WEST VIRGINIA CODE CHAPTER 36b

WV Legislature

PART I. DEFINITIONS AND OTHER GENERAL PROVISIONS.

§36B-1-101. Short Title.

This chapter may be cited as the Uniform Common Interest Ownership Act.

WV Legislature

§36B-1-102. Applicability.

Applicability of this chapter is governed by Part II of this article.

WV Legislature

§36B-1-103. Definitions.

In the declaration and bylaws (section one hundred six, article three of this chapter), unless specifically provided otherwise or the context otherwise requires, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (i) Is a general partner, officer, director or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

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

(3) "Association" or "unit owners' association" means the unit owners' association organized under section one hundred one, article three of this chapter.

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

(5) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section one hundred seven, article two of this chapter.

(7) "Common interest community" means real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration: Provided, That any resort owner which, prior to the effective date of this article, began the development of a resort and imposed fees or assessments upon owners of real estate in the

WV Legislature

resort for maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common facilities in and around the resort, for fire and police protection and for such other services as may be made available to owners of real estate, may also impose the same fees and assessments to be used for the same or similar purposes upon persons purchasing real estate in the resort after the effective date of this article without creating a common interest community.

"Ownership of a unit" does not include holding a leasehold interest of less than twenty years in a unit, including renewal options.

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

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

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

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

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

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

(14) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units, common elements or limited common elements within a common interest community; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community.

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

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

WV Legislature

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

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

(19)"Limited common element" means a portion of the common elements allocated by the declaration or by operation of subdivision (2) or (4), section one hundred two, article two of this chapter for the exclusive use of one or more but fewer than all of the units.

(20)"Master association" means an organization described in section one hundred twenty, article two of this chapter, whether or not it is also an association described in section one hundred one, article three of this chapter.

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

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

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

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

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

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

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

WV Legislature

(28) "Resort" means a destination location which consists of: (i) One or more persons offering recreational facilities and services such as skiing, golf, tennis or boating to the general public and commercial facilities such as retail stores, restaurants and hotels or other lodging accommodations; and (ii) at least one hundred residential units, a majority of which are used as vacation or second homes rather than primary residences.

(29) "Resort owner" means any person owning or operating substantially all of the recreational facilities located within a resort, or the predecessor in title of any such person.

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

(31)"Special declarant rights" means rights reserved for the benefit of a declarant to: (i) Complete improvements indicated on plans and plans filed with the declaration (section one hundred nine, article two of this chapter) or, in a cooperative, to complete improvements described in the public offering statement pursuant to subdivision (2), subsection (a), section one hundred three, article four of this chapter; (ii) exercise any development right (section one hundred ten, article two of this chapter); (iii) maintain sales offices, management offices, signs advertising the common interest community, and models (section one hundred fifteen, article two of this chapter); (iv) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community (section one hundred sixteen, article two of this chapter); (v) make the common interest community subject to a master association (section one hundred twenty, article two of this chapter); (vi) merge or consolidate a common interest community with another common interest community of the same form of ownership (section one hundred twenty-one, article two of this chapter); or (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (subsection (d), section one hundred three, article three of this chapter).

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

(33) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to subdivision (5), subsection (a), section one hundred five, article two of this chapter. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of

WV Legislature

that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(34)"Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated interests have been allocated (section one hundred seven, article two of this chapter) until that unit has been conveyed to another person.

WV Legislature

§36B-1-104. Variation by agreement.

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

WV Legislature

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

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

(b) In a condominium or planned community:

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

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

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

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

WV Legislature

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

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

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

(c) Except as provided in subsections (a) and (b) of this section, the provisions of this chapter do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

WV Legislature

§36B-1-107. Eminent domain.

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

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

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

(1) The commercial setting of the negotiations;

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

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

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

WV Legislature

§36B-1-112. Obligation of good faith.

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

WV Legislature

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

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

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

WV Legislature

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

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

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

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

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

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

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

www.legislature

PART II. APPLICABILITY.

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

Except as provided in sections 1-202 and 1-203, this chapter applies to all common interest communities created within this state after the effective date of this chapter. The provisions of chapter fifty-three, acts of the Legislature, one thousand nine hundred sixty-three, chapter one hundred twenty-nine, acts of the Legislature, one thousand nine hundred eighty, and chapter thirty-eight, acts of the Legislature, one thousand nine hundred eighty-four, do not apply to common interest communities created after the effective date of this chapter.

