

H. B. 4499

(By Delegates Skinner, Lawrence and Barrett)

[Introduced February 13, 2014; referred to the
Committee on the Judiciary.]

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10 A BILL to amend and reenact §36B-1-103, §36B-1-104, §36B-1-108,
11 §36B-1-201, §36B-1-203, §36B-1-204, §36B-1-206 and §36B-1-207
12 of the Code of West Virginia, 1931, as amended; to amend said
13 code by adding thereto four new sections, designated
14 §36B-1-115, §36B-1-116, §36B-1-208 and §36B-1-209; to amend
15 and reenact §36B-2-103, §36B-2-105, §36B-2-106, §36B-2-109,
16 §36B-2-111, §36B-2-112, §36B-2-113, §36B-2-116, §36B-2-117,
17 §36B-2-118 and §36B-2-119 of said code; to amend said code by
18 adding thereto two new sections, designated §36B-2-123 and
19 §36B-2-124; to amend and reenact §36B-3-101, §36B-3-102,
20 §36B-3-103, §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-109,
21 §36B-3-110, §36B-3-111, §36B-3-112, §36B-3-113, §36B-3-114,
22 §36B-3-115, §36B-3-116, §36B-3-117 and §36B-3-118 of said
23 code; to amend said code by adding thereto five new sections,
24 designated §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123 and

1 §36B-3-124; and to amend and reenact §36B-4-101, §36B-4-102,
2 §36B-4-103, §36B-4-108, §36B-4-109, §36B-4-112, §36B-4-113,
3 §36B-4-114, §36B-4-116 and §36B-4-117 of said code, all
4 relating to updating the Uniform Common Interest Ownership
5 Act; and providing for applicability of the chapter.

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

7 That §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201,
8 §36B-1-203, §36B-1-204, §36B-1-206 and §36B-1-207 of the Code of
9 West Virginia, 1931, as amended, be amended and reenacted; that
10 said code be amended by adding thereto four new sections,
11 designated §36B-1-115, §36B-1-116, §36B-1-208 and §36B-1-209; that
12 §36B-2-103, §36B-2-105, §36B-2-106, §36B-2-109, §36B-2-111,
13 §36B-2-112, §36B-2-113, §36B-2-116, §36B-2-117, §36B-2-118 and
14 §36B-2-119 of said code be amended and reenacted; that said code be
15 amended by adding thereto two new sections, designated §36B-2-123
16 and §36B-2-124; that §36B-3-101, §36B-3-102, §36B-3-103,
17 §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-109, §36B-3-110,
18 §36B-3-111, §36B-3-112, §36B-3-113, §36B-3-114, §36B-3-115,
19 §36B-3-116, §36B-3-117 and §36B-3-118 of said code be amended and
20 reenacted; that said code be amended by adding thereto five new
21 sections, designated §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123
22 and §36B-3-124; and that §36B-4-101, §36B-4-102, §36B-4-103,
23 §36B-4-108, §36B-4-109, §36B-4-112, §36b-4-113, §36b-4 114,
24 §36B-4-116 and §36B-4-117 of said code be amended and reenacted,

1 all to read as follows:

2 **ARTICLE 1. GENERAL PROVISIONS.**

3 **§36B-1-103. Definitions.**

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

7 In this chapter:

8 (1) "Affiliate of a declarant" means any person who controls,
9 is controlled by, or is under common control with a declarant. For
10 purposes of this definition:

11 (A) A person "controls" a declarant if the person: (i) Is a
12 general partner, officer, director or employer of the declarant;
13 (ii) directly or indirectly or acting in concert with one or more
14 other persons, or through one or more subsidiaries, owns, controls,
15 holds with power to vote, or holds proxies representing, more than
16 twenty percent of the voting interest in the declarant; (iii)
17 controls in any manner the election of a majority of the directors
18 of the declarant; or (iv) has contributed more than twenty percent
19 of the capital of the declarant.

20 (B) A person "is controlled by" a declarant if the declarant:
21 (i) Is a general partner, officer, director or employer of the
22 person; (ii) directly or indirectly or acting in concert with one
23 or more other persons, or through one or more subsidiaries, owns,
24 controls, holds with power to vote, or holds proxies representing,

1 more than twenty percent of the voting interest in the person;
2 (iii) controls in any manner the election of a majority of the
3 directors of the person; or (iv) has contributed more than twenty
4 percent of the capital of the person; and

5 (C) Control does not exist if the powers described in this
6 paragraph are held solely as security for an obligation and are not
7 exercised.

8 (2) "Allocated interests" means the following interests
9 allocated to each unit:

10 (A) In a condominium, the undivided interest in the common
11 elements, the common expense liability, and votes in the
12 association;

13 (B) In a cooperative, the common expense liability, ~~and~~ the
14 ownership interest, and votes in the association; and

15 (C) In a planned community, the common expense liability and
16 votes in the association.

17 (3) "Assessment" means the sum attributable to each unit and
18 due to the association pursuant to section one hundred fifteen,
19 article three of this chapter.

