

APPROVED AND SIGNED BY THE GOVERNOR

Date 2-15-80

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

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ENROLLED

Committee Substitute for
HOUSE BILL No. 788

(By Mr. Christian + Mr. Greer)

— ● —

Passed February 6, 1980

In Effect July 1, 1980 ~~Passage~~



Mo: 788

ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 788

(By MR. CHRISTIAN and MR. GREER)

[Originating in the House Committee on the Judiciary.]

[Passed February 6, 1980; in effect July 1, 1980.]

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-b, relating to the enactment of the uniform condominium act; short title; applicability; definitions; variation by agreement; separate titles and taxation; applicability of local ordinances, regulations and building codes; eminent domain; supplemental general principles of law applicable; construction against implicit repeal; uniformity of application and construction; severability; unconscionable agreement or term of contract; obligation of good faith; remedies to be liberally administered; creation of condominium; unit boundaries; construction and validity of declaration and bylaws; description of units; contents of declaration, all condominiums; contents of declaration, flexible condominiums; leasehold condominiums; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; conversion and expansion of flexible condominiums; withdrawal of withdrawable real estate; alterations of units; re-

location of boundaries between adjoining units; subdivision or conversion of units; interpretation of deeds; use for sales purposes; easement to facilitate completion, conversion and expansion; amendment of declaration; termination of condominium; rights of secured lenders; organization of unit owners' association; powers of unit owners' association; executive board members and officers; transfer of special declarant rights; termination of contracts and leases of declarant; bylaws; upkeep of the condominium; meetings; quorums; voting, proxies; tort and contract liability; insurance; surplus funds; assessments for common expenses; lien for assessments; association records; association as trustee; applicability, waiver; public offering statement, general provisions; same, time-share estates; same, conversion condominiums; same, condominium securities; purchaser's right to cancel; resales of units; escrow of deposits; release of liens; conversion condominiums; warranty against structural defects; statute of limitations for warranties; effect of violation on rights of action, attorney's fees; labeling of promotional material; declarant's obligation to complete and restore.

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-b, to read as follows:

CHAPTER 36B. UNIFORM CONDOMINIUM ACT.

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-101. Short title.

1 This chapter shall be known and may be cited as the
2 "Uniform Condominium Act."

§36B-1-102. Applicability.

1 (a) This chapter applies to all condominiums created
2 within this state after the effective date of this chapter.
3 Sections 1-105 (separate titles and taxation), 1-106 (ap-
4 plicability of local ordinances, regulations, and building codes),
5 1-107 (eminent domain), 2-103 (construction and validity of
6 declaration and bylaws), 2-104 (description of units),
7 3-102(a) (1) through (6) and (11) through (16) (powers

8 of unit owners' association), 3-111 (tort and contract liability),
9 3-115 (lien for assessments), 3-116 (association records), 4-
10 107 (resales of units), and 4-113 (effect of violation on rights
11 of action; attorney's fees), and section 1-103 (definitions)
12 to the extent necessary in construing any of those sections,
13 apply to all condominiums created in this state before the
14 effective date of this chapter; but those sections apply only
15 with respect to events and circumstances occurring after the
16 effective date of this chapter and do not invalidate existing
17 provisions of the declaration, bylaws, or plats or plans of those
18 condominiums.

19 (b) The provisions of chapter one hundred fifty-three,
20 acts of the legislature, one thousand nine hundred sixty-
21 three, do not apply to condominiums created after the effective
22 date of this chapter and do not invalidate any amendment to
23 the declaration, rules, bylaws, plats and plans and code of
24 regulations of any condominium created before the effective
25 date of this chapter if the amendment would be permitted
26 by this chapter. The amendment must be adopted in con-
27 formity with the procedures and requirements specified by
28 those instruments and by chapter one hundred fifty-three,
29 acts of the Legislature, one thousand nine hundred sixty-
30 three. If the amendment grants to any person any rights,
31 powers, or privileges permitted by this chapter, all correla-
32 tive obligations, liabilities, and restrictions in this chapter
33 also apply to that person.

34 (c) This chapter does not apply to condominiums or units
35 located outside this state, but the public offering statement
36 provisions (sections 4-102 through 4-105) apply to all dis-
37 positions thereof in this state unless exempt under section
38 4-101(b) (5).

39 (d) The provisions of this chapter shall apply to all con-
40 dominiums to the extent such provisions conflict or are
41 inconsistent with the provisions of chapter one hundred fifty-
42 three, acts of the legislature, one thousand nine hundred sixty-
43 three: *Provided*, That the provisions of this chapter shall not
44 modify, limit, or nullify any rights, duties, or obligations created
45 or existing under any declaration, by laws, or plats or plans, of

46 condominiums created in this state before the effective date
47 of this chapter.

§36B-1-103. Definitions.

1 In the declaration and bylaws, unless specifically provided
2 otherwise or the context otherwise requires, and in this chapter:

3 (1) "Additional real estate" means real estate that may
4 be added to a flexible condominium.

5 (2) "Affiliate of a declarant" means any person who con-
6 trols, is controlled by, or is under common control with a
7 declarant. A person "controls" a declarant if the person (i) is
8 a general partner, officer, director, or employee of the declar-
9 ant, (ii) directly or indirectly or acting in concert with one
10 or more other persons, or through one or more subsidiaries,
11 owns, controls, holds with power to vote, or holds proxies
12 representing, more than twenty percent of the voting interests
13 of the declarant, (iii) controls in any manner the election of a
14 majority of the directors of the declarant, or (iv) has contri-
15 buted more than twenty percent of the capital of the declar-
16 ant. A person "is controlled by" a declarant if the declarant
17 (i) is a general partner, officer, director, or employee of the
18 person, (ii) directly or indirectly or acting in concert with
19 one or more other persons, or through one or more sub-
20 sidiaries, owns, controls, holds with power to vote, or holds
21 proxies representing, more than twenty percent of the voting
22 interests of the person, (iii) controls in any manner the
23 election of a majority of the directors of the person, or
24 (iv) has contributed more than twenty percent of the capital
25 of the person.

26 (3) "Association" or "unit owners' association" means the
27 unit owners' association organized under section 3-101.

28 (4) "Common elements" means all portions of a condo-
29 minium other than the units.

30 (5) "Common expenses" means expenditures made or
31 liabilities incurred by or on behalf of the association, together
32 with any allocations to reserves.

33 (6) "Common expense liability" means the liability for

34 common expenses allocated to each unit pursuant to section
35 2-108.

36 (7) "Condominium" means real estate, portions of which
37 are designated for separate ownership and the remainder of
38 which is designated for common ownership solely by the
39 owners of those portions. Real estate is not a condominium
40 unless the undivided interests in the common elements are
41 vested in the unit owners.

42 (8) "Conversion condominium" means a condominium con-
43 taining any building that at any time before recording of
44 the declaration was occupied wholly or partially by persons
45 other than purchasers and persons who occupy with the
46 consent of purchasers.

47 (9) "Convertible real estate" means a portion of a flexi-
48 ble condominium not within a building containing a unit,
49 within which additional units or limited common elements,
50 or both, may be created.

51 (10) "Declarant" means:

52 (i) if the condominium has been created, (A) any person
53 who has executed a declaration, or an amendment to a
54 declaration to add additional real estate, other than persons
55 holding interests in the real estate solely as security for an
56 obligation, persons whose interest in the real estate will not
57 be conveyed to unit owners, or, in the case of a leasehold
58 condominium, a lessor who possesses no special declarant
59 rights and who is not an affiliate of a declarant who possesses
60 special declarant rights, or (B) any person who succeeds under
61 section 3-104 to any special declarant rights, or

62 (ii) if the condominium has not yet been created, any
63 person who offers to dispose of or disposes of his interest in
64 a unit not previously disposed of.

65 (11) "Dispose" or "disposition" means a voluntary trans-
66 fer of any legal or equitable interest in a unit, other than
67 as security for an obligation.

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

71 (13) "Flexible condominium means a condominium con-
72 taining withdrawable or convertible real estate, a condo-
73 minium to which additional real estate may be added, or a
74 combination thereof.

75 (14) "Identifying number" means a symbol that identifies
76 only one unit in a condominium.

77 (15) "Leasehold condominium" means a condominium in
78 which all or a portion of the real estate is subject to a lease
79 the expiration or termination of which will terminate the
80 condominium or reduce its size.

81 (16) "Limited common element" means a portion of the
82 common elements allocated by the declaration or by operation
83 of section 2-102(2) or (4) for the exclusive use of one or
84 more but fewer than all of the units.

85 (17) "Mortgage" means either a mortgage or a deed of
86 trust.

87 (18) "Offering" means any advertisement, inducement,
88 solicitation, or attempt to encourage any person to acquire
89 any interest in a unit, other than as security for an obligation.
90 An advertisement in a newspaper or other periodical of
91 general circulation, or in any broadcast medium to the gen-
92 eral public, of a condominium not located in this state, is
93 not an offering if the advertisement states that an offering
94 may be made only in compliance with the law of the jurisdic-
95 tion in which the condominium is located.

96 (19) "Person" means a natural person, corporation,
97 partnership, association, trust, other entity, or any combina-
98 tion thereof.

99 (20) "Purchaser" means any person, other than a de-
100 clarant, who by means of a voluntary transfer acquires a
101 legal or equitable interest in a unit, other than (i) a lease-
102 hold interest (including renewal options) of less than five
103 years, or (ii) as security for an obligation.

104 (21) "Real estate" means any leasehold or other estate
105 or interest in, over, or under land, including structures,
106 fixtures, and other improvements and interests which by

107 custom, usage, or law pass with a conveyance of land though
 108 not described in the contract of sale or instrument of con-
 109 veyance. "Real estate" includes parcels with or without upper
 110 or lower boundaries, and spaces that may be filled with air
 111 or water.

112 (22) "Special declarant rights" means rights reserved for
 113 the benefit of a declarant to complete improvements indi-
 114 cated on plats and plans filed with the declaration (section
 115 2-110); to convert convertible real estate in a flexible con-
 116 dominium (section 2-111); to add additional real estate to
 117 a flexible condominium (section 2-111); to withdraw with-
 118 drawable real estate from a flexible condominium (section
 119 2-112); to convert a unit into two or more units, common
 120 elements, or into two or more units and common elements
 121 (section 2-115); to maintain sales offices, management offices,
 122 signs advertising the condominium, and models (section 2-
 123 117); to use easements through the common elements for the
 124 purpose of making improvements within the condominium
 125 or within any convertible or additional real estate (section 2-
 126 118); or to appoint or remove any officer of the association
 127 or any executive board member during any period of de-
 128 clarant control (section 3-103(c)).

129 (23) "Unit" means a portion of the condominium desig-
 130 nated for separate ownership, the boundaries of which are
 131 described pursuant to section 2-105 (4).

132 (24) "Unit owner" means a declarant who owns a unit, a
 133 person to whom ownership of a unit has been conveyed, or a
 134 lessee of a unit in a leasehold condominium whose lease
 135 expires simultaneously with any lease the expiration or termi-
 136 nation of which will remove the unit from the condominium,
 137 but does not include a person having an interest in a unit
 138 solely as security for an obligation.

139 (25) "Withdrawable real estate" means real estate that
 140 may be withdrawn from a flexible condominium.

