the unit among the
37 units created by the subdivision in any reasonable manner
38 prescribed by the declarant.

39 (d) If the declaration provides, pursuant to section
40 2-105(a)(8), that all or a portion of the real estate is subject
41 to a right of withdrawal:

42 (1) If all the real estate is subject to withdrawal and the
43 declaration does not describe separate portions of real
44 estate subject to that right, none of the real estate may be
45 withdrawn after a unit has been conveyed to a purchaser;
46 and

47 (2) If any portion is subject to withdrawal, it may not be
48 withdrawn after a unit in that portion has been conveyed to
49 a purchaser.

§36B-2-111. Alterations of units.

1 Subject to the provisions of the declaration and other
2 provisions of law, a unit owner:

3 (1) May make any improvements or alterations to his
4 unit that do not impair the structural integrity or
5 mechanical systems or lessen the support of any portion of
6 the common interest community;

7 (2) May not change the appearance of the common
8 elements or the exterior appearance of a unit or any other
9 portion of the common interest community, without
10 permission of the association; and

11 (3) After acquiring an adjoining unit or an adjoining
12 part of an adjoining unit, may remove or alter any
13 intervening partition or create apertures therein, even if the
14 partition in whole or in part is a common element, if those
15 acts do not impair the structural integrity or mechanical
16 systems or lessen the support of any portion of the common
17 interest community. Removal of partitions or creation of
18 apertures under this paragraph is not an alteration of
19 boundaries.

§36B-2-112. Relocation of boundaries between adjoining units.

1 (a) Subject to the provisions of the declaration and
2 other provisions of law, the boundaries between adjoining
3 units may be relocated by an amendment to the declaration
4 upon application to the association by the owners of those
5 units. If the owners of the adjoining units have specified a
6 reallocation between their units of their allocated interests,
7 the application must state the proposed reallocations.
8 Unless the executive board determines, within thirty days,
9 that the reallocations are unreasonable, the association
10 shall prepare an amendment that identifies the units

11 involved and states the reallocations. The amendment must
12 be executed by those unit owners, contain words of
13 conveyance between them, and, on recordation, be indexed
14 in the name of the grantor and the grantee, and in the
15 grantee's index in the name of the association.

16 (b) The association (i) in a condominium or planned
17 community shall prepare and record plats or plans
18 necessary to show the altered boundaries between
19 adjoining units and their dimensions and identifying
20 numbers, and (ii) in a cooperative shall prepare and record
21 amendments to the declaration, including any plans,
22 necessary to show or describe the altered boundaries
23 between adjoining units and their dimensions and
24 identifying numbers.

§36B-2-113. Subdivision of units.

1 (a) If the declaration expressly so permits, a unit may be
2 subdivided into two or more units. Subject to the provisions
3 of the declaration and other provisions of law, upon
4 application of a unit owner to subdivide a unit, the
5 association shall prepare, execute and record an
6 amendment to the declaration, including in a condominium
7 or planned community the plats and plans, subdividing that
8 unit.

9 (b) The amendment to the declaration must be executed
10 by the owner of the unit to be subdivided, assign an
11 identifying number to each unit created and reallocate the
12 allocated interests formerly allocated to the subdivided
13 unit to the new units in any reasonable manner prescribed
14 by the owner of the subdivided unit.

§36B-2-114. Monuments as boundaries.

1 The existing physical boundaries of a unit or the physical
2 boundaries of a unit reconstructed in substantial
3 accordance with the description contained in the original
4 declaration are its legal boundaries, rather than the
5 boundaries derived from the description contained in the
6 original declaration, regardless of vertical or lateral
7 movement of the building or minor variance between those
8 boundaries and the boundaries derived from the
9 description contained in the original declaration. This
10 section does not relieve a unit owner of liability in case of

11 his willful misconduct or relieve a declarant or any other
12 person of liability for failure to adhere to any plats and
13 plans or, in a cooperative, to any representation in the
14 public offering statement.

§36B-2-115. Use for sales purposes.

1 A declarant may maintain sales offices, management
2 offices and models in units or on common elements in the
3 common interest community only if the declaration so
4 provides and specifies the rights of a declarant with regard
5 to the number, size, location and relocation thereof. In a
6 cooperative or condominium, any sales office, management
7 office or model not designated a unit by the declaration is a
8 common element. If a declarant ceases to be a unit owner, he
9 ceases to have any rights with regard thereto unless it is
10 removed promptly from the common interest community in
11 accordance with a right to remove reserved in the
12 declaration. Subject to any limitations in the declaration, a
13 declarant may maintain signs on the common elements
14 advertising the common interest community. This section is
15 subject to the provisions of other state law and to local
16 ordinances.

§36B-2-116. Easement rights.

1 (a) Subject to the provisions of the declaration, a
2 declarant has an easement through the common elements as
3 may be reasonably necessary for the purpose of discharging
4 the declarant's obligations or exercising special declarant
5 rights, whether arising under this chapter or reserved in the
6 declaration.

7 (b) In a planned community, subject to the provisions of
8 sections 3-102(a)(6) and 3-112, the unit owners have an
9 easement (i) in the common elements for purposes of access
10 to their units and (ii) to use the common elements and all
11 real estate that must become common elements (section
12 2-105(a)(6)) for all other purposes.

§36B-2-117. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed
2 by a declarant under section 2-109(f) or 2-110, or by the
3 association under section 1-107, 2-106(d), 2-108(c),
4 2-112(a), or 2-113, or by certain unit owners under section

5 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as
6 limited by subsection (d), the declaration, including any
7 plats and plans, may be amended only by vote or agreement
8 of unit owners of units to which at least sixty-seven percent
9 of the votes in the association are allocated, or any larger
10 majority the declaration specifies. The declaration may
11 specify a smaller number only if all of the units are
12 restricted exclusively to nonresidential use.

13 (b) No action to challenge the validity of an amendment
14 adopted by the association pursuant to this section may be
15 brought more than one year after the amendment is
16 recorded.

17 (c) Every amendment to the declaration must be
18 recorded in every county in which any portion of the
19 common interest community is located and is effective only
20 upon recordation. An amendment, except an amendment
21 pursuant to section 2-112(a), must be indexed in the
22 grantee's index in the name of the common interest
23 community and the association and in the grantor's index in
24 the name of the parties executing the amendment.

25 (d) Except to the extent expressly permitted or required
26 by other provisions of this chapter, no amendment may
27 create or increase special declarant rights, increase the
28 number of units, change the boundaries of any unit, the
29 allocated interests of a unit, or the uses to which any unit is
30 restricted, in the absence of unanimous consent of the unit
31 owners.

32 (e) Amendments to the declaration required by this
33 chapter to be recorded by the association must be prepared,
34 executed, recorded, and certified on behalf of the
35 association by any officer of the association designated for
36 that purpose or, in the absence of designation, by the
37 president of the association.

§36B-2-118. Termination of common interest community.

1 (a) Except in the case of a taking of all the units by
2 eminent domain (section 1-107) or in the case of foreclosure
3 against an entire cooperative of a security interest that has
4 priority over the declaration, a common interest community
5 may be terminated only by agreement of unit owners of
6 units to which at least eighty percent of the votes in the
7 association are allocated, or any larger percentage the

8 declaration specifies. The declaration may specify a smaller
9 percentage only if all of the units are restricted exclusively
10 to nonresidential uses.

11 (b) An agreement to terminate must be evidenced by the
12 execution of a termination agreement, or ratifications
13 thereof, in the same manner as a deed, by the requisite
14 number of unit owners. The termination agreement must
15 specify a date after which the agreement will be void unless
16 it is recorded before that date. A termination agreement and
17 all ratifications thereof must be recorded in every county in
18 which a portion of the common interest community is
19 situated and is effective only upon recordation.

20 (c) In the case of a condominium or planned community
21 containing only units having horizontal boundaries
22 described in the declaration, a termination agreement may
23 provide that all of the common elements and units of the
24 common interest community must be sold following
25 termination. If, pursuant to the agreement, any real estate
26 in the common interest community is to be sold following
27 termination, the termination agreement must set forth the
28 minimum terms of the sale.

29 (d) In the case of a condominium or planned community
30 containing any units not having horizontal boundaries
31 described in the declaration, a termination agreement may
32 provide for sale of the common elements, but it may not
33 require that the units be sold following termination, unless
34 the declaration as originally recorded provided otherwise
35 or all the unit owners consent to the sale.

36 (e) The association, on behalf of the unit owners, may
37 contract for the sale of real estate in a common interest
38 community, but the contract is not binding on the unit
39 owners until approved pursuant to subsections (a) and (b).
40 If any real estate is to be sold following termination, title to
41 that real estate, upon termination, vests in the association
42 as trustee for the holders of all interests in the units.
43 Thereafter, the association has all powers necessary and
44 appropriate to effect the sale. Until the sale has been
45 concluded and the proceeds thereof distributed, the
46 association continues in existence with all powers it had
47 before termination. Proceeds of the sale must be distributed
48 to unit owners and lien holders as their interests may
49 appear, in accordance with subsections (h), (i) and (j).

50 Unless otherwise specified in the termination agreement, as
51 long as the association holds title to the real estate, each
52 unit owner and the unit owner's successors in interest have
53 an exclusive right to occupancy of the portion of the real
54 estate that formerly constituted the unit. During the period
55 of that occupancy, each unit owner and the unit owner's
56 successors in interest remain liable for all assessments and
57 other obligations imposed on unit owners by this chapter or
58 the declaration.

59 (f) In a condominium or planned community, if the real
60 estate constituting the common interest community is not to
61 be sold following termination, title to the common elements
62 and, in a common interest community containing only units
63 having horizontal boundaries described in the declaration,
64 title to all the real estate in the common interest community,
65 vests in the unit owners upon termination as tenants in
66 common in proportion to their respective interests as
67 provided in subsection (j), and liens on the units shift
68 accordingly. While the tenancy in common exists, each unit
69 owner and the unit owner's successors in interest have an
70 exclusive right to occupancy of the portion of the real estate
71 that formerly constituted the unit.

72 (g) Following termination of the common interest
73 community, the proceeds of any sale of real estate, together
74 with the assets of the association, are held by the
75 association as trustee for unit owners and holders of liens on
76 the units as their interests may appear.

77 (h) Following termination of a condominium or planned
78 community, creditors of the association holding liens on the
79 units, which were recorded before termination, may enforce
80 those liens in the same manner as any lien holder. All other
81 creditors of the association are to be treated as if they had
82 perfected liens on the units immediately before
83 termination.

