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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1984

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# ENROLLED

SENATE BILL NO. 171

(By Mr. Salumbo and Mr. Harmon)

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PASSED March 7, 1984

In Effect ninety days from Passage



**ENROLLED**  
**Senate Bill No. 171**

(BY MR. PALUMBO AND MR. HARMAN)

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

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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.**

#### **§36B-1-101. Short title.**

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

#### **§36B-1-102. Applicability.**

1 (a) This chapter applies to all condominiums created  
2 within this state after the effective date of this chapter.  
3 Sections 1-105 (separate titles and taxation), 1-106  
4 (applicability of local ordinances, regulations, and building  
5 codes), 1-107 (eminent domain), 2-103 (construction and  
6 validity of declaration and bylaws), 2-104 (description of  
7 units), 3-102(a) (1) through (6) and (11) through (16) (powers  
8 of unit owners' association), 3-111 (tort and contract  
9 liability), 3-116 (lien for assessments), 3-118 (association  
10 records), 4-109 (resales of units), and 4-115 (effect of  
11 violation on rights of action; attorney's fees), and section

12 1-103 (definitions) to the extent necessary in construing any  
13 of those sections, apply to all condominiums created in this  
14 state before the effective date of this act; but those sections  
15 apply only with respect to events and circumstances  
16 occurring after the effective date of this act and do not  
17 invalidate existing provisions of the declaration, bylaws, or  
18 plats or plans of those condominiums.

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

34 (c) This chapter does not apply to condominiums or  
35 units located outside this state, but the public offering  
36 statement provisions (sections 4-102 through 4-108) apply  
37 to all contracts for the disposition thereof signed in this  
38 state by any party unless exempt under section 4-101(b).

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

### **§36B-1-103. Definitions.**

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

4 (1) "Affiliate of a declarant" means any person who  
5 controls, is controlled by, or is under common control with a

6 declarant. A person "controls" a declarant if the person (i) is  
7 a general partner, officer, director, or employer of the  
8 declarant, (ii) directly or indirectly or acting in concert with  
9 one or more other persons, or through one or more  
10 subsidiaries, owns, controls, holds with power to vote, or  
11 holds proxies representing, more than twenty percent of the  
12 voting interests in the declarant, (iii) controls in any manner  
13 the election of a majority of the directors of the declarant, or  
14 (iv) has contributed more than twenty percent of the capital  
15 of the declarant. A person "is controlled by" a declarant if  
16 the declarant (i) is a general partner, officer, director, or  
17 employer of the person, (ii) directly or indirectly or acting in  
18 concert with one or more other persons, or through one or  
19 more subsidiaries, owns, controls, holds with power to vote,  
20 or holds proxies representing, more than twenty percent of  
21 the voting interests in the person, (iii) controls in any  
22 manner the election of a majority of the directors of the  
23 person, or (iv) has contributed more than twenty percent of  
24 the capital of the person. Control does not exist if the  
25 powers described in this paragraph are held solely as  
26 security for an obligation and are not exercised.

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

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

32 (4) "Common elements" means all portions of a  
33 condominium other than the units.

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

37 (6) "Common expense liability" means the liability for  
38 common expenses allocated to each unit pursuant to section  
39 2-107.

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

46 (8) "Conversion building" means a building that at any  
47 time before creation of the condominium was occupied

48 wholly or partially by persons other than purchasers and  
49 persons who occupy with the consent of purchasers.

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

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

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

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

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

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

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

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

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

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

87 (19) "Offering" means any advertisement, inducement,  
88 solicitation, or attempt to encourage any person to acquire

89 any interest in a unit, other than as security for an  
90 obligation. An advertisement in a newspaper or other  
91 periodical of general circulation, or in any broadcast  
92 medium to the general public, of a condominium not located  
93 in this state, is not an offering if the advertisement states  
94 that an offering may be made only in compliance with the  
95 law of the jurisdiction in which the condominium is located.

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

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

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

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

118 (24) "Special declarant rights" means rights reserved  
119 for the benefit of a declarant to (i) complete improvements  
120 indicated on plats and plans filed with the declaration  
121 (section 2-109); (ii) exercise any development right (section  
122 2-110); (iii) maintain sales offices, management offices,  
123 signs advertising the condominium, and models (section  
124 2-115); (iv) use easements through the common elements for  
125 the purpose of making improvements within the  
126 condominium or within real estate which may be added to  
127 the condominium (section 2-116); (v) make the  
128 condominium part of a larger condominium or a planned  
129 community (section 2-121); (vi) make the condominium  
130 subject to a master association (section 2-120); or (vii)

131 appoint or remove any officer of the association or any  
132 master association or any executive board member during  
133 any period of declarant control (section 3-103)(c).

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

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

143 (27) "Unit owner" means a declarant or other person  
144 who owns a unit, or a lessee of a unit in a leasehold  
145 condominium whose lease expires simultaneously with any  
146 lease the expiration or termination of which will remove the  
147 unit from the condominium, but does not include a person  
148 having an interest in a unit solely as security for an  
149 obligation.