§36B-1-104. Variation by agreement.

1 Except as expressly provided in this chapter, provisions
 2 of this chapter may not be varied by agreement, and rights

3 conferred by this chapter may not be waived. A declarant
4 may not act under a power of attorney, or use any other
5 device, to evade the limitations or prohibitions of this chapter
6 or the declaration.

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

1 (a) Except as provided in subsection (b), each unit to-
2 gether with its common element interest constitutes for all
3 purposes a separate parcel of real estate.

4 (b) If there is a unit owner other than a declarant,
5 each unit together with its common element interest, but
6 excluding its common element interest in convertible or
7 withdrawable real estate, shall be separately taxed and assessed,
8 and each portion of any convertible or withdrawable real
9 estate shall be separately taxed and assessed; otherwise, the
10 real estate comprising the condominium may be taxed and
11 assessed in any manner provided by law.

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

1 A zoning, subdivision, building code, or other real estate
2 use law, ordinance, or regulation may not prohibit the
3 condominium form of ownership or impose any requirement
4 upon a condominium which it would not impose upon a
5 physically identical development under a different form of
6 ownership. Otherwise, no provision of this chapter invalidates
7 or modifies any provision of any zoning, subdivision, building
8 code, or other real estate use law, ordinance, or regulation.

§36B-1-107. Eminent domain.

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1 (a) If a unit is acquired by eminent domain, or if part
2 of a unit is acquired by eminent domain leaving the unit
3 owner with a remnant which may not practically or lawfully
4 be used for any purpose permitted by the declaration, the
5 award must compensate the unit owner for his unit and its
6 common element interest, whether or not any common element
7 interest is acquired. Upon acquisition, unless the decree
8 otherwise provides, that unit's entire common element interest,
9 votes in the association, and common expense liability are
10 automatically reallocated to the remaining units is pro-

11 portion to the respective interests, votes, and liabilities of
12 those units before the taking, and the association shall
13 promptly prepare, execute, and record an amendment to
14 the declaration reflecting the reallocations. Any remnant of
15 a unit remaining after part of a unit is taken under this
16 subsection is thereafter a common element.

17 (b) Except as provided in subsection (a), if part of a
18 unit is acquired by eminent domain, the award must
19 compensate the unit owner for the reduction in value of the
20 unit and its common element interest. Upon acquisition, (1)
21 that unit's common element interest, votes in the associa-
22 tion, and common expense liability are reduced in propor-
23 tion to the reduction in the size of the unit, or on any
24 other basis specified in the declaration, and (2) the portion
25 of common element interest, votes, and common expense
26 liability divested from the partially acquired unit are auto-
27 matically reallocated to that unit and the remaining units
28 in proportion to the respective interests, votes, and liabilities
29 of those units before the taking, with the partially acquired
30 unit participating in the reallocation on the basis of its
31 reduced interests, votes, and liabilities.

32 (c) If part of the common elements is acquired by emi-
33 nent domain, the award must be paid to the association.
34 The association shall divide any portion of the award not
35 used for any restoration or repair of the remaining common
36 elements among the unit owners in proportion to their re-
37 spective common element interests before the taking, but
38 the portion of the award attributable to the acquisition of
39 a limited common element must be equally divided among the
40 owners of the units to which that limited common element was
41 allocated at the time of acquisition, or in any manner the
42 declaration provides.

43 (d) If the acquisition of common elements or the acqui-
44 sition of certain units decreases the value of the remaining
45 units by more than a de minimus amount, the award must
46 include an amount to all remaining unit owners sufficient
47 to compensate them for that decrease in value. For pur-
48 poses of this subsection the entity authorized to exercise the
49 right of eminent domain must give notice to all unit owners

50 and holders of liens on units in the manner set forth in sec-
51 tion three, article two, chapter fifty-four of this code, or by
52 certified or registered mail, return receipt requested.

53 (e) The court decree shall be recorded in every county
54 in which any portion of the condominium is located.

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

1 The principles of law and equity, including the law of
2 corporations and unincorporated associations, the law of
3 real property and the law relative to capacity to contract,
4 principal and agent, eminent domain, estoppel, fraud, mis-
5 representation, duress, coercion, mistake, receivership, sub-
6 stantial performance, or other validating or invalidating cause
7 supplement the provisions of this chapter, except to the
8 extent inconsistent with this chapter.

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

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

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

1 This chapter shall be applied and construed so as to effectu-
2 ate its general purpose to make uniform the law with respect to
3 the subject of this chapter among states enacting it.

§36B-1-111. Severability.

1 If any provision of this chapter or the application thereof
2 to any person or circumstances is held invalid, the invalidity
3 does not affect other provisions or applications of this chapter
4 which can be given effect without the invalid provisions or
5 application, and to this end the provisions of this chapter
6 are severable.

§36B-1-112. Unconscionable agreement or term of contract.

1 (a) The court, upon finding as a matter of law that a
2 contract or contract clause was unconscionable at the time
3 the contract was made, may refuse to enforce the contract,
4 enforce the remainder of the contract without the unconscion-

5 able clause, or limit the application of any unconscionable
6 clause in order to avoid an unconscionable result.

7 (b) Whenever it is claimed, or appears to the court, that
8 a contract or any contract clause is or may be unconscion-
9 able, the parties, in order to aid the court in making the
10 determination, shall be afforded a reasonable opportunity to
11 present evidence as to:

12 (1) The commercial setting of the negotiations;

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

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

19 (4) If a sale, any gross disparity, at the time of
20 contracting, between the amount charged for the real estate
21 and the value of the real estate measured by the price at
22 which similar real estate was readily obtainable in similar
23 transactions, but a disparity between the contract price and
24 the value of the real estate measured by the price at which
25 similar real estate was readily obtainable in similar
26 transactions does not, of itself, render the contract uncon-
27 scionable.

§36B-1-113. Obligation of good faith.

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

OK CAB EN. §36B-1-114. Remedies to be liberally administered.

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

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

**ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF
CONDOMINIUMS.**

§36B-2-101. Creation of condominium.

1 (a) A condominium may be created pursuant to this
2 chapter only by recording a declaration executed, in the
3 same manner as a deed, by all persons whose interests in
4 the real estate will be conveyed to unit owners and by
5 every lessor of a lease the expiration or termination of which
6 will terminate the condominium or reduce its size. The
7 declaration shall be recorded in every county in which any
8 portion of the condominium is located, and shall be indexed
9 in the name of the condominium and each declarant.

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

17 (c) No interest in a unit may be conveyed until the unit
18 is substantially completed, as evidenced by a recorded certifi-
19 cate of completion executed by an independent architect, sur-
20 veyor, or engineer.

§36B-2-102. Unit boundaries.

1 Except as provided by the declaration:

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

8 (2) If any chute, flue, duct, wire, conduit, bearing
9 wall, bearing column, or any other fixture lies partially
10 within and partially outside the designated boundaries of a
11 unit, any portion thereof serving only that unit is a
12 limited common element allocated solely to that unit, and

13 any portion thereof serving more than one unit or any
14 portion of the common elements is a part of the common
15 elements.

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

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

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

1 (a) All provisions of the declaration and bylaws are sever-
2 able.

3 (b) The rule against perpetuities may not be applied
4 to defeat any provision of the declaration or this chapter, or
5 any instrument executed pursuant to the declaration or this
6 chapter.

7 (c) In the event of a conflict between the provisions of
8 the declaration and the bylaws, the declaration prevails ex-
9 cept to the extent the declaration is inconsistent with this
10 chapter.

11 (d) Title to a unit and its common element interest is
12 not rendered unmarketable or otherwise affected by any
13 provision of unrecorded bylaws, or by reason of an in-
14 substantial failure of the declaration to comply with this chap-
15 ter.

§36B-2-104. Description of units.

1 After the declaration is recorded, a description of a unit
2 which sets forth the name of the condominium, the record-
3 ing data for the declaration, the county in which the condo-
4 minium is located, and the identifying number of the unit,
5 is a sufficient legal description of that unit and its common
6 element interest even if the common element interest is not
7 described or referred to therein.

§36B-2-105. Contents of declaration: All condominiums.

1 The declaration for a condominium must contain:

2 (1) the name of the condominium, which must include the
3 word "condominium" or be followed by the words "a con-
4 dominium";

5 (2) the name of every county in which any part of the
6 condominium is situated;

7 (3) a legally sufficient description of the real estate in-
8 cluded in the condominium;

9 (4) a description or delineation of the boundaries of each
10 unit, including the unit's identifying number;

11 (5) a statement of the maximum number of units that may
12 be created by the subdivision or conversion of units owned
13 by the declarant pursuant to section 2-115(c);

14 (6) a description of any limited common elements, as
15 provided in section 2-109;

16 (7) a description of any common elements not within the
17 boundaries of any convertible real estate which may be
18 allocated subsequently as limited common elements, together
19 with a statement that they may be so allocated and a
20 description of the method by which the allocations are to be
21 made;

22 (8) an allocation to each unit of an undivided interest
23 in the common elements, a portion of the votes in the
24 association, and a percentage or fraction of the common
25 expenses of the association (section 2-108);

26 (9) any restrictions on use, occupancy, and alienation of
27 the units;

28 (10) the recording data for recorded easements and
29 licenses appurtenant to or included in the condominium or to
30 which any portion of the condominium is or may become
31 subject; and

32 (11) any other matters the declarant deems appropriate.

§36B-2-106. Contents of declaration; flexible condominiums.

1 The declaration for a flexible condominium shall include,
2 in addition to the matters specified in section 2-105:

3 (1) an explicit reservation of any options to create units,
4 limited common elements, or both, within convertible real
5 estate, or to add additional real estate to or withdraw with-
6 drawable real estate from the condominium;

7 (2) a statement of the time limit, not exceeding seven
8 years after the recording of the declaration, upon which any
9 option reserved under paragraph (1) will lapse, together with
10 a statement of any circumstances that will terminate the
11 option before the expiration of the time limit;

12 (3) a statement of any limitations on any option reserved
13 under paragraph (1), other than limitations created by or
14 imposed pursuant to law, or else a statement that there are
15 no such limitations;

16 (4) a statement of the extent to which the common ele-
17 ment interest, relative voting strength in the association, and
18 share of common expense liability of each unit in the
19 condominium at the time the declaration is recorded may
20 be increased or decreased by actions pursuant to any option
21 reserved under paragraph (1), including the formulas to be
22 used for those reallocations;

23 (5) legally sufficient descriptions of each portion of con-
24 vertible, additional, and withdrawable real estate;

25 (6) if portions of any convertible, additional, or
26 withdrawable real estate may be converted, added, or
27 withdrawn at different times, a statement to that effect
28 together with (i) either a statement fixing the boundaries
29 of those portions and regulating the order in which they may
30 be converted, added, or withdrawn or a statement that
31 no assurances are made in those regards, and (ii) a statement
32 as to whether, if any portion of convertible, additional, or
33 withdrawable real estate is converted, added, or withdrawn,
34 all or any particular portion of that or any other real estate
35 must be converted, added, or withdrawn;

