WEST VIRGINIA CODE: §36b-3-112

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

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least eighty percent of the votes in the association, including eighty percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.

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

(c) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The 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.

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (a), but the contract is not enforceable against the association until approved pursuant to subsections (a), (b), and (c). Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

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

(g) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.

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

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