WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED

SENATE BILL NO. 171

(By Mr. Lukens and Mr. Harmon)

PASSED March 7, 1984
In Effect ninety days from Passage
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Senate Bill No. 171
(BY MR. PALUMBO AND MR. HARMAN)

[Passed March 7, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to 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; leasehold condominiums; allocation of common element interests, votes and common expense liabilities; limited common elements; plats and plans; exercise of development rights; alterations of units; relocation of boundaries between adjoining units; subdivision or conversion of units; monuments as boundaries; use of condominium for sales purposes; easement rights; amendment of declaration; termination of condominium; rights of secured lenders; master associations; merger or consolidation of condominiums; 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; conveyance or encumbrance of common elements; insurance; surplus funds; assessments for common expenses; lien for assessments; other liens affecting condominium; association records; association as trustee; applicability; waiver; liability for public offering statement requirements; public offering statement for condominiums subject to development rights, time-share, conversion condominiums and condominium securities; purchaser's right to cancel, resales of units; escrow of deposits; release of liens; conversion buildings; warranties; effect of violation on rights of action, attorney's fees; labeling of promotional material; declarant's obligation to complete and restore; and substantial completion of units.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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), 3-116 (lien for assessments), 3-118 (association records), 4-109 (resales of units), and 4-115 (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 act; but those sections apply only with respect to events and circumstances occurring after the effective date of this act 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 act 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 act if the amendment would be permitted by this act. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter one hundred fifty-three, acts of the Legislature, one thousand nine hundred sixty-three. If the amendment grants to any person any rights, powers, or privileges permitted by this act, all correlative obligations, liabilities, and restrictions in this act 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 4-108) apply to all contracts for the disposition thereof signed in this state by any party unless exempt under section 4-101(b).

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

§36B-1-103. Definitions.

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

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

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(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 by or financial liabilities of the association, together with any allocations to reserves.

(6) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to section 2-107.

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

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

(10) "Declaration" means any instruments, however denominated, that create a condominium and any amendments to those instruments.

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

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

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

(14) "Identifying number" means a symbol or address 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 the units.

(17) "Master association" means an organization described in section 2-120, whether or not it is also an association described in section 3-101.

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

(19) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire
any interest in a unit, other than as security for an
obligation. An advertisement in a newspaper or other
periodical of general circulation, or in any broadcast
medium to the general public, of a 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 jurisdiction in which the condominium is located.

(20) "Person" means a natural person, corporation,
business trust, estate, trust, partnership, association, joint
venture, government, governmental subdivision or agency,
or other legal or commercial entity. (In the case of a land
trust, however, "person" means the beneficiary of the trust
rather than the trust or the trustee.)

(21) "Purchaser" means any person, other than a
declarant or a person in the business of selling real estate for
his own account, who by means of a voluntary transfer
acquires a legal or equitable interest in a unit, other than (i)
a leasehold interest (including renewal options) of less than
twenty years, or (ii) as security for an obligation.

(22) "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.

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

(24) "Special declarant rights" means rights reserved
for the benefit of a declarant to (i) complete improvements
indicated on plats and plans filed with the declaration
(section 2-109); (ii) exercise any development right (section
2-110); (iii) maintain sales offices, management offices,
signs advertising the condominium, and models (section
2-115); (iv) use easements through the common elements for
the purpose of making improvements within the
condominium or within real estate which may be added to
the condominium (section 2-116); (v) make the
condominium part of a larger condominium or a planned
community (section 2-121); (vi) make the condominium
subject to a master association (section 2-120); or (vii)
appoint or remove any officer of the association or any
master association or any executive board member during
any period of declarant control (section 3-103)(c).

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

(26) "Unit" means a physical portion of the
condominium designated for separate ownership or
occupancy, the boundaries of which are described pursuant
to section 2-105(a) (5).

(27) "Unit owner" means a declarant or other person
who owns a unit, 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.

§36B-1-104. Variation by agreement.

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

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

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

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

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

(d) If there is no unit owner other than a declarant, the
15 real estate comprising the condominium may be taxed and
16 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
4 requirement upon a condominium which it would not
5 impose upon a physically identical development under a
6 different form of ownership. Otherwise, no provision of this
7 chapter invalidates or modifies any provision of any zoning,
8 subdivision, building code, or other real estate use law,
9 ordinance, or regulation.