36 (7) a statement of (i) the maximum number of units that
37 may be created within any additional or convertible real
38 estate, or within any portion of either, the boundaries of
39 which are fixed pursuant to paragraph (6), (ii) how many of
40 those units will be restricted exclusively to residential use,
41 and (iii) the maximum number of units per acre that may be
42 created within any portions the boundaries of which are not
43 fixed pursuant to paragraph (6);

44 (8) if any of the units that may be built within any
45 additional or convertible real estate are not to be restricted
46 exclusively to residential use, a statement, with respect to
47 each portion of the additional and convertible real estate,
48 of the maximum percentage of the real estate areas, and the
49 maximum percentage of the floor areas of all units that may
50 be created therein, that are not restricted exclusively to
51 residential use;

52 (9) a statement of the extent to which any buildings
53 and units that may be erected upon each portion of the
54 additional or convertible real estate will be compatible
55 with the other buildings and units in the condominium in
56 terms of architectural style, quality of construction, prin-
57 cipal materials employed in construction, and size, or a
58 statement that no assurances are made in those regards;

59 (10) a statement that all restrictions in the declaration
60 affecting use, occupancy, and alienation of units will apply
61 to units created within any convertible or additional real
62 estate, or a statement of any differentiations that may be made
63 as to those units;

64 (11) general descriptions of all other improvements and
65 limited common elements that may be made or created upon or
66 within each portion of the additional or convertible real estate,
67 or a statement that no assurances are made in that regard;

68 (12) a statement of any limitations as to the locations
69 of any buildings or other improvements that may be made
70 within convertible or additional real estate, or a statement
71 that no assurances are made in that regard;

72 (13) a statement that any limited common elements

73 created within any convertible or additional real estate will
74 be of the same general types and sizes as those within other
75 parts of the condominium, or a statement of any other
76 assurances in that regard, or a statement that no assurances
77 are made in that regard;

78 (14) a statement that the proportion of limited common
79 elements to units created within convertible or additional
80 real estate will be approximately equal to the proportion
81 existing within other parts of the condominium, or a
82 statement of any other assurances in that regard, or a
83 statement that no assurances are made in that regard; and

84 (15) a statement of the extent to which any assurances
85 made in the declaration regarding additional or withdrawable
86 real estate pursuant to paragraphs (6) through (14) apply in
87 the event any additional real estate is not added to or any
88 withdrawable land is withdrawn from the condominium, or a
89 statement that those assurances do not apply if the real estate
90 is not added to or is withdrawn from the condominium.

§36B-2-107. Leasehold condominiums.

1 (a) Any lease the expiration or termination of which may
2 terminate the condominium or reduce its size, or a memo-
3 randum thereof, shall be recorded, and the declaration shall
4 state:

5 (1) the recording data for the lease or a statement of
6 where the complete lease may be inspected;

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

8 (3) a legally sufficient description of the real estate sub-
9 ject to the lease;

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

13 (5) any right of the unit owners to remove any improve-
14 ments within a reasonable time after the expiration or termi-
15 nation of the lease, or a statement that they do not have
16 those rights; and

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

20 (b) after the declaration for a leasehold condominium is
21 recorded, neither the lessor nor his successor in interest
22 may terminate the leasehold interest of a unit owner who
23 makes timely payment of his share of the rent and otherwise
24 complies with all covenants which, if violated, would en-
25 title the lessor to terminate the lease. A unit owner's lease-
26 hold interest is not affected by failure of any other person
27 to pay rent or fulfill any other covenant.

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

33 (d) If the expiration or termination of a lease decreases
34 the number of units in a condominium, the common element
35 interests, votes in the association, and common expense
36 liabilities shall be reallocated in accordance with section
37 1-107(a) as though those units had been taken by eminent
38 domain. Reallocations shall be confirmed by an amendment
39 to the declaration prepared, executed, and recorded by the
40 association.

**§36B-2-108. Allocation of common element interests, rates, and
common expense liabilities.**

1 (a) The declaration shall allocate a fraction or per-
2 centage of undivided interests in the common elements and
3 in the common expenses of the association, and a portion of
4 the votes in the association, to each unit and state the
5 formulas used to establish those allocations.

6 (b) In a flexible condominium, the common element
7 interest and common expense liability allocated to each unit
8 must be equal, or proportionate to the relative size of each
9 unit, unless the declaration as originally recorded:

10 (1) requires that any units created in additional or
11 convertible real estate be substantially identical to the other

12 units in the condominium and provides that common element
13 interests and common expense liabilities will be allocated
14 to those units in accordance with the formulas used for the
15 initial allocations; or

16 (2) identifies all other types of units that may be created
17 in additional or convertible real estate in terms of archi-
18 tectural style, quality of construction, principal materials
19 to be used, and ranges of sizes, and states the formulas
20 upon which any reallocations of common element interests
21 and common expense liabilities will be made, or states the
22 common element interest and common expense liability to be
23 allocated to each unit that may be created.

24 (c) The number of votes allocated to each unit must be
25 equal, proportionate to that unit's common expense
26 liability, or proportionate to that unit's common element
27 interest. If the declaration allocates an equal number of
28 votes in the association to each unit, each unit that may be
29 subdivided or converted by the declarant into two or more
30 units, common elements, or both (sections 2-115), must be
31 allocated a number of votes in the association proportionate
32 to the relative size of that unit compared to the aggregate
33 size of all units, and the remaining votes in the association
34 must be allocated equally to the other units. The declaration
35 may provide that different allocations of votes shall be made
36 to the units on particular matters specified in the declara-
37 tion.

38 (d) Except in the case of eminent domain (section 1-107),
39 expansion or conversion of a flexible condominium (section
40 2-111), withdrawal of withdrawable real estate (section 2-112),
41 relocation of boundaries between adjoining units (section
42 2-114), or subdivision of units (section 2-115), the common
43 element interest, votes, and common expense liability allo-
44 cated to any unit may not be altered without unanimous
45 consent of all unit owners. The common elements are not
46 subject to partition, and any purported conveyance, encum-
47 brance, judicial sale, or other voluntary or involuntary transfer
48 of an undivided interest in the common elements made
49 without the unit to which it is allocated is void.

50 (e) Except for minor variations due to rounding, the
51 sums of the undivided interests in the common elements and
52 common expense liabilities allocated at any time to all the
53 units shall each equal one if stated as fractions or one
54 hundred percent if stated as percentages. In the event of
55 discrepancy between the common element interest, votes, or
56 common expense liability allocated to a unit and the result
57 derived from application of the formulas, the allocated common
58 element interest, vote, or common expense liability prevails.

§36B-2-109. Limited common elements.

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

6 (b) Subject to any provisions of the declaration, a limited
7 common element may be reallocated by a recorded assign-
8 ment executed by the unit owners between or among whose
9 units the reallocation is made, or by an amendment to the
10 declaration executed by those unit owners. The persons exe-
11 cuting the assignment or amendment to the declaration shall
12 provide a copy thereof to the association.

13 (c) A common element not previously allocated as a limit-
14 ed common element may not be so allocated except pursuant
15 to provisions in the declaration made in accordance with sec-
16 tion 2-105(7). The declaration may provide that the allocation
17 shall be made by deeds or assignments executed by the de-
18 clarant or the association, or by amendments to the declaration.

§36B-2-110. Plats and plans.

1 (a) Plats and plans are a part of the declaration. Separate
2 plats and plans are not required by this chapter if all the
3 information required by this section is contained in either
4 a plat or plan. Each plat and plan must be clear and legible
5 and contain a certification that the plat or plan accurately
6 depicts all existing conditions and contains all information
7 required by this section.

8 (b) Each plat must show:

9 (1) the name, location, and dimensions of the condo-
10 minium;

11 (2) the location and dimensions of all existing improve-
12 ments;

13 (3) the intended location and dimensions of any con-
14 templated improvement to be constructed anywhere within
15 the condominium labeled either "MUST BE BUILT" or
16 "NEED NOT BE BUILT," but need not show contemplated
17 improvements within the boundaries of convertible real estate;

18 (4) the location and dimensions of any convertible real
19 estate, labeled as such;

20 (5) the location and dimensions of any withdrawable real
21 estate, labeled as such;

22 (6) the extent of any encroachments by or upon any por-
23 tion of the condominium;

24 (7) to the extent feasible, the location and dimensions
25 of all easements serving or burdening any portion of the
26 condominium;

27 (8) the location and dimensions of any vertical unit
28 boundaries not shown or projected on plans recorded pursuant
29 to subsection (c) and that unit's identifying number;

30 (9) the location with reference to established datum of
31 any horizontal unit boundaries not shown or projected on
32 plans recorded pursuant to subsection (c) and that unit's
33 identifying number;

34 (10) the locations and dimensions of any real estate in
35 which the unit owners will own only an estate for years,
36 labeled as "leasehold real estate";

37 (11) the distance between noncontiguous parcels of real
38 estate comprising the condominium;

39 (12) the location and dimensions of limited common ele-
40 ments, including porches, balconies and patios, other than
41 parking spaces and other limited common elements described
42 in sections 2-102(2) and (4);

43 (13) all other matters customarily shown on land sur-
44 veys.

45 (c) Plans of every building that contains or comprises
46 all or part of any unit and is located or must be built
47 within any portion of the condominium, other than within the
48 boundaries of any convertible real estate, must show:

49 (1) the location and dimensions of the vertical boun-
50 daries of each unit, to the extent those boundaries lie
51 within or coincide with the boundaries of the building in
52 which the unit is located, and that unit's identifying number;

53 (2) any horizontal unit boundaries, with reference to
54 established datum, not shown on plats recorded pursuant to
55 subsection (b), and that unit's identifying number; and

56 (3) any units that may be converted by the declarant to
57 create additional units or common elements (section 2-115(c),
58 identified appropriately.

59 (d) Unless the declaration provides otherwise, the hori-
60 zontal boundaries of part of a unit located outside of a
61 building have the same elevation as the horizontal boundaries
62 of the inside part, and need not be depicted on the plats
63 and plans.

64 (e) Upon converting convertible real estate or adding ad-
65 ditional real estate (section 2-511), the declarant shall record
66 new plats for that real estate conforming to the require-
67 ments of subsection (b) and new plans for any buildings
68 on that real estate conforming to the requirements of sub-
69 section (c). If less than all of any convertible real estate
70 is being converted, the new plats must also show the location
71 and dimensions of the remaining portion.

72 (f) If a declarant converts any unit into two or more
73 units, limited common elements, or both (section 2-115), he
74 shall record new plans showing the location and dimensions
75 of any new units and limited common elements thus created as
76 well as the location and dimensions of any portion of that
77 space not being converted.

78 (g) Instead of recording new plats and plans as required

79 by subsections (e) and (f), the declarant may record new
80 certifications of plats and plans previously recorded if those
81 plats and plans show all improvements required by subsections
82 (e) and (f).

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

§36B-2-111. Conversion and expansion of flexible condominiums.

1 (a) To convert convertible real estate or add additional
2 real estate pursuant to an option reserved under section
3 2-106(1) the declarant shall prepare, execute, and record
4 an amendment to the declaration (section 2-119) and comply
5 with section 2-110. The declarant is the unit owner of any
6 units thereby created. The amendment to the declaration
7 must assign an identifying number to each unit formed in the
8 convertible or additional real estate, and reallocate common
9 element interests, votes in the association, and common
10 expense liabilities. The amendment must describe or delineate
11 any limited common elements formed out of the convertible
12 or additional real estate, showing or designating the unit to
13 which each is allocated to the extent required by section
14 2-109.