WV Legislature

§36B-1-202. Same -- Exception for small cooperatives.

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

WV Legislature

§36B-1-203. Applicability to new common interest communities. -- Exception for small and limited expense liability planned communities.

If a planned community:

(1) Contains no more than twelve units and is not subject to any development rights; or

(2) Provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300 as adjusted pursuant to section 1-114 (adjustment of dollar amounts), it is subject only to sections 1-105 (separate titles and taxation), 1-106 (applicability of local ordinances, regulations and building codes) and 1-107 (eminent domain) unless the declaration provides that this entire chapter is applicable.

WV Legislature

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

(a) Except as provided in section 1-205, Same; exception for small preexisting cooperatives and planned communities, sections 1-105 (separate titles and taxation), 1-106 (Applicability of local ordinances, regulations and building codes), 1-107 (Eminent domain), 2-103 (Construction and validity of declaration and bylaws), 2-104 (Description of units), 2-121 (Merger or consolidation of common interest communities), 3-102(a)(1) through (6) and (11) through (16) (Powers of unit owners' association), 3-111 (Tort and contract liability), 3-116 (Lien for assessments), 3-118 (Association records), 4-109 (Resales of units), and 4-117 (Effect of violation on rights of action; attorney's fees), and section 1-103 (Definitions) to the extent necessary in construing any of those sections, apply to all common interest communities created in this state before the effective date of this chapter; but those sections apply only with respect to events and circumstances occurring after the effective date of this chapter and do not invalidate existing provisions of the declaration, bylaws or plats or plans of those common interest communities.

(b) The provisions of chapter one hundred fifty-three, Acts of the Legislature, one thousand nine hundred sixty-three, chapter one hundred twenty-nine, Acts of the Legislature, one thousand nine hundred eighty, or of chapter thirty-eight, Acts of the Legislature, one thousand nine hundred eighty-four, do not apply to condominiums or other common interest communities created after the effective date of this chapter and do not invalidate any amendment to the declaration, rules, bylaws, plats and plans and code of regulations of any condominium or common interest community created before the effective date of this chapter if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter one hundred fifty-three, Acts of the Legislature, one thousand nine hundred sixty-three. If the amendment grants to any person any rights, powers or privileges permitted by this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply to that person.

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

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

WV Legislature

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

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

WV Legislature

§36B-1-206. Same -- Amendments to governing instruments.

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

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

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

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

WV Legislature

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

This chapter does not apply to a planned community in which all units are restricted exclusively to nonresidential use unless the declaration provides that the chapter does apply to that planned community. This chapter applies to a planned community containing both units that are restricted exclusively to nonresidential use and other units that are not so restricted, only if the declaration so provides or the real estate comprising the units that may be used for residential purposes would be a planned community in the absence of the units that may not be used for residential purposes.

WV Legislature

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

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

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

WV Legislature

§36B-2-102. Unit boundaries.

Except as provided by the declaration:

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

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

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

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

WV Legislature

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

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

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

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

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

(e) A declaration or the bylaws may not change or alter a restrictive covenant in a deed to any real estate that is or that becomes subject to the provisions of this chapter. The restrictive covenants that are in effect at the time real estate is purchased that is or that becomes subject to the provisions of this chapter may not be changed or altered as to the purchaser of that real estate or as to any assign, heir or beneficiary of the original purchaser unless that original purchaser, assign, heir or beneficiary agrees in writing to a change of a restrictive covenant. This subdivision does not apply to the change of restrictive covenants of homeowner fees if the fees do not exceed the sum of $100 a year. The provisions of this section have no application to restrictive covenants which contain provisions authorizing amendment when those provisions for amendment are duly followed.

WV Legislature

§36B-2-104. Description of units.

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

WV Legislature

§36B-2-105. Contents of declaration.

(a) The declaration must contain:

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

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

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

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

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

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

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

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

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

(1) The recording data for the lease;

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

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

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

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

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal or a statement that they do not have those rights.

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

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

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

WV Legislature

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

(a) The declaration must allocate to each unit:

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

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

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

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

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

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

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

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

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

WV Legislature

§36B-2-108. Limited common elements.

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

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common interest community.

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

WV Legislature

§36B-2-109. Plats and plans.

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

(b) Each plat must show:

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

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

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

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

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

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

(7) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

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

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

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

WV Legislature

§36B-2-111. Alterations of units.

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

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

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

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

WV Legislature

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

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association.