**§36B-1-104. Variation by agreement.**

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

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

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

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

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

14 (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

27 proportion to the respective allocated interest of those units  
28 before the taking, with the partially acquired unit  
29 participating in the reallocation on the basis of its reduced  
30 allocated interest.

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

39 (d) If the acquisition of common elements or the  
40 acquisition of certain units decreases the value of the  
41 remaining units by more than a de minimus amount, the  
42 award must include an amount to all remaining unit owners  
43 sufficient to compensate them for that decrease in value.  
44 For purposes of this subsection the entity authorized to  
45 exercise the right of eminent domain must give notice to all  
46 unit owners and holders of liens on units in the manner set  
47 forth in section three, article two, chapter fifty-four of this  
48 code or by certified or registered mail, return receipt  
49 requested.

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

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

1 The principles of law and equity, including the law of  
2 corporations and unincorporated associations, the law of  
3 real property and the law relative to capacity to contract,  
4 principal and agent, eminent domain, estoppel, fraud,  
5 misrepresentation, duress, coercion, mistake, receivership,  
6 substantial performance, or other validating or  
7 invalidating cause supplement the provisions of this act,  
8 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  
2 coverage of its subject matter, no part of it shall be  
3 construed to be impliedly repealed by subsequent  
4 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  
2 effectuate its general purpose to make uniform the law with  
3 respect to the subject of this chapter among states enacting  
4 it.

**§36B-1-111. Severability.**

1 If any provision of this chapter or the application thereof  
2 to any person or circumstances is held invalid, the  
3 invalidity does not affect other provisions or applications of  
4 this act which can be given effect without the invalid  
5 provisions or application, and to this end the provisions of  
6 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  
2 contract or contract clause was unconscionable at the time  
3 the contract was made, may refuse to enforce the contract,  
4 enforce the remainder of the contract without the  
5 unconscionable clause, or limit the application of any  
6 unconscionable clause in order to avoid an unconscionable  
7 result.

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

13 (1) The commercial setting of the negotiations;

14 (2) Whether a party has knowingly taken advantage of  
15 the inability of the other party reasonably to protect his  
16 interests by reason of physical or mental infirmity,  
17 illiteracy, or inability to understand the language of the  
18 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  
21 contracting, between the amount charged for the real estate  
22 and the value of the real estate measured by the price at  
23 which similar real estate was readily obtainable in similar  
24 transactions, but a disparity between the contract price and  
25 the value of the real estate measured by the price at which  
26 similar real estate was readily obtainable in similar

27 transactions does not, of itself, render the contract  
28 unconscionable.

**§36B-1-113. Obligation of good faith.**

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

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

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

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

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

**§36B-2-101. Creation of condominium.**

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

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

**§36B-2-102. Unit boundaries.**

1 Except as provided by the declaration:

2 (1) If walls, floors, or ceilings are designated as

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

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

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

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

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

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

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

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

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

**§36B-2-104. Description of units.**

1 A description of a unit which sets forth the name of the  
2 condominium, the recording data for the declaration, the

3 county in which the condominium is located, and the  
4 identifying number of the unit, is a sufficient legal  
5 description of that unit and all rights, obligations, and  
6 interests appurtenant to that unit which were created by  
7 the declaration or bylaws.

**§36B-2-105. Contents of declaration.**

- 1 (a) The declaration for a condominium must contain:
- 2 (1) The name of the condominium, which must include
- 3 the word "condominium" or be followed by the words "a
- 4 condominium", and the association;
- 5 (2) The name of every county in which any part of the
- 6 condominium is situated;
- 7 (3) A legally sufficient description of the real estate
- 8 included in the condominium;
- 9 (4) A statement of the maximum number of units which
- 10 the declarant reserves the right to create;
- 11 (5) A description of the boundaries of each unit created
- 12 by the declaration, including the unit's identifying number;
- 13 (6) A description of any limited common elements, other
- 14 than those specified in section 2-102(2) and (4), as provided
- 15 in section 2-109 (b) (10);
- 16 (7) A description of any real estate, except real estate
- 17 subject to development rights, which may be allocated
- 18 subsequently as limited common elements, other than
- 19 limited common elements specified in section 2-102 (2) and
- 20 (4), together with a statement that they may be so allocated;
- 21 (8) A description of any development rights and other
- 22 special declarant rights (section 1-103 (23)) reserved by the
- 23 declarant, together with a legally sufficient description of
- 24 the real estate to which each of those rights applies, and a
- 25 time limit within which each of those rights must be
- 26 exercised;
- 27 (9) If any development right may be exercised with
- 28 respect to different parcels of real estate at different times,
- 29 a statement to that effect together with (i) either a statement
- 30 fixing the boundaries of those portions and regulating the
- 31 order in which those portions may be subjected to the
- 32 exercise of each development right, or a statement that no
- 33 assurances are made in those regards, and (ii) a statement as
- 34 to whether, if any development right is exercised in any
- 35 portion of the real estate subject to that development right,

36 that development right must be exercised in all or in any  
37 other portion of the remainder of that real estate;

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

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

43 (12) Any restrictions on use, occupancy, and alienation  
44 of the units;

45 (13) The recording data for recorded easements and  
46 licenses appurtenant to or included in the condominium or  
47 to which any portion of the condominium is or may become  
48 subject by virtue of a reservation in the declaration; and

49 (14) All matters required by sections 2-106, 2-107,  
50 2-108, 2-109, 2-115, 2-116 and 3-103 (d).

