

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963



ENROLLED

HOUSE BILL No. 147

(By Mr. White)



PASSED March 7, 1963

In Effect ninety days from Passage



Filed in Office of the Secretary of State
of West Virginia 3-15-63

JOE F. BURDETT
SECRETARY OF STATE

147

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(By MR. WHITE)

[Passed March 7, 1963; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter thirty-six-a, relating to the ownership of real property, the division thereof into units, the submission of real property to the provisions of this chapter and the withdrawal of such property from the provisions of this chapter; providing for the improvement, management, operation, assessment and taxation of such property; establishing certain procedures in connection therewith; providing for the conveyancing, leasing and mortgaging thereof; establishing a procedure for the assessment and collection of certain expenses with respect thereto; setting forth certain lien rights with respect thereto; and providing for the recording of certain information.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new chapter, designated chapter thirty-six-a, to read as follows:

CHAPTER 36-A. CONDOMINIUMS AND UNIT PROPERTY.

Article 1. Preliminary Provisions.

Section 1. Short Title.—This chapter shall be known
2 and may be cited as the “Unit Property Act”.

Sec. 2. Definitions.—The following words or phrases
2 as used in this chapter shall have the meanings ascribed
3 to them in this section, unless the context of this chapter
4 clearly indicates otherwise:

5 (a) “Building” means any multi-unit building or
6 buildings or complex thereof, whether in vertical or hori-
7 zontal arrangement, as well as other improvements com-
8 prising a part of the property and used or intended for
9 use for residential, commercial or industrial purposes or
10 for any other lawful purpose or for any combination of
11 such uses.

12 (b) “Code of regulations” means such governing regu-
13 lations as are adopted pursuant to this chapter for the

14 regulation and management of the property, including
15 such amendments thereof as may be adopted from time
16 to time.

17 (c) "Common elements" means and includes:

18 (i) The land on which the building is located and por-
19 tions of the building which are not included in a unit;

20 (ii) The foundations, structural parts, supports, main
21 walls, roofs, basements, halls, corridors, lobbies, stair-
22 ways and entrances and exits of the building;

23 (iii) The yards, parking areas and driveways;

24 (iv) Portions of the land and building used exclusively
25 for the management, operation or maintenance of the com-
26 mon elements;

27 (v) Installations of all central services and utilities;

28 (vi) All apparatus and installations existing for com-
29 mon use;

30 (vii) All other elements of the building necessary or
31 convenient to its existence, management, operation, main-
32 tenance and safety or normally in common use; and

33 (viii) Such facilities as are designated in the declara-
34 tion as common elements.

35 (d) "Common expenses" means and includes:

36 (i) Expenses of administration, maintenance, repair
37 and replacement of the common elements:

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

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

42 (e) "Council" means a board of natural individuals of
43 the number stated in the code of regulations who are resi-
44 dents of this state, who need not be unit owners and who
45 shall manage the business, operation and affairs of the
46 property on behalf of the unit owners and in compliance
47 with and subject to the provisions of this chapter.

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

52 (g) "Declaration plan" means a survey of the prop-
53 erty prepared in accordance with section two, article four,
54 of this chapter.

55 (h) "Majority" or "majority of the unit owners" means

56 the owners of more than fifty per cent in the aggregate in
57 interest of the undivided ownership of the common ele-
58 ments as specified in the declaration.

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

61 (j) "Property" means and includes the land, the build-
62 ing, all improvements thereon, all owned in fee simple,
63 and all easements, rights and appurtenances belonging
64 thereto, which have been or are intended to be sub-
65 mitted to the provisions of this chapter.

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

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

72 (m) "Revocation" means an instrument signed by all
73 of the unit owners and by all holders of liens against the
74 units by which the property is removed from the pro-
75 visions of this chapter.

76 (n) "Unit" means a part of the property designed or

77 intended for any type of independent use, which has a
78 direct exit to a public street or way, or to a common ele-
79 ment or common elements leading to a public street or
80 way, or to an easement or right of way leading to a pub-
81 lic street or way, and includes the proportionate undivided
82 interest in the common elements which is assigned thereto
83 in the declaration, or any amendments thereof.

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

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

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

Sec. 3. Application of Chapter.—The provisions of this
2 chapter shall be applicable only to real property, the
3 sole owner or all the owners of which submit the same
4 to the provisions hereof by a duly recorded declaration.
Article 2. General Provisions.