20 ~~(3)~~ (4) "Association" or "unit owners association" means the
21 unit owners association organized under section one hundred one,
22 article three of this chapter.

23 (5) "Bylaws" means instruments, however denominated, that
24 contain the procedures for conduct of the affairs of the

1 association regardless of the form in which the association is
 2 organized, including any amendments to the instruments.

3 ~~(4)~~ (6) "Common elements" means:

4 (A) In the case of: (i) A condominium or cooperative, all
 5 portions of the common interest community other than the units; and
 6 (ii) ~~in~~ A planned community, any real estate within a planned
 7 community which is owned or leased by the association, other than
 8 a unit; and

9 (B) In all common interest communities, any other interests in
 10 real estate for the benefit of unit owners which are subject to the
 11 declaration.

12 ~~(5)~~ (7) "Common expenses" means expenditures made by, or
 13 financial liabilities of, the association, together with any
 14 allocations to reserves.

15 ~~(6)~~ (8) "Common expense liability" means the liability for
 16 common expenses allocated to each unit pursuant to section one
 17 hundred seven, article two of this chapter.

18 ~~(7)~~ (9) "Common interest community" means real estate
 19 described in a declaration with respect to which a person, by
 20 virtue of ~~his~~ the person's ownership of a unit, is obligated to pay
 21 for a share of real estate taxes, insurance premiums, maintenance,
 22 ~~or~~ improvement of, or service or other expenses related to, common
 23 elements, other units, or other real estate described in a the
 24 declaration: *Provided*, That any resort owner which, prior to the

1 effective date of this article, began the development of a resort
2 and imposed fees or assessments upon owners of real estate in the
3 resort for maintenance and care of the roads, streets, alleys,
4 sidewalks, parks, common areas and common facilities in and around
5 the resort, for fire and police protection and for such other
6 services as may be made available to owners of real estate, may
7 also impose the same fees and assessments to be used for the same
8 or similar purposes upon persons purchasing real estate in the
9 resort after the effective date of this article without creating a
10 common interest community. The term does not include an
11 arrangement described in sections two hundred nine and two hundred
12 ten of this article. For purposes of this paragraph, ownership of
13 a unit does not include holding a leasehold interest of less than
14 twenty years in a unit, including renewal options.

15 ~~(8)~~ (10) "Condominium" means a common interest community in
16 which portions of the real estate are designated for separate
17 ownership and the remainder of the real estate is designated for
18 common ownership solely by the owners of those portions. A common
19 interest community is not a condominium unless the undivided
20 interest in the common elements are vested in the unit owners.

21 ~~(9)~~ (11) "Conversion building" means a building that at any
22 time before creation of the common interest community was occupied
23 wholly or partially by persons other than purchasers and persons
24 ~~who~~ that occupy with the consent of purchasers.

1 ~~(10)~~ (12) "Cooperative" means a common interest community in
2 which the real estate is owned by an association, each of whose
3 members is entitled by virtue of his or her ownership interest in
4 the association to exclusive possession of a unit.

5 ~~(11)~~ (13) "Dealer" means a person in the business of selling
6 units for his or her own account.

7 ~~(12)~~ (14) "Declarant" means any person or group of persons
8 acting in concert who: ~~(i)~~ (A) As part of a common promotional
9 plan, offers to dispose of ~~his or the~~ interest of the person or
10 group of persons in a unit not previously disposed of; or ~~(ii)~~ (B)
11 reserves or succeeds to any special declarant right.

12 ~~(13)~~ (15) "Declaration" means ~~any~~ the instruments, however
13 denominated, that create a common interest community, including any
14 amendments to ~~those~~ the instruments.

15 ~~(14)~~ (16) "Development rights" means any right or combination
16 of rights reserved by a declarant in the declaration to: ~~(i)~~ (A)
17 Add real estate to a common interest community; ~~(ii)~~ (B) create
18 units, common elements or limited common elements within a common
19 interest community; ~~(iii)~~ (C) subdivide units or convert units into
20 common elements; or ~~(iv)~~ (D) withdraw real estate from a common
21 interest community.

22 ~~(15)~~ (17) "Dispose" or "disposition" means a voluntary
23 transfer to a purchaser of any legal or equitable interest in a
24 unit, but the term does not include the transfer or release of a

1 security interest.

2 ~~(16)~~ (18) "Executive board" means the body, regardless of
3 name, designated in the declaration or bylaws to act on behalf of
4 the association.

5 ~~(17)~~ (19) "Identifying number" means a symbol or address that
6 identifies only one unit in a common interest community.

7 ~~(18)~~ (20) "Leasehold common interest community" means a common
8 interest community in which all or a portion of the real estate is
9 subject to a lease, the expiration or termination of which will
10 terminate the common interest community or reduce its size.

11 ~~(19)~~ (21) "Limited common element" means a portion of the
12 common elements allocated by the declaration or by operation of
13 subdivision (2) or (4), section one hundred two, article two of
14 this chapter for the exclusive use of one or more but fewer than
15 all of the units.