§36B-1-107. Eminent domain.

1 (a) If a unit is acquired by eminent domain, or if part of a
2 unit is acquired by eminent domain leaving the unit owner
3 with a remnant which may not practically or lawfully be
4 used for any purpose permitted by the declaration, the
5 award must compensate the unit owner for his unit and its
6 interest in the common elements whether or not any
7 common elements are acquired. Upon acquisition, unless
8 the decree otherwise provides, that unit's allocated
9 interests are automatically reallocated to the remaining
10 units in proportion to the respective allocated interests of
11 those units before the taking, and the association shall
12 promptly prepare, execute, and record an amendment to the
13 declaration reflecting the reallocations. Any remnant of a
14 unit remaining after part of a unit is taken under this
15 subsection is thereafter a common element.
16 (b) Except as provided in subsection (a), if part of a unit
17 is acquired by eminent domain, the award must compensate
18 the unit owner for the reduction in value of the unit and its
19 interest in the common elements, whether or not any
20 common elements are acquired. Upon acquisition, unless
21 the decree otherwise provides, (1) that unit's allocated
22 interests are reduced in proportion to the reduction in the
23 size of the unit, or on any other basis specified in the
24 declaration, and (2) the portion of the allocated interests
25 divested from the partially acquired unit are automatically
26 reallocated to that unit and the remaining units in
proportion to the respective allocated interest of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interest.

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

(d) 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.

1 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 act, except to the extent inconsistent with this chapter.

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

1 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.

1 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.

1 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 act which can be given effect without the invalid
provisions or application, and to this end the provisions of
this act are severable.

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

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

8 (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:

13 (1) The commercial setting of the negotiations;

14 (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,
iliteracy, or inability to understand the language of the
agreement or similar factors;

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

20 (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.


(a) A condominium may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed. The declaration must be recorded in every county in which any portion of the condominium is located, and must be indexed in the Grantee's index in the name of the condominium and the association and in the Grantor's index in the name of each person executing the declaration.

(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.

§36B-2-102. Unit boundaries.

Except as provided by the declaration:

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

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

(3) Subject to 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, bylaws, rules, or regulations adopted pursuant to section 3-102 (a) (1).

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

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

§36B-2-104. Description of units.

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 all rights, obligations, and
interests appurtenant to that unit which were created by
the declaration or bylaws.

§36B-2-105. Contents of declaration.

(a) The declaration for a condominium must contain:
   (1) The name of the condominium, which must include
       the word "condominium" or be followed by the words "a
       condominium", and the association;
   (2) The name of every county in which any part of the
       condominium is situated;
   (3) A legally sufficient description of the real estate
       included in the condominium;
   (4) A statement of the maximum number of units which
       the declarant reserves the right to create;
   (5) A description of the boundaries of each unit created
       by the declaration, including the unit's identifying number;
   (6) A description of any limited common elements, other
       than those specified in section 2-102(2) and (4), as provided
       in section 2-109 (b) (10);
   (7) A description of any real estate, except real estate
       subject to development rights, which may be allocated
       subsequently as limited common elements, other than
       limited common elements specified in section 2-102 (2) and
       (4), together with a statement that they may be so allocated;
   (8) A description of any development rights and other
       special declarant rights (section 1-103 (23)) reserved by the
       declarant, together with a legally sufficient description of
       the real estate to which each of those rights applies, and a
       time limit within which each of those rights must be
       exercised;
   (9) If any development right may be exercised with
       respect to different parcels of real estate at different times,
       a statement to that effect together with (i) either a statement
       fixing the boundaries of those portions and regulating the
       order in which those portions may be subjected to the
       exercise of each development right, or a statement that no
       assurances are made in those regards, and (ii) a statement as
to whether, if any development right is exercised in any
portion of the real estate subject to that development right,
that development right must be exercised in all or in any
other portion of the remainder of that real estate;
(10) Any other conditions or limitations under which
the rights described in paragraph (8) may be exercised or
will lapse;
(11) An allocation to each unit of the allocated interests
in the manner described in (section 2-107);
(12) Any restrictions on use, occupancy, and alienation
of the units;
(13) 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 by virtue of a reservation in the declaration; and
(14) All matters required by sections 2-106, 2-107,
2-108, 2-109, 2-115, 2-116 and 3-103 (d).
(b) The declaration may contain any other matters the
declarant deems appropriate.

