WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

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ENROLLED
Committee Substitute for
HOUSE BILL No. 788

(By Mr. Christian & Mr. Green)

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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.


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

§36B-1-102. Applicability.

(a) This chapter applies to all condominiums created within this state after the effective date of this chapter.

Sections 1-105 (separate titles and taxation), 1-106 (applicability of local ordinances, regulations, and building codes), 1-107 (eminent domain), 2-103 (construction and validity of declaration and bylaws), 2-104 (description of units), 3-102(a) (1) through (6) and (11) through (16) (powers
of unit owners' association), 3-111 (tort and contract liability),
3-115 (lien for assessments), 3-116 (association records), 4-
107 (resales of units), and 4-113 (effect of violation on rights
of action; attorney's fees), and section 1-103 (definitions)
to the extent necessary in construing any of those sections,
apply to all condominiums created in this state before the
effective date of this chapter; but those sections apply only
with respect to events and circumstances occurring after the
effective date of this chapter and do not invalidate existing
provisions of the declaration, bylaws, or plats or plans of those
condominiums.

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

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

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

§36B-1-103. Definitions.

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

(1) “Additional real estate” means real estate that may be added to a flexible condominium.

(2) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. A person “controls” a declarant if the person (i) is a general partner, officer, director, or employee of the declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of the declarant. (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than twenty percent of the capital of the declarant. A person “is controlled by” a declarant if the declarant (i) is a general partner, officer, director, or employee of the person, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interests of the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than twenty percent of the capital of the person.

(3) “Association” or “unit owners’ association” means the unit owners’ association organized under section 3-101.

(4) “Common elements” means all portions of a condominium other than the units.

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

(6) “Common expense liability” means the liability for
common expenses allocated to each unit pursuant to section 2-108.

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

(8) "Conversion condominium" means a condominium containing any building that at any time before recording of the declaration was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(9) "Convertible real estate" means a portion of a flexible condominium not within a building containing a unit, within which additional units or limited common elements, or both, may be created.

(10) "Declarant" means:

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

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

(11) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable interest in a unit, other than as security for an obligation.

(12) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.
(13) "Flexible condominium means a condominium contain-
ing withdrawable or convertible real estate, a condo-
minium to which additional real estate may be added, or a
combination thereof.

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

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

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

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

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

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

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

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

(22) "Special declarant rights" means rights reserved for the benefit of a declarant to complete improvements indicated on plats and plans filed with the declaration (section 2-110); to convert convertible real estate in a flexible condominium (section 2-111); to add additional real estate to a flexible condominium (section 2-111); to withdraw withdrawable real estate from a flexible condominium (section 2-112); to convert a unit into two or more units, common elements, or into two or more units and common elements (section 2-115); to maintain sales offices, management offices, signs advertising the condominium, and models (section 2-117); to use easements through the common elements for the purpose of making improvements within the condominium or within any convertible or additional real estate (section 2-118); or to appoint or remove any officer of the association or any executive board member during any period of declarant control (section 3-103(c)).

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

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

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

§36B-1-104. Variation by agreement.

Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights
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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.
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-
portion to the respective interests, votes, and liabilities of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its common element interest. Upon acquisition, (1) that unit's common element interest, votes in the association, and common expense liability are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration, and (2) the portion of common element interest, votes, and common expense liability divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective interests, votes, and liabilities of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced interests, votes, and liabilities.

(c) If part of the common elements is acquired by eminent domain, the award must be paid to the association. The association shall divide any portion of the award not used for any restoration or repair of the remaining common elements among the unit owners in proportion to their respective common element interests before the taking, but the portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition, or in any manner the declaration provides.

(d) If the acquisition of common elements or the acquisition of certain units decreases the value of the remaining units by more than a de minimus amount, the award must include an amount to all remaining unit owners sufficient to compensate them for that decrease in value. For purposes of this subsection the entity authorized to exercise the right of eminent domain must give notice to all unit owners...
and holders of liens on units in the manner set forth in section three, article two, chapter fifty-four of this code, or by

certified or registered mail, return receipt requested.

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

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

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

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

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

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

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

§36B-1-111. Severability.

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

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

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

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

(1) The commercial setting of the negotiations;

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

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

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

§36B-1-113. Obligation of good faith.

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

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

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

(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.
ARTICLE 2. CREATION, ALTERATIONS AND TERMINATION OF CONDOMINIUMS.