51 (b) The declaration may contain any other matters the  
52 declarant deems appropriate.

**§36B-2-106. Leasehold condominiums.**

1 (a) Any lease the expiration or termination of which  
2 may terminate the condominium or reduce its size, or a  
3 memorandum thereof, shall be recorded. Every lessor of  
4 those leases must sign the declaration, and the declaration  
5 shall state:

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

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

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

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

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

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

21 (b) After the declaration for a leasehold condominium is  
22 recorded, neither the lessor nor his successor in interest may

23 terminate the leasehold interest of a unit owner who makes  
24 timely payment of his share of the rent and otherwise  
25 complies with all covenants which, if violated, would  
26 entitle the lessor to terminate the lease. A unit owner's  
27 leasehold interest is not affected by failure of any other  
28 person to pay rent or fulfill any other covenant.

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

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

**§36B-2-107. Allocation of common element interests, votes,  
and common expense liabilities.**

1 (a) The declaration shall allocate a fraction or  
2 percentage of undivided interests in the common elements  
3 and in the common expenses of the association, and a  
4 portion of the votes in the association, to each unit and state  
5 the formulas used to establish those allocations. Those  
6 allocations may not discriminate in favor of units owned by  
7 the declarant.

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

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



23 (d) Except for minor variations due to rounding, the  
24 sums of the undivided interests in the common elements and  
25 common expense liabilities allocated at any time to all the  
26 units must each equal one if stated as fractions or one  
27 hundred percent if stated as percentages. In the event of  
28 discrepancy between an allocated interest and the result  
29 derived from application of the pertinent formulas, the  
30 allocated interest prevails.

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

**§36B-2-108. Limited common elements.**

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

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

14 (c) A common element not previously allocated as a  
15 limited common element may not be so allocated except  
16 pursuant to provisions in the declaration made in  
17 accordance with section 2-105(a) (7). The allocations shall  
18 be made by amendments to the declaration.

**§36B-2-109. Plats and plans.**

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

7 (b) Each plat must show:

8 (1) The name and a survey or general schematic map of  
9 the entire condominium;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (b) Development rights may be reserved within any real  
15 estate added to the condominium if the amendment adding  
16 that real estate includes all matters required by section  
17 2-105 or 2-106, as the case may be, and the plats and plans  
18 include all matters required by section 2-109. This  
19 provision does not extend the time limit on the exercise of  
20 development rights imposed by the declaration pursuant to  
21 section 2-105(a) (8).

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

25 (1) If the declarant converts the unit entirely to common  
26 elements, the amendment to the declaration must reallocate  
27 all the allocated interests of that unit among the other units  
28 as if that unit had been taken by eminent domain (section  
29 1-107).

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

36 (d) If the declaration provides, pursuant to section  
37 2-105(a) (8), that all or a portion of the real estate is subject  
38 to the development right of withdrawal:

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

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

**§36B-2-111. Alterations of units.**

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

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

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

11 (3) After acquiring an adjoining unit or an adjoining  
12 part of an adjoining unit, may remove or alter any  
13 intervening partition or create apertures therein, even if the  
14 partition in whole or in part is a common element, if those

15 acts do not impair the structural integrity or mechanical  
16 systems or lessen the support of any portion of the  
17 condominium. Removal of partitions or creation of  
18 apertures under this paragraph is not an alteration of  
19 boundaries.

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

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

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

**§36B-2-113. Subdivision of units.**

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

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

**§36B-2-114. Monuments as boundaries.**

1 The existing physical boundaries of a unit or the physical  
2 boundaries of a unit reconstructed in substantial  
3 accordance with the original plats and plans thereof  
4 become its boundaries rather than the metes and bounds  
5 expressed in the deed or plat or plan, regardless of settling  
6 or lateral movement of the building, or minor variance  
7 between boundaries shown on the plats or plans or in the  
8 deed and those of the building. This section does not relieve  
9 a unit owner of liability in case of his willful misconduct nor  
10 relieve a declarant or any other person of liability for failure  
11 to adhere to the plats and plans.

**§36B-2-115. Use for sales purposes.**

1 A declarant may maintain sales offices, management  
2 offices, and models in units or on common elements in the  
3 condominium only if the declaration so provides and  
4 specifies the rights of a declarant with regard to the  
5 number, size, location, and relocation thereof. Any sales  
6 office, management office, or model not designated a unit  
7 by the declaration is a common element, and if a declarant  
8 ceases to be a unit owner, he ceases to have any rights with  
9 regard thereto unless it is removed promptly from the  
10 condominium in accordance with a right to remove reserved  
11 in the declaration. Subject to any limitations in the  
12 declaration, a declarant may maintain signs on the common  
13 elements advertising the condominium. The provisions of  
14 this section are subject to the provisions of other state law  
15 and to local ordinances.