16 ~~(20)~~ (22) "Master association" means an organization described
17 in section one hundred twenty, article two of this chapter, whether
18 or not it is also an association described in section one hundred
19 one, article three of this chapter.

20 ~~(21)~~ (23) "Offering" means any advertisement, inducement,
21 solicitation or attempt to encourage any person to acquire any
22 interest in a unit, other than as security for an obligation. An
23 advertisement in a newspaper or other periodical of general
24 circulation, or in any broadcast medium to the general public, of

1 a common interest community not located in this state, is not an
 2 offering if the advertisement states that an offering may be made
 3 only in compliance with the law of the jurisdiction in which the
 4 common interest community is located.

5 ~~(22)~~ (24) "Person" means an individual, corporation, business
 6 trust, estate, trust, partnership, limited liability company,
 7 association, joint venture, public corporation, government,
 8 governmental subdivision, ~~or~~ agency, or instrumentality, or any
 9 other legal or commercial entity. In the case of a land trust, ~~the~~
 10 ~~corpus of which is real estate, however, "person" the term~~ means
 11 the beneficiary of the trust rather than the trust or the trustee.

12 ~~(23)~~ (25) "Planned community" means a common interest
 13 community that is not a condominium or a cooperative. A
 14 condominium or cooperative may be part of a planned community.

15 ~~(24)~~ (26) "Proprietary lease" means an agreement with the
 16 association pursuant to which a member is entitled to exclusive
 17 possession of a unit in a cooperative.

18 ~~(25)~~ (27) "Purchaser" means a person, other than a declarant
 19 or a dealer, ~~who~~ that by means of a voluntary transfer acquires a
 20 legal or equitable interest in a unit other than: ~~(i)~~ (A) A
 21 leasehold interest (including renewal options) of less than twenty
 22 years; or ~~(ii)~~ (B) as security for an obligation.

23 ~~(26)~~ (28) "Real estate" means any leasehold or other estate or
 24 interest in, over, or under land, including structures, fixtures

1 and other improvements and interest that by custom, usage or law
2 pass with a conveyance of land though not described in the contract
3 of sale or instrument of conveyance. ~~"Real estate"~~ The term
4 includes parcels with or without upper or lower boundaries, and
5 spaces that may be filled with air or water.

6 (29) "Record", used as a noun, means information that is
7 inscribed on a tangible medium or that is stored in an electronic
8 or other medium and is retrievable in perceivable form.

9 ~~(27)~~ (30) "Residential purposes" means use for dwelling or
10 recreational purposes, or both.

11 (31) "Rule" means a policy, guideline, restriction, procedure,
12 or regulation of an association, however denominated, which is not
13 set forth in the declaration or bylaws and which governs the
14 conduct of persons or the use or appearance of property.

15 ~~(28)~~ (32) "Resort" means a destination location which consists
16 of: (i)(A) One or more persons offering recreational facilities
17 and services such as skiing, golf, tennis or boating to the general
18 public and commercial facilities such as retail stores, restaurants
19 and hotels or other lodging accommodations; and (ii)(B) at least
20 one hundred residential units, a majority of which are used as
21 vacation or second homes rather than primary residences.

22 ~~(29)~~ (33) "Resort owner" means any person owning or operating
23 substantially all of the recreational facilities located within a
24 resort, or the predecessor in title of any such person.

1 ~~(30)~~ (34) "Security interest" means an interest in real estate
2 or personal property, created by contract or conveyance, which
3 secures payment or performance of an obligation. The term includes
4 a lien created by a mortgage, deed of trust, trust deed, security
5 deed, contract for deed, land sales contract, lease intended as
6 security, assignment of lease or rents intended as security, pledge
7 of an ownership interest in an association, and any other
8 consensual lien or title retention contract intended as security
9 for an obligation.

10 ~~(31)~~ (35) "Special declarant rights" means rights reserved for
11 the benefit of a declarant to:

12 ~~(i)~~ (A) Complete improvements indicated on plans and plans
13 filed with the declaration pursuant to section one hundred nine,
14 article two of this chapter or, in a cooperative, to complete
15 improvements described in the public offering statement pursuant to
16 subdivision (2), subsection (a), section one hundred three, article
17 four of this chapter;

18 ~~(ii)~~ (B) exercise any development right pursuant to section
19 one hundred ten, article two of this chapter;

20 ~~(iii)~~ (C) maintain sales offices, management offices, signs
21 advertising the common interest community, and models pursuant to
22 section one hundred fifteen, article two of this chapter;

23 ~~(iv)~~ (D) use easements through the common elements for the
24 purpose of making improvements within the common interest community

1 or within real estate which may be added to the common interest
2 community pursuant to section one hundred sixteen, article two of
3 this chapter;

4 ~~(v)~~ (E) make the common interest community subject to a master
5 association pursuant to section one hundred twenty, article two of
6 this chapter;

7 ~~(vi)~~ (F) merge or consolidate a common interest community with
8 another common interest community of the same form of ownership
9 pursuant to section one hundred twenty-one, article two of this
10 chapter; ~~or~~

11 ~~(vii)~~ (G) appoint or remove any officer of the association or
12 any master association or any executive board member during any
13 period of declarant control pursuant to subsection (d), section one
14 hundred three, article three of this chapter;

15 (H) Control any construction, design review, or aesthetic
16 standards committee or process;

17 ~~(ix)~~ (I) Attend meetings of the unit owners and, except during
18 an executive session, the executive board; or

19 (J) Have access to the records of the association to the same
20 extent as a unit owner.