§36B-2-106. Leasehold condominiums.

(a) Any lease the expiration or termination of which
may terminate the condominium or reduce its size, or a
memorandum thereof, shall be recorded. Every lessor of
those leases must sign the declaration, 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
subject to the lease;
(4) Any right of the unit owners to redeem the reversion
and the manner whereby those rights may be exercised, or a
statement that they do not have those rights;
(5) Any right of the unit owners to remove any
improvements within a reasonable time after the expiration
or termination of the lease, or a statement that they do not
have those rights; and
(6) Any rights of the unit owners to renew the lease and
the conditions of any renewal, or a statement that they do
not have those rights.
(b) After the declaration for a leasehold condominium 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
entitle the lessor to terminate the lease. A unit owner's
leasehold 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 allocated
interests 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-2-107. Allocation of common element interests, votes,
and common expense liabilities.

(a) The declaration shall allocate a fraction or
percentage 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. Those
allocations may not discriminate in favor of units owned by
the declarant.

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

(c) The declaration may provide: (i) That different
allocations of votes shall be made to the units on particular
matters specified in the declaration; (ii) for cumulative
voting only for the purpose of electing members of the
executive board; and (iii) for class voting on specified issues
affecting the class if necessary to protect valid interests of
the class. A declarant may not utilize cumulative or class
voting for the purpose of evading any limitation imposed on
declarants by this chapter, nor may units constitute a class
because they are owned by a declarant.
(d) 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 must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formulas, the allocated interest prevails.

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

§36B-2-108. Limited common elements.

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

(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(a) (7). The allocations shall be made by amendments to the declaration.

§36B-2-109. 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 contains all information required by this section.

(b) Each plat must show:
(1) The name and a survey or general schematic map of the entire condominium;

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

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

(4) The extent of any encroachments by or upon any portion of the condominium;

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

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

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

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

(9) The distance between noncontiguous parcels of real estate comprising the condominium;

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

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

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

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

(1) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;
(2) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and
(3) Any units in which the declarant has reserved the right to create additional units or common elements (section 2-110 (d)), identified appropriately.

(e) 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.

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

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

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

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

(b) Development rights may be reserved within any real estate added to the condominium 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 plats and plans include all matters required by section 2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to section 2-105(a) (8).
Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

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

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

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

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

2. If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser.

§36B-2-111. Alterations of units.

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

1. May make any improvements or alterations to his unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the 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-2-112. Relocation of boundaries between adjoining units.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within thirty days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, 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-2-113. Subdivision of units.

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

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.
§36B-2-114. Monuments as boundaries.

1 The existing physical boundaries of a unit or the physical boundaries 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. This section does not relieve a unit owner of liability in case of his willful misconduct nor relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

§36B-2-115. Use for sales purposes.

1 A declarant may maintain sales offices, management offices, and models in units or on common elements 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. The provisions of this section are subject to the provisions of other state law and to local ordinances.


1 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-2-117. Amendment of declaration.

1 (a) Except in cases of amendments that may be executed by a declarant under section 2-109(f) or 2-110, the
association under section 1-107, 2-106(d), 2-108(c), 2-112(a) or 2-113; or certain unit owners under section 2-108(b), 2-112(a), 2-113(b) or 2-118(b), and, except as limited by subsection (d), the declaration, including 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. An amendment shall be indexed in the grantee's index in the name of the condominium and the association and in the grantor's index in the name of the parties executing the amendment.

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

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

§36B-2-118. 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 use.

(b) An agreement to terminate must be evidenced by the
execution of a termination agreement or ratifications
thereof, in the same manner as a deed, by the requisite
number of unit owners. The termination agreement must
specify a date after which the agreement will be void unless
it is recorded before that date. A termination agreement and
all ratifications thereof must be recorded in every county in
which a portion of the condominium is situated, and is
effective only upon recordation.

(c) In the case of a condominium containing only units
having horizontal boundaries described in the declaration,
a termination agreement may provide that all the common
elements and units of the condominium shall be sold
following termination. If pursuant to the agreement, any
real estate in the condominium is to be sold following
termination, the termination agreement must set forth the
minimum terms of the sale.

(d) In the case of a condominium containing any units
not having horizontal boundaries described in the
declaration, a termination agreement may provide for sale
of the common elements, but may not require that the units
be sold following termination, unless the declaration as
originally recorded provided otherwise or unless all the unit
owners consent to the sale.