**§36B-2-116. Easement rights.**

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

**§36B-2-117. Amendment of declaration.**

1 (a) Except in cases of amendments that may be executed  
2 by a declarant under section 2-109(f) or 2-110, the

3 association under section 1-107, 2-106(d), 2-108(c), 2-112(a)  
4 or 2-113; or certain unit owners under section 2-108(b),  
5 2-112(a), 2-113(b) or 2-118(b), and, except as limited by  
6 subsection (d), the declaration, including the plats and  
7 plans, may be amended only by vote or agreement of unit  
8 owners of units to which at least sixty-seven percent of the  
9 votes in the association are allocated, or any larger majority  
10 the declaration specifies. The declaration may specify a  
11 smaller number only if all of the units are restricted  
12 exclusively to nonresidential use.

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

17 (c) Every amendment to the declaration must be  
18 recorded in every county in which any portion of the  
19 condominium is located, and is effective only upon  
20 recordation. An amendment shall be indexed in the  
21 grantee's index in the name of the condominium and the  
22 association and in the grantor's index in the name of the  
23 parties executing the amendment.

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

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

**§36B-2-118. Termination of condominium.**

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

7 only if all of the units in the condominium are restricted  
8 exclusively to nonresidential use.

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

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

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

33 (e) The association, on behalf of the unit owners, may  
34 contract for the sale of real estate in the condominium, but  
35 the contract is not binding on the unit owners until  
36 approved pursuant to subsections (a) and (b). If any real  
37 estate in the condominium is to be sold following  
38 termination, title to that real estate, upon termination, vests  
39 in the association as trustee for the holders of all interest in  
40 the units. Thereafter, the association has all powers  
41 necessary and appropriate to effect the sale. Until the sale  
42 has been concluded and the proceeds thereof distributed,  
43 the association continues in existence with all powers it had  
44 before termination. Proceeds of the sale must be distributed  
45 to unit owners and lien holders as their interests may  
46 appear, in proportion to the respective interests of unit  
47 owners as provided in subsection (h). Unless otherwise  
48 specified in the termination agreement, as long as the



49 association holds title to the real estate, each unit owner  
50 and his successors in interest have an exclusive right to  
51 occupancy of the portion of the real estate that formerly  
52 constituted his unit. During the period of that occupancy,  
53 each unit owner and his successors in interest remain liable  
54 for all assessments and other obligations imposed on unit  
55 owners by this chapter or the declaration.

56 (f) If the real estate constituting the condominium is not  
57 to be sold following termination, title to the common  
58 elements and, in a condominium containing only units  
59 having horizontal boundaries described in the declaration,  
60 title to all the real estate in the condominium, vests in the  
61 unit owners upon termination as tenants in common in  
62 proportion to their respective interests as provided in  
63 subsection (h), and liens on the units shift accordingly.  
64 While the tenancy in common exists, each unit owner and  
65 his successors in interest have an exclusive right to  
66 occupancy of the portion of the real estate that formerly  
67 constituted his unit.

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

78 (h) The respective interests of unit owners referred to in  
79 subsections (e), (f) and (g) are as follows:

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

91 owners is determined by dividing the fair market value of  
92 that unit owner's unit and common element interest by the  
93 total fair market values of all the units and common  
94 elements.

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

100 (i) Except as provided in subsection (j), foreclosure or  
101 enforcement of a lien or encumbrance against the entire  
102 condominium does not of itself terminate the condominium,  
103 and foreclosure or enforcement of a lien, or encumbrance  
104 against a portion of the condominium, other than  
105 withdrawable real estate, does not withdraw that portion  
106 from the condominium. Foreclosure or enforcement of a  
107 lien or encumbrance against withdrawable real estate does  
108 not of itself withdraw that real estate from the  
109 condominium, but the person taking title thereto has the  
110 right to require from the association, upon request, an  
111 amendment excluding the real estate from the  
112 condominium.

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

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

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

11 receiving and distributing any insurance proceeds except  
12 pursuant to section 3-113.

**§36B-2-120. Master associations.**

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

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

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

24 (d) The rights and responsibilities of unit owners with  
25 respect to the unit owners' association set forth in sections  
26 3-103, 3-108, 3-109, 3-110 and 3-112 apply in the conduct of  
27 the affairs of a master association only to those persons who  
28 elect the board of a master association, whether or not those  
29 persons are otherwise unit owners within the meaning of  
30 this chapter.

31 (e) Notwithstanding the provisions of section 3-103(f)  
32 with respect to the election of the executive board of an  
33 association by all unit owners after the period of declarant  
34 control ends, and even if a master association is also an  
35 association described in section 3-101, the certificate of  
36 incorporation or other instrument creating the master  
37 association and the declaration of each condominium the  
38 powers of which are assigned by the declaration or

39 delegated to the master association may provide that the  
40 executive board of the master association must be elected  
41 after the period of declarant control in any of the following  
42 ways:

43 (1) All unit owners of all condominiums subject to the  
44 master association may elect all members of that executive  
45 board.

46 (2) All members of the executive boards of all  
47 condominiums subject to the master association may elect  
48 all members of that executive board.