21 ~~(32)~~ (36) "Time share" means a right to occupy a unit or any
22 of several units during five or more separated time periods over a
23 period of at least five years, including renewal options, whether
24 or not coupled with an estate or interest in a common interest

1 community or a specified portion thereof.

2 ~~(33)~~ (37) "Unit" means a physical portion of the common
3 interest community designated for separate ownership or occupancy,
4 the boundaries of which are described pursuant to subdivision (5),
5 subsection (a), section one hundred five, article two of this
6 chapter. If a unit in a cooperative is owned by a unit owner or is
7 sold, conveyed, voluntarily or involuntarily encumbered or
8 otherwise transferred by a unit owner, the interest in that unit
9 which is owned, sold, conveyed, encumbered, or otherwise
10 transferred is the right to possession of that unit under a
11 proprietary lease, coupled with the allocated interests of that
12 unit, and the association's interest in that unit is not thereby
13 affected.

14 ~~(34)~~ (38) "Unit owner" means a declarant or other person ~~who~~
15 that owns a unit, or a lessee of a unit in a leasehold common
16 interest community whose lease expires simultaneously with any
17 lease, the expiration or termination of which will remove the unit
18 from the common interest community, but does not include a person
19 having an interest in a unit solely as security for an obligation.
20 In a condominium or planned community, the declarant is the owner
21 of any unit created by the declaration. In a cooperative, the
22 declarant is treated as the owner of any unit to which allocated
23 interests have been allocated pursuant to section one hundred
24 seven, article two of this chapter) until that unit has been

1 conveyed to another person.

2 **§36B-1-104. No variation by agreement.**

3 Except as expressly provided in this chapter, ~~provisions~~
4 ~~herein~~ the effect of its provisions may not be varied by agreement,
5 and rights conferred by it may not be waived. Except as otherwise
6 provided in section two hundred seven of this article, a declarant
7 may not act under a power of attorney, or use any other device, to
8 evade the limitations or prohibitions of this chapter or the
9 declaration.

10 **§36B-1-108. Supplemental general principles of law applicable.**

11 The principles of law and equity, including the law of
12 corporations, ~~and~~ unincorporated associations and any other form of
13 organization authorized by the laws of this state, the law of real
14 property estate, and the law relative to capacity to contract,
15 principal and agent, eminent domain, estoppel, fraud,
16 misrepresentation, duress, coercion, mistake, receivership,
17 substantial performance, or other validating or invalidating cause
18 supplement the provisions of this chapter, except to the extent
19 inconsistent with this chapter.

20 **§36B-1-115. Severability.**

21 If any provision of this chapter or the application thereof to
22 any person or circumstances is held invalid, the invalidity does
23 not affect other provisions or applications of this chapter which
24 can be given effect without the invalid provisions or applications,

1 and to this end the provisions of this chapter are severable.

2 **§36B-1-116. Relation to Electronic Signatures in Global and**
3 **National Commerce Act.**

4 This chapter modifies, limits and supersedes the federal
5 Electronic Signature in Global and National Commerce Act, 15 U.S.C.
6 section 7001, et seq., but does not modify , limit, or supersede
7 section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize
8 electronic delivery of any of the notices described in section
9 103(b) of that act, 15 U.S.C. section 7003(b).

10 PART II. APPLICABILITY.

11 **§36B-1-201. Applicability to new common interest communities.**

12 Except as otherwise provided in this article ~~sections 1-202~~
13 ~~and 1-203~~, this chapter applies to all common interest communities
14 created within this state after the effective date of this chapter.
15 The provisions of chapter fifty-three, Acts of the Legislature,
16 1963, chapter one hundred twenty-nine, Acts of the Legislature,
17 1980, and chapter thirty-eight, Acts of the Legislature, 1984, do
18 not apply to common interest communities created after the
19 effective date of this chapter. Amendments to this chapter apply to
20 all common interest communities created after the effective date of
21 this chapter or made subject to this chapter by amendment of the
22 declaration of the common interest community, regardless of when
23 the amendment to this chapter becomes effective.