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

WV Legislature

§36B-2-113. Subdivision of units.

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

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

WV Legislature

§36B-2-114. Monuments as boundaries.

The existing physical boundaries of a unit or the physical boundaries of a unit reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of his willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

WV Legislature

§36B-2-115. Use for sales purposes.

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

WV Legislature

§36B-2-116. Easement rights.

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

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

WV Legislature

§36B-2-117. Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under section 2-109(f) or 2-110, or by the association under section 1-107, 2-106(d), 2-108(c), 2- 112(a), or 2-113, or by certain unit owners under section 2- 108(b), 2-112(a), 2-113(b), or 2-118(b), and except as limited by subsection (d), the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.

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

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

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

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

WV Legislature

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

WV Legislature

(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.

WV Legislature

(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.

WV Legislature

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

The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to: (i) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding; or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to section 3-113.

WV Legislature

§36B-2-120. Master associations.

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

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

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

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

(e) Even if a master association is also an association described in section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

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

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

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

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

WV Legislature

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

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

(b) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either: (i) By stating the reallocations or the formulas upon which they are based; or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the preexisting common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common interest community.

WV Legislature

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

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

WV Legislature

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

A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under section 2-118 or their heirs, successors, or assigns. The association must be organized as a profit or nonprofit corporation, trust, partnership, or as an unincorporated association.

WV Legislature

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

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

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

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

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

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

(5) Make contracts and incur liabilities;

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

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

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section one hundred twelve of this article and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section one hundred twelve of this article;

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

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subsections (1) and (4), section one hundred two, article two of this chapter, and for services provided to unit owners;

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

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section one hundred nine, article four of this chapter, or statements of unpaid assessments;

WV Legislature

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

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

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

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

(17) Institute litigation or administrative proceedings in its own name against a unit owner for the collection of dues or assessments that are overdue or in arrears; and

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

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

WV Legislature

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

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

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

(c) Within thirty days after adoption of any proposed budget for the common interest community, the executive board shall provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than thirty days after mailing of the summary. Unless at that meeting a majority of all unit owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

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

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

WV Legislature

(f) Except as otherwise provided in section 2-120(e), not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three members, at least a majority of whom must be unit owners. The executive board shall elect the officers. The executive board members and officers shall take office upon election.

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

WV Legislature

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

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

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

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

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

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

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

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

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

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

(2) The period of declarant control (section 3-103(d)) terminates unless the judgment or

WV Legislature

instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

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

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

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

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

(ii) On his transferor, other than:

(A) Misrepresentation by any previous declarant;

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

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

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

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

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

WV Legislature

section 3-103(d).

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

WV Legislature

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

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

WV Legislature

§36B-3-106. Bylaws.

(a) The bylaws of the association must provide:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board of president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

(4) Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(6) A method for amending the bylaws.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

WV Legislature

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

(a) Except to the extent provided by the declaration, subsection (b), or section 3-113(h), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit power responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

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

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

WV Legislature

§36B-3-108. Meetings.

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

WV Legislature

§36B-3-109. Quorums.

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

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

WV Legislature

§36B-3-110. Voting; proxies.

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

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

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (i) The provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting these matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in section 3-108, of all meetings at which lessees are entitled to vote.

(d) No votes allocated to a unit owned by the association may be cast.

WV Legislature

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

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

WV Legislature

§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.

(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.

WV Legislature

(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.

WV Legislature

§36B-3-113. Insurance.

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

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

(2) Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

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

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

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

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

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

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

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

WV Legislature

(e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community is terminated.

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

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

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless (i) the common interest community is terminated, in which case section 2-118 applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) eighty percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees (section 2-105(a)(12(ii)), (A) the insurance proceeds attributable to units limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) In a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

WV Legislature

(i) The provisions of this section may be varied or waived in the case of a common interest community all of whose units are restricted to nonresidential use.

WV Legislature

§36B-3-114. Surplus funds.

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

WV Legislature

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

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

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

(c) To the extent required by the declaration:

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

(2) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited; and

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

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

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

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

WV Legislature

§36B-3-116. Lien for assessments.

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

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. (The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).)

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

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

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

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

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

(h) For the purpose of perfecting and preserving its lien, the association shall give notice to

WV Legislature

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

(1) A legally sufficient description of the unit;

(2) The name or names of the owners of the unit;

(3) The amount of unpaid assessments due together with the date when each fell due; and

(4) The date of recordation.

