WEST VIRGINIA CODE CHAPTER 36A

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§36A-1-1. Short title.

This chapter shall be known and may be cited as the "Unit Property Act."

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§36A-1-2. Definitions.

The following words or phrases as used in this chapter shall have the meanings ascribed to them in this section, unless the context of this chapter clearly indicates otherwise:

(a) "Building" means any multiunit building or buildings or complex thereof, whether in vertical or horizontal arrangement, as well as other improvements comprising a part of the property and used or intended for use for residential, commercial or industrial purposes or for any other lawful purpose or for any combination of such uses.

(b) "Code of regulations" means such governing regulations as are adopted pursuant to this chapter for the regulation and management of the property, including such amendments thereof as may be adopted from time to time.

(c) "Common elements" means and includes:

(i) The land on which the building is located and portions of the building which are not included in a unit;

(ii) The foundations, structural parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways and entrances and exits to the building;

(iii) The yards, parking areas and driveways;

(iv) Portions of the land and building used exclusively for the management, operation or maintenance of the common elements;

(v) Installations of all central services and utilities;

(vi) All apparatus and installations existing for common use;

(vii) All other elements of the building necessary or convenient to its existence, management, operation, maintenance and safety or normally in common use; and

(viii) Such facilities as are designated in the declaration as common elements.

(d) "Common expenses" means and includes:

(i) Expenses of administration, maintenance, repair and replacement of the common elements;

(ii) Expenses agreed upon as common by all the unit owners; and

(iii) Expenses declared common by provisions of this chapter, or by the declaration or the code of regulations.

(e) "Council" means a board of natural individuals of the number stated in the code of

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regulations who are residents of this state, who need not be unit owners and who shall manage the business, operation and affairs of the property on behalf of the unit owners and in compliance with and subject to the provisions of this chapter.

(f) "Declaration" means the instrument by which the owner of property submits it to the provisions of this chapter as hereinafter provided, and all amendments thereof.

(g) "Declaration plan" means a survey of the property prepared in accordance with section two, article four, of this chapter.

(h) "Majority" or "majority of the unit owners" means the owners of more than fifty percent in the aggregate in interest of the undivided ownership of the common elements as specified in the declaration.

(i) "Person" means a natural individual, corporation, partnership, association, trustee or other legal entity.

(j) "Property" means and includes the land, the building, all improvements thereon, all owned in fee simple, and all easements, rights and appurtenances belonging thereto, which have been or are intended to be submitted to the provisions of this chapter.

(k) "Recorded" means that an instrument has been duly entered of record in the office of the clerk of the county court of the county in which the property is situate.

(l) "Clerk" means the clerk of the county court of the county in which the property is situate.

(m) "Revocation" means an instrument signed by all of the unit owners and by all holders of liens against the units by which the property is removed from the provisions of this chapter.

(n) "Unit" means a part of the property designed or intended for any type of independent use, which has a direct exit to a public street or way, or to a common element or common elements leading to a public street or way, or to an easement or right-of-way leading to a public street or way, and includes the proportionate undivided interest in the common elements which is assigned thereto in the declaration, or any amendments thereof.

(o) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration plan.

(p) "Unit owner" means the person or persons owning a unit in fee simple.

(q) "Mortgage" means either mortgage or deed of trust.

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§36A-1-3. Application of chapter.

The provisions of this chapter shall be applicable only to real property, the sole owner or all the owners of which submit the same to the provisions hereof by a duly recorded declaration.

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§36A-2-1. Status of units; ownership.

Each unit, together with its proportionate undivided interest in the common elements, is for all purposes real property and the ownership of each unit, together with its proportionate undivided interest in the common elements, is for all purposes the ownership of real property.

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§36A-2-2. Common elements.

The percentage of undivided interest in the common elements assigned to each unit shall be set forth in the declaration and such percentage shall not be altered except by recording an amended declaration duly executed by all of the unit owners affected thereby. The undivided interest in the common elements may not be separated from the unit to which such interest pertains and shall be deemed to be conveyed, leased or encumbered with the unit even though such interest is not expressly referred to or described in the deed, lease, mortgage or other instrument. The common elements shall remain undivided and no owner may exempt himself from liability with respect to the common expenses by waiver of the enjoyment of the right to use any of the common elements or by the abandonment of his unit or otherwise, and no action for partition or division of any part of the common elements shall be permitted, except as provided in section two, article eight of this chapter. Each unit owner or lessee thereof may use the common elements in accordance with the purpose for which they are intended. The maintenance and repair of the common elements and the making of any additions or improvements thereto shall be carried out only as provided in the code of regulations.