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

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

3 (c) No interest in a unit may be conveyed until the unit is substantially completed, as evidenced by a recorded certificate of completion executed by an independent architect, surveyor, 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 of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

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

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

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

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

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

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

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

(d) Title to a unit and its common element interest is not rendered unmarketable or otherwise affected by any provision of unrecorded bylaws, or by reason of an insufficient failure of the declaration to comply with this chapter.

§36B-2-104. Description of units.

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and its common element interest even if the common element interest is not 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 word "condominium" or be followed by the words "a condominium";

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

4 (3) a legally sufficient description of the real estate included in the condominium;

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

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

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

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

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

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

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

12 (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, in addition to the matters specified in section 2-105:

2 (1) an explicit reservation of any options to create units, limited common elements, or both, within convertible real estate, or to add additional real estate to or withdraw withdrawable real estate from the condominium;

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

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

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

6 (5) legally sufficient descriptions of each portion of convertible, additional, and withdrawable real estate;

7 (6) if portions of any convertible, additional, or withdrawable real estate may be converted, added, or withdrawn at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which they may be converted, added, or withdrawn or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any portion of convertible, additional, or withdrawable real estate is converted, added, or withdrawn, all or any particular portion of that or any other real estate must be converted, added, or withdrawn;
(7) a statement of (i) the maximum number of units that
may be created within any additional or convertible real
estate, or within any portion of either, the boundaries of
which are fixed pursuant to paragraph (6), (ii) how many of
those units will be restricted exclusively to residential use,
and (iii) the maximum number of units per acre that may be
created within any portions the boundaries of which are not
fixed pursuant to paragraph (6);

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

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

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

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

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

(13) a statement that any limited common elements
created within any convertible or additional real estate will
be of the same general types and sizes as those within other
parts of the condominium, or a statement of any other
assurances in that regard, or a statement that no assurances
are made in that regard;

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

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

§36B-2-107. Leasehold condominiums.

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

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

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

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

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

(5) any right of the unit owners to remove any improve-
ments within a reasonable time after the expiration or termi-
nation of the lease, or a statement that they do not have
those rights; and
(6) any rights of the unit owners to renew the lease and
the conditions of any renewal, or a statement that they do
not have those rights.
(b) after the declaration for a leasehold condominium is
recorded, neither the lessor nor his successor in interest
may terminate the leasehold interest of a unit owner who
makes timely payment of his share of the rent and otherwise
complies with all covenants which, if violated, would en-
title the lessor to terminate the lease. A unit owner's lease-
hold interest is not affected by failure of any other person
to pay rent or fulfill any other covenant.
(c) acquisition of the leasehold interest of any unit owner
by the owner of the reversion or remainder does not merge
the leasehold and fee simple interests unless the leasehold
interests of all unit owners subject to that reversion or
remainder are acquired.
(d) If the expiration or termination of a lease decreases
the number of units in a condominium, the common element
interests, votes in the association, and common expense
liabilities shall be reallocated in accordance with section
1-107(a) as though those units had been taken by eminent
domain. Reallocations shall be confirmed by an amendment
to the declaration prepared, executed, and recorded by the
association.

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

(a) The declaration shall allocate a fraction or per-
centage of undivided interests in the common elements and
in the common expenses of the association, and a portion of
the votes in the association, to each unit and state the
formulas used to establish those allocations.
(b) In a flexible condominium, the common element
interest and common expense liability allocated to each unit
must be equal, or proportionate to the relative size of each
unit, unless the declaration as originally recorded:
(1) requires that any units created in additional or
convertible real estate be substantially identical to the other
units in the condominium and provides that common element
interests and common expense liabilities will be allocated
to those units in accordance with the formulas used for the
initial allocations; or

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

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

(d) Except in the case of eminent domain (section 1-107),
expansion or conversion of a flexible condominium (section
2-111), withdrawal of withdrawable real estate (section 2-112),
relocation of boundaries between adjoining units (section
2-114), or subdivision of units (section 2-115), the common
element interest, votes, and common expense liability allo-
cated to any unit may not be altered without unanimous
consent of all unit owners. The common elements are not
subject to partition, and any purported conveyance, encum-
brance, judicial sale, or other voluntary or involuntary transfer
of an undivided interest in the common elements made
without the unit to which it is allocated is void.
(e) Except for minor variations due to rounding, the sums of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between the common element interest, votes, or common expense liability allocated to a unit and the result derived from application of the formulas, the allocated common element interest, vote, or common expense liability prevails.