84 (i) In a cooperative, the declaration may provide that all
85 creditors of the association have priority over any interests
86 of unit owners and creditors of unit owners. In that event,
87 following termination, creditors of the association holding
88 liens on the cooperative which were recorded before
89 termination may enforce their liens in the same manner as
90 any lien holder, and any other creditor of the association is
91 to be treated as if he had perfected a lien against the

92 cooperative immediately before termination. Unless the
93 declaration provides that all creditors of the association
94 have that priority:

95 (1) The lien of each creditor of the association which
96 was perfected against the association before termination
97 becomes, upon termination, a lien against each unit owner's
98 interest in the unit as of the date the lien was perfected;

99 (2) Any other creditor of the association is to be treated
100 upon termination as if the creditor had perfected a lien
101 against each unit owner's interest immediately before
102 termination;

103 (3) The amount of the lien of an association's creditor
104 described in paragraphs (1) and (2) against each of the unit
105 owners' interest must be proportionate to the ratio which
106 each unit's common expense liability bears to the common
107 expense liability of all of the units;

108 (4) The lien of each creditor of each unit owner which
109 was perfected before termination continues as a lien against
110 that unit owner's unit as of the date the lien was perfected;
111 and

112 (5) The assets of the association must be distributed to
113 all unit owners and all lien holders as their interests may
114 appear in the order described above. Creditors of the
115 association are not entitled to payment from any unit owner
116 in excess of the amount of the creditor's lien against that
117 unit owner's interest.

118 (j) The respective interests of unit owners referred to in
119 subsections (e), (f), (g), (h), and (i) are as follows:

120 (1) Except as provided in paragraph (2), the respective
121 interests of unit owners are the fair market values of their
122 units, allocated interests, and any limited common elements
123 immediately before the termination, as determined by one
124 or more independent appraisers selected by the association.
125 The decision of the independent appraisers must be
126 distributed to the unit owners and becomes final unless
127 disapproved within thirty days after distribution by unit
128 owners of units to which twenty-five percent of the votes in
129 the association are allocated. The proportion of any unit
130 owner's interest to that of all unit owners is determined by
131 dividing the fair market value of that unit owner's unit and
132 its allocated interests by the total fair market values of all
133 the units and their allocated interests.

134 (2) If any unit or any limited common element is
135 destroyed to the extent that an appraisal of the fair market
136 value thereof before destruction cannot be made, the
137 interests of all unit owners are: (i) In a condominium, their
138 respective common element interests immediately before
139 the termination; (ii) in a cooperative, their respective
140 ownership interests immediately before the termination;
141 and (iii) in a planned community, their respective common
142 expense liabilities immediately before the termination.

143 (k) In a condominium or planned community, except as
144 provided in subsection (1), foreclosure or enforcement of a
145 lien or encumbrance against the entire common interest
146 community does not terminate, of itself, the common
147 interest community, and foreclosure or enforcement of a
148 lien or encumbrance against a portion of the common
149 interest community, other than withdrawable real estate,
150 does not withdraw that portion from the common interest
151 community. Foreclosure or enforcement of a lien or
152 encumbrance against withdrawable real estate does not
153 withdraw, of itself, that real estate from the common
154 interest community, but the person taking title thereto may
155 require from the association, upon request, an amendment
156 excluding the real estate from the common interest
157 community.

158 (l) In a condominium or planned community, if a lien or
159 encumbrance against a portion of the real estate comprising
160 the common interest community has priority over the
161 declaration and the lien or encumbrance has not been
162 partially released, the parties foreclosing the lien or
163 encumbrance, upon foreclosure, may record an instrument
164 excluding the real estate subject to that lien or
165 encumbrance from the common interest community.

§36B-2-119. Rights of secured lenders.

1 The declaration may require that all or a specified
2 number or percentage of the lenders who hold security
3 interests encumbering the units approve specified actions
4 of the unit owners or the association as a condition to the
5 effectiveness of those actions, but no requirement for
6 approval may operate to (i) deny or delegate control over the
7 general administrative affairs of the association by the unit
8 owners or the executive board, or (ii) prevent the

9 association or the executive board from commencing,
10 intervening in, or settling any litigation or proceeding, or
11 (iii) prevent any insurance trustee or the association from
12 receiving and distributing any insurance proceeds except
13 pursuant to section 3-113.

§36B-2-120. Master associations.

1 (a) If the declaration provides that any of the powers
2 described in section 3-102 are to be exercised by or may be
3 delegated to a profit or nonprofit corporation or to an
4 unincorporated association that exercises those or other
5 powers on behalf of one or more common interest
6 communities or for the benefit of the unit owners of one or
7 more common interest communities, all provisions of this
8 chapter applicable to unit owners' associations apply to any
9 such corporation or unincorporated association except as
10 modified by this section.

11 (b) Unless it is acting in the capacity of an association
12 described in section 3-101, a master association may
13 exercise the powers set forth in section 3-102(a)(2) only to
14 the extent expressly permitted in the declarations of
15 common interest communities which are part of the master
16 association or expressly described in the delegations of
17 power from those common interest communities to the
18 master association.

19 (c) If the declaration of any common interest
20 community provides that the executive board may delegate
21 certain powers to a master association, the members of the
22 executive board have no liability for the acts or omissions of
23 the master association with respect to those powers
24 following delegation.

25 (d) The rights and responsibilities of unit owners with
26 respect to the unit owners' association set forth in sections
27 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of
28 the affairs of a master association only to persons who elect
29 the board of a master association, whether or not those
30 persons are otherwise unit owners within the meaning of
31 this chapter.

32 (e) Even if a master association is also an association
33 described in section 3-101, the certificate of incorporation
34 or other instrument creating the master association and the
35 declaration of each common interest community the powers

36 of which are assigned by the declaration or delegated to the
37 master association, may provide that the executive board of
38 the master association must be elected after the period of
39 declarant control in any of the following ways:

40 (1) All unit owners of all common interest communities
41 subject to the master association may elect all members of
42 the master association's executive board.

43 (2) All members of the executive boards of all common
44 interest communities subject to the master association may
45 elect all members of the master association's executive
46 board.

47 (3) All unit owners of each common interest community
48 subject to the master association may elect specified
49 members of the master association's executive board.

50 (4) All members of the executive board of each common
51 interest community subject to the master association may
52 elect specified members of the master association's
53 executive board.

§36B-2-121. Merger or consolidation of common interest communities.

1 (a) Any two or more common interest communities of
2 the same form of ownership, by agreement of the unit
3 owners as provided in subsection (b), may be merged or
4 consolidated into a single common interest community. In
5 the event of a merger or consolidation, unless the agreement
6 otherwise provides, the resultant common interest
7 community is the legal successor, for all purposes, of all of
8 the preexisting common interest communities, and the
9 operations and activities of all associations of the
10 preexisting common interest communities are merged or
11 consolidated into a single association that holds all powers,
12 rights, obligations, assets and liabilities of all preexisting
13 associations.

14 (b) An agreement of two or more common interest
15 communities to merge or consolidate pursuant to
16 subsection (a) must be evidenced by an agreement prepared,
17 executed, recorded, and certified by the president of the
18 association of each of the preexisting common interest
19 communities following approval by owners of units to
20 which are allocated the percentage of votes in each common
21 interest community required to terminate that common

22 interest community. The agreement must be recorded in
23 every county in which a portion of the common interest
24 community is located and is not effective until recorded.

25 (c) Every merger or consolidation agreement must
26 provide for the reallocation of the allocated interests in the
27 new association among the units of the resultant common
28 interest community either (i) by stating the reallocations or
29 the formulas upon which they are based or (ii) by stating the
30 percentage of overall allocated interests of the new common
31 interest community which are allocated to all of the units
32 comprising each of the preexisting common interest
33 communities, and providing that the portion of the
34 percentages allocated to each unit formerly comprising a
35 part of the preexisting common interest community must be
36 equal to the percentages of allocated interests allocated to
37 that unit by the declaration of the preexisting common
38 interest community.

§36B-2-122. Addition of unspecified real estate.

1 In a planned community, if the right is originally reserved
2 in the declaration, the declarant in addition to any other
3 development right, may amend the declaration at any time
4 during as many years as are specified in the declaration for
5 adding additional real estate to the planned community
6 without describing the location of that real estate in the
7 original declaration; but, the amount of real estate added to
8 the planned community pursuant to this section may not
9 exceed ten percent of the real estate described in section
10 2-105(a)(3) and the declarant may not in any event increase
11 the number of units in the planned community beyond the
12 number stated in the original declaration pursuant to
13 section 2-105(a)(5).

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

§36B-3-101. Organization of unit owners' association.

1 A unit owners' association must be organized no later
2 than the date the first unit in the common interest
3 community is conveyed. The membership of the association
4 at all times consists exclusively of all unit owners or,
5 following termination of the common interest community,
6 of all former unit owners entitled to distributions of
7 proceeds under section 2-118 or their heirs, successors, or

8 assigns. The association must be organized as a profit or
9 nonprofit corporation, trust, partnership, or as an
10 unincorporated association.

§36B-3-102. Powers of unit owners' association.

1 (a) Except as provided in subsection (b), and subject to
2 the provisions of the declaration, the association, even if
3 unincorporated, may:

4 (1) Adopt and amend bylaws and rules and regulations;

5 (2) Adopt and amend budgets for revenues,
6 expenditures, and reserves and collect assessments for
7 common expenses from unit owners;

8 (3) Hire and discharge managing agents and other
9 employees, agents, and independent contractors;

10 (4) Institute, defend, or intervene in litigation or
11 administrative proceedings in its own name on behalf of
12 itself or two or more unit owners on matters affecting the
13 common interest community;

14 (5) Make contracts and incur liabilities;

15 (6) Regulate the use, maintenance, repair, replacement,
16 and modification of common elements;

17 (7) Cause additional improvements to be made as a part
18 of the common elements;

19 (8) Acquire, hold, encumber, and convey in its own
20 name any right, title, or interest to real estate or personal
21 property, but (i) common elements in a condominium or
22 planned community may be conveyed or subjected to a
23 security interest only pursuant to section 3-112 and (ii) part
24 of a cooperative may be conveyed, or all or part of a
25 cooperative may be subjected to a security interest, only
26 pursuant to section 3-112;

27 (9) Grant easements, leases, licenses, and concessions
28 through or over the common elements;

29 (10) Impose and receive any payments, fees, or charges
30 for the use, rental, or operation of the common elements,
31 other than limited common elements described in sections
32 2-102(2) and (4), and for services provided to unit owners;

33 (11) Impose charges for late payment of assessments
34 and, after notice and an opportunity to be heard, levy
35 reasonable fines for violations of the declaration, bylaws,
36 rules, and regulations of the association;

37 (12) Impose reasonable charges for the preparation and

38 recordation of amendments to the declaration, resale
39 certificates required by section 4-109, or statements of
40 unpaid assessments;

41 (13) Provide for the indemnification of its officers and
42 executive board and maintain directors' and officers'
43 liability insurance;

44 (14) Assign its right to future income, including the
45 right to receive common expense assessments, but only to
46 the extent the declaration expressly so provides;

47 (15) Exercise any other powers conferred by the
48 declaration or bylaws;

49 (16) Exercise all other powers that may be exercised in
50 this state by legal entities of the same type as the
51 association; and

52 (17) Exercise any other powers necessary and proper for
53 the governance and operation of the association.