(e) The association, on behalf of the unit owners, may
contract for the sale of real estate in the condominium, but
the contract is not binding on the unit owners until
approved pursuant to subsections (a) and (b). If any real
estate in the condominium is to be sold following
termination, title to that real estate, upon termination, vests
in the association as trustee for the holders 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 distributed,
the association continues in existence with all powers it had
before termination. Proceeds of the sale must be distributed
to unit owners and lien holders as their interests may
appear, in proportion to the respective interests of unit
owners as provided in subsection (h). 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.

(f) If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (h), 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.

(g) Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were docketed before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(h) The respective interests of unit owners referred to in subsections (e), (f) and (g) 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 values 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 before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(i) Except as provided in subsection (j), 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.

(j) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance may upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium.

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

1 The declaration may require that all or a specified number or percentage of the mortgagees 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 except pursuant to section 3-113.

§36B-2-120. Master associations.

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

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

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

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

(e) Notwithstanding the provisions of section 3-103(f) with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends, and even if a master association is also an association described in section 3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or
delegated to the master association may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

1. All unit owners of all condominiums subject to the master association may elect all members of that executive board.

2. All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board.

3. All unit owners of each condominium subject to the master association may elect specified members of that executive board.

4. All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.

§36B-2-121. Merger or consolidation of condominiums.

1. Any two or more condominiums, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets and liabilities of all preexisting associations.

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

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

ARTICLE 3. MANAGEMENT OF CONDOMINIUM.

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

1 A unit owners' association must be organized no later
2 than the date the first unit in the condominium is conveyed.
3 The membership of the association at all time shall consist
4 exclusively of all the unit owners or, following termination
5 of the condominium, of all former unit owners entitled to
6 distributions of proceeds under section 2-118, or their heirs,
7 successors, or assigns. The association shall be organized as
8 a profit or nonprofit corporation or as an unincorporated
9 association.

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

1 (a) Except as provided in subsection (b), and subject to
2 the provisions of the declaration, the association, even if
3 unincorporated, may:
4 (1) Adopt and amend bylaws and rules and regulations;
5 (2) Adopt and amend budgets for revenues,
6 expenditures, and reserves and collect assessments for
7 common expenses from unit owners;
8 (3) Hire and discharge managing agents and other
9 employees, agents, and independent contractors;
10 (4) Institute, defend, or intervene in litigation or
11 administrative proceeding in its own name on behalf of
12 itself or two or more unit owners on matters affecting the
13 condominium;
14 (5) Make contracts and incur liabilities;
15 (6) Regulate the use, maintenance, repair, replacement,
16 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, but common elements may be conveyed or subjected to a security interest only pursuant to section 3-112;

(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) and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, 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 4-109, or statements of unpaid assessments;