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§36A-2-3. Invalidity of contrary agreements.

Any agreement contrary to the provisions of this chapter shall be void and of no effect.

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§36A-3-1. Administration governed by code of regulations.

The administration of every property shall be governed by a code of regulations, a true and correct copy of which, and all duly adopted amendments of which, shall be duly recorded.

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§36A-3-2. Adoption, amendment or repeal of code of regulations.

The council has authority to make, alter, amend and repeal the code of regulations, subject to the right of a majority of the unit owners to change any such actions.

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§36A-3-3. Contents of code of regulations.

The code of regulations shall provide for at least the following and may include other lawful provisions:

(a) Identification of the property by reference to the place of record of the declaration and the declaration plan;

(b) The method of calling meetings of unit owners and meetings of the council;

(c) The number of unit owners and the number of members of council which shall constitute a quorum for the transaction of business;

(d) The number and qualification of members of council, the duration of the term of such members and the method of filling vacancies;

(e) The annual election by the council of a president, secretary and treasurer and any other officers which the code of regulations may specify;

(f) The duties of each officer, the compensation and removal of officers and the method of filling vacancies;

(g) Maintenance, repair and replacement of the common elements and payment of the cost thereof;

(h) The manner of collecting common expenses from unit owners; and

(i) The method of adopting and of amending rules governing the details of the use and operation of the property and the use of the common elements.

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§36A-3-4. Compliance by owners with code of regulations, administrative provisions, etc.

Each unit owner shall comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit or in the declaration plan.

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§36A-3-5. Remedy for noncompliance with code of regulations, administrative provisions, etc.

Failure to comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time and with the covenants, conditions and restrictions set forth in the declaration or in deeds of units or in the declaration plan shall be grounds for an action for the recovery of damages or for injunctive relief, or both, maintainable by any member of the council on behalf of the council or the unit owners or, in a proper case, by an aggrieved unit owner or by any person who holds a mortgage lien upon a unit and is aggrieved by any such noncompliance.

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§36A-3-6. Duties of council.

The duties of the council shall include the following:

(a) The maintenance, repair and replacement of the common elements;

(b) The assessment and collection of funds from unit owners for common expenses and the payment of such common expenses;

(c) The adoption and amendment of the code of regulations and the promulgation, distribution and enforcement of rules governing the details of the use and operation of the property and the use of the common elements, subject to the right of a majority of the unit owners to change any such actions; and

(d) Any other duties which may be set forth in the declaration or code of regulations.

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§36A-3-7. Powers of council.

Subject to the limitations and restrictions contained in this chapter, the council shall on behalf of the unit owners:

(a) Have power to manage the business, operation and affairs of the property and for such purposes to engage employees and appoint agents and to define their duties and fix their compensation, enter into contracts and other written instruments or documents and to authorize the execution thereof by officers elected by the council; and

(b) Have such incidental powers as may be appropriate to the performance of their duties.

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§36A-3-8. Work on common elements.

The maintenance, repair and replacement of the common elements and the making of improvements or additions thereto shall be carried on only as provided in the code of regulations.

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§36A-3-9. Certain work prohibited.

No unit owner shall do any work on his unit or the common elements which would jeopardize the soundness or safety of the property or impair any easement or hereditament without the unanimous consent of the unit owners affected thereby.

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§36A-3-10. Easements for work.

The council shall have an easement to enter any unit to maintain, repair or replace the common elements, as well as to make repairs to units if such repairs are reasonably necessary for public safety or to prevent damage to other units or to the common elements.

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§36A-3-11. Common profits and expenses.

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the unit owners according to the percentage of the undivided interest of each in the common elements as set forth in the declaration and any amendments thereto.

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§36A-3-12. Voting by unit owners.

At any meeting of unit owners, each unit owner shall be entitled to the same number of votes as the percentage of ownership in the common elements assigned to his unit in the declaration and any amendments thereto.

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§36A-3-13. Records of receipts and expenditures; examination by owners; records of assessments.

The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common elements, specifying and itemizing the maintenance, repair and replacement expenses of the common elements and any other expenses incurred. Such records shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the council assessing common expenses against the units and unit owners, he shall keep an accurate record of such assessments and of the payment thereof by each unit owner.

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§36A-4-1. Contents of declaration.