15 (b) Convertible or withdrawable real estate may be
16 created within any additional real estate added to the con-
17 dominium if the amendment adding that real estate includes
18 all matters required by section 2-105 or 2-106, as the case
19 may be, and the plat includes all matters required by sections
20 2-110(b). This provision does not extend the time limit on
21 conversion or contraction of a flexible condominium im-
22 posed by the declaration pursuant to section 2-106(2).

23 (c) Until conversion occurs or the period during which
24 conversion may occur expires, whichever occurs first, the
25 declarant alone is liable for real estate taxes assessed against
26 convertible real estate and all other expenses in connection
27 with that real estate. No other unit owner and no other
28 portion of the condominium is subject to a claim for pay-
29 ment of those taxes or expenses. Unless the declaration pro-

30 vides otherwise, any income or proceeds from convertible
31 real estate inures to the declarant.

§36B-2-112. Withdrawal of withdrawable real estate.

1 (a) To withdraw withdrawable real estate from a flexible
2 condominium pursuant to an option reserved under section
3 2-106(1), the declarant shall prepare, execute, and record
4 an amendment to the declaration containing a legally suffi-
5 cient description of the real estate being withdrawn and
6 stating the fact of withdrawal. The amendment must reallo-
7 cate common element interests, votes in the association, and
8 common expense liabilities to the remaining units in the con-
9 dominium in proportion to the respective interests, votes,
10 and liabilities of those units before the withdrawal, and the
11 reallocation is effective when the amendment is recorded.

12 (b) If a portion of the withdrawable real estate was des-
13 cribed pursuant to section 2-106(6), that portion may not
14 be withdrawn if any person other than the declarant owns a
15 unit situated therein. If the portion was not so described,
16 none of it is withdrawable if any person other than the
17 declarant owns a unit situated therein.

18 (c) Until withdrawal occurs or the period during which
19 withdrawal may occur expires, whichever occurs first, the
20 declarant alone is liable for real estate taxes assessed against
21 withdrawable real estate and all other expenses in connection
22 with that real estate. No other unit owner and no other
23 portion of the condominium is subject to a claim for payment
24 of those taxes or expenses. Unless the declaration provides
25 otherwise, any income or proceeds from withdrawable real
26 estate inures to the declarant.

§36B-2-113. Alterations of units.

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

3 (1) may make any improvements or alterations to his unit
4 that do not impair the structural integrity or mechanical
5 systems or lessen the support of any portion of the con-
6 dominium;

7 (2) may not change the appearance of the common ele-
8 ments, or the exterior appearance of a unit or any other
9 portion of the condominium, without permission of the
10 association;

11 (3) after acquiring an adjoining unit or an adjoining
12 part of an adjoining unit, may remove or alter any inter-
13 vening partition or create apertures therein, even if the
14 partition in whole or in part is a common element, if those
15 acts do not impair the structural integrity or mechanical
16 systems or lessen the support of any portion of the con-
17 dominium. Removal of partitions or creation of apertures
18 under this paragraph is not an alteration of boundaries.

§36B-2-114. Relocation of boundaries between adjoining units.

1 (a) Subject to the provisions of the declaration and
2 other provisions of law, the boundaries between adjoining
3 units may be relocated by an amendment to the declaration
4 upon application to the association by the owners of those
5 units. If the owners of the adjoining units have specified
6 a reallocation between their units of their common element
7 interests, votes in the association, and common expense
8 liabilities, the application must state the proposed re-
9 allocations. Unless the executive board determines, with-
10 in thirty days, that the reallocations are unreasonable,
11 the association shall prepare an amendment that identifies
12 the units involved, states the reallocations, is executed by
13 those unit owners, contains words of conveyance between
14 them, and, upon recordation, is indexed in the name of the
15 grantor and the grantee.

16 (b) The association shall prepare and record plats or
17 plans necessary to show the altered boundaries between ad-
18 joining units, and their dimensions and identifying numbers.

§36B-2-115. Subdivision or conversion of units.

1 (a) If the declaration expressly so permits, a unit may
2 be subdivided into two or more units or, in the case of a
3 unit owned by a declarant, may be subdivided or converted
4 into two or more units, common elements, or a combination
5 of units and common elements. Subject to the provisions of

6 the declaration and other provisions of law, upon application
7 of a unit owner to subdivide a unit, or upon application of
8 a declarant to convert a unit, the association shall pre-
9 pare, execute, and record an amendment to the declaration,
10 including the plats and plans, subdividing or converting
11 that unit.

12 (b) The amendment to the declaration must be executed
13 by the owner of the unit to be subdivided, assign an
14 identifying number to each unit created, and reallocate the
15 common element interest, votes in the association, and
16 common expense liability formerly allocated to the
17 subdivided unit to the new units in any reasonable manner
18 prescribed by the owner of the subdivided unit.

19 (c) In the case of a unit owned by a declarant, if a
20 declarant converts all of a unit to common elements, the
21 amendment to the declaration must reallocate among the other
22 units the common element interest, votes in the association,
23 and common expense liability formerly allocated to the con-
24 verted unit on the same basis used for the initial allocation
25 thereof.

§36B-2-116. Interpretation of deeds.

1 In interpreting deeds and plans, the existing physical
2 boundaries of a unit or of a unit reconstructed in substantial
3 accordance with the original plats and plans thereof become
4 its boundaries rather than the metes and bounds expressed in
5 the deed or plat or plan, regardless of settling or lateral move-
6 ment of the building, or minor variance between boundaries
7 shown on the plats or plans or in the deed and those of the
8 building.

§36B-2-117. Use for sales purposes.

1 A declarant may maintain sales offices, management of-
2 fices, and models in the condominium only if the
3 declaration so provides and specifies the rights of a de-
4 clarant with regard to the number, size, location, and
5 relocation thereof. Any sales office, management office, or
6 model not designated a unit by the declaration is a common
7 element, and if a declarant ceases to be a unit owner, he

8 ceases to have any rights with regard thereto unless it is
9 removed promptly from the condominium in accordance with a
10 right to remove reserved in the declaration. Subject to any
11 limitations in the declaration, a declarant may maintain signs
12 on the common elements advertising the condominium.

§36B-2-118. Easement to facilitate completion, conversion, and expansion.

1 Subject to the provisions of the declaration, a declarant
2 has an easement through the common elements as may be
3 reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether
4 arising under this chapter or reserved in the declaration.
5

§36B-2-119. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed
2 by a declarant under sections 2-110(e) and (f), 2-111(a), or
3 2-112(a); the association under sections 1-107, 2-107(d),
4 2-109(c), or 2-115(a); or certain unit owners under sections
5 2-109(b), 2-114(a), 2-115(b), or 2-120(b), and except as
6 limited by subsection (d), the declaration, including the
7 plats and plans, may be amended only by vote or agreement
8 of unit owners of units to which at least sixty-seven percent
9 of the votes in the association are allocated, or any larger
10 majority the declaration specifies. The declaration may specify a smaller number only if all of the units are restricted
11 exclusively to nonresidential use.
12

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

16 (c) Every amendment to the declaration must be recorded
17 in every county in which any portion of the condominium is
18 located, and is effective only upon recordation.
19

20 (d) Except to the extent expressly permitted or required
21 by other provisions of this chapter, no amendment may create
22 or increase special declarant rights, increase the number of
23 units, or change the boundaries of any unit, the common
24 element interest, common expense liability, or voting strength

25 in the association allocated to a unit, or the uses to which
26 any unit is restricted, is the absence of unanimous consent
27 of the unit owners.

28 (e) Amendments to the declaration required by this chap-
29 ter to be recorded by the association shall be prepared, exe-
30 cuted, recorded, and certified by any officer of the associa-
31 tion designated for that purpose or, in the absence of desig-
32 nation, by the president of the association.

§36B-2-120. Termination of condominium.

1 (a) Except in the case of a taking of all the units by
2 eminent domain (section 1-107), a condominium may be
3 terminated only by agreement of unit owners of units to
4 which at least eighty percent of the votes in the association
5 are allocated, or any larger percentage the declaration speci-
6 fies. The declaration may specify a smaller percentage only
7 if all of the units in the condominium are restricted exclusively
8 to nonresidential uses.

9 (b) An agreement of unit owners to terminate a con-
10 dominium must be evidenced by their execution of a termina-
11 tion agreement or ratifications thereof. If, pursuant to a
12 termination agreement, the real estate constituting the con-
13 dominium is to be sold following termination, the termination
14 agreement must set forth the terms of the sale. A termination
15 agreement and all ratifications thereof must be recorded in
16 every county in which a portion of the condominium is
17 situated, and is effective only upon recordation.

18 (c) The association, on behalf of the unit owners, may
19 contract for the sale of the condominium, but the contract
20 is not binding on the unit owners until approved pursuant to
21 subsections (a) and (b). If the real estate constituting
22 the condominium is to be sold following termination, title
23 to that real estate, upon termination, vests in the
24 association as trustee for the holder of all interest in
25 the units. Thereafter, the association has all powers
26 necessary and appropriate to effect the sale. Until the
27 sale has been concluded and the proceeds thereof dis-
28 tributed, the association continues in existence with all
29 powers it had before termination. Proceeds of the sale must

30 be distributed to unit owners and lienholders as their
31 interests may appear, in proportion to the respective interest
32 of unit owners as provided in subsection (f). Unless other-
33 wise specified in the termination agreement, as long as the
34 association holds title to the real estate, each unit owner and
35 his successors in interest have an exclusive right to occupancy
36 of the portion of the real estate that formerly constituted his
37 unit. During the period of that occupancy, each unit owner
38 and his successors in interest remain liable for all assessments
39 and other obligations imposed on unit owners by this chapter
40 or the declaration.

41 (d) If the real estate constituting the condominium is
42 not to be sold following termination, title to the real estate,
43 upon termination, vests in the unit owners as tenants in
44 common in proportion to their respective interests as pro-
45 vided in subsection (f), and liens on the units shift ac-
46 cordingly. While the tenancy in common exists, each unit
47 owner and his successors in interest have an exclusive right
48 to occupancy of the portion of the real estate that formerly
49 constituted his unit.

50 (e) Following termination of the condominium, and after
51 payment of or provision for the claims of the association's
52 creditors, the assets of the association shall be distributed
53 to unit owners in proportion to their respective interests
54 as provided in subsection (f). The proceeds of sale described
55 in subsection (c) and held by the association as trustees
56 are not assets of the association.

57 (f) The respective interests of unit owners referred to
58 in subsections (c), (d), and (e) are as follows:

59 (1) Except as provided in paragraph (2), the respective
60 interests of unit owners are the fair market values of their
61 units, limited common elements, and common element interests
62 immediately before the termination, as determined by one or
63 more independent appraisers selected by the association. The
64 decision of the independent appraisers shall be distributed
65 to the unit owners and becomes final unless disap-
66 proved within thirty days after distribution by unit owners
67 of units to which twenty-five percent of the votes in the

68 association are allocated. The proportion of any unit
69 owner's interest to that of all unit owners is determined by
70 dividing the fair market value of that unit owner's unit and
71 common element interest by the total fair market value of
72 all the units and common elements.