54 (b) The declaration may not impose limitations on the
55 power of the association to deal with the declarant which
56 are more restrictive than the limitations imposed on the
57 power of the association to deal with other persons.

§36B-3-103. Executive board members and officers.

1 (a) Except as provided in the declaration, the bylaws,
2 subsection (b), or other provisions of this chapter, the
3 executive board may act in all instances on behalf of the
4 association. In the performance of their duties, the officers
5 and members of the executive board are required to
6 exercise (i) if appointed by the declarant, the care required
7 of fiduciaries of the unit owners and (ii) if elected by the unit
8 owners, ordinary and reasonable care.

9 (b) The executive board may not act on behalf of the
10 association to amend the declaration (section 2-117), to
11 terminate the common interest community (section 2-118)
12 or to elect members of the executive board or determine the
13 qualifications, powers and duties, or terms of office of
14 executive board members (section 3-103(f)), but the
15 executive board may fill vacancies in its membership for the
16 unexpired portion of any term.

17 (c) Within thirty days after adoption of any proposed
18 budget for the common interest community, the executive
19 board shall provide a summary of the budget to all the unit
20 owners, and shall set a date for a meeting of the unit owners

21 to consider ratification of the budget not less than fourteen
22 nor more than thirty days after mailing of the summary.
23 Unless at that meeting a majority of all unit owners or any
24 larger vote specified in the declaration reject the budget,
25 the budget is ratified, whether or not a quorum is present. In
26 the event the proposed budget is rejected, the periodic
27 budget last ratified by the unit owners must be continued
28 until such time as the unit owners ratify a subsequent
29 budget proposed by the executive board.

30 (d) Subject to subsection (e), the declaration may
31 provide for a period of declarant control of the association,
32 during which a declarant, or persons designated by him,
33 may appoint and remove the officers and members of the
34 executive board. Regardless of the period provided in the
35 declaration, a period of declarant control terminates no
36 later than the earlier of: (i) Sixty days after conveyance of
37 seventy-five percent of the units that may be created to unit
38 owners other than a declarant; (ii) two years after all
39 declarants have ceased to offer units for sale in the ordinary
40 course of business; or (iii) two years after any right to add
41 new units was last exercised. A declarant may voluntarily
42 surrender the right to appoint and remove officers and
43 members of the executive board before termination of that
44 period, but in that event the declarant may require, for the
45 duration of the period of declarant control, that specified
46 actions of the association or executive board, as described
47 in a recorded instrument executed by the declarant, be
48 approved by the declarant before they become effective.

49 (e) Not later than sixty days after conveyance of twenty-
50 five percent of the units that may be created to unit owners
51 other than a declarant, at least one member and not less
52 than twenty-five percent of the members of the executive
53 board must be elected by unit owners other than the
54 declarant. Not later than sixty days after conveyance of
55 fifty percent of the units that may be created to unit owners
56 other than a declarant, not less than thirty-three and one-
57 third percent of the members of the executive board must be
58 elected by unit owners other than the declarant.

59 (f) Except as otherwise provided in section 2-120(e), not
60 later than the termination of any period of declarant
61 control, the unit owners shall elect an executive board of at
62 least three members, at least a majority of whom must be

63 unit owners. The executive board shall elect the officers.
64 The executive board members and officers shall take office
65 upon election.

66 (g) Notwithstanding any provision of the declaration or
67 bylaws to the contrary, the unit owners, by a two-thirds
68 vote of all persons present and entitled to vote at any
69 meeting of the unit owners at which a quorum is present,
70 may remove any member of the executive board with or
71 without cause, other than a member appointed by the
72 declarant.

§36B-3-104. Transfer of special declarant rights.

1 (a) A special declarant right (section 1-103(29)) created
2 or reserved under this chapter may be transferred only by
3 an instrument evidencing the transfer recorded in every
4 county in which any portion of the common interest
5 community is located. The instrument is not effective unless
6 executed by the transferee.

7 (b) Upon transfer of any special declarant right, the
8 liability of a transfer or declarant is as follows:

9 (1) A transferor is not relieved of any obligation or
10 liability arising before the transfer and remains liable for
11 warranty obligations imposed upon him by this chapter.
12 Lack of privity does not deprive any unit owner of standing
13 to maintain an action to enforce any obligation of the
14 transferor.

15 (2) If a successor to any special declarant right is an
16 affiliate of a declarant (section 1-103(1)), the transferor is
17 jointly and severally liable with the successor for any
18 obligations or liabilities of the successor relating to the
19 common interest community.

20 (3) If a transferor retains any special declarant rights,
21 but transfers other special declarant rights to a successor
22 who is not an affiliate of the declarant, the transferor is
23 liable for any obligations or liabilities imposed on a
24 declarant by this chapter or by the declaration relating to
25 the retained special declarant rights and arising after the
26 transfer.

27 (4) A transferor has no liability for any act or omission
28 or any breach of a contractual or warranty obligation
29 arising from the exercise of a special declarant right by a
30 successor declarant who is not an affiliate of the transferor.

31 (c) Unless otherwise provided in a mortgage
32 instrument, deed of trust, or other agreement creating a
33 security interest, in case of foreclosure of a security interest,
34 sale by a trustee under an agreement creating a security
35 interest, tax sale, judicial sale, or sale under bankruptcy
36 code or receivership proceedings, of any units owned by a
37 declarant or real estate in a common interest community
38 subject to development rights, a person acquiring title to all
39 the property being foreclosed or sold, but only upon his
40 request, succeeds to all special declarant rights related to
41 that property held by that declarant, or only to any rights
42 reserved in the declaration pursuant to section 2-115 and
43 held by that declarant to maintain models, sales offices, and
44 signs. The judgment or instrument conveying title must
45 provide for transfer of only the special declarant rights
46 requested.

47 (d) Upon foreclosure of a security interest, sale by a
48 trustee under an agreement creating a security interest, tax
49 sale, judicial sale, or sale under bankruptcy code or
50 receivership proceedings, of all interests in a common
51 interest community owned by a declarant:

52 (1) The declarant ceases to have any special declarant
53 rights, and

54 (2) The period of declarant control (section 3-103(d))
55 terminates unless the judgment or instrument conveying
56 title provides for transfer of all special declarant rights held
57 by that declarant to a successor declarant.

58 (e) The liabilities and obligations of a person who
59 succeeds to special declarant rights are as follows:

60 (1) A successor to any special declarant right who is an
61 affiliate of a declarant is subject to all obligations and
62 liabilities imposed on the transferor by this chapter or by
63 the declaration.

64 (2) A successor to any special declarant right, other than
65 a successor described in paragraphs (3) or (4) of a successor
66 who is an affiliate of a declarant, is subject to the
67 obligations and liabilities imposed by this chapter or the
68 declaration:

69 (i) On a declarant which relates to the successor's
70 exercise or nonexercise of special declarant rights; or

71 (ii) On his transferor, other than:

72 (A) Misrepresentation by any previous declarant;

73 (B) Warranty obligations on improvements made by any
74 previous declarant, or made before the common interest
75 community was created;

76 (C) Breach of any fiduciary obligation by any previous
77 declarant or his appointees to the executive board; or

78 (D) Any liability or obligation imposed on the
79 transferor as a result of the transferor's acts or omissions
80 after the transfer.

81 (3) A successor to only a right reserved in the
82 declaration to maintain models, sales offices, and signs
83 (section 2-115), may not exercise any other special
84 declarant right, and is not subject to any liability or
85 obligation as a declarant, except the obligation to provide a
86 public offering statement and any liability arising as a
87 result thereof.

88 (4) A successor to all special declarant rights held by a
89 transferor who succeeded to those rights pursuant to a deed
90 or other instrument of conveyance in lieu of foreclosure or a
91 judgment or instrument conveying title under subsection
92 (c), may declare in a recorded instrument the intention to
93 hold those rights solely for transfer to another person.
94 Thereafter, until transferring all special declarant rights to
95 any person acquiring title to any unit or real estate subject
96 to development rights owned by the successor, or until
97 recording an instrument permitting exercise of all those
98 rights, that successor may not exercise any of those rights
99 other than any right held by his transferor to control the
100 executive board in accordance with section 3-103(d) for the
101 duration of any period of declarant control, and any
102 attempted exercise of those rights is void. So long as a
103 successor declarant may not exercise special declarant
104 rights under this subsection, the successor declarant is not
105 subject to any liability or obligation as a declarant other
106 than liability for his acts and omissions under section
107 3-103(d).

108 (f) Nothing in this section subjects any successor to a
109 special declarant right to any claims against or other
110 obligations of a transferor declarant other than claims and
111 obligations arising under this chapter or the declaration.

§36B-3-105. Termination of contracts and leases of declarant.

1 If entered into before the executive board elected by the

2 unit owners pursuant to section 3-103(f) takes office, (i) any
3 management contract, employment contract, or lease of
4 recreational or parking areas or facilities, (ii) any other
5 contract or lease between the association and a declarant or
6 an affiliate of a declarant, or (iii) any contract or lease that
7 is not bona fide or was unconscionable to the unit owners at
8 the time entered into under the circumstances then
9 prevailing, may be terminated without penalty by the
10 association at any time after the executive board elected by
11 the unit owners pursuant to section 3-103(f) takes office
12 upon not less than ninety days' notice to the other party.
13 This section does not apply to: (i) Any lease the termination
14 of which would terminate the common interest community
15 or reduce its size, unless the real estate subject to that lease
16 was included in the common interest community for the
17 purpose of avoiding the right of the association to terminate
18 a lease under this section, or (ii) a proprietary lease.