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

(b) Subject to any provisions of the declaration, a limited common element may be reallocated by a recorded assignment executed by the unit owners between or among whose units the reallocation is made, or by an amendment to the declaration executed by those unit owners. The persons executing the assignment or amendment to the declaration shall provide a copy thereof to the association.

(c) A common element not previously allocated as a limited common element may not be so allocated except pursuant to provisions in the declaration made in accordance with section 2-105(7). The declaration may provide that the allocation shall be made by deeds or assignments executed by the declarant or the association, or by amendments to the declaration.

§36B-2-110. Plats and plans.

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

1. the name, location, and dimensions of the condominium;
2. the location and dimensions of all existing improvements;
3. the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium labeled either “MUST BE BUILT” or “NEED NOT BE BUILT,” but need not show contemplated improvements within the boundaries of convertible real estate;
4. the location and dimensions of any convertible real estate, labeled as such;
5. the location and dimensions of any withdrawable real estate, labeled as such;
6. the extent of any encroachments by or upon any portion of the condominium;
7. to the extent feasible, the location and dimensions of all easements serving or burdening any portion of the condominium;
8. the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit’s identifying number;
9. the location with reference to established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (c) and that unit’s identifying number;
10. the locations and dimensions of any real estate in which the unit owners will own only an estate for years, labeled as “leasehold real estate”;
11. the distance between noncontiguous parcels of real estate comprising the condominium;
12. the location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and other limited common elements described in sections 2-102(2) and (4);
(13) all other matters customarily shown on land surveys.

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

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

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

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

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

(e) Upon converting convertible real estate or adding additional real estate (section 2-511), the declarant shall record new plats for that real estate conforming to the requirements of subsection (b) and new plans for any buildings on that real estate conforming to the requirements of subsection (c). If less than all of any convertible real estate is being converted, the new plats must also show the location and dimensions of the remaining portion.

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

(g) Instead of recording new plats and plans as required
by subsections (e) and (f), the declarant may record new
certifications of plats and plans previously recorded if those
plats and plans show all improvements required by subsections
(e) and (f).

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

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

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

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

(c) Until conversion occurs or the period during which
conversion may occur expires, whichever occurs first, the
declarant alone is liable for real estate taxes assessed against
convertible real estate and all other expenses in connection
with that real estate. No other unit owner and no other
portion of the condominium is subject to a claim for pay-
ment of those taxes or expenses. Unless the declaration pro-
vides otherwise, any income or proceeds from convertible real estate inures to the declarant.

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

(a) To withdraw withdrawable real estate from a flexible condominium pursuant to an option reserved under section 2-106(1), the declarant shall prepare, execute, and record an amendment to the declaration containing a legally sufficient description of the real estate being withdrawn and stating the fact of withdrawal. The amendment must reallocate common element interests, votes in the association, and common expense liabilities to the remaining units in the condominium in proportion to the respective interests, votes, and liabilities of those units before the withdrawal, and the reallocation is effective when the amendment is recorded.

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

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

§36B-2-113. Alterations of units.

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

(1) may make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;
(2) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association;

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

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

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

(b) The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.

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

(a) If the declaration expressly so permits, a unit may be subdivided into two or more units or, in the case of a unit owned by a declarant, may be subdivided or converted into two or more units, common elements, or a combination of units and common elements. Subject to the provisions of
the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, or upon application of a declarant to convert a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing or converting that unit.

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

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

§36B-2-116. Interpretation of deeds.

In interpreting deeds and plans, the existing physical boundaries of a unit or of a unit reconstructed in substantial accordance with the original plats and plans thereof become its boundaries rather than the metes and bounds expressed in the deed or plat or plan, regardless of settling or lateral movement of the building, or minor variance between boundaries shown on the plats or plans or in the deed and those of the building.

§36B-2-117. Use for sales purposes.

A declarant may maintain sales offices, management offices, and models in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element, and if a declarant ceases to be a unit owner, he
ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium.

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

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

§36B-2-119. Amendment of declaration.

