

SB 424

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1998



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SENATE BILL NO. 424

(By Senator Wootton et al)



PASSED March 10 1998

In Effect Ninety days from Passage

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OFFICE OF LEGISLATION
SECRETARY OF STATE

ENROLLED

Senate Bill No. 424

(BY SENATORS WOOTON, WHITE, HELMICK, ROSS,
PREZIOSO, WALKER, BUCKALEW, SCHOONOVER,
ANDERSON AND SHARPE)

[Passed March 10, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred three, article one, chapter thirty-six-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform common interest ownership act; providing for definitions; and allowing a resort owner to impose a charge to cover costs incurred for maintenance and improvements to real estate made available to unit owners without creating a common interest ownership community.

Be it enacted by the Legislature of West Virginia:

That section one 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 to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-103. Definitions.

1 In the declaration and bylaws (section one hundred six,
2 article three of this chapter), unless specifically provided
3 otherwise or the context otherwise requires, and in this
4 chapter:

5 (1) "Affiliate of a declarant" means any person who
6 controls, is controlled by, or is under common control with
7 a declarant. A person "controls" a declarant if the person:
8 (i) Is a general partner, officer, director or employer of the
9 declarant; (ii) directly or indirectly or acting in concert
10 with one or more other persons, or through one or more
11 subsidiaries, owns, controls, holds with power to vote, or
12 holds proxies representing, more than twenty percent of
13 the voting interest in the declarant; (iii) controls in any
14 manner the election of a majority of the directors of the
15 declarant; or (iv) has contributed more than twenty
16 percent of the capital of the declarant. A person "is
17 controlled by" a declarant if the declarant: (i) Is a general
18 partner, officer, director or employer of the person; (ii)
19 directly or indirectly or acting in concert with one or more
20 other persons, or through one or more subsidiaries, owns,
21 controls, holds with power to vote, or holds proxies
22 representing, more than twenty percent of the voting
23 interest in the person; (iii) controls in any manner the
24 election of a majority of the directors of the person; or (iv)
25 has contributed more than twenty percent of the capital of
26 the person. Control does not exist if the powers described

27 in this paragraph are held solely as security for an obliga-
28 tion and are not exercised.

29 (2) "Allocated interests" means the following interests
30 allocated to each unit: (i) In a condominium, the undivided
31 interest in the common elements, the common expense
32 liability, and votes in the association; (ii) in a cooperative,
33 the common expense liability and the ownership interest
34 and votes in the association; and (iii) in a planned commu-
35 nity, the common expense liability and votes in the
36 association.

37 (3) "Association" or "unit owners' association" means
38 the unit owners' association organized under section one
39 hundred one, article three of this chapter.

40 (4) "Common elements" means: (i) In a condominium or
41 cooperative, all portions of the common interest commu-
42 nity other than the units; and (ii) in a planned community,
43 any real estate within a planned community owned or
44 leased by the association, other than a unit.

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

48 (6) "Common expense liability" means the liability for
49 common expenses allocated to each unit pursuant to
50 section one hundred seven, article two of this chapter.

51 (7) "Common interest community" means real estate
52 with respect to which a person, by virtue of his ownership
53 of a unit, is obligated to pay for real estate taxes, insur-
54 ance premiums, maintenance or improvement of other real
55 estate described in a declaration: *Provided*, That any
56 resort owner which, prior to the effective date of this
57 article, began the development of a resort and imposed

58 fees or assessments upon owners of real estate in the resort
59 for maintenance and care of the roads, streets, alleys,
60 sidewalks, parks, common areas and common facilities in
61 and around the resort, for fire and police protection and
62 for such other services as may be made available to
63 owners of real estate, may also impose the same fees and
64 assessments to be used for the same or similar purposes
65 upon persons purchasing real estate in the resort after the
66 effective date of this article without creating a common
67 interest community.

68 "Ownership of a unit" does not include holding a lease-
69 hold interest of less than twenty years in a unit, including
70 renewal options.