§36B-3-106. Bylaws.

- 1 (a) The bylaws of the association must provide:
- 2 (1) The number of members of the executive board and
- 3 the titles of the officers of the association;
- 4 (2) Election by the executive board of president,
- 5 treasurer, secretary, and any other officers of the
- 6 association the bylaws specify;
- 7 (3) The qualifications, powers and duties, terms of
- 8 office, and manner of electing and removing executive
- 9 board members and officers and filling vacancies;
- 10 (4) Which, if any, of its powers the executive board or
- 11 officers may delegate to other persons or to a managing
- 12 agent;
- 13 (5) Which of its officers may prepare, execute, certify,
- 14 and record amendments to the declaration on behalf of the
- 15 association; and
- 16 (6) A method for amending the bylaws.
- 17 (b) Subject to the provisions of the declaration, the
- 18 bylaws may provide for any other matters the association
- 19 deems necessary and appropriate.

§36B-3-107. Upkeep of common interest community.

- 1 (a) Except to the extent provided by the declaration,
- 2 subsection (b), or section 3-113(h), the association is

3 responsible for maintenance, repair, and replacement of the
4 common elements, and each unit owner is responsible for
5 maintenance, repair, and replacement of his unit. Each unit
6 owner shall afford to the association and the other unit
7 owners, and to their agents or employees, access through his
8 unit reasonably necessary for those purposes. If damage is
9 inflicted on the common elements or on any unit through
10 which access is taken, the unit power responsible for the
11 damage, or the association if it is responsible, is liable for
12 the prompt repair thereof.

13 (b) In addition to the liability that a declarant as a unit
14 owner has under this chapter, the declarant alone is liable
15 for all expenses in connection with real estate subject to the
16 development rights. No other unit owner and no other
17 portion of the common interest community is subject to a
18 claim for payment of those expenses. Unless the declaration
19 provides otherwise, any income or proceeds from real estate
20 subject to development rights inures to the declarant.

21 (c) In a planned community, if all development rights
22 have expired with respect to any real estate, the declarant
23 remains liable for all expenses of that real estate unless,
24 upon expiration, the declaration provides that the real
25 estate becomes common elements or units.

§36B-3-108. Meetings.

1 A meeting of the association must be held at least once
2 each year. Special meetings of the association may be called
3 by the president, a majority of the executive board, or by
4 unit owners having twenty percent, or any lower percentage
5 specified in the bylaws, of the votes in the association. Not
6 less than ten nor more than sixty days in advance of any
7 meeting, the secretary or other officer specified in the
8 bylaws shall cause notice to be hand delivered or sent
9 prepaid by United States mail to the mailing address of
10 each unit or to any other mailing address designated in
11 writing by the unit owner. The notice of any meeting must
12 state the time and place of the meeting and the items on the
13 agenda, including the general nature of any proposed
14 amendment to the declaration or bylaws, any budget
15 changes, and any proposal to remove an officer or member
16 of the executive board.

§36B-3-109. Quorums.

1 (a) Unless the bylaws provide otherwise, a quorum is
2 present throughout any meeting of the association if
3 persons entitled to cast twenty percent of the votes that may
4 be cast for election of the executive board are present in
5 person or by proxy at the beginning of the meeting.

6 (b) Unless the bylaws specify a larger percentage, a
7 quorum is deemed present throughout any meeting of the
8 executive board if persons entitled to cast fifty percent of
9 the votes on that board are present at the beginning of the
10 meeting.

§36B-3-110. Voting; proxies.

1 (a) If only one of several owners of a unit is present at a
2 meeting of the association, that owner is entitled to cast all
3 the votes allocated to that unit. If more than one of the
4 owners are present, the votes allocated to that unit may be
5 cast only in accordance with the agreement of a majority in
6 interest of the owners, unless the declaration expressly
7 provides otherwise. There is majority agreement if any one
8 of the owners casts the votes allocated to that unit without
9 protest being made promptly to the person presiding over
10 the meeting by any of the other owners of the unit.

11 (b) Votes allocated to a unit may be cast pursuant to a
12 proxy duly executed by a unit owner. If a unit is owned by
13 more than one person, each owner of the unit may vote or
14 register protest to the casting of votes by the other owners of
15 the unit through a duly executed proxy. A unit owner may
16 revoke a proxy given pursuant to this section only by actual
17 notice of revocation to the person presiding over a meeting
18 of the association. A proxy is void if it is not dated or
19 purports to be revocable without notice. A proxy terminates
20 one year after its date, unless it specifies a shorter term.

21 (c) If the declaration requires that votes on specified
22 matters affecting the common interest community be cast
23 by lessees rather than unit owners of leased units: (i) The
24 provisions of subsections (a) and (b) apply to lessors as if
25 they were unit owners; (ii) unit owners who have leased
26 their units to other persons may not cast votes on those
27 specified matters; and (iii) lessees are entitled to notice of
28 meetings, access to records, and other rights respecting
29 these matters as if they were unit owners. Unit owners must

30 also be given notice, in the manner provided in section
31 3-108, of all meetings at which lessees are entitled to vote.
32 (d) No votes allocated to a unit owned by the association
33 may be cast.

§36B-3-111. Tort and contract liability.

1 Neither the association nor any unit owner except the
2 declarant is liable for that declarant's torts in connection
3 with any part of the common interest community which
4 that declarant has the responsibility to maintain.
5 Otherwise, an action alleging a wrong done by the
6 association must be brought against the association and not
7 against any unit owner. If the wrong occurred during any
8 period of declarant control and the association gives the
9 declarant reasonable notice of and an opportunity to defend
10 against the action, the declarant who then controlled the
11 association is liable to the association or to any unit owner
12 for (i) all tort losses not covered by insurance suffered by the
13 association or that unit owner, and (ii) all costs that the
14 association would not have incurred but for a breach of
15 contract or other wrongful act or omission. Whenever the
16 declarant is liable to the association under this section, the
17 declarant is also liable for all expenses of litigation,
18 including reasonable attorney's fees, incurred by the
19 association. Any statute of limitation affecting the
20 association's right of action under this section is tolled until
21 the period of declarant control terminates. A unit owner is
22 not precluded from maintaining an action contemplated by
23 this section because he is a unit owner or a member or
24 officer of the association. Liens resulting from judgments
25 against the association are governed by section 3-117
26 (Other Liens).

§36B-3-112. Conveyance or encumbrance of common elements.

1 (a) In a condominium or planned community, portions
2 of the common elements may be conveyed or subjected to a
3 security interest by the association if persons entitled to
4 cast at least eighty percent of the votes in the association,
5 including eighty percent of the votes allocated to units not

6 owned by a declarant, or any larger percentage the
7 declaration specifies, agree to that action; but all owners of
8 units to which any limited common element is allocated
9 must agree in order to convey that limited common element
10 or subject it to a security interest. The declaration may
11 specify a smaller percentage only if all of the units are
12 restricted exclusively to nonresidential uses. Proceeds of
13 the sale are an asset of the association.

14 (b) Part of a cooperative may be conveyed and all or part
15 of a cooperative may be subjected to a security interest by
16 the association if persons entitled to cast at least eighty
17 percent of the votes in the association, including eighty
18 percent of the votes allocated to units not owned by a
19 declarant, or any larger percentage the declaration
20 specified, agree to that action; but, if fewer than all of the
21 units or limited common elements are to be conveyed or
22 subjected to a security interest, then all unit owners of those
23 units, or the units to which those limited common elements
24 are allocated, must agree in order to convey those units or
25 limited common elements or subject them to a security
26 interest. The declaration may specify a smaller percentage
27 only if all of the units are restricted exclusively to
28 nonresidential uses. Proceeds of the sale are an asset of the
29 association. Any purported conveyance or other voluntary
30 transfer of an entire cooperative, unless made pursuant to
31 section 2-118, is void.

32 (c) An agreement to convey common elements in a
33 condominium or planned community, or to subject them to
34 a security interest, or in a cooperative, an agreement to
35 convey any part of a cooperative or subject it to a security
36 interest, must be evidenced by the execution of an
37 agreement, or ratifications thereof, in the same manner as a
38 deed, by the requisite number of unit owners. The
39 agreement must specify a date after which the agreement
40 will be void unless recorded before that date. The
41 agreement and all ratifications thereof must be recorded in
42 every county in which a portion of the common interest
43 community is situated, and is effective only upon
44 recordation.

45 (d) The association, on behalf of the unit owners, may
46 contract to convey an interest in a common interest

47 community pursuant to subsection (a), but the contract is
48 not enforceable against the association until approved
49 pursuant to subsections (a), (b), and (c). Thereafter, the
50 association has all powers necessary and appropriate to
51 effect the conveyance or encumbrance, including the power
52 to execute deeds or other instruments.

53 (e) Unless made pursuant to this section, any purported
54 conveyance, encumbrance, judicial sale, or other voluntary
55 transfer of common elements or of any other part of a
56 cooperative is void.

57 (f) A conveyance or encumbrance of common elements
58 or of a cooperative pursuant to this section does not deprive
59 any unit of its rights of access and support.

60 (g) Unless the declaration otherwise provides, a
61 conveyance or encumbrance of common elements pursuant
62 to this section does not affect the priority or validity of
63 pre-existing encumbrances.

64 (h) In a cooperative, the association may acquire, hold,
65 encumber, or convey a proprietary lease without complying
66 with this section.

§36B-3-113. Insurance.

1 (a) Commencing not later than the time of the first
2 conveyance of a unit to a person other than a declarant, the
3 association shall maintain, to the extent reasonably
4 available:

5 (1) Property insurance on the common elements and, in
6 a planned community, also on property that must become
7 common elements, insuring against all risks of direct
8 physical loss commonly insured against or, in the case of a
9 conversion building, against fire and extended coverage
10 perils. The total amount of insurance after application of
11 any deductibles must be not less than eighty percent of the
12 actual cash value of the insured property at the time the
13 insurance is purchased and at each renewal date, exclusive
14 of land, excavations, foundations, and other items normally
15 excluded from property policies; and

16 (2) Liability insurance, including medical payments
17 insurance, in an amount determined by the executive board
18 but not less than any amount specified in the declaration,
19 covering all occurrences commonly insured against for
20 death, bodily injury, and property damage arising out of or

21 in connection with the use, ownership, or maintenance of
22 the common elements and, in cooperatives, also of all units.