73 (2) If any unit or any limited common element is des-
74 troyed to the extent that an appraisal of the fair market
75 value thereof prior to destruction cannot be made, the in-
76 terests of all unit owners are their respective common element
77 interests immediately before the termination.

78 (g) Foreclosure or enforcement of a lien or encumbrance
79 against the entire condominium does not of itself terminate
80 the condominium, and foreclosure or enforcement of a lien, or
81 encumbrance against a portion of the condominium, other
82 than withdrawable real estate, does not withdraw that portion
83 from the condominium. Foreclosure or enforcement of a lien
84 or encumbrance against withdrawable real estate does not of
85 itself withdraw that real estate from the condominium, but
86 the person taking title thereto has the right to require from
87 the association, upon request, an amendment excluding the
88 real estate from the condominium.

§36B-2-121. Rights of secured lenders.

1 The declaration may require that all or a specified number
2 or percentage of the mortgages or beneficiaries of deeds
3 of trust encumbering the units approve specified actions of
4 the unit owners or the association as a condition to the
5 effectiveness of those actions, but no requirement for approval
6 may operate to (1) deny or delegate control over the general
7 administrative affairs of the association by the unit owners
8 or the executive board, or (2) prevent the association or the
9 executive board from commencing, intervening in, or settling
10 any litigation or proceeding, or receiving and distributing any
11 insurance proceeds pursuant to section 3-112.

ARTICLE 3. MANAGEMENT OF THE CONDOMINIUM.

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

1 A unit owners' association shall be organized no later
2 than the date the condominium is created. The membership

3 of the association at all times shall consist exclusively of
 4 all the unit owners or, following termination of the
 5 condominium, of all former unit owners entitled to dis-
 6 tributions of proceeds under section 2-120, or their
 7 heirs, successors, or assigns. The association shall be organiz-
 8 ed as a profit or nonprofit corporation or as an unincorporated
 9 association.

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

1 (a) Subject to the provisions of the declaration, the asso-
 2 ciation, even if unincorporated, may:

3 (1) adopt and amend bylaws and rules and regulations;

4 (2) adopt and amend budgets for revenues, expenditures,
 5 and reserves and collect assessments for common expenses
 6 from unit owners;

7 (3) hire and terminate managing agents and other em-
 8 ployees, agents, and independent contractors;

9 (4) institute, defend, or intervene in litigation or ad-
 10 ministrative proceeding in its own name on behalf of it-
 11 self or two or more unit owners on matters effecting the
 12 condominium;

13 (5) make contracts and incur liabilities;

14 (6) regulate the use, maintenance, repair, replacement,
 15 and modification of common elements;

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

18 (8) acquire, hold, encumber, and convey in its own name
 19 any right, title, or interest to real or personal property;

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

22 (10) impose and receive any payments, fees or charges
 23 for the use, rental, or operation of the common elements
 24 other than limited common elements described in sections
 25 2-102(2) and (4);

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

30 (12) impose reasonable charges for the preparation and
31 recordation of amendments to the declaration, resale cer-
32 tificates required by section 4-107, or statements of unpaid
33 assessments;

34 (13) provide for the indemnification of its officers and
35 executive board and maintain directors' and officers' liability
36 insurance;

37 (14) exercise any other powers conferred by the declaration
38 or bylaws;

39 (15) exercise all other powers that may be exercised in
40 this state by legal entities of the same type as the association;
41 and

42 (16) exercise any other powers necessary and proper for
43 the governance and operation of the association.

44 (b) Notwithstanding subsection (a), the declaration may
45 not impose limitations on the power of the association to
46 deal with the declarant that are more restrictive than the
47 limitations imposed on the power of the association to deal
48 with other persons.

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

1 (a) Except as provided in the declaration, the bylaws,
2 in subsection (b), or other provisions of this chapter, the
3 executive board may act in all instances on behalf of the
4 association. The officers and members of the executive
5 board appointed by the declarant are subject to liability as
6 fiduciaries of the unit owners for their acts or omissions.

7 (b) The executive board may not act on behalf of the
8 association to amend the declaration (section 2-119), to
9 terminate the condominium (section 2-120), or to elect mem-
10 bers of the executive board or determine the qualifications,
11 powers and duties, or terms of office of executive board
12 members (section 3-103(e)), but the executive board may
13 fill vacancies in its membership for the unexpired portion of

14 any term. In addition to other rights conferred by the
15 declaration, bylaws or this act, the unit owners, by majority
16 or any larger vote specified in the declaration, may reject
17 any budget or capital expenditure approved by the executive
18 board, within thirty days after the approval.

19 (c) Subject to subsection (d), the declaration may provide
20 for a period of declarant control of the association, during
21 which period a declarant, or persons designated by him,
22 may appoint and remove the officers and members of the
23 executive board. Any period of declarant control extends
24 from the date of the first conveyance of a unit to a person
25 other than a declarant for a period not exceeding five years
26 in the case of a flexible condominium containing convertible
27 real estate or to which additional real estate may be added,
28 or three years in the case of any other condominium.
29 Regardless of the period provided in the declaration, a period
30 of declarant control terminates no later than sixty days after
31 conveyance of seventy-five percent of the units to unit owners
32 other than a declarant. A declarant may voluntarily sur-
33 render the right to appoint and remove officers and members
34 of the executive board before termination of that period, but
35 in that event he may require, for the duration of the period
36 of declarant control, that specified actions of the association
37 or executive board, as described in a recorded instrument
38 executed by the declarant, be approved by the declarant
39 before they become effective.

40 (d) Not later than sixty days after conveyance of twenty-
41 five percent of the units to unit owners other than a de-
42 clarant, not less than twenty-five percent of the members
43 of the executive board shall be elected by unit owners other
44 than the declarant. Not later than sixty days after con-
45 veyance of fifty percent of the units to unit owners other
46 than a declarant, not less than thirty-three and one-third
47 percent of the members of the executive board shall be
48 elected by unit owners other than the declarant.

49 (e) Not later than the termination of any period of
50 declarant control, the unit owners shall elect an executive
51 board of at least three members, at least a majority of whom

52 must be unit owners. The executive board shall elect the
53 officers. The persons elected shall take office upon election.

54 (f) In determining whether the period of declarant control
55 has terminated under subsection (c), or whether unit owners
56 other than a declarant are entitled to elect members of the
57 executive board under subsection (d), the percentage of the
58 units conveyed is presumed to be that percentage which would
59 have been conveyed if all the units the declarant has built
60 or reserved the right to build in the declaration were in-
61 cluded in the condominium.

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

1 (a) No special declarant rights (section 1-103(21)) created
2 or reserved under this chapter may be transferred except by
3 an instrument evidencing the transfer recorded in every
4 county in which any portion of the condominium is located.
5 The instrument is not effective unless executed by the trans-
6 feree.

7 (b) Upon transfer of any special declarant right, the lia-
8 bility of a transferor declarant is as follows:

9 (1) A transferor is not relieved of any obligation or liability
10 arising before the transfer and remains liable for warranty
11 obligations imposed upon him by this chapter. Lack of pri-
12 vity does not deprive any unit owner of standing to bring an
13 action to enforce any obligation of the transferor.

14 (2) If a transferor retains any special declarant right, or
15 if a successor to any special declarant right is an affiliate of
16 a declarant (section 1-103(2)), the transferor is subject to
17 liability for all obligations and liabilities imposed on a de-
18 clarant by this chapter or by the declaration arising after the
19 transfer and is jointly and severally liable with the successor
20 for the liabilities and obligations of the successor which re-
21 late to the condominium.

22 (3) A transferor who retains no special declarant right has
23 no liability for any act or omission or any breach of a contrac-
24 tual or warranty obligation arising from the exercise of a
25 special declarant right by a successor declarant who is not an
26 affiliate of the transferor.

27 (c) Unless otherwise provided in a mortgage instrument or
28 deed of trust, in case of foreclosure of a mortgage, sale by a
29 trustee under a deed of trust, or sale under bankruptcy act
30 or receivership proceedings, of any units owned by a declar-
31 ant in the condominium, a person acquiring title to all the
32 units being foreclosed or sold, but only upon his request,
33 succeeds to all special declarant rights, or only to any rights
34 reserved in the declaration pursuant to section 2-117 to
35 maintain models, sales offices and signs. The judgment or
36 instrument conveying title shall provide for transfer of only
37 the special declarant rights requested.

38 (d) Upon foreclosure, sale by a trustee under a deed of
39 trust, or sale under bankruptcy act or receivership proceed-
40 ings, of all units in a condominium owned by a declarant:

41 (1) the declarant ceases to have any special declarant rights,
42 and

43 (2) the period of declarant control (section 3-103(c)) termi-
44 nates unless the judgment or instrument conveying title pro-
45 vides for transfer of all special declarant rights to a successor
46 declarant.

47 (e) The liabilities and obligations of persons who succeed
48 to special declarant rights are as follows:

49 (1) a successor to any special declarant right who is an
50 affiliate of a declarant is subject to all obligations and lia-
51 bilities imposed on any declarant by this chapter or by the
52 declaration.

53 (2) a successor to any special declarant right, other than
54 a successor described in paragraphs (3) or (4), who is not an
55 affiliate of a declarant, is subject to all obligations and lia-
56 bilities imposed upon a declarant by this chapter or the
57 declaration, but he is not subject to liability for misrepresen-
58 tations or warranty obligations on improvements made by any
59 previous declarant or made before the condominium was
60 created, or for a breach of fiduciary obligation by any pre-
61 vious declarant.

62 (3) a successor to only a right reserved in the declaration
63 to maintain models, sales offices, and signs (section 2-117),

64 if he is not an affiliate of a declarant, may not exercise any
65 other special declarant right, and is not subject to any lia-
66 bility or obligation as a declarant, except the obligation to
67 provide a public offering statement, and any liability arising
68 as a result thereof.

69 (4) a successor to all special declarant rights who is not
70 an affiliate of a declarant and who succeeded to those rights
71 pursuant to a deed in lieu of foreclosure or a judgment or in-
72 strument conveying title to units under subsection (c), may
73 declare his intention in a recorded instrument to hold those
74 rights solely for transfer to another person. Thereafter, until
75 transferring all special declarant rights to any person ac-
76 quiring title to any unit owned by the successor, or until re-
77 cording an instrument permitting exercise of all those rights,
78 that successor may not exercise any of those rights other than
79 the right to control the executive board in accordance with
80 the provisions of section 3-103(c) for the duration of any
81 period of declarant control, and any attempted exercise of
82 those rights is void. So long as a successor declarant may not
83 exercise special declarant rights under this subsection, he is
84 not subject to any liability or obligation as a declarant other
85 than liability for the successor's acts and omissions under
86 section 3-103(c).

87 (f) Nothing in this section subjects any successor to a
88 special declarant right to any claims against or other obliga-
89 tions of a transferor declarant, other than claims and obli-
90 gations arising under this chapter or the declaration.