The declaration shall contain the following:

(a) A reference to this chapter and an expression of the intention to submit the property to the provisions of this chapter;

(b) A description of the land and building;

(c) The name by which the property will be known;

(d) A statement that the property is to consist of units and common elements as shown in a declaration plan;

(e) A description of the common elements and the proportionate undivided interest, expressed as a percentage, assigned to each unit therein, which percentages shall aggregate one hundred percent;

(f) A statement that the proportionate undivided interest in the common elements may be altered by the recording of an amendment duly executed by all unit owners affected thereby;

(g) A statement of the purposes or uses for which each unit is intended and restrictions, if any, as to use;

(h) The names of the first members of council;

(i) Any further details in connection with the property which the party or parties executing the declaration may deem appropriate.

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§36A-4-2. Declaration plan.

The declaration plan shall bear the verified statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and accurately (i) shows the property, the location of the building thereon, the building and the layout of the floors of the building, including the units and the common elements and (ii) sets forth the name by which the property will be known, and the unit designation for each unit therein.

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§36A-4-3. Contents of deeds of units.

Deeds of units shall include the following:

(a) The name by which the property is identified in the declaration plan and the name of the political subdivision and the ward, if any, and the name of the county in which the building is situate, together with a reference to the declaration and the declaration plan, including reference to the place where both instruments and any amendments thereof are recorded;

(b) The unit designation of the unit in the declaration plan and any other data necessary for its proper identification;

(c) A reference to the last unit deed if the unit was previously conveyed;

(d) The proportionate undivided interest, expressed as a percentage, in the common elements which is assigned to the unit in the declaration and any amendments thereof;

(e) In addition to the foregoing, the first deed conveying each unit shall contain the following specific provision:

"The grantee, for and on behalf of the grantee and the grantee's heirs, personal representatives, successors and assigns, by the acceptance of this deed covenants and agrees to pay such charges for the maintenance of, repairs to, replacement of and expenses in connection with the common elements as may be assessed from time to time by the council in accordance with the Unit Property Act of West Virginia, and further covenants and agrees that the unit conveyed by this deed shall be subject to a charge for all amounts so assessed and that, except insofar as section five, article seven of said Unit Property Act may relieve a subsequent unit owner of liability for prior unpaid assessments, this covenant shall run with and bind the land or unit hereby conveyed and all subsequent owners thereof"; and

(f) Any further details which the grantor and grantee may deem appropriate.

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§36A-4-4. Mortgages and other liens of record affecting property at time of first conveyance of each unit.

At the time of the first conveyance of each unit following the recording of the original declaration, every mortgage and other lien of record affecting the entire building or property or a greater portion thereof than the unit being conveyed shall be paid and satisfied of record, or the unit being conveyed shall be released therefrom by partial release duly recorded.

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§36A-4-5. Sales, conveyances or leases of or liens upon separate units.

Units may be sold, conveyed, mortgaged, leased or otherwise dealt with in the same manner as like dealings are conducted with respect to real property and interests therein. Every written instrument dealing with a unit shall specifically set forth the name by which the property is identified and the unit designation identifying the unit involved.

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§36A-5-1. Instruments recordable.

All instruments relating to the property or any unit, including the instruments provided for in this chapter, shall be entitled to be recorded, provided that they are acknowledged or proved in the manner provided by law.

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§36A-5-2. Recording a prerequisite to effectiveness of certain instruments.

No declaration, declaration plan or code of regulations, or any amendments thereto, shall be effective until the same have been duly recorded.

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§36A-5-3. Place of recording.

The clerk shall record declarations, deeds of units, codes of regulations, and revocations in the same records as are maintained for the recording of deeds of real property. Mortgages relating to units shall be recorded in the same records as are maintained by the clerk for the recording of real estate mortgages. Declaration plans, and any and all amendments thereto, shall be recorded in the same records as are maintained for the recording of subdivision plans.

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§36A-5-4. Indexing by recording officer.

The clerk shall index each declaration against the maker thereof as the grantor and the name by which the property is identified therein as the grantee. The clerk shall index each declaration plan and code of regulations and any revocation in the name by which the property is identified therein in both the grantor index and the grantee index. The clerk shall index each unit deed and mortgage and lease covering a unit in the same manner as like instruments are indexed.

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§36A-5-5. Recording fees.

The clerk shall be entitled to charge the same fees for recording instruments which are recordable under this chapter as the clerk is entitled to charge for like services with respect to the recording of various similar instruments under the general law.

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§36A-6-1. Removal.

Property may be removed from the provisions of this chapter by a revocation expressing the intention to so remove property previously made subject to the provisions of this chapter. No such revocation shall be effective unless the same is executed by all of the unit owners and by the holders of all mortgages, judgments or other liens affecting the units and is duly recorded.