1 **§36B-1-203. Exception for small and limited expense liability**
2 **planned communities.**

3 (a) If a planned community that is not subject to any
4 development right:

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

7 (2) Provides, in its declaration, that the annual average
8 common expense liability of all units restricted to residential
9 purposes, exclusive of optional user fees and any insurance
10 premiums paid by the association, may not exceed \$300 as adjusted
11 pursuant to section one hundred fourteen of this article
12 (adjustment of dollar amounts), it is subject only to sections one
13 hundred five of this article (separate titles and taxation), one
14 hundred six of this article (applicability of local ordinances,
15 regulations and building codes), ~~and~~ one hundred seven of this
16 article (eminent domain), one hundred sixteen of article three
17 (lien for sums due associations; enforcement), and one hundred
18 seventeen of article four (effect of violation on rights of action:
19 attorney's fees) unless the declaration provides that this entire
20 chapter is applicable.

21 (b) The exemption provided in subdivision (2), subsection (a)
22 of this section applies only if:

23 (1) The declarant reasonably believes in good faith that the
24 maximum stated assessment will be sufficient to pay the expenses of

1 the planned community; and

2 (2) The declaration provides that the assessment may not be
3 increased above the limitation in subdivision (2), subsection (a)
4 of this section during the period of declarant control without the
5 consent of all unit owners.

6 (c) If the exemption provided in subdivision (2), subsection
7 (a) of this section was included in a declaration recorded prior to
8 the effective date of this amendment:

9 (1) The sum stated in that declaration shall adjust pursuant
10 to section one hundred fourteen of this article (adjustment of
11 dollar amounts);

12 (2) The annual average common expense liability of the units
13 may exceed \$300, as adjusted pursuant to section one hundred
14 fourteen of this article, if the limitation in the declaration
15 prevents the association from: (i) Fulfilling any duty to maintain
16 real estate owned or leased by the association or improvements
17 thereto, or (ii) fulfilling any other duty imposed on the
18 association by the declaration, articles, bylaws or applicable law;
19 and

20 (3) If the declarant no longer owns any unit, the declaration
21 may be amended by sixty-seven percent of the units to allow the
22 association to meet its actual financial needs, notwithstanding any
23 provision in the declaration to the contrary. An amendment made in
24 accordance with this subsection will not cause the community to be

1 subject to any greater provisions of this chapter than set forth in
 2 subdivision (2), subsection (a) of this section.

3 (d) Any declarant electing the exemption provided in
 4 subdivision (2), subsection (a) of this section shall record with
 5 the declaration the predevelopment budget which is the basis for
 6 its subdivision (2), subsection (c) of this section determination
 7 of post-development annual average common expense liability.

8 **§36B-1-204. Applicability to preexisting common interest**
 9 **communities.**

10 ~~(a) Except as provided in section 1-205, Same; exception for~~
 11 ~~small preexisting cooperatives and planned communities, sections~~
 12 ~~1-105 (separate titles and taxation), 1-106 (Applicability of local~~
 13 ~~ordinances, regulations and building codes), 1-107 (Eminent~~
 14 ~~domain), 2-103 (Construction and validity of declaration and~~
 15 ~~bylaws), 2-104 (Description of units), 2-121 (Merger or~~
 16 ~~consolidation of common interest communities), 3-102(a)(1) through~~
 17 ~~(6) and (11) through (16) (Powers of unit owners' association),~~
 18 ~~3-111 (Tort and contract liability), 3-116 (Lien for assessments),~~
 19 ~~3-118 (Association records), 4-109 (Resales of units), and 4-117~~
 20 ~~(Effect of violation on rights of action; attorney's fees), and~~
 21 ~~section 1-103 (Definitions) to the extent necessary in construing~~
 22 ~~any of those sections, apply to all common interest communities~~
 23 ~~created in this state before the effective date of this chapter;~~
 24 ~~but those sections apply only with respect to events and~~

1 ~~circumstances occurring after the effective date of this chapter~~
2 ~~and do not invalidate existing provisions of the declaration,~~
3 ~~bylaws or plats or plans of those common interest communities.~~
4 Except for a cooperative or planned community described in section
5 two hundred five of this article (Same-Exception for small
6 preexisting cooperatives and planned communities), or a
7 nonresidential common interest community described in section two
8 hundred seven (Same; Exception for small preexisting cooperatives
9 and planned communities), the following sections apply to a common
10 interest community created in this state before the effective date
11 of this article:

12 (1) Section one hundred five of this article (Separate titles
13 and taxation);

14 (2) Section one hundred six of this article (Applicability of
15 local ordinances, regulations, and building codes);

16 (3) Section one hundred seven of this article (Eminent
17 domain);

18 (4) Section two hundred six of this article (Amendments to
19 governing instruments);

20 (5) Section one hundred two, article two of this chapter (Unit
21 boundaries);

22 (6) Section one hundred three, article two of this chapter
23 (Construction and validity of declaration and bylaws);

24 (7) Section one hundred four, article two of this chapter

1 (Description of units);

2 (8) Subsections (h) and (i), section one hundred seventeen,
3 article two (Amendment of declaration);

4 (9) Section one hundred twenty-one, article two of this
5 chapter (Merger or consolidation of common interest communities);