Section 1. Status of Units; Ownership Thereof.—Each
2 unit, together with its proportionate undivided interest
3 in the common elements, is for all purposes real property

4 and the ownership of each unit, together with its pro-
5 portionate undivided interest in the common elements,
6 is for all purposes the ownership of real property.

Sec. 2. Common Elements.—The percentage of un-
2 divided interest in the common elements assigned to each
3 unit shall be set forth in the declaration and such per-
4 centage shall not be altered except by recording an
5 amended declaration duly executed by all of the unit
6 owners affected thereby. The undivided interest in the
7 common elements may not be separated from the unit
8 to which such interest pertains and shall be deemed
9 to be conveyed, leased or encumbered with the unit even
10 though such interest is not expressly referred to or de-
11 scribed in the deed, lease, mortgage or other instrument.
12 The common elements shall remain undivided and no
13 owner may exempt himself from liability with respect to
14 the common expenses by waiver of the enjoyment of the
15 right to use any of the common elements or by the aban-
16 donment of his unit or otherwise, and no action for par-
17 tition or division of any part of the common elements
18 shall be permitted, except as provided in section two,

19 article eight of this chapter. Each unit owner or lessee
20 thereof may use the common elements in accordance with
21 the purpose for which they are intended. The mainte-
22 nance and repair of the common elements and the making
23 of any additions or improvements thereto shall be carried
24 out only as provided in the code of regulations.

Sec. 3. Invalidity of Contrary Agreements.— Any
2 agreement contrary to the provisions of this chapter shall
3 be void and of no effect.

Article 3. Administrative Provisions.

Section 1. Code of Regulations.—The administration
2 of every property shall be governed by a code of regula-
3 tions, a true and correct copy of which, and all duly
4 adopted amendments of which, shall be duly recorded.

Sec. 2. Adoption, Amendment, Repeal of Code of
2 **Regulations.**—The council has authority to make, alter,
3 amend and repeal the code of regulations, subject to the
4 right of a majority of the unit owners to change any such
5 actions.

Sec. 3. Contents of the Code of Regulations.—The code

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

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

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

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

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

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

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

20 (g) Maintenance, repair and replacement of the com-
21 mon elements and payment of the cost thereof;

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

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

**Sec. 4. Compliance with Code of Regulations, Adminis-
2 trative Provisions, Covenants, Conditions and Restrictions.**

3 —Each unit owner shall comply with the code of regu-
4 lations and with such rules governing the details of the
5 use and operation of the property and the use of the
6 common elements as may be in effect from time to time,
7 and with the covenants, conditions and restrictions set
8 forth in the declaration or in the deed to his unit or in
9 the declaration plan.

**Sec. 5. Non-compliance with Code of Regulations,
2 Administrative Provisions, Covenants, Conditions and
3 Restrictions.—**Failure to comply with the code of regu-
4 lations and with such rules governing the details of the
5 use and operation of the property and the use of the com-
6 mon elements as may be in effect from time to time and
7 with the covenants, conditions and restrictions set forth in

3 the declaration or in deeds of units or in the declaration
9 plan shall be grounds for an action for the recovery of
10 damages or for injunctive relief, or both, maintainable
11 by any member of the council on behalf of the council or
12 the unit owners of, in a proper case, by an aggrieved unit
13 owner or by any person who holds a mortgage lien upon
14 a unit and is aggrieved by any such non-compliance.

Sec. 6. Duties of Council.—The duties of the council
2 shall include the following:

- 3 (a) The maintenance, repair and replacement of the
4 common elements;
- 5 (b) The assessment and collection of funds from unit
6 owners for common expenses and the payment of such
7 common expenses;
- 8 (c) The adoption and amendment of the code of reg-
9 ulations and the promulgation, distribution and enforce-
10 ment of rules governing the details of the use and opera-
11 tion of the property and the use of the common elements,
12 subject to the right of a majority of the unit owners to
13 change any such actions; and
- 14 (d) Any other duties which may be set forth in the
15 declaration or code of regulations.

Sec. 7. Powers of Council.—Subject to the limitations

2 and restrictions contained in this chapter, the council shall
3 on behalf of the unit owners:

4 (a) Have power to manage the business, operation
5 and affairs of the property and for such purposes to en-
6 gage employees and appoint agents and to define their
7 duties and fix their compensation, enter into contracts
8 and other written instruments or documents and to au-
9 thorize the execution thereof by officers elected by the
10 council; and

11 (b) Have such incidental powers as may be appro-
12 priate to the performance of their duties.