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§36A-6-2. Effect of removal.

When property subject to the provisions of this chapter has been removed as provided in section one of this article, the former unit owners shall, at the time such removal becomes effective, become tenants in common of the property. The undivided interest in the property owned in common which shall appertain to each unit owner at the time of removal shall be the percentage of undivided interest previously owned by such person in the common elements.

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§36A-6-3. Resubmission.

The removal of property from the provisions of this chapter shall not preclude such property from being resubmitted to the provisions of the chapter in the manner herein provided.

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§36A-7-1. Assessments and taxes.

Each unit and its proportionate undivided interest in the common elements as determined by the declaration and any amendments thereof shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the building or property of which the unit is a part. Neither the building, the property nor any of the common elements shall be assessed or taxed separately after the declaration and declaration plan are recorded, nor shall the same be subject to assessment or taxation, except as the units and their proportionate undivided interests in the common elements are assessed and taxed pursuant to the provisions of this section.

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§36A-7-2. Assessment of charges.

All sums assessed by resolutions duly adopted by the council against any unit for the share of common expenses chargeable to that unit shall constitute the personal liability of the owner of the unit so assessed and shall, until fully paid, together with interest thereon at the rate of six percent per annum from the thirtieth day following the adoption of such resolutions, constitute a charge against such unit which shall be enforceable as provided in section three of this article.

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§36A-7-3. Method of enforcing charges.

Any charge assessed against a unit may be enforced by a civil action by the council acting on behalf of the unit owners, provided that each suit when filed shall refer to this chapter and to the unit against which the assessment is made and the owner thereof and shall be indexed by the clerk of the county court of the county in which the unit is situate as lis pendens. Any judgment against a unit and its owner shall be enforceable in the same manner as is otherwise provided by law.

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§36A-7-4. Mechanics' liens against units.

Any mechanics' liens arising as a result of repairs to or improvements of a unit by a unit owner shall be liens only against such unit. Any mechanics' liens arising as a result of repairs to or improvements of the common elements, if authorized in writing pursuant to a duly adopted resolution of the council, shall be paid by the council as a common expense and until so paid shall be liens against each unit in a percentage equal to the proportionate share of the common elements relating to such unit.

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§36A-7-5. Unpaid assessments at time of voluntary sale of unit.

Upon the voluntary sale or conveyance of a unit, the purchaser shall be jointly and severally liable with the seller for all unpaid assessments for common expenses which are a charge against the unit as of the date of the sale or conveyance, but such joint and several liability shall be without prejudice to the purchaser's right to recover from the seller the amount of any such unpaid assessments which the purchaser may pay, and until any such assessments are paid they shall continue to be charged against the unit which may be enforced in the manner set forth in section three of this article: Provided, however, That any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon. Any such excess which cannot be promptly collected from the former unit owner may be reassessed by the council as a common expense to be collected from all of the unit owners, including the purchaser, his successors and assigns.

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§36A-8-1. Insurance.

The council shall, if required by the declaration, the code of regulations or by a majority of the unit owners, insure the building against loss or damage by fire and such other hazards as shall be required or requested, without prejudice to the right of each unit owner to insure his own unit for his own benefit. The premiums for such insurance on the building shall be deemed common expenses.

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§36A-8-2. Repair or reconstruction.

Except as hereinafter provided, damage to or destruction of the building or of one or more of several buildings which comprise the property shall be promptly repaired and restored by the council using the proceeds of insurance held by the council, if any, for that purpose, and the unit owners directly affected thereby shall be liable for assessment for any deficiency in proportion to their respective undivided ownership of the common elements: Provided, however, That if there is substantially total destruction of the building or of one or more of several buildings which comprise the property, or if seventy-five percent of the unit owners directly affected thereby duly resolve not to proceed with repair or restoration, then, and in that event, the salvage value of the property or of the substantially destroyed building or buildings shall be subject to partition at the suit of any unit owner directly affected thereby, in which event the net proceeds of sale, together with the net proceeds of insurance policies held by the council, if any, shall be considered as one fund and shall be divided among all the unit owners directly affected thereby in proportion to their respective undivided ownership of the common elements, after discharging, out of the respective shares of unit owners directly affected thereby, to the extent sufficient for the purpose, all liens against the units of such unit owners.

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§36A-8-3. Severability.

If any provision of this chapter, or any section, sentence, clause, phrase or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of the chapter and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances, shall not be affected thereby.

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