

# Senate Bill No. 376

(By Senator Beach)

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[Introduced February 1, 2011; referred to  
the Committee on the Judiciary.]

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A BILL to amend and reenact §36B-3-102 of the Code of West Virginia, 1931, as amended, relating to permitting unit owners' associations to institute legal action against a unit owner to collect dues or assessments that are overdue or in arrears to the association.

*Be it enacted by the Legislature of West Virginia:*

That §36B-3-102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.**

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

- 1 (a) Except as provided in subsection (b), and subject to the
- 2 provisions of the declaration, the association, even if unin-
- 3 corporated, may:

- 4 (1) Adopt and amend bylaws and rules and regulations;
- 5 (2) Adopt and amend budgets for revenues, expenditures,  
6 and reserves and collect assessments for common expenses  
7 from unit owners;
- 8 (3) Hire and discharge managing agents and other employ-  
9 ees, agents, and independent contractors;
- 10 (4) Institute, defend, or intervene in litigation or adminis-  
11 trative proceedings in its own name on behalf of itself or two  
12 or more unit owners on matters affecting the common  
13 interest community;
- 14 (5) Make contracts and incur liabilities;
- 15 (6) Regulate the use, maintenance, repair, replacement, and  
16 modification of common elements;
- 17 (7) Cause additional improvements to be made as a part of  
18 the common elements;
- 19 (8) Acquire, hold, encumber, and convey in its own name  
20 any right, title, or interest to real estate or personal property,  
21 but (i) common elements in a condominium or planned  
22 community may be conveyed or subjected to a security  
23 interest only pursuant to section ~~3-112~~ one hundred twelve  
24 of this article and (ii) part of a cooperative may be conveyed,  
25 or all or part of a cooperative may be subjected to a security

26 interest, only pursuant to section ~~3-112~~one hundred twelve  
27 of this article;

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

30 (10) Impose and receive any payments, fees, or charges for  
31 the use, rental, or operation of the common elements, other  
32 than limited common elements described in ~~sections 2-102(2)~~  
33 ~~and (4)~~ subsections (1) and (4), section one hundred two,  
34 article two of this chapter, and for services provided to unit  
35 owners;

36 (11) Impose charges for late payment of assessments and,  
37 after notice and an opportunity to be heard, levy reasonable  
38 fines for violations of the declaration, bylaws, rules, and  
39 regulations of the association;

40 (12) Impose reasonable charges for the preparation and  
41 recordation of amendments to the declaration, resale  
42 certificates required by ~~section 4-109~~ section one hundred  
43 nine, article four of this chapter, or statements of unpaid  
44 assessments;

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

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

51 (15) Exercise any other powers conferred by the declara-  
52 tion or bylaws;

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

55 (17) Institute litigation or administrative proceedings in its  
56 own name against a unit owner for the collection of dues or  
57 assessments that are overdue or in arrears; and

58 ~~(17)~~ (18) Exercise any other powers necessary and proper  
59 for the governance and operation of the association.

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

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(NOTE: The purpose of this bill is to permit unit owners' associations to institute legal action against a unit owner to collect dues or assessments that are overdue or in arrears to the association.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)