6 (10) Section one hundred twenty-four, article two of this
7 chapter (Termination following catastrophe);

8 (11) Subdivisions (1) through (6) and (11) through (16),
9 subsection (a), section one hundred two, article three of this
10 chapter (Powers and duties of unit owners association);

11 (12) Section one hundred three, article three of this chapter
12 (Executive board members and officers);

13 (13) Section one hundred eight, article three (Meetings);

14 (14) Section one hundred eleven, article three of this chapter
15 (Tort and contract liability);

16 (15) Section one hundred sixteen, article three of this
17 chapter (Lien for assessments);

18 (16) Section one hundred eighteen, article three of this
19 chapter (Association records);

20 (17) Section one hundred twenty-four, article three of this
21 chapter (Litigation involving declarant);

22 (18) Section one hundred nine, article four of this chapter
23 (Resale of units);

24 (19) Section one hundred seventeen, article four of this

1 chapter (Effect of violation on rights of action; attorney's fees);

2 and

3 (20) Section one hundred three of this article (Definitions)

4 to the extent necessary to construe any of those sections.

5 (b) The sections described in subsection (a) apply only to

6 events and circumstances occurring after the effective date of this

7 chapter and do not invalidate existing provisions of the

8 declaration, bylaws, or plats or plans of those common interest

9 communities.

10 ~~(b)~~ (c) The provisions of chapter one hundred fifty-three,

11 Acts of the Legislature, 1963, chapter one hundred twenty-nine,

12 Acts of the Legislature, 1980, or of chapter thirty-eight, Acts of

13 the Legislature, 1984, do not apply to condominiums or other common

14 interest communities created after the effective date of this

15 chapter and do not invalidate any amendment to the declaration,

16 rules, bylaws, plats and plans and code of regulations of any

17 condominium or common interest community created before the

18 effective date of this chapter if the amendment would be permitted

19 by this chapter. The amendment must be adopted in conformity with

20 the procedures and requirements specified by those instruments and

21 by chapter one hundred fifty-three, Acts of the Legislature, 1963.

22 If the amendment grants to any person any rights, powers or

23 privileges permitted by this chapter, all correlative obligations,

24 liabilities and restrictions in this chapter also apply to that

1 person.

2 ~~(c) This chapter does not apply to condominiums or units~~
3 ~~located outside this state, but the public offering statement~~
4 ~~provisions, (sections 4-102 through 4-109) apply to all contracts~~
5 ~~for the disposition thereof signed in this state by any party~~
6 ~~unless exempt under section 4-101(b).~~

7 (d) The provisions of this chapter shall apply to all
8 condominiums or common interest communities to the extent such
9 provisions conflict or are inconsistent with the provisions of
10 chapter one hundred fifty-three, Acts of the Legislature, 1963:
11 *Provided*, That the provisions of this chapter shall not modify,
12 limit or nullify any rights, duties or obligations created or
13 existing under any declaration, bylaws or plats or plans of
14 condominiums created in this state before the effective date of
15 this chapter.

16 **§36B-1-206. Amendments to governing instruments.**

17 (a) ~~In the case of amendments to~~ The declaration, bylaws or
18 plats and plans of any common interest community created before the
19 effective date of this chapter may be amended to achieve any result
20 permitted by this chapter, regardless of what applicable law
21 provided before this chapter was adopted.

22 (1) ~~If the result accomplished by the amendment was permitted~~
23 ~~by law prior to this chapter, the amendment may be made either in~~
24 ~~accordance with that law, in which case that law applies to that~~

1 ~~amendment, or it may be made under this chapter, and~~

2 ~~(2) If the result accomplished by the amendment is permitted~~
 3 ~~by this chapter, and was not permitted by law prior to this~~
 4 ~~chapter, the amendment may be made under this chapter.~~

5 (3) Except as otherwise provided in subsections (i) and (j) of
 6 section one hundred seventeen, article two of this chapter, an
 7 amendment to the declaration, bylaws, or plats and plans authorized
 8 by this section ~~to be made under this chapter~~ must be adopted in
 9 conformity ~~with applicable law and with any the~~ procedures and
 10 requirements for amending the instruments specified by those
 11 instruments, or if there are none, in conformity with the amendment
 12 procedures of this chapter. If an amendment grants to ~~any a~~ person
 13 ~~any rights, powers or privileges~~ any right, power or privilege
 14 permitted by this chapter, ~~all~~ any correlative obligations,
 15 ~~liabilities and restrictions~~ liability, or restriction in this
 16 chapter also ~~apply~~ applies to that person.

