WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1994

- - -

ENROLLED

HOUSE BILL No. 1308

(By Delegates Manuel, Ratliff, and Doyle)

- - -

Passed March 12, 1994
In Effect 90 Days From Passage
AN ACT to amend and reenact section two hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred one, one hundred three and one hundred eight, article four of said chapter, all relating to the uniform common interest ownership act; increasing maximum annual assessment; modifying exemptions for making public offerings; providing for amendments to declaration by a majority of unit owners rather than by unanimous consent; requiring a showing of actual damages by a purchaser who did not receive public offerings; and imposing a three-year statute of limitation on claims for damages.

Be it enacted by the Legislature of West Virginia:

That section two hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred one, one hundred three and one hundred eight, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-203. Applicability to new common interest communities. — Exception for small and limited expense liability planned communities.
If a planned community:

(1) Contains no more than twelve units and is not subject to any development rights; or

(2) Provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed three hundred dollars as adjusted pursuant to section 1-114 (adjustment of dollar amounts) it is subject only to sections 1-105 (separate titles and taxation) 1-106 (applicability of local ordinances, regulations and building codes) and 1-107 (eminent domain) unless the declaration provides that this entire chapter is applicable.

ARTICLE 4. PROTECTION OF PURCHASERS.

§36B-4-101. Applicability; waiver.

(a) This article applies to all units subject to this chapter except as provided in subsection (b) or as modified or waived by agreement of purchasers of units in a common interest community in which all units are restricted to nonresidential use.

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

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

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

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

(5) A disposition to a dealer;

(6) A disposition that may be canceled at any time and for any reason by the purchaser without penalty; or

(7) A disposition of a unit in a planned community in which the declaration limits the maximum annual assessment of any unit to not more than five hundred dollars, as adjusted pursuant to section 1-114 (Adjust-
(i) The declarant has a reasonable and good faith belief that the maximum stated assessment will be sufficient to pay the expenses of the planned community;

(ii) The declaration cannot be amended to increase the assessment during the period of declarant or declarant’s family control without the consent of a majority of unit owners other than the declarant; and

(iii) The planned community is not subject to any development rights.

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

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

(1) The name and principal address of the declarant and of the common interest community and a statement that the common interest community is either a condominium, cooperative or planned community;

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

(3) The number of units in the common interest community;

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

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

(ii) A statement of any other reserves;

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

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

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

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

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

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

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

(11) A statement that:

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

(ii) If a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit plus ten percent of the share, proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community: Provided, That purchaser is required to show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this paragraph is instituted within three years from the date on which purchaser's right of action shall have accrued; and

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

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

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

(14) Any restraints on alienation of any portion of the common interest community and any restrictions: (i) On use, occupancy, and alienation of the units; and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation or casualty loss to the unit or to the common interest community or on termination of the common interest community;

(15) A description of the insurance coverage provided
(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to section 4-119 (Declarant's Obligation to Complete and Restore);

(18) A brief narrative description of any zoning and other land use requirements affecting the common interest community;

(19) All unusual and material circumstances, features and characteristics of the common interest community and the units; and

(20) In a cooperative, (i) whether the unit owners will be entitled, for federal, state and local income tax purposes, to a pass through of deductions for payments made by the association for real estate taxes and interest paid by the holder of a security interest encumbering the cooperative; and (ii) a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than twelve units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16), (17), (18) and (19) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

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

§36B-4-108. Purchaser's right to cancel.
(a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than fifteen days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days after first receiving the public offering statement.

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

(c) If a person required to deliver a public offering statement pursuant to section 4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to ten percent of the sale price of the unit, plus ten percent of the share proportionate to his common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community: Provided, That purchaser must show that he or she has been actually damaged as a result of the failure to provide such offering statement and that his or her action to recover such damage and the penalty provided in this subsection is instituted within three years from the date on which purchaser’s right of action shall have accrued.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of March, 1994.

Governor