71 (8) "Condominium" means a common interest commu-
72 nity in which portions of the real estate are designated for
73 separate ownership and the remainder of the real estate is
74 designated for common ownership solely by the owners of
75 those portions. A common interest community is not a
76 condominium unless the undivided interest in the common
77 elements are vested in the unit owners.

78 (9) "Conversion building" means a building that at any
79 time before creation of the common interest community
80 was occupied wholly or partially by persons other than
81 purchasers and persons who occupy with the consent of
82 purchasers.

83 (10) "Cooperative" means a common interest commu-
84 nity in which the real estate is owned by an association,
85 each of whose members is entitled by virtue of his owner-
86 ship interest in the association to exclusive possession of
87 a unit.

88 (11) "Dealer" means a person in the business of selling

89 units for his own account.

90 (12) "Declarant" means any person or group of persons
91 acting in concert who: (i) As part of a common promo-
92 tional plan, offers to dispose of his or its interest in a unit
93 not previously disposed of; or (ii) reserves or succeeds to
94 any special declarant right.

95 (13) "Declaration" means any instruments, however
96 denominated, that create a common interest community,
97 including any amendments to those instruments.

98 (14) "Development rights" means any right or combina-
99 tion of rights reserved by a declarant in the declaration to:
100 (i) Add real estate to a common interest community; (ii)
101 create units, common elements or limited common ele-
102 ments within a common interest community; (iii) subdi-
103 vide units or convert units into common elements; or (iv)
104 withdraw real estate from a common interest community.

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

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

112 (17) "Identifying number" means a symbol or address
113 that identifies only one unit in a common interest commu-
114 nity.

115 (18) "Leasehold common interest community" means a
116 common interest community in which all or a portion of
117 the real estate is subject to a lease, the expiration or
118 termination of which will terminate the common interest

119 community or reduce its size.

120 (19) "Limited common element" means a portion of the
121 common elements allocated by the declaration or by
122 operation of subdivision (2) or (4), section one hundred
123 two, article two of this chapter for the exclusive use of one
124 or more but fewer than all of the units.

125 (20) "Master association" means an organization
126 described in section one hundred twenty, article two of
127 this chapter, whether or not it is also an association
128 described in section one hundred one, article three of this
129 chapter.

130 (21) "Offering" means any advertisement, inducement,
131 solicitation or attempt to encourage any person to acquire
132 any interest in a unit, other than as security for an obliga-
133 tion. An advertisement in a newspaper or other periodical
134 of general circulation, or in any broadcast medium to the
135 general public, of a common interest community not
136 located in this state, is not an offering if the advertisement
137 states that an offering may be made only in compliance
138 with the law of the jurisdiction in which the common
139 interest community is located.

140 (22) "Person" means an individual, corporation,
141 business trust, estate, trust, partnership, association, joint
142 venture, government, governmental subdivision or agency,
143 or other legal or commercial entity. In the case of a trust,
144 the corpus of which is real estate, however, "person"
145 means the beneficiary of the trust rather than the trust or
146 the trustee.

147 (23) "Planned community" means a common interest
148 community that is not a condominium or a cooperative. A
149 condominium or cooperative may be part of a planned

150 community.

151 (24) "Proprietary lease" means an agreement with the
152 association pursuant to which a member is entitled to
153 exclusive possession of a unit in a cooperative.

154 (25) "Purchaser" means a person, other than a declarant
155 or a dealer, who by means of a voluntary transfer acquires
156 a legal or equitable interest in a unit other than: (i) A
157 leasehold interest (including renewal options) of less than
158 twenty years; or (ii) as security for an obligation.

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

167 (27) "Residential purposes" means use for dwelling or
168 recreational purposes, or both.