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

1 If entered into before the executive board elected by the
2 unit owners pursuant to section 3-103(e) takes office, (1)
3 any management contract, employment contract, or lease of
4 recreational or parking areas or facilities, (2) any other
5 contract or lease to which a declarant or an affiliate of a
6 declarant is a party, or (3) any contract or lease that is not
7 bona fide or was unconscionable to the unit owners at the
8 time entered into under the circumstances then prevailing,
9 may be terminated without penalty by the association at
10 any time after the executive board elected by the unit owners

11 pursuant to section 3-103(e) takes office upon not less than
 12 ninety days' notice to the other party. This subsection does
 13 not apply to any lease the termination of which would
 14 terminate the condominium or reduce its size, unless the real
 15 estate subject to that lease was submitted to the condominium
 16 for the purpose of avoiding the right of the association to
 17 terminate a lease under this section.

§36B-3-106. Bylaws.

1 (a) The bylaws of the association must provide for:

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

4 (2) election by the executive board of a president, treas-
 5 surer, secretary, and any other officers of the association the
 6 bylaws specify;

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

10 (4) which, if any, of its powers the executive board or
 11 officers may delegate to other persons or to a managing agent;
 12 and

13 (5) which of its officers may prepare, execute, certify,
 14 and record amendments to the declaration on behalf of the
 15 association.

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

§36B-3-107. Upkeep of the condominium.

1 (a) Except to the extent provided by the declaration or
 2 section 3-112(d), the association is responsible for main-
 3 tenance, repair, and replacement of the common elements,
 4 and each unit owner is responsible for maintenance, repair,
 5 and replacement of his unit. Each unit owner shall afford
 6 to the association and the other unit owners, and to their
 7 agents or employees, access through his unit reasonably
 8 necessary for those purposes. If damage is inflicted on the

9 common elements or any unit through which access is taken,
10 the unit owner responsible for the damage, or the association
11 if it is responsible, is liable for the prompt repair thereof.

12 (b) If any unit in a condominium all of whose units are
13 restricted to nonresidential use is damaged, and the ex-
14 terior appearance of the unit is thereby affected, the person
15 responsible for the exterior of the unit shall cause the unit
16 to be repaired or rebuilt to the extent necessary to restore
17 its exterior appearance. If that person fails within a reasonable
18 period of time to effect the repairs or rebuilding, the
19 association may purchase the unit at its fair market value to
20 be determined by an independent appraiser selected by the
21 association.

§36B-3-108. Meetings.

1 The bylaws must require that meetings of the association
2 be held at least once each year and provide for special
3 meetings. The bylaws must specify which of the association's
4 officers, not less than ten nor more than sixty days in
5 advance of any meeting, shall cause notice to be hand-
6 delivered or sent prepaid by United States mail to the mailing
7 address of each unit or to any other mailing address desig-
8 nated in writing by the unit owner. The notice of any meeting
9 must state the time and place of the meeting and the items
10 on the agenda, including the general nature of any proposed
11 amendment to the declaration or bylaws.

§36B-3-109. Quorums.

1 (a) Unless the bylaws provide otherwise, a quorum is
2 deemed present throughout any meeting of the association if
3 persons entitled to cast twenty percent of the votes which
4 may be cast for election of the executive board are present
5 in person or by proxy at the beginning of the meeting. The
6 bylaws may require a larger percentage or a smaller percentage
7 not less than ten percent.

8 (b) Unless the bylaws specify a larger percentage, a
9 quorum is deemed present throughout any meeting of the
10 executive board if persons entitled to cast fifty percent of

11 the votes on that board are present at the beginning of the
12 meeting.

§36B-3-110. Voting; proxies.

1 (a) If only one of the multiple owners of a unit is present
2 at a meeting of the association, he is entitled to cast all the
3 votes allocated to that unit. If more than one of the multiple
4 owners are present, the votes allocated to that unit may be
5 cast only in accordance with their unanimous agreement unless
6 the declaration expressly provides otherwise. There is unani-
7 mous agreement if any one of the multiple owners casts the
8 votes allocated to that unit without protest being made prompt-
9 ly to the person presiding over the meeting by any of the
10 other owners of the unit.

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

21 (c) The declaration may provide for cumulative voting
22 only for the purpose of electing members of the executive
23 board and for class voting on specified issues affecting the
24 class if necessary to protect valid interests of the class. A
25 declarant may not utilize cumulative or class voting for the
26 purpose of evading any limitation imposed on declarants by
27 this chapter.

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

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

1 (a) An action in tort alleging a wrong done by a declarant
2 or his agent or employee in connection with a portion of any
3 convertible or withdrawable real estate or other portion of the
4 condominium which the declarant has the responsibility to

5 maintain may not be brought against the association or a unit
6 owner other than a declarant. Otherwise, an action in tort
7 alleging a wrong done by the association or by an agent or
8 employee of the association, or an action arising from a con-
9 tract made by or on behalf of the association, shall be
10 brought against the association. If the tort or breach of con-
11 tract occurred during any period of declarant control (section
12 3-103(c)), the declarant is liable to the association for all
13 unreimbursed losses suffered by the association as a result
14 of that tort or breach of contract, including costs and reason-
15 able attorney's fees. Any statute of limitation affecting the
16 association's right of action under this section is tolled until
17 the period of declarant control terminates. A unit owner is
18 not precluded from bringing an action contemplated by this
19 subsection because he is a unit owner or a member or officer
20 of the association.

21 (b) A judgment for money against the association if prop-
22 erly docketed as required by section five, article three, chapter
23 thirty-eight of this code is a lien against all of the units. No
24 other property of a unit owner is subject to the claims of
25 creditors of the association. The association shall notify all
26 unit owners in any manner reasonably calculated to give
27 notice to unit owners of the filing of any action against the
28 association, including notice by certified or registered mail,
29 return receipt requested.

30 (c) No judgment shall be a lien as against a subsequent
31 purchaser of any unit for valuable consideration without notice
32 unless it is docketed as required by section five, article three,
33 chapter thirty-eight of this code. A judgment against the asso-
34 ciation shall be indexed in the name of the condominium and
35 of the particular unit owners.

§36B-3-112. Insurance.

1 (a) Commencing not later than the time of the first
2 conveyance of a unit to a person other than a declarant, the
3 association shall maintain, to the extent reasonably available:
4 (1) property insurance on the common elements and units,
5 exclusive of improvements and betterments installed in units
6 by unit owners, insuring against all risks of direct physical

7 loss commonly insured against or, in the case of a conversion
8 condominium, against fire and extended coverage perils. The
9 total amount of insurance after application of any deductibles
10 shall be not less than eighty percent of the actual cash value
11 of the insured property, exclusive of land, excavations, founda-
12 tions, and other items normally excluded from property
13 policies; and

14 (2) comprehensive general liability insurance, including
15 medical payments insurance, in an amount determined by the
16 executive board but not less than any amount specified in
17 the declaration, covering all occurrences commonly insured
18 against for death, bodily injury, and property damage arising
19 out of or in connection with the use, ownership, or main-
20 tenance of the common elements.

21 (b) If the insurance described in subsection (a) is not
22 maintained, the association promptly shall cause notice of
23 that fact to be hand-delivered or sent prepaid by United
24 States mail to all unit owners. The declaration may require
25 the association to carry any other insurance, and the associa-
26 tion in any event may carry any other insurance it deems
27 appropriate to protect the association or the unit owners.

28 (c) Insurance policies carried pursuant to subsection (a)
29 must provide that:

30 (1) each unit owner is an insured person under the
31 policy with respect to liability arising out of his ownership
32 of an undivided interest in the common elements or member-
33 ship in the association;

34 (2) the insurer waives its right to subrogation under the
35 policy against any unit owner of the condominium or members
36 of his household;

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

41 (4) if, at the time of a loss under the policy, there is
42 other insurance in the name of a unit owner covering the

43 same property covered by the policy, the policy is primary
44 insurance not contributing with the other insurance.

45 (d) Any loss covered by the property policy under sub-
46 section (a)(1) shall be adjusted with the association, but
47 the insurance proceeds for that loss shall be payable to any
48 insurance trustee designated for that purpose, or otherwise
49 to the association, and not to any mortgagee or beneficiary
50 under a deed of trust. The insurance trustee or the association
51 shall hold any insurance proceeds in trust for unit owners
52 and lienholders as their interests may appear. Subject
53 to the provisions of subsection (g), the proceeds shall be
54 disbursed first for the repair or restoration of the damaged
55 common elements and units, and unit owners and lienholders
56 are not entitled to receive payment of any portion of the
57 proceeds unless there is a surplus of proceeds after the com-
58 mon elements and units have been completely repaired or
59 restored, or the condominium is terminated.

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

63 (f) An insurer that has issued an insurance policy under
64 this section shall issue certificates or memoranda of insurance
65 to the association and, upon request, to any unit owner,
66 mortgagee, or beneficiary under a deed of trust. The in-
67 surance may not be canceled until thirty days after notice of
68 the proposed cancellation has been mailed to the association,
69 each unit owner and each mortgagee or beneficiary under
70 a deed of trust to whom certificates of insurance have been
71 issued.

72 (g) Any portion of the condominium damaged or destroyed
73 shall be repaired or replaced promptly by the association
74 unless (1) the condominium is terminated, (2) repair or
75 replacement would be illegal under any state or local health
76 or safety statute or ordinance, or (3) eighty percent of the
77 unit owners, including every owner of a unit or assigned
78 limited common element which will not be rebuilt, vote not
79 to rebuild. The cost of repair or replacement in excess of
80 insurance proceeds and reserves is a common expense. If the

81 entire condominium is not repaired or replaced, (1) the
 82 insurance proceeds attributable to the damaged common ele-
 83 ments shall be used to restore the damaged area to a condi-
 84 tion compatible with the remainder of the condominium, (2)
 85 the insurance proceeds attributable to units and limited com-
 86 mon elements which are not rebuilt shall be distributed to
 87 the owners of those units and the owners of the units to
 88 which those limited common elements were assigned, and (3)
 89 the remainder of the proceeds shall be distributed to all the
 90 unit owners in proportion to their common element interest.
 91 If the unit owners vote not to rebuild any unit, that unit's
 92 entire common element interest, votes in the association,
 93 and common expense liability are automatically reallocated
 94 upon the vote as if the unit had been condemned under
 95 section 1-107(a), and the association promptly shall pre-
 96 pare, execute, and record an amendment to the declaration
 97 reflecting the reallocations. Notwithstanding the provisions
 98 of this subsection, section 2-120 governs the distribution of
 99 insurance proceeds if the condominium is terminated.

100 (h) The provisions of this section may be varied or
 101 waived in the case of a condominium all of whose units are
 102 restricted to nonresidential use.

§36B-3-113. Surplus funds.

1 Unless otherwise provided in the declaration, any surplus
 2 funds of the association remaining after payment of or
 3 provision for common expenses and any prepayment of
 4 reserves must be credited to the unit owners to reduce their
 5 future common expense assessments.

§36B-3-114. Assessments for common expenses.

1 (a) Until the association makes a common expense
 2 assessment, the declarant shall pay all the expenses of the
 3 condominium. After any assessment has been made by the
 4 association, assessments shall be made at least annually and
 5 shall be based on a budget adopted at least annually by the
 6 association.

7 (b) Except for assessments under subsection (c), common
 8 expenses shall be assessed against all the units in accordance

9 with the common expense liability allocated to each unit
10 (section 2-108). Any past due assessment or installment
11 thereof shall bear interest at the rate established by the
12 association not exceeding eighteen percent per year.

