

H.B. # 4308

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

HOUSE BILL No. 4308

(By Delegates Manuel, Vest and Doyle)



Passed March 12, 1994

In Effect 90 Days From Passage

ENROLLED
H. B. 4308

(By DELEGATES MANUEL, VEST AND DOYLE)

[Passed March 12, 1994; in effect ninety 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.

1 If a planned community:

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

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

ARTICLE 4. PROTECTION OF 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
3 modified or waived by agreement of purchasers of units
4 in a common interest community in which all units are
5 restricted to 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 dealer;

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

17 (7) A disposition of a unit in a planned community in
18 which the declaration limits the maximum annual
19 assessment of any unit to not more than five hundred
20 dollars, as adjusted pursuant to section 1-114 (Adjust-

21 ment of dollar amounts) if:

22 (i) The declarant has a reasonable and good faith
23 belief that the maximum stated assessment will be
24 sufficient to pay the expenses of the planned community;

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

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

§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
5 and of the common interest community and a statement
6 that the common interest community is either a
7 condominium, cooperative or planned community;

8 (2) A general description of the common interest
9 community, including to the extent possible, the types,
10 number, and declarant's schedule of commencement and
11 completion of construction of buildings and amenities
12 that the declarant anticipates including in the common
13 interest community;

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

16 (4) Copies and a brief narrative description of the
17 significant features of the declaration, other than any
18 plats and plans and any other recorded covenants,
19 conditions, restrictions and reservations affecting the
20 common interest community; the bylaws and any rules
21 or regulations of the association; copies of any contracts
22 and leases to be signed by purchasers at closing and a
23 brief narrative description of any contracts or leases
24 that will or may be subject to cancellation by the
25 association under section 3-105;

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

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

37 (ii) A statement of any other reserves;

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

40 (iv) The projected monthly common expense assess-
41 ment for each type of unit;

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

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

52 (8) A description of any liens, defects, or encumbran-
53 ces on or affecting the title to the common interest
54 community;

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

57 (10) The terms and significant limitations of any
58 warranties provided by the declarant, including statu-
59 tory warranties and limitations on the enforcement
60 thereof or on damages;

61 (11) A statement that:

62 (i) Within fifteen days after receipt of a public

63 offering statement a purchaser, before conveyance, may
64 cancel any contract for purchase of a unit from a
65 declarant;

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

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

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

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

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

101 (15) A description of the insurance coverage provided

102 for the benefit of unit owners;

103 (16) Any current or expected fees or charges to be
104 paid by unit owners for the use of the common elements
105 and other facilities related to the common interest
106 community;

107 (17) The extent to which financial arrangements have
108 been provided for completion of all improvements that
109 the declarant is obligated to build pursuant to section
110 4-119 (Declarant's Obligation to Complete and Restore);

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

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

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

126 (b) If a common interest community composed of not
127 more than twelve units is not subject to any development
128 rights and no power is reserved to a declarant to make
129 the common interest community part of a larger
130 common interest community, group of common interest
131 communities, or other real estate, a public offering
132 statement may but need not include the information
133 otherwise required by paragraphs (9), (10), (15), (16),
134 (17), (18) and (19) of subsection (a) and the narrative
135 descriptions of documents required by subsection (a)(4).

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

§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 with a copy of the public offering statement
4 and all amendments thereto before conveyance of the
5 unit, and not later than the date of any contract of sale.
6 Unless a purchaser is given the public offering state-
7 ment 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
12 to 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
15 for service of process. Cancellation is without penalty,
16 and all payments made by the purchaser before
17 cancellation must 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
22 required by subsection (a), the purchaser, in addition to
23 any rights to damages or other relief, is entitled to
24 receive from that person an amount equal to ten percent
25 of the sale price of the unit, plus ten percent of the share,
26 proportionate to his common expense liability, of any
27 indebtedness of the association secured by security
28 interests encumbering the common interest community:
29 *Provided*, That purchaser must show that he or she has
30 been actually damaged as a result of the failure to
31 provide such offering statement and that his or her
32 action to recover such damage and the penalty provided
33 in this subsection is instituted within three years from
34 the date on which purchaser's right of action shall have
35 accrued.

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

[Handwritten signature]

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Handwritten signature]

Clerk of the Senate

Donald J. Kapp

Clerk of the House of Delegates

[Handwritten signature]

President of the Senate

[Handwritten signature]

Speaker of the House of Delegates

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

[Handwritten signature]

Governor

PRESENTED TO THE

GOVERNOR

Date 3/28/94

Time 9:29 am