17 **§36B-1-207. Applicability to nonresidential and mixed-use common**
 18 **interest communities.**

19 (a) Except as otherwise provided in subsection (d), this
 20 section applies only to ~~This chapter does not apply to a~~ common
 21 interest ~~planned~~ community in which all units are restricted
 22 exclusively to nonresidential purposes. ~~use unless the declaration~~
 23 ~~provides that the chapter does apply to that planned community.~~
 24 ~~This chapter applies to a planned community containing both units~~

~~1 that are restricted exclusively to nonresidential use and other
2 units that are not restricted, only if the declaration so provides
3 or the real estate comprising the units that may be used for
4 residential purposes would be a planned community in the absence of
5 the units that may not be used for residential purposes.~~

6 (b) A nonresidential common interest community is not subject
7 to this chapter except to the extent the declaration provides that:

8 (1) This entire chapter applies to the community;

9 (2) Articles one and two apply to the community; or

10 (3) In the case of a planned community or a cooperative, only
11 sections one hundred five (Separate titles and taxation), one
12 hundred six (Applicability of local ordinance, regulations and
13 building codes), and one hundred seven (Eminent domain) of this
14 article apply to the community.

15 (c) If this entire chapter applies to a nonresidential common
16 interest community, the declaration may also require, subject to
17 section one hundred twelve of this article (Unconscionable
18 agreement or term of contract); that:

19 (1) Notwithstanding section one hundred five, article three of
20 this chapter (Termination of Contracts and Leases of Declarant),
21 and management, maintenance, operations, or employment contract,
22 lease of recreational or parking areas or facilities, and any other
23 contract or lease between the association and a declarant or an
24 affiliate of a declarant, the declaration continues in force after

1 the declarant turns over control of the association; and

2 (2) Notwithstanding section one hundred four of this article
3 (Variation by Agreement), purchasers of units must execute proxies,
4 powers of attorney, or similar devices in favor of the declarant
5 regarding particular matters enumerated in those instruments.

6 (d) A common interest community that contains units restricted
7 exclusively to nonresidential purposes and other units that may be
8 used for residential purposes would comprise a common interest
9 community that would be subject to this chapter in the absence of
10 the nonresidential units or the declaration provides that this
11 chapter applies as provided in subsection (b) or (c) of this
12 section.

13 **§36B-1-208. Applicability to Out-of-State Common Interest**
14 **Communities.**

15 This chapter does not apply to a common interest community
16 located outside this state, but sections one hundred two and one
17 hundred three, article four of this chapter and, to the extent
18 applicable sections one hundred four through one hundred six,
19 article four of this chapter apply to a contract for the
20 disposition of a unit in that common interest community signed in
21 this state by any party unless exempt under subsection (b), section
22 one hundred one, article four of this chapter.

23 **§36B-1-209. Other Exempt Real Estates Arrangements.**

1 (a) An arrangement between the associations for two or more
2 common interest communities to share the costs of real estate
3 taxes, insurance premiums, services, maintenance or improvements of
4 real estate, or other activities specified in their arrangement or
5 declarations does not create a separate common interest community.

6 (b) An arrangement between an association and the owner of
7 real estate that is not part of a common interest community to
8 share the costs of real estate taxes, insurance premiums, services,
9 maintenance or improvements of real estate, or other activities
10 specified in their arrangement or declarations does not create a
11 separate common interest community. However, assessments against
12 the units in the common interest community required by the
13 arrangement must be included in the periodic budget for the common
14 interest community and the arrangement must be disclosed in all
15 public offering statements and resale certificates required by this
16 chapter.

17 **ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON**
18 **INTEREST COMMUNITIES.**

19 **§36B-2-103. Construction and validity of declaration and bylaws.**

20 (a) All provisions of the declaration and bylaws are
21 severable.

22 (b) The rule against perpetuities does not apply to defeat any
23 provision of the declaration, bylaws or rules. ~~or regulations~~
24 ~~adopted pursuant to section 3-102(a)(1)~~

1 (c) ~~In the event of~~ If a conflict exists between the
2 ~~provisions of the~~ declaration and the bylaws, the declaration
3 prevails except to the extent the declaration is inconsistent with
4 this chapter.

5 (d) Title to a unit and common elements is not rendered
6 unmarketable or otherwise affected by reason of an insubstantial
7 failure of the declaration to comply with this chapter. Whether a
8 substantial failure impairs marketability is not affected by this
9 chapter.

10 (e) A declaration or the bylaws may not change or alter a
11 restrictive covenant in a deed to any real estate that is or that
12 becomes subject to the provisions of this chapter. The restrictive
13 covenants that are in effect at the time real estate is purchased
14 that is or that becomes subject to the provisions of this chapter
15 may not be changed or altered as to the purchaser of that real
16 estate or as to any assign, heir or beneficiary of the original
17 purchaser unless that original purchaser, assign, heir or
18 beneficiary agrees in writing to a change of a restrictive
19 covenant. This subdivision does not apply to the change of
20 restrictive covenants of homeowner fees if the fees do not exceed
21 the sum of ~~\$100~~ \$300 a year. The provisions of this section have
22 no application to restrictive covenants which contain provisions
23 authorizing amendment when those provisions for amendment are duly
24 followed.