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

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

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

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

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

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

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

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

(c) The association, on behalf of the unit owners, may
contract for the sale of the condominium, but the contract
is not binding on the unit owners until approved pursuant to
subsections (a) and (b). If the real estate constituting
the condominium is to be sold following termination, title
to that real estate, upon termination, vests in the
association as trustee for the holder of all interest in
the units. Thereafter, the association has all powers
necessary and appropriate to effect the sale. Until the
sale has been concluded and the proceeds thereof dis-
tributed, the association continues in existence with all
powers it had before termination. Proceeds of the sale must
be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interest of unit owners as provided in subsection (f). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit. During the period of that occupancy, each unit owner and his successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(d) If the real estate constituting the condominium is not to be sold following termination, title to the real estate, upon termination, vests in the unit owners as tenants in common in proportion to their respective interests as provided in subsection (f), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his unit.

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

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

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

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

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

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

1. The declaration may require that all or a specified number or percentage of the mortgages or beneficiaries of deeds of trust encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (2) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any 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 than the date the condominium is created. The membership
of the association at all times shall consist exclusively of
all the unit owners or, following termination of the
condominium, of all former unit owners entitled to dis-
tributions of proceeds under section 2-120, or their
heirs, successors, or assigns. The association shall be organiz-
ed as a profit or nonprofit corporation or as an unincorporated
association.

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

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

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

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

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

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

(5) make contracts and incur liabilities;

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

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

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

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

(10) impose and receive any payments, fees or charges
for the use, rental, or operation of the common elements
other than limited common elements described in sections
2-102(2) and (4);
(11) impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association;

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

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

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

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

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

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

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

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

(b) The executive board may not act on behalf of the association to amend the declaration (section 2-119), to terminate the condominium (section 2-120), or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members (section 3-103(e)), but the executive board may fill vacancies in its membership for the unexpired portion of
any term. In addition to other rights conferred by the
declaration, bylaws or this act, the unit owners, by majority
or any larger vote specified in the declaration, may reject
any budget or capital expenditure approved by the executive
board, within thirty days after the approval.

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

(d) Not later than sixty days after conveyance of twenty-
five percent of the units to unit owners other than a de-
clarant, not less than twenty-five percent of the members
of the executive board shall be elected by unit owners other
than the declarant. Not later than sixty days after con-
voyance of fifty percent of the units to unit owners other
than a declarant, not less than thirty-three and one-third
percent of the members of the executive board shall be
elected by unit owners other than the declarant.

(e) Not later than the termination of any period of
declarant control, the unit owners shall elect an executive
board of at least three members, at least a majority of whom
must be unit owners. The executive board shall elect the
officers. The persons elected shall take office upon election.

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

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

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

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

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

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

(3) A transferor who retains no special declarant right has
no liability for any act or omission or any breach of a contrac-
tual or warranty obligation arising from the exercise of a
special declarant right by a successor declarant who is not an
affiliate of the transferor.
(c) Unless otherwise provided in a mortgage instrument or deed of trust, in case of foreclosure of a mortgage, sale by a trustee under a deed of trust, or sale under bankruptcy act or receivership proceedings, of any units owned by a declarant in the condominium, a person acquiring title to all the units being foreclosed or sold, but only upon his request, succeeds to all special declarant rights, or only to any rights reserved in the declaration pursuant to section 2-117 to maintain models, sales offices and signs. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure, sale by a trustee under a deed of trust, or sale under bankruptcy act or receivership proceedings, of all units in a condominium owned by a declarant:

1. the declarant ceases to have any special declarant rights, and

2. the period of declarant control (section 3-103(c)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights to a successor declarant.

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

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

2. a successor to any special declarant right, other than a successor described in paragraphs (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed upon a declarant by this chapter or the declaration, but he is not subject to liability for misrepresentations or warranty obligations on improvements made by any previous declarant or made before the condominium was created, or for a breach of fiduciary obligation by any previous declarant.

3. a successor to only a right reserved in the declaration to maintain models, sales offices, and signs (section 2-117),
if he is not an affiliate of a declarant, may not exercise any
other special declarant right, and is not subject to any lia-
ability or obligation as a declarant, except the obligation to
provide a public offering statement, and any liability arising
as a result thereof.