23 (b) In the case of a building that is part of a cooperative
24 or that contains units having horizontal boundaries
25 described in the declaration, the insurance maintained
26 under subsection (a)(1), to the extent reasonably available,
27 must include the units, but need not include improvements
28 and betterments installed by unit owners.

29 (c) If the insurance described in subsections (a) and (b) is
30 not reasonably available, the association promptly shall
31 cause notice of that fact to be hand delivered or sent prepaid
32 by United States mail to all unit owners. The declaration
33 may require the association to carry any other insurance,
34 and the association in any event may carry any other
35 insurance it considers appropriate to protect the
36 association or the unit owners.

37 (d) Insurance policies carried pursuant to subsections
38 (a) and (b) must provide that:

39 (1) Each unit owner is an insured person under the
40 policy with respect to liability arising out of his interest in
41 the common elements or membership in the association;

42 (2) The insurer waives its right to subrogation under the
43 policy against any unit owner or member of his household;

44 (3) No act or omission by any unit owner, unless acting
45 within the scope of his authority on behalf of the
46 association, will void the policy or be a condition to
47 recovery under the policy; and

48 (4) If, at the time of a loss under the policy, there is other
49 insurance in the name of a unit owner covering the same
50 risk covered by the policy, the association's policy provides
51 primary insurance.

52 (e) Any loss covered by the property policy under
53 subsections (a)(1) and (b) must be adjusted with the
54 association, but the insurance proceeds for that loss are
55 payable to any insurance trustee designated for that
56 purpose, or otherwise to the association, and not to any
57 holder of a security interest. The insurance trustee or the
58 association shall hold any insurance proceeds in trust for
59 the association, unit owners, and lien holders as their
60 interests may appear. Subject to the provisions of
61 subsection (h), the proceeds must be disbursed first for the
62 repair or restoration of the damaged property, and the
63 association, unit owners, and lien holders are not entitled to

64 receive payment of any portion of the proceeds unless there
65 is a surplus of proceeds after the property has been
66 completely repaired or restored, or the common interest
67 community is terminated.

68 (f) An insurance policy issued to the association does
69 not prevent a unit owner from obtaining insurance for his
70 own benefit.

71 (g) An insurer that has issued an insurance policy under
72 this section shall issue certificates or memoranda of
73 insurance to the association and, upon written request, to
74 any unit owner or holder of a security interest. The insurer
75 issuing the policy may not cancel or refuse to renew it until
76 thirty days after notice of the proposed cancellation or
77 nonrenewal has been mailed to the association, each unit
78 owner and each holder of a security interest to whom a
79 certificate or memorandum of insurance has been issued at
80 their respective last known addresses.

81 (h) Any portion of the common interest community for
82 which insurance is required under this section which is
83 damaged or destroyed must be repaired or replaced
84 promptly by the association unless (i) the common interest
85 community is terminated, in which case section 2-118
86 applies (ii) repair or replacement would be illegal under any
87 state or local statute or ordinance governing health or
88 safety, or (iii) eighty percent of the unit owners, including
89 every owner of a unit or assigned limited common element
90 that will not be rebuilt, vote not to rebuild. The cost of
91 repair or replacement in excess of insurance proceeds and
92 reserves is a common expense. If the entire common interest
93 community is not repaired or replaced, (i) the insurance
94 proceeds attributable to the damaged common elements
95 must be used to restore the damaged area to a condition
96 compatible with the remainder of the common interest
97 community, and (ii) except to the extent that other persons
98 will be distributees (section 2-105(a)12(ii)), (A) the
99 insurance proceeds attributable to units limited common
100 elements that are not rebuilt must be distributed to the
101 owners of those units and the owners of the units to which
102 those limited common elements were allocated, or to lien
103 holders, as their interests may appear, and (B) the
104 remainder of the proceeds must be distributed to all the unit
105 owners or lien holders, as their interests may appear, as

106 follows: (1) In a condominium, in proportion to the common
107 element interests of all the units and (2) in a cooperative or
108 planned community, in proportion to the common expense
109 liabilities of all the units. If the unit owners vote not to
110 rebuild any unit, that unit's allocated interests are
111 automatically reallocated upon the vote as if the unit had
112 been condemned under section 1-107(a), and the
113 association promptly shall prepare, execute, and record an
114 amendment to the declaration reflecting the reallocations.
115 (i) The provisions of this section may be varied or
116 waived in the case of a common interest community all of
117 whose units are restricted to nonresidential use.

§36B-3-114. Surplus funds.

1 Unless otherwise provided in the declaration, any surplus
2 funds of the association remaining after payment of or
3 provision for common expenses and any prepayment of
4 reserves must be paid to the unit owners in proportion to
5 their common expense liabilities or credited to them to
6 reduce their future common expense assessments.

§36B-3-115. Assessments for common expenses.

1 (a) Until the association makes a common expense
2 assessment, the declarant shall pay all common expenses.
3 After an assessment has been made by the association,
4 assessments must be made at least annually, based on a
5 budget adopted at least annually by the association.

6 (b) Except for assessments under subsections (c), (d) and
7 (e), all common expenses must be assessed against all the
8 units in accordance with the allocations set forth in the
9 declaration pursuant to section 2-107(a) and (b). Any past
10 due common expense assessment or installment thereof
11 bears interest at the rate established by the association not
12 exceeding eighteen percent per year.

13 (c) To the extent required by the declaration:

14 (1) Any common expense associated with the
15 maintenance, repair or replacement of a limited common
16 element must be assessed against the units to which that
17 limited common element is assigned, equally, or in any
18 other proportion the declaration provides;

19 (2) Any common expense or portion thereof benefiting

20 fewer than all of the units must be assessed exclusively
21 against the units benefited; and

22 (3) The costs of insurance must be assessed in
23 proportion to risk and the costs of utilities must be assessed
24 in proportion to usage.

25 (d) Assessments to pay a judgment against the
26 association (section 3-117(a)) may be made only against the
27 units in the common interest community at the time the
28 judgment was entered, in proportion to their common
29 expense liabilities.

30 (e) If any common expense is caused by the misconduct
31 of any unit owner, the association may assess that expense
32 exclusively against his unit.

33 (f) If common expense liabilities are reallocated,
34 common expense assessments and any installment thereof
35 not yet due must be recalculated in accordance with the
36 reallocated common expense liabilities.

§36B-3-116. Lien for assessments.

1 (a) The association has a lien on a unit for any
2 assessment levied against that unit or fines imposed against
3 its unit owner from the time the assessment or fine becomes
4 due. Unless the declaration otherwise provides, fees,
5 charges, late charges, fines and interest charged pursuant to
6 section 3-102(a)(10), (11) and (12) are enforceable as
7 assessments under this section. If an assessment is payable
8 in installments, the full amount of the assessment is a lien
9 from the time the first installment thereof becomes due.

10 (b) A lien under this section is prior to all other liens and
11 encumbrances on a unit except (i) liens and encumbrances
12 recorded before the recordation of the declaration and, in a
13 cooperative, liens and encumbrances which the association
14 creates, assumes, or takes subject to, (ii) a first security
15 interest on the unit recorded before the date on which the
16 assessment sought to be enforced became delinquent, or, in
17 a cooperative, the first security interest encumbering only
18 the unit owner's interest and perfected before the date on
19 which the assessment sought to be enforced became
20 delinquent, and (iii) liens for real estate taxes and other
21 governmental assessments or charges against the unit or
22 cooperative. The lien is also prior to all security interests
23 described in clause (ii) above to the extent of the common

24 expense assessments based on the periodic budget adopted
25 by the association pursuant to section 3-115(a) which would
26 have become due in the absence of acceleration during the
27 six months immediately preceding institution of an action
28 to enforce the lien. This subsection does not affect the
29 priority of mechanics' or materialmen's liens, or the priority
30 of liens for other assessments made by the association. (The
31 lien under this section is not subject to the provisions of
32 (insert appropriate reference to state homestead, dower and
33 curtesy, or other exemptions).)

34 (c) Unless the declaration otherwise provides, if two or
35 more associations have liens for assessments created at any
36 time on the same property, those liens have equal priority.

37 (d) A lien for unpaid assessments is extinguished unless
38 proceedings to enforce the lien are instituted within three
39 years after the full amount of the assessments becomes due.

40 (e) This section does not prohibit actions to recover
41 sums for which subsection (a) creates a lien or prohibit an
42 association from taking a deed in lieu of foreclosure.

43 (f) A judgment or decree in any action brought under
44 this section must include costs and reasonable attorney's
45 fees for the prevailing party.

46 (g) The association upon written request shall furnish to
47 a unit owner a statement setting forth the amount of unpaid
48 assessments against the unit. If the unit owner's interest is
49 real estate, the statement must be in recordable form. The
50 statement must be furnished within ten business days after
51 receipt of the request and is binding on the association, the
52 executive board, and every unit owner.

53 (h) For the purpose of perfecting and preserving its lien,
54 the association shall give notice to the unit owner in the
55 manner set forth in section one (§56-2-1), article two,
56 chapter fifty-six of this code, or by registered or certified
57 mail, return receipt requested, and in a form reasonably
58 calculated to inform the owner of his liability for payment
59 of the assessment. The lien shall be discharged as to
60 subsequent purchasers for value without notice unless the
61 association shall cause to be recorded a notice of the lien in
62 the office of the clerk of the county commission of any
63 county wherein any part of the condominium is located. The
64 notice shall contain:

65 (1) A legally sufficient description of the unit;

- 66 (2) The name or names of the owners of the unit;
67 (3) The amount of unpaid assessments due together with
68 the date when each fell due; and
69 (4) The date of recordation.
70 The clerk of the county commission in whose office the
71 notice is recorded shall index the notice in the appropriate
72 deed books and lien books in the name of the unit owners
73 and of the association. The cost of recordation shall be
74 assessed against any unit owner found to be delinquent in a
75 subsequent proceeding to enforce the lien.
76 Upon payment of the assessment, the association shall
77 execute a written release of the lien in the manner set forth
78 in section one (§38-12-1), article twelve, chapter thirty-
79 eight of this code. This release shall be recorded, at the
80 expense of the association, in the office of the clerk of the
81 county commission wherein the notice of the lien was filed.
82 (i) At any time before the association has disposed of a
83 unit in a cooperative or entered into a contract for its
84 disposition under the power of sale, the unit owners or the
85 holder of any subordinate security interest may cure the
86 unit owner's default and prevent sale or other disposition
87 by tendering the performance due under the security
88 agreement, including any amounts due because of exercise
89 of a right to accelerate, plus the reasonable expenses of
90 proceeding to foreclosure incurred to the time of tender,
91 including reasonable attorney's fees of the creditor.