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

52 (4) All members of the executive board of each  
53 condominium subject to the master association may elect  
54 specified members of that executive board.

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

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

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

22 (c) Every merger or consolidation agreement must  
23 provide for the reallocation of the allocated interests in the  
24 new association among the units of the resultant

25 condominium either (i) by stating the reallocations or the  
26 formulas upon which they are based or (ii) by stating the  
27 percentage of overall allocated interests of the new  
28 condominium which are allocated to all of the units  
29 comprising each of the preexisting condominiums, and  
30 providing that the portion of the percentages allocated to  
31 each unit formerly comprising a part of the preexisting  
32 condominium must be equal to the percentages of allocated  
33 interests allocated to that unit by the declaration of the  
34 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;

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

19 (8) Acquire, hold, encumber, and convey in its own  
20 name any right, title, or interest to real or personal  
21 property, but common elements may be conveyed or  
22 subjected to a security interest only pursuant to section  
23 3-112;

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

26 (10) Impose and receive any payments, fees or charges  
27 for the use, rental, or operation of the common elements  
28 other than limited common elements described in sections  
29 2-102(2) and (4) and for services provided to unit owners;

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

34 (12) Impose reasonable charges for the preparation and  
35 recordation of amendments to the declaration, resale  
36 certificates required by section 4-109, or statements of  
37 unpaid assessments;

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

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

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

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

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

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

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

1 (a) Except as provided in the declaration, the bylaws, in  
2 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



11 warranty obligations imposed upon him by this chapter.  
12 Lack of privity does not deprive any unit owner of standing  
13 to maintain an action to enforce any obligation of the  
14 transferor.

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

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

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

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

45 (d) Upon foreclosure, tax sale, judicial sale, sale by a  
46 trustee under a deed of trust, or sale under bankruptcy code  
47 or receivership proceedings, of all units and other real  
48 estate in a condominium owned by a declarant:

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

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

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

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

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

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

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

67 (ii) On his transferor, other than:

68 (A) Misrepresentations by any previous declarant;

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

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

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

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

84 (4) A successor to all special declarant rights held by his  
85 transferor who is not an affiliate of that declarant and who  
86 succeeded to those rights pursuant to a deed in lieu of  
87 foreclosure or a judgment or instrument conveying title to  
88 units under subsection (c), may declare his intention in a  
89 recorded instrument to hold those rights solely for transfer  
90 to another person. Thereafter, until transferring all special  
91 declarant rights to any person acquiring title to any unit  
92 owned by the successor, or until recording an instrument  
93 permitting exercise of all those rights, that successor may  
94 not exercise any of those rights other than any right held by

95 his transferor to control the executive board in accordance  
96 with the provisions of section 3-103(d) for the duration of  
97 any period of declarant control, and any attempted exercise  
98 of those rights is void. So long as a successor declarant may  
99 not exercise special declarant rights under this subsection,  
100 he is not subject to any liability or obligation as a declarant  
101 other than liability for his acts and omissions under section  
102 3-103(d).

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

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

1 If entered into before the executive board elected by the  
2 unit owners pursuant to section 3-103(f) takes office, (i) any  
3 management contract, employment contract, or lease of  
4 recreational or parking areas or facilities, (ii) any other  
5 contract or lease between the association and a declarant or  
6 an affiliate of a declarant, or (iii) any contract or lease that  
7 is not bona fide or was unconscionable to the unit owners at  
8 the time entered into under the circumstances then  
9 prevailing, may be terminated without penalty by the  
10 association at any time after the executive board elected by  
11 the unit owners pursuant to section 3-103(f) takes office  
12 upon not less than ninety days' notice to the other party.  
13 This subsection does not apply to any lease the termination  
14 of which would terminate the condominium or reduce its  
15 size, unless the real estate subject to that lease was included  
16 in the condominium for the purpose of avoiding the right of  
17 the association to terminate a lease under this section.

**§36B-3-106. Bylaws.**

- 1 (a) The bylaws of the association must provide for:
  - 2 (1) The number of members of the executive board and  
3 the titles of the officers of the association;
  - 4 (2) Election by the executive board of a president,  
5 treasurer, secretary, and any other officers of the  
6 association the bylaws specify;
  - 7 (3) The qualifications, powers and duties, terms of  
8 office, and manner of electing and removing executive  
9 board members and officers and filling vacancies;

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

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

16 (6) The method of amending the bylaws.

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

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

1 (a) Except to the extent provided by the declaration,  
2 subsection (b), or section 3-313, the association is  
3 responsible for maintenance, repair, and replacement of the  
4 common elements, and each unit owner is responsible for  
5 maintenance, repair, and replacement of his unit. Each unit  
6 owner shall afford to the association and the other unit  
7 owners, and to their agents or employees, access through his  
8 unit reasonably necessary for those purposes. If damage is  
9 inflicted on the common elements or any unit through  
10 which access is taken, the unit owner responsible for the  
11 damage, or the association if it is responsible, is liable for  
12 the prompt repair thereof.