Sec. 8. Work on Common Elements.—The mainte-

2 nance, repair and replacement of the common elements
3 and the making of improvements or additions thereto
4 shall be carried on only as provided in the code of regu-
5 lations.

Sec. 9. Certain Work Prohibited.—No unit owner shall

2 do any work on his unit or the common elements which
3 would jeopardize the soundness or safety of the property
4 or impair any easement or hereditament without the

5 unanimous consent of the unit owners affected thereby.

Sec. 10. Easements for Work.—The council shall have
2 an easement to enter any unit to maintain, repair or re-
3 place the common elements, as well as to make repairs
4 to units if such repairs are reasonably necessary for pub-
5 lic safety or to prevent damage to other units or to the
6 common elements.

Sec. 11. Common Profits and Expenses.—The common
2 profits of the property shall be distributed among, and
3 the common expenses shall be charged to, the unit own-
4 ers according to the percentage of the undivided interest
5 of each in the common elements as set forth in the
6 declaration and any amendments thereto.

Sec. 12. Voting by Unit Owners.—At any meeting of
2 unit owners, each unit owner shall be entitled to the
3 same number of votes as the percentage of ownership
4 in the common elements assigned to his unit in the
5 declaration and any amendments thereto.

Sec. 13. Books of Receipts and Expenditures, Availa-
2 **bility for Examination.**—The treasurer shall keep de-
3 tailed records of all receipts and expenditures, including

4 expenditures affecting the common elements, specifying
5 and itemizing the maintenance, repair and replacement
6 expenses of the common elements and any other expenses
7 incurred. Such records shall be available for examina-
8 tion by the unit owners during regular business hours.
9 In accordance with the actions of the council assessing
10 common expenses against the units and unit owners, he
11 shall keep an accurate record of such assessments and
12 of the payment thereof by each unit owner.

**Article 5. The Declaration, Reservations of Charges There-
under, Conveyances, Mortgages and Leases.**

Section 1. Contents of Declaration.—The declaration
2 shall contain the following:
3 (a) A reference to this chapter and an expression of
4 the intention to submit the property to the provisions
5 of this chapter;
6 (b) A description of the land and building;
7 (c) The name by which the property will be known;
8 (d) A statement that the property is to consist of
9 units and common elements as shown in a declaration
10 plan;

11 (e) A description of the common elements and the pro-
12 portionate undivided interest, expressed as a percentage,
13 assigned to each unit therein, which percentages shall
14 aggregate one hundred per cent;

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

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

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

22 (i) Any further details in connection with the prop-
23 erty which the party or parties executing the declara-
24 tion may deem appropriate.

Sec. 2. Declaration Plan.—The declaration plan shall
2 bear the verified statement of a registered architect or
3 licensed professional engineer certifying that the declara-
4 tion plan fully and accurately (i) shows the property,
5 the location of the building thereon, the building and
6 the layout of the floors of the building, including the
7 units and the common elements and (ii) sets forth the

8 name by which the property will be known, and the
9 unit designation for each unit therein.

Sec. 3. Contents of Deeds of Units.—Deeds of units

2 shall include the following:

3 (a) The name by which the property is identified in
4 the declaration plan and the name of the political sub-
5 division and the ward, if any, and the name of the county
6 in which the building is situate, together with a refer-
7 ence to the declaration and the declaration plan, in-
8 cluding reference to the place where both instruments
9 and any amendments thereof are recorded;

10 (b) The unit designation of the unit in the declara-
11 tion plan and any other data necessary for its proper
12 identification;

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

15 (d) The proportionate undivided interest, expressed
16 as a percentage, in the common elements which is
17 assigned to the unit in the declaration and any amend-
18 ments thereof;

19 (e) In addition to the foregoing, the first deed con-

20 veying each unit shall contain the following specific
21 provision:

22 "The grantee, for and on behalf of the grantee and the
23 grantee's heirs, personal representatives, successors and
24 assigns, by the acceptance of this deed covenants and
25 agrees to pay such charges for the maintenance of, re-
26 pairs to, replacement of and expenses in connection with
27 the common elements as may be assessed from time to
28 time by the council in accordance with the unit prop-
29 erty act of West Virginia, and further covenants and
30 agrees that the unit conveyed by this deed shall be sub-
31 ject to a charge for all amounts so assessed and that,
32 except insofar as section five, article seven of said unit
33 property act may relieve a subsequent unit owner of
34 liability for prior unpaid assessments, this covenant shall
35 run with and bind the land or unit hereby conveyed and
36 all subsequent owners thereof"; and