13 (c) Except as provided by the declaration:

14 (1) any common expense associated with the maintenance,
15 repair, or replacement of a limited common element shall be
16 assessed in equal shares against the units to which that
17 limited common element was assigned at the time the expense
18 was incurred; and

19 (2) any common expense benefiting fewer than all of the
20 units shall be assessed exclusively against the units benefited.

21 (d) If common expense liabilities are reallocated, com-
22 mon expense assessments and any installment thereof not
23 yet due shall be recalculated in accordance with the reallocated
24 common expense liabilities.

§36B-3-115. Lien for assessments.

1 (a) The association has a lien on a unit for any assess-
2 ment levied against that unit or fines imposed against its
3 unit owner from the time the assessment or fine becomes due.
4 The association's lien may be foreclosed in like manner as a
5 mortgage on real estate or a power of sale under a deed of
6 trust. Unless the declaration otherwise provides, fees, charges,
7 late charges, fines, and interest charged pursuant to section
8 3-102(10), (11) and (12) are enforceable as assessments under
9 this section. If an assessment is payable in installments, the
10 full amount of the assessment is a lien from the time the first
11 installment thereof becomes due.

12 (b) A lien under this section is prior to all other liens
13 and encumbrances on a unit except (1) liens and encum-
14 brances recorded before the recordation of the declaration,
15 (2) mortgages and deeds of trust on the unit securing first
16 mortgage holders and recorded before the due date of the
17 assessment or the due date of the first installment payable
18 on the assessment, and (3) liens for real estate taxes and
19 other governmental assessments or charges against the unit.

20 To the extent of the common expense assessments made
 21 under section 3-114(b) due during the six months immediately
 22 preceding institution of an action to enforce the lien, the lien
 23 is also prior to the mortgages and deeds of trust described in
 24 clause (2) above. This subsection does not affect the priority
 25 of mechanics' or materialmen's liens.

26 (c) For the purpose of perfecting and preserving its lien
 27 the association shall give notice to the unit owner in the
 28 manner set forth in section one, article two, chapter fifty-six
 29 of this code, or by registered or certified mail, return receipt
 30 requested, and in a form reasonably calculated to inform the
 31 owner of his liability for payment of the assessment. The lien
 32 shall be discharged as to subsequent purchasers for value
 33 without notice unless the association shall cause to be record-
 34 ed a notice of the lien in the office of the clerk of the county
 35 commission of any county wherein any part of the condo-
 36 minium is located. The notice shall contain

37 (1) a legally sufficient description of the unit.

38 (2) the name or names of the owners of the unit.

39 (3) the amount of unpaid assessments due together with
 40 the date when each fell due.

41 (4) the date of recordation.

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

48 Upon payment of the assessment the association shall exe-
 49 cute a written release of the lien in the manner set forth in
 50 section one, article twelve, chapter thirty-eight of this code.
 51 This release shall be recorded, at the expense of the asso-
 52 ciation, in the office of the county clerk wherein the notice
 53 of the lien was filed.

54 (d) A lien for unpaid assessments is extinguished unless

55 proceedings to enforce the lien are instituted within three
56 years after the assessments become payable.

57 (e) Nothing in this section shall be construed to prohibit
58 actions or suits to recover sums for which subsection (a)
59 creates a lien, or to prohibit an association from taking a
60 deed in lieu of foreclosure.

61 (f) A judgment or decree in any action or suit brought
62 under this section shall include costs and reasonable attor-
63 ney's fees for the prevailing party.

64 (g) The association shall furnish to a unit owner upon
65 written request a recordable statement setting forth the amount
66 of unpaid assessments currently levied against his unit. The
67 statement shall be furnished within ten business days after
68 receipt of the request and is binding on the association, the
69 executive board, and every unit owner.

§36B-3-116. Association records.

1 The association shall keep financial records sufficiently
2 detailed to enable the association to comply with section
3 4-107. All financial and other records shall be made reason-
4 ably available for examination by any unit owner and his
5 authorized agents.

§36B-3-117. Association as trustee.

1 With respect to a third person dealing with the association
2 in the association's capacity as a trustee, the existence of
3 trust powers and their proper exercise by the association
4 may be assumed without inquiry. A third person is not
5 bound to inquire whether the association has power to act
6 as trustee or is properly exercising trust powers and a third
7 person, without actual knowledge that the association is
8 exceeding or improperly exercising its powers, is fully pro-
9 tected in dealing with the association as if it possessed and
10 properly exercised the powers it purports to exercise. A
11 third person is not bound to assure the proper application of
12 trust assets paid or delivered to the association in its capacity
13 as trustee.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.

1 (a) This article applies to all units subject to this chapter,
2 except as provided in subsection (b) or as modified or waived
3 by agreement of purchasers of units in a condominium in
4 which all units are restricted to nonresidential use.

5 (b) A public offering statement need not be prepared or
6 delivered in the case of:

7 (1) gratuitous transfer of a unit;

8 (2) a disposition pursuant to court order;

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

10 (4) a disposition by foreclosure or deed in lieu of fore-
11 closure;

12 (5) a disposition of a condominium situated wholly outside
13 this state pursuant to a contract executed wholly outside this
14 state; or

15 (6) a transfer to which section 4-107 (resales of units)
16 applies.

§36B-4-102. Public offering statement; general provisions.

1 (a) Except as provided in subsection (b), a public offer-
2 ing statement must contain or fully and accurately disclose:

3 (1) the name and principal address of the declarant and
4 of the condominium;

5 (2) a general description of the condominium, including
6 without limitation the types, number, and declarant's schedule
7 of commencement and completion of construction of all
8 buildings, units, and amenities;

9 (3) the total number of additional units that may be
10 included in the condominium and the proportion of units the
11 declarant intends to rent or market in blocks of units to
12 investors;

13 (4) a brief narrative description of any options reserved
14 by a declarant to withdraw withdrawable real estate under

15 section 2-106(1) and the expected effects that withdrawal
16 would have on the remaining portion of the condominium;

17 (5) copies and a brief narrative description of the sig-
18 nificant features of the declaration (other than the plats
19 and plans), the bylaws, and rules and regulations, copies
20 of any contracts and leases to be signed by purchasers at
21 closing, and a brief narrative description of any contracts
22 or leases that will or may be subject to cancellation by the
23 association under section 3-105;

24 (6) any current balance sheet and a projected budget for
25 the association, either within or as an exhibit to the public
26 offering statement, for one year after the date of the first
27 conveyance to a purchaser, and thereafter the current budget
28 of the association, a statement of who prepared the budget,
29 and a statement of the budget's assumptions concerning oc-
30 cupancy and inflation factors. The budget must include,
31 without limitation:

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

35 (ii) a statement of any other reserves;

36 (iii) the projected common expense assessment by cate-
37 gory of expenditures for the association;

38 (iv) the projected monthly common expense assessment for
39 each type of unit;

40 (7) any services not reflected in the budget that the
41 declarant provides, or expenses that he pays, and that he
42 expects may become at any subsequent time a common expense
43 of the association and the projected common expense assess-
44 ment attributable to each of those services or expenses for
45 the association and for each type of unit;

46 (8) any initial or special fee due from the purchaser at
47 closing, together with a description of the purpose and
48 method of calculating the fee;

49 (9) a description of any liens, defects, or encumbrances
50 on or affecting the title to the condominium;

51 (10) a description of any financing offered by the de-
52 clarant;

53 (11) the terms and significant limitations of any war-
54 ranties provided by the declarant, including statutory war-
55 ranties and limitations on the enforcement thereof or on
56 damages;

57 (12) a statement that:

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

61 (ii) if a declarant fails to provide a public offering state-
62 ment to a purchaser before conveying a unit, that purchaser
63 may recover from the declarant ten percent of the sales
64 price of the unit; and

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

68 (13) a statement of any judgments against the association,
69 the status of any pending suits to which the association is
70 a party, and the status of any pending suits material to the
71 condominium of which a declarant has actual knowledge;

72 (14) a statement that any deposit made in connection
73 with the purchase of a unit will be held in an escrow account
74 until closing and will be returned to the purchaser if the
75 purchaser cancels the contract pursuant to section 4-106;

76 (15) any restraints on alienation of any portion of the
77 condominium;

78 (16) a description of the insurance coverage provided for
79 the benefit of unit owners;

80 (17) any current or expected fees or charges to be paid
81 by unit owners for the use of the common elements and other
82 facilities related to the condominium;

83 (18) the extent to which financial arrangements have
84 been provided for completion of all improvements labeled

85 "MUST BE BUILT" pursuant to section 4-115 (declarant's
86 obligation to complete and restore); and

87 (19) all unusual and material circumstances, features, and
88 characteristics of the condominium and the units.

89 (b) If a condominium composed of not more than twelve
90 units is not a flexible condominium and no power is reserved
91 to a declarant to make the condominium part of a larger
92 condominium, group of condominiums, or other real estate, a
93 public offering statement may but need not include the in-
94 formation otherwise required by paragraphs (3), (4), (10),
95 (11), (16), (17), (18), and (19) of subsection (a), and the
96 narrative descriptions of documents required by paragraph
97 (a) (5).

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

§36B-4-103. Same; time-share estates.

1 (a) For purposes of this section, "time-share estate"
2 means either:

3 (1) an "interval estate," meaning a combination of (i) an
4 estate for years in a unit, during the term of which title to
5 the unit rotates among the time-share owners thereof, vesting
6 in each of them in turn for periods established by a fixed
7 recorded schedule, with the series thus established recurring
8 regularly until the term expires, coupled with (ii) a vested
9 undivided fee simple interest in the remainder in that unit, the
10 magnitude of that interest having been established by the
11 declaration or by the deed creating the interval estate; or

12 (2) a "time-span estate," meaning a combination of (i) an
13 undivided interest in a present estate in fee simple in a unit,
14 the magnitude of that interest having been established by the
15 declaration or by the deed conveying the time-span estate,
16 coupled with (ii) the exclusive right to possession and occu-
17 pancy of that unit during a regularly recurring period desig-
18 nated by that deed or by a recorded document referred to
19 therein.

20 (b) If the declaration provides that ownership or occu-
 21 pancy of the units are or may be owned in time-shares, the
 22 public offering statement shall disclose in addition to the
 23 information required by section 4-102:

24 (1) the total number of units in which time-share estates
 25 may be created;

26 (2) the total number of time-share estates that may be
 27 created in the condominium;

28 (3) the projected common expense assessment for each
 29 time-share estate and whether those assessments may vary
 30 seasonally;

31 (4) a statement of any services not reflected in the budget
 32 which the declarant provides, or expenses which he pays,
 33 and which he expects may become at any subsequent time a
 34 common expense of the association, and the projected common
 35 expense assessment attributable to each of those services or
 36 expenses for each time-share estate;

37 (5) the extent to which the time-share owners of a unit
 38 are jointly and severally liable for the payment of real estate
 39 taxes and all assessments and other charges levied against
 40 that unit;

41 (6) the extent to which a suit for partition may be main-
 42 tained against a unit owned in time-share estates; and

43 (7) the extent to which a time-share estate may become
 44 subject to a tax or other lien arising out of claims against
 45 other time-share owners of the same unit.

