WEST VIRGINIA CODE: §36b-2-118

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

(a) Except in the case of a taking of all the units by eminent domain (section 1-107) or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

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

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

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

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (h), (i) and (j). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain

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liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

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

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

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

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

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

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

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

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

(5) The assets of the association must be distributed to all unit owners and all lien holders as

their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

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

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

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

(k) In a condominium or planned community, except as provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

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

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