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

**§36B-3-108. Meetings.**

1 A meeting of the association must be held at least once  
2 each year. Special meetings of the association may be called  
3 by the president or by twenty percent or any lower  
4 percentage specified in the bylaws of either the executive  
5 board or the unit owners. Not less than ten nor more than  
6 sixty days in advance of any meeting, the secretary or other  
7 officer specified in the bylaws shall cause notice to be

8 hand-delivered or sent prepaid by United States mail to the  
9 mailing address of each unit or to any other mailing address  
10 designated in writing by the unit owner. The notice of any  
11 meeting must state the time and place of the meeting and  
12 the items on the agenda, including the general nature of any  
13 proposed amendment to the declaration or bylaws, any  
14 budget changes and any proposal to remove a director or  
15 office.

**§36B-3-109. Quorums.**

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

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

**§36B-3-110. Voting; proxies.**

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

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

21 terminates one year after its date, unless it specifies a  
22 shorter term.

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

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

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

1 Neither the association nor any unit owner except the  
2 declarant is liable for that declarant's torts in connection  
3 with any part of the condominium which that declarant has  
4 the responsibility to maintain. Otherwise, an action  
5 alleging a wrong done by the association must be brought  
6 against the association and not against any unit owner. If  
7 the wrong occurred during any period of declarant control  
8 and the association gives the declarant reasonable notice of  
9 and an opportunity to defend against the action, the  
10 declarant who then controlled the association is liable to  
11 the association or to any unit owner: (i) For all tort losses  
12 not covered by insurance suffered by the association or that  
13 unit owner, and (ii) for all costs which the association would  
14 not have incurred but for a breach of contract or other  
15 wrongful act or omission. Whenever the declarant is liable  
16 to the association under this section, the declarant is also  
17 liable for all litigation expenses, including reasonable  
18 attorneys' fees, incurred by the association. Any statute of  
19 limitation affecting the association's right of action under  
20 this section is tolled until the period of declarant control  
21 terminates. A unit owner is not precluded from bringing an  
22 action contemplated by this subsection because he is a unit  
23 owner or a member or officer of the association. Liens  
24 resulting from judgments against the association are  
25 governed by section 3-117.

**§36B-3-112. Conveyance or encumbrance of common elements.**

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

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

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

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

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

37 (f) Unless the declaration otherwise provides, a  
38 conveyance or encumbrance of common elements pursuant  
39 to this section does not affect the priority or validity of  
40 preexisting encumbrances.

**§36B-3-113. Insurance.**

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

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

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

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

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

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

38 (1) Each unit owner is an insured person under the  
39 policy with respect to liability arising out of his interest in  
40 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

83 association unless (i) the condominium is terminated, (ii)  
84 repair or replacement would be illegal under any state or  
85 local health or safety statute or ordinance, or (iii) eighty  
86 percent of the unit owners, including every owner of a unit  
87 or assigned limited common element which will not be  
88 rebuilt, vote not to rebuild. The cost of repair or  
89 replacement in excess of insurance proceeds and reserves is  
90 a common expense. If the entire condominium is not  
91 repaired or replaced, (i) the insurance proceeds attributable  
92 to the damaged common elements must be used to restore  
93 the damaged area to a condition compatible with the  
94 remainder of the condominium, (ii) the insurance proceeds  
95 attributable to units and limited common elements which  
96 are not rebuilt must be distributed to the owners of those  
97 units and the owners of the units to which those limited  
98 common elements were allocated, or to lienholders, as their  
99 interests may appear, and (iii) the remainder of the proceeds  
100 must be distributed to all the unit owners or lienholders, as  
101 their interests may appear, in proportion to the common  
102 element interests of all the units. If the unit owners vote not  
103 to rebuild any unit, that unit's allocated interests are  
104 automatically reallocated upon the vote as if the unit had  
105 been condemned under section 1-107(a), and the  
106 association promptly shall prepare, execute, and record an  
107 amendment to the declaration reflecting the reallocations. *Am*  
108 Notwithstanding the provisions of this subsection, section  
109 2-118 governs the distribution of insurance proceeds if the  
110 condominium is terminated.  
111 (i) The provisions of this section may be varied or  
112 waived in the case of a condominium all of whose units are  
113 restricted to nonresidential use.

**§36B-3-114. Surplus funds.**

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

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

1 (a) Until the association makes a common expense

2 assessment, the declarant shall pay all common expenses.  
3 After any assessment has been made by the association,  
4 assessments must be made at least annually based on a  
5 budget adopted at least annually by the association.

6 (b) Except for assessments under subsection <sup>5</sup>(c), (d) and *new*  
7 (e), all common expenses must be assessed against all the  
8 units in accordance with the allocations set forth in the  
9 declaration pursuant to section 2-107(a). Any past due  
10 common expense assessment or installment thereof bears  
11 interest at the rate established by the association not  
12 exceeding eighteen percent per year.