§36B-3-117. Other liens.

- 1 (a) In a condominium or planned community:
2 (1) Except as provided in paragraph (2), a judgment for
3 money against the association (if recorded) is not a lien on
4 the common elements, but is a lien in favor of the judgment
5 lien holder against all of the units in the common interest
6 community at the time the judgment was entered. No other
7 property of a unit owner is subject to the claims of creditors
8 of the association.
9 (2) If the association has granted a security interest in
10 the common elements to a creditor of the association
11 pursuant to section 3-112, the holder of that security
12 interest shall exercise its right against the common
13 elements before its judgment lien on any unit may be
14 enforced.

15 (3) Whether perfected before or after the creation of the
16 common interest community, if a lien, other than a deed of
17 trust or mortgage, including a judgment lien or lien
18 attributable to work performed or materials supplied
19 before creation of the common interest community,
20 becomes effective against two or more units, the unit owner
21 of an affected unit may pay to the lien holder the amount of
22 the lien attributable to his unit and the lien holder, upon
23 receipt of payment, promptly shall deliver a release of the
24 lien covering that unit. The amount of the payment must be
25 proportionate to the ratio which that unit owner's common
26 expense liability bears to the common expense liabilities of
27 all unit owners whose units are subject to the lien. After
28 payment, the association may not assess or have a lien
29 against that unit owner's unit for any portion of the
30 common expenses incurred in connection with that lien.

31 (4) A judgment against the association must be indexed
32 in the name of the common interest community and the
33 association and, when so indexed, is notice of the lien
34 against the units.

35 (b) In a cooperative:

36 (1) If the association receives notice of an impending
37 foreclosure on all or any portion of the association's real
38 estate, the association shall promptly transmit a copy of
39 that notice to each unit owner of a unit located within the
40 real estate to be foreclosed. Failure of the association to
41 transmit the notice does not affect the validity of the
42 foreclosure.

43 (2) Whether or not a unit owner's unit is subject to the
44 claims of the association's creditors, no other property of a
45 unit owner is subject to those claims.

§36B-3-118. Association records.

1 The association shall keep financial records sufficiently
2 detailed to enable the association to comply with section
3 4-109. All financial and other records must be made
4 reasonably available for examination by any unit owner
5 and his authorized agents.

§36B-3-119. Association as trustee.

1 With respect to a third person dealing with the
2 association in the association's capacity as a trustee, the

3 existence of trust powers and their proper exercise by the
4 association may be assumed without inquiry. A third
5 person is not bound to inquire whether the association has
6 power to act as trustee or is properly exercising trust
7 powers. A third person, without actual knowledge that the
8 association is exceeding or improperly exercising its
9 powers, is fully protected in dealing with the association as
10 if it possessed and properly exercised the powers it purports
11 to exercise. A third person is not bound to assure the proper
12 application of trust assets paid or delivered to the
13 association in its capacity as trustee.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.

- 1 (a) This article applies to all units subject to this chapter
2 except as provided in subsection (b) or as modified or
3 waived by agreement of purchasers of units in a common
4 interest community in which all units are restricted to
5 nonresidential use.
- 6 (b) Neither a public offering statement nor a resale
7 certificate need be prepared or delivered in the case of:
 - 8 (1) A gratuitous disposition of a unit;
 - 9 (2) A disposition pursuant to court order;
 - 10 (3) A disposition by a government or governmental
11 agency;
 - 12 (4) A disposition by foreclosure or deed in lieu of
13 foreclosure;
 - 14 (5) A disposition to a dealer;
 - 15 (6) A disposition that may be canceled at any time and
16 for any reason by the purchaser without penalty; or
 - 17 (7) A disposition of a unit in a planned community in
18 which the declaration limits the maximum annual
19 assessment of any unit to not more than three hundred
20 dollars, as adjusted pursuant to section 1-115 (Adjustment
21 of dollar amounts) if:
 - 22 (i) The declarant has a reasonable and good faith belief
23 that the maximum stated assessment will be sufficient to
24 pay the expenses of the planned community;
 - 25 (ii) The declaration cannot be amended to increase the
26 assessment during the period of declarant control without
27 the consent of all unit owners; and
 - 28 (iii) The planned community is not subject to any
29 development rights.

§36B-4-102. Liability for public offering statement requirements.

- 1 (a) Except as provided in subsection (b), a declarant,
2 before offering any interest in a unit to the public, shall
3 prepare a public offering statement conforming to the
4 requirements of sections 4-103, 4-104, 4-105 and 4-106.
- 5 (b) A declarant may transfer responsibility for
6 preparation of all or a part of the public offering statement
7 to a successor declarant section 3-104 or to a dealer who
8 intends to offer units in the common interest community. In
9 the event of any such transfer, the transferor shall provide
10 the transferee with any information necessary to enable the
11 transferee to fulfill the requirements of subsection (a).
- 12 (c) Any declarant or dealer who offers a unit to a
13 purchaser shall deliver a public offering statement in the
14 manner prescribed in subsection 4-108(a). The person who
15 prepared all or a part of the public offering statement is
16 liable under sections 4-108 and 4-117 for any false or
17 misleading statement set forth therein or for any omission
18 of a material fact therefrom with respect to that portion of
19 the public offering statement which he prepared. If a
20 declarant did not prepare any part of a public offering
21 statement that he delivers, he is not liable for any false or
22 misleading statement set forth therein or for any omission
23 of a material fact therefrom unless he had actual knowledge
24 of the statement or omission or, in the exercise of reasonable
25 care, should have known of the statement or omission.
- 26 (d) If a unit is part of a common interest community and
27 is part of any other real estate regime in connection with the
28 sale of which the delivery of a public offering statement is
29 required under the laws of this state, a single public offering
30 statement conforming to the requirements of sections
31 4-103, 4-104, 4-105 and 4-106 as those requirements relate
32 to each regime in which the unit is located, and to any other
33 requirements imposed under the laws of this state, may be
34 prepared and delivered in lieu of providing two or more
35 public offering statements.

§36B-4-103. Public offering statement; general provisions.

- 1 (a) Except as provided in subsection (b), a public
2 offering statement must contain or fully and accurately
3 disclose:

4 (1) The name and principal address of the declarant and
5 of the common interest community and a statement that the
6 common interest community is either a condominium,
7 cooperative or planned community;

8 (2) A general description of the common interest
9 community, including to the extent possible, the types,
10 number, and declarant's schedule of commencement and
11 completion of construction of buildings and amenities that
12 the declarant anticipates including in the common interest
13 community;

14 (3) The number of units in the common interest
15 community;

16 (4) Copies and a brief narrative description of the
17 significant features of the declaration, other than any plats
18 and plans and any other recorded covenants, conditions,
19 restrictions and reservations affecting the common interest
20 community; the bylaws and any rules or regulations of the
21 association; copies of any contracts and leases to be signed
22 by purchasers at closing and a brief narrative description of
23 any contracts or leases that will or may be subject to
24 cancellation by the association under section 3-105;

25 (5) Any current balance sheet and a projected budget for
26 the association, either within or as an exhibit to the public
27 offering statement, for one year after the date of the first
28 conveyance to a purchaser and thereafter the current
29 budget of the association, a statement of who prepared the
30 budget and a statement of the budget's assumptions
31 concerning occupancy and inflation factors. The budget
32 must include, without limitation:

33 (i) A statement of the amount or a statement that there is
34 no amount included in the budget as a reserve for repairs
35 and replacement;

36 (ii) A statement of any other reserves;

37 (iii) The projected common expense assessment by
38 category of expenditures for the association; and

39 (iv) The projected monthly common expense assessment
40 for each type of unit;

41 (6) Any services not reflected in the budget that the
42 declarant provides, or expenses that he pays and which he
43 expects may become at any subsequent time a common
44 expense of the association and the projected common
45 expense assessment attributable to each of those services or
46 expenses for the association and for each type of unit;

47 (7) Any initial or special fee due from the purchaser at
48 closing, together with a description of the purpose and
49 method of calculating the fee;

50 (8) A description of any liens, defects, or encumbrances
51 on or affecting the title to the common interest community;

52 (9) A description of any financing offered or arranged
53 by the declarant;

54 (10) The terms and significant limitations of any
55 warranties provided by the declarant, including statutory
56 warranties and limitations on the enforcement thereof or on
57 damages;

58 (11) A statement that:

59 (i) Within fifteen days after receipt of a public offering
60 statement a purchaser, before conveyance, may cancel any
61 contract for purchase of a unit from a declarant;

62 (ii) If a declarant fails to provide a public offering
63 statement to a purchaser before conveying a unit, that
64 purchaser may recover from the declarant ten percent of the
65 sales price of the unit plus ten percent of the share,
66 proportionate to his common expense liability, of any
67 indebtedness of the association secured by security
68 interests encumbering the common interest community;
69 and

70 (iii) If a purchaser receives the public offering
71 statement more than fifteen days before signing a contract,
72 he cannot cancel the contract;

73 (12) A statement of any unsatisfied judgments or
74 pending suits against the association and the status of any
75 pending suits material to the common interest community
76 of which a declarant has actual knowledge;

77 (13) A statement that any deposit made in connection
78 with the purchase of a unit will be held in an escrow account
79 until closing and will be returned to the purchaser if the
80 purchaser cancels the contract pursuant to section 4-108,
81 together with the name and address of the escrow agent;

82 (14) Any restraints on alienation of any portion of the
83 common interest community and any restrictions: (i) On
84 use, occupancy, and alienation of the units; and (ii) on the
85 amount for which a unit may be sold or on the amount that
86 may be received by a unit owner on sale, condemnation or
87 casualty loss to the unit or to the common interest
88 community or on termination of the common interest
89 community;

- 90 (15) A description of the insurance coverage provided
91 for the benefit of unit owners;
- 92 (16) Any current or expected fees or charges to be paid
93 by unit owners for the use of the common elements and
94 other facilities related to the common interest community;
- 95 (17) The extent to which financial arrangements have
96 been provided for completion of all improvements that the
97 declarant is obligated to build pursuant to section 4-119
98 (Declarant's obligation to complete and restore);
- 99 (18) A brief narrative description of any zoning and
100 other land use requirements affecting the common interest
101 community;
- 102 (19) All unusual and material circumstances, features
103 and characteristics of the common interest community and
104 the units; and
- 105 (20) In a cooperative, (i) whether the unit owners will be
106 entitled, for federal, state and local income tax purposes, to
107 a pass through of deductions for payments made by the
108 association for real estate taxes and interest paid the holder
109 of a security interest encumbering the cooperative; and (ii) a
110 statement as to the effect on every unit owner if the
111 association fails to pay real estate taxes or payments due the
112 holder of a security interest encumbering the cooperative.
- 113 (b) If a common interest community composed of not
114 more than twelve units is not subject to any development
115 rights and no power is reserved to a declarant to make the
116 common interest community part of a larger common
117 interest community, group of common interest
118 communities, or other real estate, a public offering
119 statement may but need not include the information
120 otherwise required by paragraphs (9), (10), (15), (16), (17),
121 (18) and (19) of subsection (a) and the narrative descriptions
122 of documents required by subsection (a)(4).
- 123 (c) A declarant promptly shall amend the public
124 offering statement to report any material change in the
125 information required by this section.