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

(f) Nothing in this section subjects any successor to a
special declarant right to any claims against or other obliga-
tions of a transferor declarant, other than claims and obli-
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
unit owners pursuant to section 3-103(e) takes office, (1)
any management contract, employment contract, or lease of
recreational or parking areas or facilities, (2) any other
contract or lease to which a declarant or an affiliate of a
declarant is a party, or (3) any contract or lease that is not
bona fide or was unconscionable to the unit owners at the
time entered into under the circumstances then prevailing,
may be terminated without penalty by the association at
any time after the executive board elected by the unit owners.
pursuant to section 3-103(c) takes office upon not less than ninety days' notice to the other party. This subsection does not apply to any lease the termination of which would terminate the condominium or reduce its size, unless the real estate subject to that lease was submitted to the condominium for the purpose of avoiding the right of the association to terminate a lease under this section.

§36B-3-106. Bylaws.

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

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

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

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

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

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

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

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

(a) Except to the extent provided by the declaration or section 3-112(d), the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his unit reasonably necessary for those purposes. If damage is inflicted on the
common elements or any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.

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

§36B-3-108. Meetings.

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

§36B-3-109. Quorums.

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

(b) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent of
§36B-3-110. Voting; proxies.

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

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

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

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

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

(a) An action in tort alleging a wrong done by a declarant or his agent or employee in connection with a portion of any convertible or withdrawable real estate or other portion of the condominium which the declarant has the responsibility to
maintain may not be brought against the association or a unit owner other than a declarant. Otherwise, an action in tort alleging a wrong done by the association or by an agent or employee of the association, or an action arising from a contract made by or on behalf of the association, shall be brought against the association. If the tort or breach of contract occurred during any period of declarant control (section 3-103(c)), the declarant is liable to the association for all unreimbursed losses suffered by the association as a result of that tort or breach of contract, including costs and reasonable attorney’s fees. Any statute of limitation affecting the association’s right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association.

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

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

§368-3-112. Insurance.

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

(1) property insurance on the common elements and units, exclusive of improvements and betterments installed in units by unit owners, insuring against all risks of direct physical
loss commonly insured against or, in the case of a conversion condominium, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent of the actual cash value of the insured property, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

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

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

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

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

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

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

(4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the
same property covered by the policy, the policy is primary insurance not contributing with the other insurance.

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

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

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

(g) Any portion of the condominium damaged or destroyed shall be repaired or replaced promptly by the association unless (1) the condominium is terminated, (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the
entire condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium, (2) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, and (3) the remainder of the proceeds shall be distributed to all the unit owners in proportion to their common element interest. If the unit owners vote not to rebuild any unit, that unit's entire common element interest, votes in the association, and common expense liability are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 2-120 governs the distribution of insurance proceeds if the condominium is terminated.

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

§36B-3-113. Surplus funds.

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

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

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

7 (b) Except for assessments under subsection (c), common expenses shall be assessed against all the units in accordance
with the common expense liability allocated to each unit (section 2-108). Any past due assessment or installment thereof shall bear interest at the rate established by the association not exceeding eighteen percent per year.

(c) Except as provided by the declaration:

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

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

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

§36B-3-115. Lien for assessments.

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

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (1) liens and encumbrances recorded before the recordation of the declaration, (2) mortgages and deeds of trust on the unit securing first mortgage holders and recorded before the due date of the assessment or the due date of the first installment payable on the assessment, and (3) liens for real estate taxes and other governmental assessments or charges against the unit.
To the extent of the common expense assessments made under section 3-114(b) due during the six months immediately preceding institution of an action to enforce the lien, the lien is also prior to the mortgages and deeds of trust described in clause (2) above. This subsection does not affect the priority of mechanics' or materialmen's liens.

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

(1) a legally sufficient description of the unit.

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

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

(4) the date of recordation.

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

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

(d) A lien for unpaid assessments is extinguished unless
proceedings to enforce the lien are instituted within three years after the assessments become payable.

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

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

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

§36B-3-116. Association records.

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

§36B-3-117. Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers and a third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.
ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.
1 (a) This article applies to all units subject to this chapter, except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.
2 (b) A public offering statement need not be prepared or delivered in the case of:
3 (1) gratuitous transfer of a unit;
4 (2) a disposition pursuant to court order;
5 (3) a disposition by a government or governmental agency;
6 (4) a disposition by foreclosure or deed in lieu of foreclosure;
7 (5) a disposition of a condominium situated wholly outside this state pursuant to a contract executed wholly outside this state, or
8 (6) a transfer to which section 4-107 (resales of units) applies.