§36B-4-104. Same; conversion condominiums.

1 (a) The public offering statement of a conversion con-
 2 dominium must contain, in addition to the information re-
 3 quired by section 4-102:

4 (1) a statement by the declarant, based on a report
 5 prepared by an independent architect or engineer, describing
 6 the present condition of all structural components and mechan-
 7 cal and electrical installations' material to the use and enjoy-
 8 ment of the condominium;

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

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

15 (b) This section applies only to units that may be oc-
16 cupied for residential use.

§36B-4-105. Same; condominium securities.

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

§36B-4-106. Purchaser's right to cancel.

1 (a) Unless delivery of a public offering statement is
2 not required under section 4-101(b), a declarant shall
3 provide a purchaser of a unit with a copy of the public
4 offering statement and all amendments thereto before con-
5 veyance of that unit, and not later than the date of any
6 contract of sale. Unless a purchaser is given the public
7 offering statement more than fifteen days before execution of
8 a contract for the purchase of a unit, the purchaser, before
9 conveyance, may cancel the contract within fifteen days after
10 first receiving the public offering statement.

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

18 (c) If a declarant fails to provide a purchaser to whom
19 a unit is conveyed with a public offering statement and all
20 amendments thereto as required by subsection (a), the pur-

21 chaser, in addition to any rights to damages or other relief,
 22 is entitled to receive from the declarant an amount equal to
 23 ten percent of the sales price of the unit.

§36B-4-107. Resales of units.

1 (a) In the event of a resale of a unit by a unit owner
 2 other than a declarant, the unit owner shall furnish to a
 3 purchaser before execution of any contract for sale of a
 4 unit, or otherwise before conveyance, a copy of the de-
 5 claration (other than the plats and plans), the bylaws, the
 6 rules or regulations of the association, and a certificate
 7 containing:

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

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

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

16 (4) a statement of any capital expenditures proposed by
 17 the association for the current and two next succeeding
 18 fiscal years;

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

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

24 (7) the current operating budget of the association;

25 (8) a statement of any judgments against the association
 26 and the status of any pending suits to which the association
 27 is a party;

28 (9) a statement describing any insurance coverage pro-
 29 vided for the benefit of unit owners;

30 (10) a statement as to whether the executive board has

31 knowledge that any alterations or improvements to the unit
32 or to the limited common elements assigned thereto violate
33 any provision of the declaration;

34 (11) a statement as to whether the executive board has
35 knowledge of any violations of the health or building codes
36 with respect to the unit, the limited common elements assigned
37 thereto, or any other portion of the condominium; and

38 (12) a statement of the remaining term of any leasehold
39 estate affecting the condominium and the provisions govern-
40 ing any extension or renewal thereof.

41 (b) The association, within ten days after a request by
42 a unit owner, shall furnish a certificate containing the in-
43 formation necessary to enable the unit owner to comply with
44 this section. A unit owner providing a certificate pursuant
45 to subsection (a) is not liable to the purchaser for any
46 erroneous information provided by the association and in-
47 cluded in the certificate.

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

§36B-4-108. Escrow of deposits.

1 Any deposit made in connection with the purchase or re-
2 servation of a unit from a declarant shall be placed in escrow
3 and held in this state in an account designated solely for
4 that purpose by an institution whose accounts are insured
5 by a governmental agency or instrumentality until (1) delivered
6 to the declarant at closing (2) delivered to the declarant
7 because of purchaser's default under a contract to purchase
8 the unit; or (3) refunded to the purchaser.

§36B-4-109. Release of liens.

1 (a) Before conveying a unit, other than by deed in lieu of

2 foreclosure, to a purchaser other than a declarant, a declar-
3 ant shall record or furnish to the purchaser, releases of all
4 liens affecting that unit and its common element interest which
5 the purchaser does not expressly agree to take subject to or
6 assume. This subsection does not apply to any withdrawable
7 real estate in which no unit has been conveyed.

8 (b) Whether perfected before or after creation of the con-
9 dominium, if a lien other than a deed of trust or mortgage,
10 including a lien attributable to work performed or materials
11 supplied before creation of the condominium, becomes effec-
12 tive against two or more units, the unit owner of an affected
13 unit may pay to the lienholder the amount of the lien attri-
14 butable to his unit, and the lienholder, upon receipt of pay-
15 ment, promptly shall deliver a release of the lien covering that
16 unit and its common element interest. The amount of the
17 payment must be proportionate to the ratio which that unit
18 owner's common expense liability bears to the common ex-
19 pense liabilities of all unit owners whose units are subject to
20 the lien. After payment, the association may not assess or
21 have a lien against that unit owner's unit for any portion of
22 the common expenses incurred in connection with that lien.

§36B-4-110. Conversion condominiums.

1 (a) A declarant of a conversion condominium shall give
2 each of the tenants and any subtenant in possession of
3 buildings subject to this chapter notice of the conversion
4 no later than one hundred twenty days before the declarant
5 will require the tenants and any subtenant in possession to
6 vacate. The notice must set forth generally the rights of
7 tenants and subtenants under this section and shall be
8 hand-delivered to the unit or mailed by prepaid United
9 States mail to the tenant and subtenant at the address of
10 the unit or any other mailing address provided by a tenant.
11 No tenant or subtenant may be required by the declarant to
12 vacate upon less than one hundred twenty days' notice,
13 except by reason of nonpayment of rent, waste, or conduct
14 that disturbs other tenants' peaceful enjoyment of the pre-
15 mises, and the terms of the tenancy may not be altered
16 during that period. Failure of a declarant to give notice as

17 required by this section is a defense to an action for posses-
18 sion.

19 (b) For sixty days after delivery or mailing of the notice
20 described in subsection (a), the declarant shall offer to
21 convey each unit or proposed unit occupied for residential
22 use to the tenant who leases that unit. If a tenant fails to
23 purchase the unit during that sixty day period, the declarant
24 may not offer to dispose of an interest in that unit during the
25 following one hundred eighty days at a price or on terms
26 more favorable to the offeree than the price or terms
27 offered to the tenant. This subsection does not apply to any
28 unit in a conversion condominium if that unit will be
29 restricted exclusively to nonresidential use or the boundaries
30 of the converted unit do not substantially conform to the
31 dimensions of the residential unit before conversion.

32 (c) If a declarant, in violation of subsection (b), conveys
33 a unit to a purchaser for value who has no knowledge of
34 the violation, recordation of the deed conveying the unit
35 extinguishes any right a tenant may have under subsection
36 (b) to purchase that unit if the deed states that the seller
37 has complied with subsection (b), but does not affect the
38 right of a tenant to recover damages from the declarant for
39 a violation of subsection (b).

40 (d) If a notice of conversion specifies a date by which
41 a unit or proposed unit must be vacated, the notice also
42 constitutes a notice to vacate specified by section five,
43 article six, chapter thirty-seven of this code.

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

§36B-4-111. Warranty against structural defects.

1 (a) *Definition.*—As used in this section “structural defects”
2 means those defects in components constituting any unit or
3 common element which reduce the stability or safety of the
4 structure below accepted standards or restrict the normal
5 intended use of all or part of the structure and which require
6 repair, renovation, restoration or replacement. Nothing in this
7 section shall be construed to make the declarant responsible

8 for any items of maintenance relating to the units or common
9 elements.

10 (b) *General rule.*—A declarant warrants against structural
11 defects in each of the units for two years from the date each is
12 conveyed to a bona fide purchaser, and all of the common
13 elements for two years. The two years shall begin as to each
14 of the common elements whenever the common element has
15 been completed or, if later:

16 (1) as to any common element within any additional real
17 estate or portion thereof, at the time the first unit therein
18 is conveyed to a bona fide purchaser:

19 (2) as to any common element within any convertible real
20 estate or portion thereof, at the time the first unit therein
21 is conveyed to a bona fide purchaser; and

22 (3) as to any common element within any other portion of
23 the condominium, at the time the first unit therein is con-
24 veyed to a bona fide purchaser.

25 (c) *Limitation for conversion condominiums.*—The declar-
26 ant of a conversion condominium may offer the units, common
27 elements, or both, in “as is” condition in which event the de-
28 clarant’s warranty against structural defects applies only to
29 defects in components installed by declarant or work done by
30 declarant except to the extent that the declarant gives a more
31 extensive warranty in writing.

32 (d) *Exclusion or modification of warranty.*—Except with
33 respect to a purchaser of a unit for residential use, the war-
34 ranty against structural defects

35 (1) may be excluded or modified by agreement of the par-
36 ties; and

37 (2) is excluded by expression of disclaimer, such as “as
38 is,” “with all faults” or other language which in common
39 understanding calls the buyer’s attention to the exclusion of
40 warranties.

§36B-4-112. Statute of limitations for warranties.

1 (a) A judicial proceeding for breach of any obligation

2 arising under this chapter must be commenced within six
3 years after the cause of action accrues.

4 (b) Subject to subsection (c), a cause of action for breach
5 of any express or statutory warranty, regardless of the pur-
6 chaser's lack of knowledge of the breach, accrues:

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

12 (2) as to each common element, at the time the common
13 element is completed or, if later, (i) as to a common element
14 within any additional or convertible real estate or portion
15 thereof, at the time the first unit therein is conveyed to a bona
16 fide purchaser, or (ii) as to a common element within any
17 other portion of the condominium, at the time the first unit
18 in the condominium is conveyed to a bona fide purchaser.

19 (c) If any express or statutory warranty explicitly extends to
20 future performance or duration of any improvement or com-
21 ponent of the condominium, the cause of action accrues at the
22 time the breach is discovered or at the end of the period for
23 which the warranty explicitly extends, whichever is earlier.

§36B-4-113. Effect of violations on rights of action; attorney's fees.

1 If a declarant or any other person subject to this chapter
2 violates any provision thereof or any provision of the
3 declaration or bylaws, any person or class of persons adverse-
4 ly affected by the violation has a claim for appropriate
5 relief. Punitive damages may be awarded in the case of a
6 willful violation of the chapter. The court, in an appropriate
7 case, may award reasonable attorney's fees.

§36B-4-114. Labeling of promotional material.

1 If any improvement contemplated in a condominium is
2 required by section 2-110(b)(3) to be labeled "NEED NOT
3 BE BUILT" on a plat or plan, or is to be located within
4 convertible real estate, no promotional material may be
5 displayed or delivered to prospective purchasers which de-

6 scribes or depicts that improvement unless the description or
7 depiction of the improvement is conspicuously labeled or
8 identified as "NEED NOT BE BUILT."

§36B-4-115. Declarant's obligation to complete and restore.

1 (a) The declarant shall complete all improvements labeled
2 "MUST BE BUILT" on plats or plans prepared pursuant
3 to section 2-110.

4 (b) The declarant is subject to liability for the prompt
5 repair and restoration, to a condition compatible with the
6 remainder of the condominium, of any portion of the con-
7 dominium affected by the exercise of rights reserved pursuant
8 to or created by sections 2-111, 2-112, 2-117 and 2-118.

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

James L. Davis
Chairman Senate Committee

Glenn C. Chumley
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

Odd C. Willis
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. C. B. B. B. B.
President of the Senate

Clide N. Lee
Speaker House of Delegates

The within approved this the 15
day of February, 1980.

John J. Dwyer
Governor

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