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

Sec. 4. Mortgages and Other Liens of Record Affecting

2 Property at Time of the First Conveyance of Each Unit.—

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

Sec. 5. Sales, Conveyances or Leases of or Liens upon
2 **Separate Units.**—Units may be sold, conveyed, mortgaged,
3 leased or otherwise dealt with in the same manner as
4 like dealings are conducted with respect to real property
5 and interests therein. Every written instrument dealing
6 with a unit shall specifically set forth the name by which
7 the property is identified and the unit designation iden-
8 tifying the unit involved.

Article 6. Recording.

Section 1. Instruments Recordable.—All instruments
2 relating to the property or any unit, including the in-
3 struments provided for in this chapter, shall be entitled
4 to be recorded, provided that they are acknowledged or
5 proved in the manner provided by law.

Sec. 2. Recording a Prerequisite to Effectiveness of

2 **Certain Instruments.**—No declaration, declaration plan
3 or code of regulations, or any amendments thereto, shall
4 be effective until the same have been duly recorded.

Sec. 3. Place of Recording.—The clerk shall record

2 declarations, deeds of units, codes of regulations, and
3 revocations in the same records as are maintained for
4 the recording of deeds of real property. Mortgages re-
5 lating to units shall be recorded in the same records as
6 are maintained by the clerk for the recording of real
7 estate mortgages. Declaration plans, and any and all
8 amendments thereto, shall be recorded in the same records
9 as are maintained for the recording of subdivision plans.

Sec. 4. Indexing by Recording Officer.—The clerk

2 shall index each declaration against the maker thereof
3 as the grantor and the name by which the property is
4 identified therein as the grantee. The clerk shall in-
5 dex each declaration plan and code of regulations and
6 any revocation in the name by which the property is
7 identified therein in both the grantor index and the
8 grantee index. The clerk shall index each unit deed

9 and mortgage and lease covering a unit in the same
10 manner as like instruments are indexed.

Sec. 5. Recording Fees.—The clerk shall be entitled
2 to charge the same fees for recording instruments which
3 are recordable under this chapter as the clerk is en-
4 titled to charge for like services with respect to the re-
5 cording of various similar instruments under the general
6 law.

**Article 6. Removal of Property from the Provisions of This
Chapter.**

Section 1. Removal.—Property may be removed from
2 the provisions of this chapter by a revocation expressing
3 the intention to so remove property previously made sub-
4 ject to the provisions of this chapter. No such revocation
5 shall be effective unless the same is executed by all of the
6 unit owners and by the holders of all mortgages, judg-
7 ments or other liens affecting the units and is duly re-
8 corded.

Sec. 2. Effect of Removal.—When property subject
2 to the provisions of this chapter has been removed as pro-
3 vided in section one of this article, the former unit

4 owners shall, at the time such removal becomes effective,
5 become tenants in common of the property. The un-
6 divided interest in the property owned in common which
7 shall appertain to each unit owner at the time of removal
8 shall be the percentage of undivided interest previously
9 owned by such person in the common elements.

Sec. 3. Resubmission.—The removal of property from
2 the provisions of this chapter shall not preclude such
3 property from being resubmitted to the provisions of the
4 chapter in the manner herein provided.

Article 7. Assessments, Taxation and Liens.

Section 1. Assessments and Taxes.—Each unit and its
2 proportionate undivided interest in the common elements
3 as determined by the declaration and any amendments
4 thereof shall be assessed and taxed for all purposes as a
5 separate parcel of real estate entirely independent of the
6 building or property of which the unit is a part. Neither
7 the building, the property nor any of the common elements
8 shall be assessed or taxed separately after the declaration
9 and declaration plan are recorded, nor shall the same
10 be subject to assessment or taxation, except as the units

11 and their proportionate undivided interests in the common
12 elements are assessed and taxed pursuant to the pro-
13 visions of this section.

Sec. 2. Assessment of Charges.—All sums assessed by
2 resolutions duly adopted by the council against any unit
3 for the share of common expenses chargeable to that unit
4 shall constitute the personal liability of the owner of the
5 unit so assessed and shall, until fully paid, together with
6 interest thereon at the rate of six percent per annum from
7 the thirtieth day following the adoption of such resolu-
8 tions, constitute a charge against such unit which shall be
9 enforceable as provided in section three of this article.