13 (c) To the extent required by the declaration:

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

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

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

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

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

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

**§36B-3-116. Lien for assessments.**

1 (a) The association has a lien on a unit for any  
2 assessment levied against that unit or fines imposed against  
3 its unit owner from the time the assessment or fine becomes  
4 due. The association's lien may be foreclosed in like manner  
5 as a mortgage on real estate or a power of sale under a deed  
6 of trust. But the association shall give reasonable notice of

7 its action to all lienholders of the unit whose interest would  
8 be affected. Unless the declaration otherwise provides, fees,  
9 charges, late charges, fines, and interest charged pursuant  
10 to section 3-102(a) (10), (11) and (12) are enforceable as  
11 assessments under this section. If an assessment is payable  
12 in installments, the full amount of the assessment is a lien  
13 from the time the first installment thereof becomes due.

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

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

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

- 46 (1) A legally sufficient description of the unit;  
47 (2) The name or names of the owners of the unit;

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

50 (4) The date of recordation.

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

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

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

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

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

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

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

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

7 (b) If the association has granted a security interest in  
8 the common elements to a creditor of the association  
9 pursuant to section 3-112, the holder of that security  
10 interest shall exercise its right against the common

11 elements before its judgment lien on any unit may be  
12 enforced.

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

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

**§36B-3-118. Association records.**

1 The association shall keep financial records sufficiently  
2 detailed to enable the association to comply with section  
3 4-109. All financial and other records shall be made  
4 reasonably available for examination by any unit owner  
5 and his authorized agents.

**§36B-3-119. Association as trustee.**

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

1 (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.

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

8 (1) A gratuitous disposition of a unit;

9 (2) A disposition pursuant to court order;

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

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

14 (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.**

1 (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.

5 (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).

13 (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

18 liable under sections 4-108 and 4-115 for any false or  
19 misleading statement set forth therein or for any omission  
20 of material fact therefrom with respect to that portion of the  
21 public offering statement which he prepared. If a declarant  
22 did not prepare any part of a public offering statement that  
23 he delivers, he is not liable for any false or misleading  
24 statement set forth therein or for any omission of material  
25 fact therefrom unless he had actual knowledge of the  
26 statement or omission or, in the exercise of reasonable care,  
27 should have known of the statement or omission.

28 (d) If a unit is part of a condominium and is part of any  
29 other real estate regime in connection with the sale of which  
30 the delivery of a public offering statement is required under  
31 the laws of this state, a single public offering statement  
32 conforming to the requirements of sections 4-103, 4-104,  
33 4-105 and 4-106 as those requirements relate to all real  
34 estate regimes in which the unit is located, and to any other  
35 requirements imposed under the laws of this state, may be  
36 prepared and delivered in lieu of providing two or more  
37 public offering statements.

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

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

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

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

11 (3) The number of units in the condominium;

12 (4) Copies and a brief narrative description of the  
13 significant features of the declaration (other than the plats  
14 and plans) and any other recorded ~~covenants~~, conditions, *etc.*  
15 restrictions and reservations affecting the condominium;  
16 the bylaws, and any rules or regulations of the association;  
17 copies of any contracts and leases to be signed by  
18 purchasers at closing, and a brief narrative description of  
19 any contracts or leases that will or may be subject to  
20 cancellation by the association under section 3-105;



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

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

32 (ii) A statement of any other reserves;

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

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

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

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

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

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

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

54 (11) A statement that:

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

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

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

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

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

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

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

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

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

85 (18) A brief narrative description of any zoning and  
86 other land use requirements affecting the condominium;  
87 and

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

90 (b) If a condominium composed of not more than twelve  
91 units is not subject to any development rights, and no power  
92 is reserved to a declarant to make the condominium part of  
93 a larger condominium, group of condominiums, or other  
94 real estate, a public offering statement may but need not  
95 include the information otherwise required by paragraphs  
96 (9), (10), (15), (16), (17), (18) and (19) of subsection (a) and the  
97 narrative descriptions of documents required by paragraph  
98 (a) (4).

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

**§36B-4-104. Same — Condominiums subject to development rights.**

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

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

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

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

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

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

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

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

37 (8) A statement of any limitations as to the locations of

38 any building or other improvement that may be made  
39 within any part of the condominium pursuant to any  
40 development right reserved by the declarant, or a statement  
41 that no assurances are made in that regard;

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

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

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

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

**§36B-4-105. Same — Time shares.**

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

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

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

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

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

**§36B-4-106. Same — Condominiums containing conversion buildings.**

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

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

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

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

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

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

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

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

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

11 (b) If a purchaser elects to cancel a contract pursuant to  
12 subsection (a), he may do so by hand-delivering notice

13 thereof to the offeror or by mailing notice thereof by  
14 prepaid United States mail to the offeror or to his agent for  
15 service of process. Cancellation is without penalty, and all  
16 payments made by the purchaser before cancellation shall  
17 be refunded promptly.