§36B-4-102. Public offering statement; general provisions.
1 (a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately disclose:
2 (1) the name and principal address of the declarant and of the condominium;
3 (2) a general description of the condominium, including without limitation the types, number, and declarant's schedule of commencement and completion of construction of all buildings, units, and amenities;
4 (3) the total number of additional units that may be included in the condominium and the proportion of units the declarant intends to rent or market in blocks of units to investors;
5 (4) a brief narrative description of any options reserved by a declarant to withdraw withdrawable real estate under
(5) copies and a brief narrative description of the significant features of the declaration (other than the plats and plans), the bylaws, and rules and regulations, copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3-105;

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

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

(ii) a statement of any other reserves;

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

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

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

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

(9) a description of any liens, defects, or encumbrances on or affecting the title to the condominium;
(10) a description of any financing offered by the declarant;

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

(12) a statement that:

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

(ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit; and

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

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

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

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

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

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

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

“MUST BE BUILT” pursuant to section 4-115 (declarant’s obligation to complete and restore); and

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

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

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

§36B-4-103. Same; time-share estates.

(a) For purposes of this section, “time-share estate” means either:

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

(2) a “time-span estate,” meaning a combination of (i) an undivided interest in a present estate in fee simple in a unit, the magnitude of that interest having been established by the declaration or by the deed conveying the time-span estate, coupled with (ii) the exclusive right to possession and occupancy of that unit during a regularly recurring period designated by that deed or by a recorded document referred to therein.
§36B-4-104. Same; conversion condominiums.

(a) The public offering statement of a conversion condominium must contain, in addition to the information required by section 4-102:

(1) a statement by the declarant, based on a report prepared by an independent architect or engineer, describing the present condition of all structural components and mechanical and electrical installations' material to the use and enjoyment 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-
in addition to any rights to damages or other relief, is entitled to receive from the declarant an amount equal to ten percent of the sales price of the unit.

§36B-4-107. Resales of units.

(a) In the event of a resale of a unit by a unit owner other than a declarant, the unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than the plats and plans), the bylaws, the rules or regulations of the association, and a certificate containing:

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

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

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

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

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

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

(7) the current operating budget of the association;

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

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

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

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

(12) a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

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

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

§36B-4-108. Escrow of deposits.

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

§36B-4-109. Release of liens.

(a) Before conveying a unit, other than by deed in lieu of
foreclosure, to a purchaser other than a declarant, a declarant shall record or furnish to the purchaser, releases of all
liens affecting that unit and its common element interest which the purchaser does not expressly agree to take subject to or assume. This subsection does not apply to any withdrawable real estate in which no unit has been conveyed.

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

§36B-4-110. Conversion condominiums.

(a) A declarant of a conversion condominium shall give each of the tenants and any subtenant in possession of buildings subject to this chapter notice of the conversion no later than one hundred twenty days before the declarant will require the tenants and any subtenant in possession to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be hand-delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required by the declarant to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure of a declarant to give notice as
required by this section is a defense to an action for possession.

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

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

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

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

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

(a) Definition.—As used in this section “structural defects” means these defects in components constituting any unit or common element which reduce the stability or safety of the structure below accepted standards or restrict the normal intended use of all or part of the structure and which require repair, renovation, restoration or replacement. Nothing in this section shall be construed to make the declarant responsible
for any items of maintenance relating to the units or common elements.

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

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

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

(3) as to any common element within any other portion of the condominium, at the time the first unit therein is conveyed to a bona fide purchaser.

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

(d) Exclusion or modification of warranty.—Except with respect to a purchaser of a unit for residential use, the warranty against structural defects

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

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

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

(a) A judicial proceeding for breach of any obligation
arising under this chapter must be commenced within six years after the cause of action accrues.

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

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

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

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

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

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

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

If any improvement contemplated in a condominium is required by section 2-110(b)(3) to be labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within convertible real estate, no promotional material may be displayed or delivered to prospective purchasers which de-
scribes or depicts that improvement unless the description or depiction of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

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

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

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved pursuant 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

Clarence C. Chumley
Chairman House Committee

Originated in the House.

Takes effect July 1, 1980.

Judd C. Wells
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

H. G. Bland
President of the Senate

Clyde W. Lee, Sr.
Speaker House of Delegates

The within ______________________ this the __________ day of __________, 1980.

John B. Douglas
Governor