The clerk of the county commission in whose office the notice is recorded shall index the notice in the appropriate deed books and lien books in the name of the unit owners and of the association. The cost of recordation shall be assessed against any unit owner found to be delinquent in a subsequent proceeding to enforce the lien.

Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one (§38-12-1), article twelve, chapter thirty-eight of this code. This release shall be recorded, at the expense of the association, in the office of the clerk of the county commission wherein the notice of the lien was filed.

(i) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

WVLegislature

§36B-3-117. Other liens.

(a) In a condominium or planned community:

(1) Except as provided in paragraph (2), a judgment for money against the association (if recorded) is not a lien on the common elements, but is a lien in favor of the judgment lien holder against all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

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

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

(b) In a cooperative:

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

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

WV Legislature

§36B-3-118. Association records.

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

WV Legislature

§36B-3-119. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

WV Legislature

§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this chapter except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition to a dealer;

(6) A disposition that may be canceled at any time and for any reason by the purchaser without penalty; or

(7) A disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than $500, as adjusted pursuant to section 1-114 (Adjustment of dollar amounts) if:

(i) The declarant has a reasonable and good faith belief that the maximum stated assessment will be sufficient to pay the expenses of the planned community;

(ii) The declaration cannot be amended to increase the assessment during the period of declarant or declarant's family control without the consent of a majority of unit owners other than the declarant; and

(iii) The planned community is not subject to any development rights.

WV Legislature

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

(a) Except as provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of sections 4-103, 4-104, 4-105 and 4-106.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant section 3-104 or to a dealer who intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a).

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in subsection 4-108(a). The person who prepared all or a part of the public offering statement is liable under sections 4-108 and 4-117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement conforming to the requirements of sections 4- 103, 4-104, 4-105 and 4-106 as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements.

WV Legislature

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

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

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

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

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

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

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

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

(ii) A statement of any other reserves;

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

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

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

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

WV Legislature

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

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

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

(11) A statement that:

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

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community: Provided, That purchaser is required to show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this paragraph is instituted within three years from the date on which purchaser's right of action shall have accrued; and

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

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

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

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

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

WV Legislature

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 4-119 (Declarant's Obligation to Complete and Restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units; and

(20) In a cooperative, (i) whether the unit owners will be entitled, for federal, state and local income tax purposes, to a pass through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative; and (ii) a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than twelve units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17), (18) and (19) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

WV Legislature

§36B-4-104. Same -- Common interest communities subject to development rights.

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

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

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

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

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

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

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

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

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

(9) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

WV Legislature

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

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

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

WV Legislature

§36B-4-105. Same -- Time shares.

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

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

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

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

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

WV Legislature

§36B-4-106. Same -- Common interest communities containing conversion buildings.

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

(1) A statement by the declarant, based on a report prepared by an independent (registered) architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard; and

(3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

WV Legislature

§36B-4-107. Same -- Common interest community securities.

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

WV Legislature

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

(a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), he may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sale price of the unit, plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community: Provided, That purchaser must show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this subsection is instituted within three years from the date on which purchaser's right of action shall have accrued.

WV Legislature

§36B-4-109. Resales of units.

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under section 4-101(b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than any plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;

(2) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) A statement of any other fees payable by unit owners;

(4) A statement of any capital expenditures anticipated by the association for the current and two next succeeding fiscal years;

(5) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves designated by the association for any specified projects;

(6) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(7) The current operating budget of the association;

(8) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(9) A statement describing any insurance coverage provided for the benefit of unit owners;

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

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

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

(13) A statement of any restrictions in the declaration affecting the amount that may be received by a unit owner upon sale, condemnation, casualty loss to the unit or the common

WV Legislature

interest community, or termination of the common interest community; and

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

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

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

WV Legislature

§36B-4-110. Escrow of deposits.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 4-102(c) must be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until: (i) Delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser.

WV Legislature

§36B-4-111. Release of liens.

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

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

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

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

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

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

WV Legislature

§36B-4-112. Conversion buildings.

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.

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

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

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

WV Legislature

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

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

(1) Any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the common interest community that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

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

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

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

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

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

WV Legislature

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

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

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

(1) Free from defective materials; and

(2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

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

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

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

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

WV Legislature

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

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

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

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

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

WV Legislature

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

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

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

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

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

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

WV Legislature

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

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

WV Legislature

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

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

WV Legislature

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

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

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

WV Legislature

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

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

WV Legislature