**§36B-4-104. Same; common interest communities subject to
development rights.**

- 1 If the declaration provides that a common interest
2 community is subject to any development rights, the public
3 offering statement must disclose, in addition to the
4 information required by section 4-103:

5 (1) The maximum number of units and the maximum
6 number of units per acre, that may be created;

7 (2) A statement of how many or what percentage of the
8 units that may be created will be restricted exclusively to
9 residential use or a statement that no representations are
10 made regarding use restrictions;

11 (3) If any of the units that may be built within real estate
12 subject to development rights are not to be restricted
13 exclusively to residential use, a statement, with respect to
14 each portion of that real estate, of the maximum percentage
15 of the real estate areas, and the maximum percentage of the
16 floor areas of all units that may be created therein, that are
17 not restricted exclusively to residential use;

18 (4) A brief narrative description of any development
19 rights reserved by a declarant and of any conditions
20 relating to or limitations upon the exercise of development
21 rights;

22 (5) A statement of the maximum extent to which each
23 unit's allocated interests may be changed by the exercise of
24 any development right described in paragraph (3);

25 (6) A statement of the extent to which any buildings or
26 other improvements that may be erected pursuant to any
27 development right in any part of the common interest
28 community will be compatible with existing buildings and
29 improvements in the common interest community in terms
30 of architectural style, quality of construction, and size, or a
31 statement that no assurances are made in those regards;

32 (7) General descriptions of all other improvements that
33 may be made and limited common elements that may be
34 created within any part of the common interest community
35 pursuant to any development right reserved by the
36 declarant, or a statement that no assurances are made in
37 that regard;

38 (8) A statement of any limitations as to the locations of
39 any building or other improvement that may be made
40 within any part of the common interest community
41 pursuant to any development right reserved by the
42 declarant, or a statement that no assurances are made in
43 that regard;

44 (9) A statement that any limited common elements
45 created pursuant to any development right reserved by the
46 declarant will be of the same general types and sizes as the

47 limited common elements within other parts of the common
48 interest community, or a statement of the types and sizes
49 planned, or a statement that no assurances are made in that
50 regard;

51 (10) A statement that the proportion of limited common
52 elements to units created pursuant to any development
53 right reserved by the declarant will be approximately equal
54 to the proportion existing within other parts of the common
55 interest community, or a statement of any other assurances
56 in that regard, or a statement that no assurances are made in
57 that regard;

58 (11) A statement that all restrictions in the declaration
59 affecting use, occupancy and alienation of units will apply
60 to any units created pursuant to any development right
61 reserved by the declarant, or a statement of any
62 differentiations that may be made as to those units, or a
63 statement that no assurances are made in that regard; and

64 (12) A statement of the extent to which any assurances
65 made pursuant to this section apply or do not apply in the
66 event that any development right is not exercised by the
67 declarant.

§36B-4-105. Same; time shares.

1 If the declaration provides that ownership or occupancy
2 of any units, is or may be in time shares, the public offering
3 statement shall disclose, in addition to the information
4 required by section 4-103:

5 (1) The number and identity of units in which time
6 shares may be created;

7 (2) The total number of time shares that may be created;

8 (3) The minimum duration of any time shares that may
9 be created; and

10 (4) The extent to which the creation of time shares will
11 or may affect the enforceability of the association's lien for
12 assessments provided in section 3-116.

**§36B-4-106. Same; common interest communities containing
conversion buildings.**

1 (a) The public offering statement of a common interest
2 community containing any conversion building must
3 contain, in addition to the information required by section
4 4-103;

- 5 (1) A statement by the declarant, based on a report
6 prepared by an independent (registered) architect or
7 engineer, describing the present condition of all structural
8 components and mechanical and electrical installations
9 material to the use and enjoyment of the building;
- 10 (2) A statement by the declarant of the expected useful
11 life of each item reported on in paragraph (1) or a statement
12 that no representations are made in that regard; and
- 13 (3) A list of any outstanding notices of uncured
14 violations of building code or other municipal regulations,
15 together with the estimated cost of curing those violations.
- 16 (b) This section applies only to buildings containing
17 units that may be occupied for residential use.

§36B-4-107. Same; common interest community securities.

- 1 If an interest in a common interest community is
2 currently registered with the Securities and Exchange
3 Commission of the United States, a declarant satisfies all
4 requirements relating to the preparation of a public
5 offering statement of this chapter if he delivers to the
6 purchaser a copy of the public offering statement filed with
7 the Securities and Exchange Commission.

§36B-4-108. Purchaser's right to cancel.

- 1 (a) A person required to deliver a public offering
2 statement pursuant to section 4-102(c) shall provide a
3 purchaser with a copy of the public offering statement and
4 all amendments thereto before conveyance of the unit, and
5 not later than the date of any contract of sale. Unless a
6 purchaser is given the public offering statement more than
7 fifteen days before execution of a contract for the purchase
8 of a unit, the purchaser, before conveyance, may cancel the
9 contract within fifteen days after first receiving the public
10 offering statement.
- 11 (b) If a purchaser elects to cancel a contract pursuant to
12 subsection (a), he may do so by hand delivering notice
13 thereof to the offeror or by mailing notice thereof by
14 prepaid United States mail to the offeror or to his agent for
15 service of process. Cancellation is without penalty, and all
16 payments made by the purchaser before cancellation must
17 be refunded promptly.
- 18 (c) If a person required to deliver a public offering

19 statement pursuant to section 4-102(c) fails to provide a
20 purchaser to whom a unit is conveyed with that public
21 offering statement and all amendments thereto as required
22 by subsection (a), the purchaser, in addition to any rights to
23 damages or other relief, is entitled to receive from that
24 person an amount equal to ten percent of the sale price of
25 the unit, plus ten percent of the share, proportionate to his
26 common expense liability, of any indebtedness of the
27 association secured by security interests encumbering the
28 common interest community.

§36B-4-109. Resales of units.

- 1 (a) Except in the case of a sale in which delivery of a
2 public offering statement is required, or unless exempt
3 under section 4-101(b), a unit owner shall furnish to a
4 purchaser before execution of any contract for sale of a unit,
5 or otherwise before conveyance, a copy of the declaration
6 (other than any plats and plans), the bylaws, the rules or
7 regulations of the association, and a certificate containing:
 - 8 (1) A statement disclosing the effect on the proposed
9 disposition of any right of first refusal or other restraint on
10 the free alienability of the unit;
 - 11 (2) A statement setting forth the amount of the monthly
12 common expense assessment and any unpaid common
13 expense or special assessment currently due and payable
14 from the selling unit owner;
 - 15 (3) A statement of any other fees payable by unit
16 owners;
 - 17 (4) A statement of any capital expenditures anticipated
18 by the association for the current and two next succeeding
19 fiscal years;
 - 20 (5) A statement of the amount of any reserves for capital
21 expenditures and of any portions of those reserves
22 designated by the association for any specified projects;
 - 23 (6) The most recent regularly prepared balance sheet
24 and income and expense statement, if any, of the
25 association;
 - 26 (7) The current operating budget of the association;
 - 27 (8) A statement of any unsatisfied judgments against
28 the association and the status of any pending suits in which
29 the association is a defendant;
 - 30 (9) A statement describing any insurance coverage
31 provided for the benefit of unit owners;

32 (10) A statement as to whether the executive board has
33 knowledge that any alterations or improvements to the unit
34 or to the limited common elements assigned thereto violate
35 any provision of the declaration;

36 (11) A statement as to whether the executive board has
37 knowledge of any violations of the health or building codes
38 with respect to the unit, the limited common elements
39 assigned thereto, or any other portion of the common
40 interest community;

41 (12) A statement of the remaining term of any leasehold
42 estate affecting the common interest community and the
43 provisions governing any extension or renewal thereof;

44 (13) A statement of any restrictions in the declaration
45 affecting the amount that may be received by a unit owner
46 upon sale, condemnation, casualty loss to the unit or the
47 common interest community, or termination of the common
48 interest community; and

49 (14) In a cooperative, an accountant's statement, if any
50 was prepared, as to the deductibility for federal income tax
51 purposes by the unit owner of real estate taxes and interest
52 paid by the association.

53 (b) The association, within ten days after a request by a
54 unit owner, shall furnish a certificate containing the
55 information necessary to enable the unit owner to comply
56 with this section. A unit owner providing a certificate
57 pursuant to subsection (a) is not liable to the purchaser for
58 any erroneous information provided by the association and
59 included in the certificate.

60 (c) A purchaser is not liable for any unpaid assessment
61 or fee greater than the amount set forth in the certificate
62 prepared by the association. A unit owner is not liable to a
63 purchaser for the failure or delay of the association to
64 provide the certificate in a timely manner, but the purchase
65 contract is voidable by the purchaser until the certificate
66 has been provided and for five days thereafter or until
67 conveyance, whichever first occurs.

§36B-4-110. Escrow of deposits.

1 Any deposit made in connection with the purchase or
2 reservation of a unit from a person required to deliver a
3 public offering statement pursuant to section 4-102(c) must
4 be placed in escrow and held either in this state or in the

5 state where the unit is located in an account designated
6 solely for that purpose by an institution whose accounts are
7 insured by a governmental agency or instrumentality until
8 (i) delivered to the declarant at closing; (ii) delivered to the
9 declarant because of the purchaser's default under a
10 contract to purchase the unit; or (iii) refunded to the
11 purchaser.

§36B-4-111. Release of liens.