169 (28) "Resort" means a destination location which con-
170 sists of: (i) One or more persons offering recreational
171 facilities and services such as skiing, golf, tennis or
172 boating to the general public and commercial facilities
173 such as retail stores, restaurants and hotels or other
174 lodging accommodations; and (ii) at least one hundred
175 residential units, a majority of which are used as vacation
176 or second homes rather than primary residences.

177 (29) "Resort owner" means any person owning or operat-
178 ing substantially all of the recreational facilities located
179 within a resort, or the predecessor in title of any such
180 person.

181 (30) "Security interest" means an interest in real estate
182 or personal property, created by contract or conveyance,
183 which secures payment or performance of an obligation.
184 The term includes a lien created by a mortgage, deed of
185 trust, trust deed, security deed, contract for deed, land
186 sales contract, lease intended as security, assignment of
187 lease or rents intended as security, pledge of an ownership
188 interest in an association, and any other consensual lien or
189 title retention contract intended as security for an obliga-
190 tion.

191 (31) "Special declarant rights" means rights reserved
192 for the benefit of a declarant to: (i) Complete improve-
193 ments indicated on plans and plans filed with the declara-
194 tion (section one hundred nine, article two of this chapter)
195 or, in a cooperative, to complete improvements described
196 in the public offering statement pursuant to subdivision
197 (2), subsection (a), section one hundred three, article four
198 of this chapter; (ii) exercise any development right (section
199 one hundred ten, article two of this chapter); (iii) maintain
200 sales offices, management offices, signs advertising the
201 common interest community, and models (section one
202 hundred fifteen, article two of this chapter); (iv) use
203 easements through the common elements for the purpose
204 of making improvements within the common interest
205 community or within real estate which may be added to
206 the common interest community (section one hundred
207 sixteen, article two of this chapter); (v) make the common
208 interest community subject to a master association
209 (section one hundred twenty, article two of this chapter);
210 (vi) merge or consolidate a common interest community
211 with another common interest community of the same
212 form of ownership (section one hundred twenty-one,
213 article two of this chapter); or (vii) appoint or remove any

214 officer of the association or any master association or any
215 executive board member during any period of declarant
216 control (subsection (d), section one hundred three, article
217 three of this chapter).

218 (32) "Time share" means a right to occupy a unit or any
219 of several units during five or more separated time periods
220 over a period of at least five years, including renewal
221 options, whether or not coupled with an estate or interest
222 in a common interest community or a specified portion
223 thereof.

224 (33) "Unit" means a physical portion of the common
225 interest community designated for separate ownership or
226 occupancy, the boundaries of which are described pursu-
227 ant to subdivision (5), subsection (a), section one hundred
228 five, article two of this chapter. If a unit in a cooperative
229 is owned by a unit owner or is sold, conveyed, voluntarily
230 or involuntarily encumbered or otherwise transferred by
231 a unit owner, the interest in that unit which is owned,
232 sold, conveyed, encumbered, or otherwise transferred is
233 the right to possession of that unit under a proprietary
234 lease, coupled with the allocated interests of that unit, and
235 the association's interest in that unit is not thereby
236 affected.

237 (34) "Unit owner" means a declarant or other person
238 who owns a unit, or a lessee of a unit in a leasehold
239 common interest community whose lease expires simulta-
240 neously with any lease, the expiration or termination of
241 which will remove the unit from the common interest
242 community, but does not include a person having an
243 interest in a unit solely as security for an obligation. In a
244 condominium or planned community, the declarant is the
245 owner of any unit created by the declaration. In a cooper-

246 ative, the declarant is treated as the owner of any unit to
247 which allocated interests have been allocated (section one
248 hundred seven, article two of this chapter) until that unit
249 has been conveyed to another person.

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

Ray Schover
.....
Chairman Senate Committee

Nick Tentasio
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Phillips
.....
Clerk of the Senate

Bryson W. Day
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Tom K.
.....
Speaker House of Delegates

The within *approved* this the *19th* day of *March*, 1998

Jeff Blodgett
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/16/98

Time 10:21 am