Sec. 3. Method of Enforcing Charges.—Any charge
2 assessed against a unit may be enforced by a civil action
3 by the council acting on behalf of the unit owners, pro-
4 vided that each suit when filed shall refer to this chapter
5 and to the unit against which the assessment is made and
6 the owner thereof and shall be indexed by the clerk of the
7 county court of the county in which the unit is situate as
8 lis pendens. Any judgment against a unit and its owner
9 shall be enforceable in the same manner as is otherwise
10 provided by law.

Sec. 4. Mechanics' Liens Against Units.—Any mechanics' liens arising as a result of repairs to or improvements of a unit by a unit owner shall be liens only against such unit. Any mechanics' liens arising as a result of repairs to or improvements of the common elements, if authorized in writing pursuant to a duly adopted resolution of the council, shall be paid by the council as a common expense and until so paid shall be liens against each unit in a percentage equal to the proportionate share of the common elements relating to such unit.

Sec. 5. Unpaid Assessments at Time of Voluntary Sale of a Unit.—Upon the voluntary sale or conveyance of a unit, the purchaser shall be jointly and severally liable with the seller for all unpaid assessments for common expenses which are a charge against the unit as of the date of the sale or conveyance, but such joint and several liability shall be without prejudice to the purchaser's right to recover from the seller the amount of any such unpaid assessments which the purchaser may pay, and until any such assessments are paid, they shall continue to be a charge against the unit which may be enforced in the

12 manner set forth in section three of this article: *Provided,*
13 *however,* That any person who shall have entered into a
14 written agreement to purchase a unit shall be entitled
15 to obtain a written statement from the treasurer setting
16 forth the amount of unpaid assessments charged against
17 the unit and its owners, and if such statement does not
18 reveal the full amount of the unpaid assessments as of
19 the date it is rendered, neither the purchaser nor the unit
20 shall be liable for the payment of an amount in excess of
21 the unpaid assessments shown thereon. Any such excess
22 which cannot be promptly collected from the former unit
23 owner may be reassessed by the council as a common ex-
24 pense to be collected from all of the unit owners, including
25 the purchaser, his successors and assigns.

Article 8. Miscellaneous.

Section 1. Insurance.—The council shall, if required
2 by the declaration, the code of regulations or by a major-
3 ity of the unit owners, insure the building against loss or
4 damage by fire and such other hazards as shall be re-
5 quired or requested, without prejudice to the right of each
6 unit owner to insure his own unit for his own benefit.

7 The premiums for such insurance on the building shall
8 be deemed common expenses.

Sec. 2. **Repair or Reconstruction.**—Except as herein-
2 after provided, damage to or destruction of the building
3 or of one or more of several buildings which comprise
4 the property shall be promptly repaired and restored by
5 the council using the proceeds of insurance held by the
6 council, if any, for that purpose, and the unit owners
7 directly affected thereby shall be liable for assessment
8 for any deficiency in proportion to their respective un-
9 divided ownership of the common elements: *Provided,*
10 *however,* That if there is substantially total destruction
11 of the building or of one or more of several buildings
12 which comprise the property, or if seventy-five per cent
13 of the unit owners directly affected thereby duly resolve
14 not to proceed with repair or restoration, then, and in
15 that event, the salvage value of the property or of the
16 substantially destroyed building or buildings shall be
17 subject to partition at the suit of any unit owner directly
18 affected thereby, in which event the net proceeds of sale,
19 together with the net proceeds of insurance policies held

20 by the council, if any, shall be considered as one fund
21 and shall be divided among all the unit owners directly
22 affected thereby in proportion to their respective un-
23 divided ownership of the common elements, after dis-
24 charging, out of the respective shares of unit owners
25 directly affected thereby, to the extent sufficient for the
26 purpose, all liens against the units of such unit owners.

Sec. 3. Severability.—If any provision of this chapter,
2 or any section, sentence, clause, phrase or word, or the
3 application thereof in any circumstance is held invalid,
4 the validity of the remainder of the chapter and of the
5 application of any such provision, section, sentence,
6 clause, phrase or word in any other circumstances, shall
7 not be affected thereby.

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

O. Ray Parker
Chairman Senate Committee

Ethel L. Crandall
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard Thayer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard Robinson
President of the Senate

Julius W. Singleton Jr.
Speaker House of Delegates

The within approved this the 14th
day of March, 1963.

W. W. Bann
Governor