1 (a) In the case of a sale of a unit where delivery of a
2 public offering statement is required pursuant to section
3 4-102(c), a seller:

4 (1) Before conveying a unit, shall record or furnish to
5 the purchaser releases of all liens, except liens on real estate
6 that a declarant has the right to withdraw from the common
7 interest community, that the purchaser does not expressly
8 agree to take subject to or assume and that encumber:

9 (i) In a condominium, that unit and its common element
10 interest; and

11 (ii) In a cooperative or planned community, that unit
12 and any limited common elements assigned thereto, or

13 (2) Shall provide a surety bond or substitute collateral
14 for or insurance against the lien.

15 (b) Before conveying real estate to the association, the
16 declarant shall have that real estate released from: (1) All
17 liens the foreclosure of which would deprive unit owners of
18 any right of access to or easement of support of their units,
19 and (2) all other liens on that real estate unless the public
20 offering statement describes certain real estate that may be
21 conveyed subject to liens in specified amounts.

§36B-4-112. Conversion buildings.

1 (a) A declarant of a common interest community
2 containing conversion buildings, and any dealer who
3 intends to offer units in such a common interest community,
4 shall give each of the residential tenants and any residential
5 subtenant in possession of a portion of a conversion
6 building notice of the conversion and provide those persons
7 with the public offering statement no later than one
8 hundred twenty days before the tenants and any subtenant
9 in possession are required to vacate. The notice must set
10 forth generally the rights of tenants and subtenants under

11 this section and must be hand delivered to the unit or mailed
12 by prepaid United States mail to the tenant and subtenant
13 at the address of the unit or any other mailing address
14 provided by a tenant. No tenant or subtenant may be
15 required to vacate upon less than one hundred twenty days'
16 notice, except by reason of nonpayment of rent, waste, or
17 conduct that disturbs other tenants' peaceful enjoyment of
18 the premises, and the terms of the tenancy may not be
19 altered during that period. Failure to give notice as required
20 by this section is a defense to an action for possession.

21 (b) For sixty days after delivery or mailing of the notice
22 described in subsection (a), the person required to give the
23 notice shall offer to convey each unit or proposed unit
24 occupied for residential use to the tenant who leases that
25 unit. If a tenant fails to purchase the unit during that sixty
26 day period, the offeror may not offer to dispose of an
27 interest in that unit during the following one hundred
28 eighty days at a price or on terms more favorable to the
29 offeree than the price or terms offered to the tenant. This
30 subsection does not apply to any unit in a conversion
31 building if that unit will be restricted exclusively to
32 nonresidential use or the boundaries of the converted unit
33 do not substantially conform to the dimensions of the
34 residential unit before conversion.

35 (c) If a seller, in violation of subsection (b), conveys a
36 unit to a purchaser for value who has no knowledge of the
37 violation, the recordation of the deed conveying the unit or,
38 in a cooperative, the conveyance of the unit, extinguishes
39 any right a tenant may have under subsection (b) to
40 purchase that unit if the deed states that the seller has
41 complied with subsection (b), but the conveyance does not
42 affect the right of a tenant to recover damages from the
43 seller for a violation of subsection (b).

44 (d) Nothing in this section permits termination of a
45 lease by a declarant in violation of its terms.

§36B-4-113. Express warranties of quality.

1 (a) Express warranties made by any seller to a
2 purchaser of a unit, if relied upon by the purchaser, are
3 created as follows:

4 (1) Any affirmation of fact or promise which relates to
5 the unit, its use, or rights appurtenant thereto, area

6 improvements to the common interest community that
7 would directly benefit the unit, or the right to use or have
8 the benefit of facilities not located in the common interest
9 community, creates an express warranty that the unit and
10 related rights and uses will conform to the affirmation or
11 promise;

12 (2) Any model or description of the physical
13 characteristics of the common interest community,
14 including plans and specifications of or for improvements,
15 creates an express warranty that the common interest
16 community will conform to the model or description;

17 (3) Any description of the quantity or extent of the real
18 estate comprising the common interest community,
19 including plats or surveys, creates an express warranty that
20 the common interest community will conform to the
21 description, subject to customary tolerances; and

22 (4) A provision that a purchaser may put a unit only to a
23 specified use is an express warranty that the specified use is
24 lawful.

25 (b) Neither formal words, such as "warranty" or
26 "guarantee," nor a specific intention to make a warranty,
27 are necessary to create an express warranty of quality, but a
28 statement purporting to be merely an opinion or
29 commendation of the real estate or its value does not create
30 a warranty.

31 (c) Any conveyance of a unit transfers to the purchaser
32 all express warranties of quality made by previous sellers.

§36B-4-114. Implied warranties of quality.

1 (a) A declarant and any dealer warrants that a unit will
2 be in at least as good condition at the earlier of the time of
3 the conveyance or delivery of possession as it was at the
4 time of contracting, reasonable wear and tear expected.

5 (b) A declarant and any dealer impliedly warrants that
6 a unit and the common elements in the common interest
7 community are suitable for the ordinary uses of real estate
8 of its type and that any improvements made or contracted
9 for by him, or made by any person before the creation of the
10 common interest community, will be:

11 (1) Free from defective materials; and

12 (2) Constructed in accordance with applicable law,

13 according to sound engineering and construction
14 standards, and in a workmanlike manner.

15 (c) In addition, a declarant and any dealer warrants to a
16 purchaser of a unit that may be used for residential use that
17 an existing use, continuation of which is contemplated by
18 the parties, does not violate applicable law at the earlier of
19 the time of conveyance or delivery of possession.

20 (d) Warranties imposed by this section may be excluded
21 or modified as specified in section 4-115.

22 (e) For purposes of this section, improvements made or
23 contracted for by an affiliate of a declarant, section
24 1-103(1), are made or contracted for by the declarant.

25 (f) Any conveyance of a unit transfers to the purchaser
26 all of the declarant's implied warranties of quality.

**§36B-4-115. Exclusion or modification of implied warranties
of quality.**

1 (a) Except as limited by subsection (b) with respect to a
2 purchaser of a unit that may be used for residential use,
3 implied warranties of quality:

4 (1) May be excluded or modified by agreement of the
5 parties; and

6 (2) Are excluded by expression of disclaimer, such as
7 "as is," "with all faults" or other language that in common
8 understanding calls the purchaser's attention to the
9 exclusion of warranties.

10 (b) With respect to a purchaser of a unit that may be
11 occupied for residential use, no general disclaimer of
12 implied warranties of quality is effective, but a declarant
13 and any dealer may disclaim liability in an instrument
14 signed by the purchaser for a specified defect or specified
15 failure to comply with applicable law, if the defect or
16 failure entered into and became a part of the basis of the
17 bargain.

§36B-4-116. Statute of limitations for warranties.

1 (a) A judicial proceeding for breach of any obligation
2 arising under section 4-113 or 4-114 must be commenced
3 within six years after the cause of action accrues, but the
4 parties may agree to reduce the period of limitation to not
5 less than two years. With respect to a unit that may be
6 occupied for residential use, an agreement to reduce the

7 period of limitation must be evidenced by a separate
8 instrument executed by the purchaser.

9 (b) Subject to subsection (c), a cause of action for breach
10 of warranty of quality, regardless of the purchaser's lack of
11 knowledge of the breach, accrues:

12 (1) As to a unit, at the time the purchaser to whom the
13 warranty is first made enters into possession if a possessory
14 interest was conveyed or at the time of acceptance of the
15 instrument of conveyance if a nonpossessory interest was
16 conveyed; and

17 (2) As to each common element, at the time the common
18 element is completed or, if later, as to (i) a common element
19 that may be added to the common interest community or
20 portion thereof, at the time the first unit therein is conveyed
21 to a bona fide purchaser, or (ii) a common element within
22 any other portion of the common interest community, at the
23 time the first unit is conveyed to a bona fide purchaser.

24 (c) If a warranty of quality explicitly extends to future
25 performance or duration of any improvement or component
26 of the common interest community, the cause of action
27 accrues at the time the breach is discovered or at the end of
28 the period for which the warranty explicitly extends,
29 whichever is earlier.

§36B-4-117. Effect of violations on rights of action; attorney's fees.

1 If a declarant or any other person subject to this chapter
2 fails to comply with any of its provisions or any provision of
3 the declaration or bylaws, any person or class of persons
4 adversely affected by the failure to comply has a claim for
5 appropriate relief. Punitive damages may be awarded for a
6 willful failure to comply with this chapter. The court, in an
7 appropriate case, may award reasonable attorney's fees.

§36B-4-118. Labeling of promotional material.

1 No promotional material may be displayed or delivered to
2 prospective purchasers which describes or portrays an
3 improvement that is not in existence unless the description
4 or portrayal of the improvement in the promotional
5 material is conspicuously labeled or identified either as
6 "MUST BE BUILT" or as "NEED NOT BE BUILT."

§36B-4-119. Declarant's obligation to complete and restore.

1 (a) Except for improvements labeled "Need Not Be
2 Built," the declarant shall complete all improvements
3 depicted on any site plan or other graphic representation,
4 including any plats or plans prepared pursuant to section
5 2-109, whether or not that site plan or other graphic
6 representation is contained in the public offering statement
7 or in any promotional material distributed by or for the
8 declarant.

9 (b) The declarant is subject to liability for the prompt
10 repair and restoration, to a condition compatible with the
11 remainder of the common interest community, of any
12 portion of the common interest community affected by the
13 exercise of rights reserved pursuant to or created by
14 sections 2-110, 2-111, 2-112, 2-113, 2-115, 2-116.

§36B-4-120. Substantial completion of units.

1 In the case of a sale of a unit in which delivery of a public
2 offering statement is required, a contract of sale may be
3 executed, but no interest in that unit may be conveyed until
4 the declaration is recorded and the unit is substantially
5 completed, as evidenced by a recorded certificate of
6 substantial completion executed by an independent
7 registered architect, surveyor or engineer, or by issuance of
8 a certificate of occupancy authorized by law.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce G. Williams
.....
Chairman Senate Committee

Floyd Fulk
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1986.

Paul C. Hull
.....
Clerk of the Senate

Donald G. Kopp
.....
Clerk of the House of Delegates

Sam Tankovitch
.....
President of the Senate

Joseph P. Allright
.....
Speaker House of Delegates

The within *Approved* this the *26th*
Hand
day of 1986.

Arthur A. Shivers Jr.
.....
Governor



PRESENTED TO THE
GOVERNOR

Date 3/20/86

Time 3:31 p.m.

FILED IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86
B. C. C. S.

RECEIVED

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SECRETARY OF STATE