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

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

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

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

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

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

§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
3 executive board may act in all instances on behalf of the
4 association. In the performance of their duties, the officers
5 and members of the executive board are required to
6 exercise (i) if appointed by the declarant, the care required
7 of fiduciaries of the unit owners and (ii) if elected by the unit
8 owners, ordinary and reasonable care.
9 (b) The executive board may not act on behalf of the
10 association to amend the declaration (section 2-117), to
11 terminate the condominium (section 2-118), or to elect
12 members of the executive board or determine the
13 qualifications, powers and duties, or terms of office of
14 executive board members (section 3-103(f)), but the
15 executive board may fill vacancies in its membership for the
16 unexpired portion of any term.
17 (c) Within thirty days after adoption of any proposed
18 budget for the condominium, the executive board shall
19 provide a summary of the budget to all the unit owners and
20 shall set a date for a meeting of the unit owners to consider
21 ratification of the budget not less than fourteen nor more
22 than thirty days after mailing of the summary. Unless at
23 that meeting a majority of all the unit owners or any larger
24 vote specified in the declaration reject the budget, the
25 budget is ratified, whether or not a quorum is present. In the
26 event the proposed budget is rejected, the periodic budget
27 last ratified by the unit owners shall be continued until such
28 time as the unit owners ratify a subsequent budget
29 proposed by the executive board.
30 (d) Subject to subsection (e), the declaration may
31 provide for a period of declarant control of the association,
32 during which period a declarant, or persons designated by
33 him, may appoint and remove the officers and members of
34 the executive board. Regardless of the period provided in
35 the declaration, a period of declarant control terminates no
36 later than the earlier of: (i) Sixty days after conveyance of
37 seventy-five percent of the units which may be created to
38 unit owners other than a declarant; (ii) two years after all
39 declarants have ceased to offer units for sale in the ordinary
40 course of business; or (iii) two years after any development
41 right to add new units was last exercised. A declarant may
42 voluntarily surrender the right to appoint and remove
43 officers and members of the executive board before
44 termination of that period, but in that event he may require, 
45 for the duration of the period of declarant control, that 
46 specified actions of the association or executive board, as 
47 described in a recorded instrument executed by the 
48 declarant, be approved by the declarant before they become 
49 effective. 
50 (e) Not later than sixty days after conveyance of twenty-
51 five percent of the units which may be created to unit 
52 owners other than a declarant, at least one member and not 
53 less than twenty-five percent of the members of the 
54 executive board must be elected by unit owners other than 
55 the declarant. Not later than sixty days after conveyance of 
56 fifty percent of the units which may be created to unit 
57 owners other than a declarant, not less than thirty-three 
58 and one-third percent of the members of the executive 
59 board must be elected by unit owners other than the 
60 declarant. 
61 (f) Not later than the termination of any period of 
62 declarant control, the unit owners shall elect an executive 
63 board of at least three members, at least a majority of whom 
64 must be unit owners. The executive board shall elect the 
65 officers. The executive board members and officers shall 
66 take office upon election. 
67 (g) Notwithstanding any provision of the declaration or 
68 bylaws to the contrary, the unit owners, by a two-thirds 
69 vote of all persons present and entitled to vote at any 
70 meeting of the unit owners at which a quorum is present, 
71 may remove any member of the executive board with or 
72 without cause, other than a member appointed by the 
73 declarant. 

§36B-3-104. Transfer of special declarant rights. 
1 (a) No special declarant rights (section 1-103(23)) 
2 created or reserved under this chapter may be transferred 
3 except by an instrument evidencing the transfer recorded in 
4 every county in which any portion of the condominium is 
5 located. The instrument is not effective unless executed by 
6 the transferee. 
7 (b) Upon transfer of any special declarant right, the 
8 liability of a transferor declarant is as follows: 
9 (1) A transferor is not relieved of any obligation or 
10 liability arising before the transfer and remains liable for
warranty obligations imposed upon him by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor. 

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

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

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

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

(d) Upon foreclosure, tax sale, judicial sale, sale by a trustee under a deed of trust, or sale under bankruptcy code or receivership proceedings, of all units and other real estate 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(d)) terminates unless the judgment or instrument conveying
title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of 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 the transferor by this chapter or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4), who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to his exercise or nonexercise of special declarant rights; or

(ii) On his transferor, other than:

(A) Misrepresentations by any previous declarant;

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

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

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

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

(4) A successor to all special declarant rights held by his transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument 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 acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by
his transferor to control the executive board in accordance with the provisions of section 3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he is not subject to any liability or obligation as a declarant other than liability for his acts and omissions under section 3-103(d).

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

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

If entered into before the executive board elected by the unit owners pursuant to section 3-103(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to section 3-103(f) takes office upon not less than ninety days' notice to the other party. This 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 included in 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;
(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and
(6) The method of amending the bylaws.
(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

§36B-3-107. Upkeep of condominium.

(a) Except to the extent provided by the declaration, subsection (b), or section 3-313, 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) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

§36B-3-108. Meetings.

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

§36B-3-109. Quorums.
(a) Unless the bylaws provide otherwise, a quorum is
present throughout any meeting of the association if
persons entitled to cast twenty percent of the votes which
may be cast for election of the executive board are present
in person or by proxy at the beginning of the meeting.
(b) Unless the bylaws specify a larger percentage, a
quorum is deemed present throughout any meeting of the
executive board if persons entitled to cast fifty percent of
the votes on that board are present at the beginning of the
meeting.

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

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

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

Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (i) For all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association. Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this subsection because he is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 3-117.
§36B-3-112. Conveyance or encumbrance of common elements.

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

(b) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recordation.

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

(d) Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of common elements, unless made pursuant to this section or pursuant to section 3-117(b), is void.