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

**§36B-4-109. Resales of units.**

1 (a) Except in the case of a sale where delivery of a public  
2 offering statement is required, or unless exempt under  
3 section 4-101(b), a unit owner shall furnish to a purchaser  
4 before execution of any contract for sale of a unit, or  
5 otherwise before conveyance, a copy of the declaration  
6 (other than the plats and plans), the bylaws, the rules or  
7 regulations of the association, and a certificate containing:  
8 (1) A statement disclosing the effect on the proposed  
9 disposition of any right of first refusal or other restraint on  
10 the free alienability of the unit;

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

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

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

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

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

26 (7) The current operating budget of the association;

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

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

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

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

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

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

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

**§36B-4-110. Escrow of deposits.**

1 Any deposit made in connection with the purchase or  
2 reservation of a unit from a person required to deliver a  
3 public offering statement pursuant to section 4-102(c) shall  
4 be placed in escrow and held either in this state or in the  
5 state where the unit is located in an account designated  
6 solely for that purpose by an institution whose accounts are  
7 insured by a governmental agency or instrumentality until:  
8 (1) Delivered to the declarant at closing; (2) delivered to the

9 declarant because of purchaser's default under a contract to  
10 purchase the unit; or (3) refunded to the purchaser.

**§36B-4-111. Release of liens.**

1 (a) In the case of a sale of a unit where delivery of a  
2 public offering statement is required pursuant to section  
3 4-102(c), a seller shall, before conveying a unit, record or  
4 furnish to the purchaser, releases of all liens affecting that  
5 unit and its common element interest which the purchaser  
6 does not expressly agree to take subject to or assume. This  
7 subsection does not apply to any real estate which a  
8 declarant has the right to withdraw.

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

**§36B-4-112. Conversion buildings.**

1 (a) A declarant of a condominium containing  
2 conversion buildings and any person in the business of  
3 selling real estate for his own account who intends to offer  
4 units in such a condominium shall give each of the  
5 residential tenants and any residential subtenant in  
6 possession of a portion of a conversion building notice of the  
7 conversion and provide those persons with the public  
8 offering statement no later than one hundred twenty days  
9 before the tenants and any subtenant in possession are  
10 required to vacate. The notice must set forth generally the  
11 rights of tenants and subtenants under this section and  
12 shall be hand-delivered to the unit or mailed by prepaid  
13 United States mail to the tenant and subtenant at the  
14 address of the unit or any other mailing address provided by  
15 a tenant. No tenant or subtenant may be required to vacate  
16 upon less than one hundred twenty days' notice, except by  
17 reason of nonpayment of rent, waste, or conduct that  
18 disturbs other tenants' peaceful enjoyment of the premises,  
19 and the terms of the tenancy may not be altered during that  
20 period. Failure to give notice as required by this section is a  
21 defense to an action for possession.



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

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

44 (d) If a notice of conversion specifies a date by which a  
45 unit or proposed unit must be vacated and otherwise  
46 complies with the provisions of section five, article six,  
47 chapter thirty-seven of this code, the notice also constitutes  
48 a notice to vacate specified by that section.

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

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

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

10 (b) *General rule.*—A declarant warrants against  
11 structural defects in each of the units for two years from the

12 date each is conveyed to a bona fide purchaser, and all of the  
13 common elements for two years. The two years shall begin  
14 as to each of the common elements whenever the common  
15 element has been completed or, if later:

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

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

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

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

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

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

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

**§36B-4-114. Statute of limitations for warranties.**

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

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

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

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

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

**§36B-4-115. Effect of violations on rights of action; attorney's fees.**

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

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

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

**§36B-4-117. Declarant's obligation to complete and restore.**

1 (a) The declarant shall complete all improvements  
2 labeled "MUST BE BUILT" on plats or plans prepared  
3 pursuant to section 2-109.

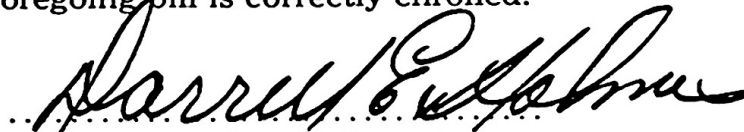
4 (b) The declarant is subject to liability for the prompt  
5 repair and restoration, to a condition compatible with the  
6 remainder of the condominium, of any portion of the

7 condominium affected by the exercise of rights reserved  
8 pursuant to or created by sections 2-110, 2-111, 2-112,  
9 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  
2 offering statement is required, a contract of sale may be  
3 executed, but no interest in that unit may be conveyed until  
4 the declaration is recorded and the unit is substantially  
5 completed, as evidenced by a recorded certificate of  
6 substantial completion executed by an independent  
7 registered architect, surveyor or engineer, or by issuance of  
8 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

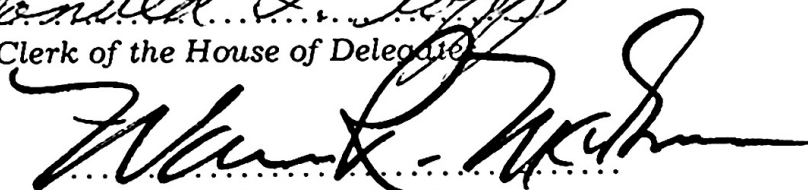
  
.....  
Chairman House Committee

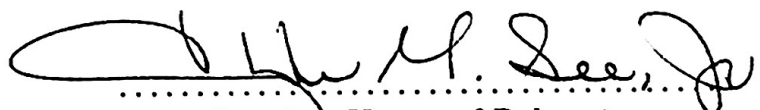
Originated in the Senate.

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 *30* .....  
day of ..... *March* ....., 198*4*.

  
.....  
Governor

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