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

(f) Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of preexisting encumbrances.
§36B-3-113. Insurance.

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

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

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

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

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

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

1. (1) Each unit owner is an insured person under the policy with respect to liability arising out of his interest in the common elements or membership in the association;
41 (2) The insurer waives its right to subrogation under the
42 policy against any unit owner or members of his household;
43 (3) No act or omission by any unit owner, unless acting
44 within the scope of his authority on behalf of the
45 association, will void the policy or be a condition to
46 recovery under the policy; and
47 (4) If, at the time of a loss under the policy, there is other
48 insurance in the name of a unit owner covering the same
49 risk covered by the policy, the association's policy provides
50 primary insurance.
51 (e) Any loss covered by the property policy under
52 subsections (a) (1) and (b) must be adjusted with the
53 association, but the insurance proceeds for that loss are
54 payable to any insurance trustee designated for that
55 purpose, or otherwise to the association, and not to any
56 mortgagee or beneficiary under a deed of trust. The
57 insurance trustee or the association shall hold any
58 insurance proceeds in trust for unit owners and lienholders
59 as their interest may appear. Subject to the provisions of
60 subsection (h), the proceeds must be disbursed first for the
61 repair or restoration of the damaged property, and unit
62 owners and lienholders are not entitled to receive payment
63 of any portion of the proceeds unless there is a surplus of
64 proceeds after the property has been completely repaired or
65 restored, or the condominium is terminated.
66 (f) An insurance policy issued to the association does
67 not prevent a unit owner from obtaining insurance for his
68 own benefit.
69 (g) An insurer that has issued an insurance policy under
70 this section shall issue certificates or memoranda of
71 insurance to the association and, upon written request, to
72 any unit owner, mortgagee, or beneficiary under a deed of
73 trust. The insurer issuing the policy may not cancel or refuse
74 to renew it until thirty days after notice of the proposed
75 cancellation or nonrenewal has been mailed to the
76 association, each unit owner and each mortgagee or
77 beneficiary under a deed of trust to whom certificates, a
78 certificate or memorandum of insurance has been issued at
79 their respective last known addresses.
80 (h) Any portion of the condominium for which
81 insurance is required under this section which is damaged
82 or destroyed shall be repaired or replaced promptly by the
association unless (i) the condominium is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) 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, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the condominium, (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (iii) the remainder of the proceeds must be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, section 2-118 governs the distribution of insurance proceeds if the condominium is terminated.

(i) 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-3-114. Surplus funds.

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

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

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

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

c) To the extent required by the declaration:

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

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

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

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

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

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

§36B-3-116. Lien for assessments.

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

(b) A lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration, (ii) a first mortgage or deed of trust on the unit recorded before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit. The lien is also prior to the mortgages and deeds of trust described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

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

(d) 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;
The amount of unpaid assessments due together with the date when each fell due; and
(4) The date of recordation.

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

Upon payment of the assessment, the association shall execute a written release of the lien in the manner set forth in section one, 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.

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

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

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

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

§36B-3-117. Other liens affecting the condominium.

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

(b) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-112, the holder of that security interest shall exercise its right against the common
(c) Whether perfected before or after the creation of the condominium, if a lien other than a deed of trust or mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the 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. 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.

(d) A judgment against the association must be recorded and indexed in the name of the condominium and the association in the office of the clerk of the county commission; and, when so indexed, is notice of the lien against the units.

§36B-3-118. Association records.

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

§36B-3-119. Association as trustee.

1 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
12 application of trust assets paid or delivered to the 13 association in its capacity as trustee.

ARTICLE 4. PROTECTION OF CONDOMINIUM PURCHASERS.

§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this 2 chapter, except as provided in subsection (b) or as modified 3 or waived by agreement of purchasers of units in a 4 condominium in which all units are restricted to 5 nonresidential use.

(b) Neither a public offering statement nor a resale 7 certificate need be prepared or delivered in the case of:

(1) A gratuitous disposition of a unit;
(2) A disposition pursuant to court order;
(3) A disposition by a government or governmental 11 agency;
(4) A disposition by foreclosure or deed in lieu of 13 foreclosure;
(5) A disposition to a person in the business of selling 15 real estate who intends to offer those units to purchasers; or 16 (6) A disposition that may be canceled at any time and 17 for any reason by the purchaser without penalty.

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

(a) Except as provided in subsection (b), a declarant, 2 prior to the offering of any interest in a unit to the public, 3 shall prepare a public offering statement conforming to the 4 requirements of sections 4-103, 4-104, 4-105 and 4-106.

(b) A declarant may transfer responsibility for 6 preparation of all or a part of the public offering statement 7 to a successor declarant (section 3-104) or to a person in the 8 business of selling real estate who intends to offer units in 9 the condominium for his own account. In the event of any 10 such transfer, the transferor shall provide the transferee 11 with any information necessary to enable the transferee to 12 fulfill the requirements of subsection (a).

(c) Any declarant or other person in the business of 14 selling real estate who offers a unit for his own account to a 15 purchaser shall deliver a public offering statement in the 16 manner prescribed in subsection 4-108(a). The person who 17 prepared all or a part of the public offering statement is
liable under sections 4-108 and 4-115 for any false or misleading statement set forth therein or for any omission of material fact therefrom with respect to that portion of the public offering statement which he prepared. If a declarant did not prepare any part of a public offering statement that he delivers, he is not liable for any false or misleading statement set forth therein or for any omission of material fact therefrom unless he had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

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

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

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

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

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

(3) The number of units in the condominium;

(4) Copies and a brief narrative description of the significant features of the declaration (other than the plats and plans) and any other recorded covenants, conditions, restrictions and reservations affecting the condominium; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under section 3-105;
(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

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

(ii) A statement of any other reserves;

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

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

(6) Any services not reflected in the budget that the declarant provides, or expenses that he pays, and 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;

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

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

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

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

(11) A statement that:

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

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit; and
If a purchaser receives the public offering statement more than fifteen days before signing a contract, he cannot cancel the contract;

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

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

(14) Any restraints on alienation of any portion of the condominium;

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

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

(17) The extent to which financial arrangements have been provided for completion of all improvements labeled "MUST BE BUILT" pursuant to section 4-117 (declarant's obligation to complete and restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the condominium; 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 subject to any development rights, 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 (9), (10), (15), (16), (17), (18) and (19) of subsection (a) and the narrative descriptions of documents required by paragraph (a) (4).

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.
§36B-4-104. Same — Condominiums subject to development rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

§36B-4-105. Same — Time shares.

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

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

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

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

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in section 3-116.
§36B-4-106. Same — Condominiums containing conversion buildings.

(a) The public offering statement of a condominium containing any conversion building 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 building;

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

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

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

§36B-4-107. Same — Condominium securities.

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

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

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

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

(c) If a person required to deliver a public offering statement pursuant to section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sales price of the unit.

§36B-4-109. Resales of units.

(a) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under section 4-101(b), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration (other than 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 anticipated by the association for the current and two next succeeding fiscal years;

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

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

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

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

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

(11) A statement as to whether the executive board has knowledge of any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the 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-4-110. Escrow of deposits.

1 Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to section 4-102(c) shall be placed in escrow and held either in this state or in the state where the unit is located in an account designated solely for that purpose by an institution whose accounts are insured by a governmental agency or instrumentality until:

(1) Delivered to the declarant at closing; (2) delivered to the
§36B-4-111. Release of liens.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to section 4-102(c), a seller shall, before conveying a unit, 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 real estate which a declarant has the right to withdraw.

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

§36B-4-112. Conversion buildings.

(a) A declarant of a condominium containing conversion buildings and any person in the business of selling real estate for his own account who intends to offer units in such a condominium shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and 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 to vacate upon less than one hundred twenty days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession.
(b) For sixty days after delivery or mailing of the notice described in subsection (a), the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of the violation, 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 seller 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 and otherwise complies with the provisions of section five, article six, chapter thirty-seven of this code, the notice also constitutes a notice to vacate specified by that section.

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

§36B-4-113. Warranty against structural defects.

(a) Definition.—As used in this section "structural defects" means those 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-4-114. 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 that may be added to the condominium 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-4-115. Effect of violations on rights of action; attorney's fees.

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

§36B-4-116. Labeling of promotional material.

If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement is conspicuously labeled or identified as "NEED NOT BE BUILT."

§36B-4-117. 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 2-109.

(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 2-110, 2-111, 2-112, 2-113, 2-115 and 2-116.

§36B-4-118. Substantial completion of units.

1 In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by law.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 20 day of March, 1964.

Governor