1 **§36B-2-105. Contents of declaration.**

2 (a) The declaration must contain:

3 (1) The names of the common interest community and the
4 association and a statement that the common interest community is
5 either a condominium, cooperative or planned community;

6 (2) The name of every county in which any part of the common
7 interest community is situated;

8 (3) A legally sufficient description of the real estate
9 included in the common interest community;

10 (4) A statement of the maximum number of units that the
11 declarant reserves the right to create;

12 (5) In a condominium or planned community, a description of
13 the boundaries of each unit created by the declaration, including
14 the unit's identifying number or, in a cooperative, a description,
15 which may be by plats or plans, of each unit created by the
16 declaration, including the unit's identifying number, its size or
17 number of rooms and its location within a building if it is within
18 a building containing more than one unit;

19 (6) A description of any limited common elements, other than
20 those specified in section 2-102(2) and (4), as provided in section
21 2-109(b)(10) and, in a planned community, any real estate that is
22 or must become common elements;

23 (7) A description of any real estate, except real estate
24 subject to development rights, that may be allocated subsequently

1 as limited common elements, other than limited common elements
2 specified in section 2-102(2) and (4), together with a statement
3 that they may be so allocated;

4 (8) A description of any development rights ~~(section 1-~~
5 ~~103(14))~~ and other special declarant rights ~~(section 1-103(29))~~
6 reserved by the declarant, together with a legally sufficient
7 description of the real estate to which each of those rights
8 applies, and a time limit within which each of those rights must be
9 exercised;

10 (9) If any development right may be exercised with respect to
11 different parcels of real estate at different times, a statement to
12 that effect together with

13 ~~(i)~~ (A) Either a statement fixing the boundaries of those
14 portions and regulating the order in which those portions may be
15 subjected to the exercise of each development right or a statement
16 that no assurances are made in those regards; and

17 ~~(ii)~~ (B) A statement as to whether, if any development right
18 is exercised in any portion of the real estate subject to that
19 development right, that development right must be exercised in all
20 or in any other portion of the remainder of that real estate;

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

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

1 (12) Any restrictions ~~(i) on use, occupancy and~~ on alienation
2 of the units, including any restrictions on leasing which exceed
3 the restrictions on leasing units which executive boards may impose
4 pursuant to section 3-102(c) (2) 3-120(d) and ~~(ii)~~ on the amount for
5 which a unit may be sold or on the amount that may be received by
6 a unit owner on sale, condemnation, or casualty loss to the unit or
7 to the common interest community, or on termination of the common
8 interest community;

9 (13) The recording data for recorded easements and licenses
10 appurtenant to or included in the common interest community or to
11 which any portion of the common interest community is or may become
12 subject by virtue of a reservation in the declaration; ~~and~~

13 (14) Any authorization pursuant to which the association may
14 establish and enforce construction and design criteria and
15 aesthetic standards as provided in sections 3-106 and 3-120; and

16 ~~(14)~~ (15) All matters required by sections 2-106, 2-107, 2-
17 108, 2-109, 2-115, 2-116 and 3-103(d).

18 (b) The declaration may contain any other matters the
19 declarant considers appropriate, including any restrictions on the
20 uses of a unit or the number or other qualifications of persons who
21 may occupy units.

22 **§36B-2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.**

23 (a) Any lease the expiration or termination of which may
24 terminate the common interest community or reduce its size, or a

1 memorandum thereof, must be recorded. Every lessor of those leases
2 in a condominium or planned community shall sign the declaration.
3 The declaration must state:

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

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

7 (3) A legally sufficient description of the real estate
8 subject to the lease;

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

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

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

18 (b) After the declaration for a leasehold condominium or
19 leasehold planned community is recorded, neither the lessor nor the
20 lessor's successor in interest may terminate the leasehold interest
21 of a unit owner who makes timely payment of a unit owner's share of
22 the rent and otherwise complies with all covenants which, if
23 violated, would entitle the lessor to terminate the lease. A unit
24 owner's leasehold interest in a condominium or planned community is

1 not affected by failure of any other person to pay rent or fulfill
2 any other covenant.

3 (c) Acquisition of the leasehold interest of any unit owner by
4 the owner of the reversion or remainder does not merge the
5 leasehold and fee simple interests unless the leasehold interests
6 of all unit owners subject to that reversion or remainder are
7 acquired.

8 (d) If the expiration or termination of a lease decreases the
9 number of units in a common interest community, the allocated
10 interests must be reallocated in accordance with section 1-107(a)
11 as if those units had been taken by eminent domain. Reallocations
12 must be confirmed by an amendment to the declaration prepared,
13 executed, and recorded by the association.

14 **§36B-2-109. Plats and plans.**

15 (a) Plats and plans are a part of the declaration and are
16 required for all common interest communities except cooperatives.
17 Separate plats and plans are not required by this chapter if all
18 the information required by this section is contained in either a
19 plat or plan. Each plat and plan must be clear and legible and
20 contain a certification that the plat or plan contains all
21 information required by this section.

22 (b) Each plat must show:

23 (1) The name and a survey or general schematic map of the
24 entire common interest community;

1 (2) The location and dimensions of all real estate not subject
2 to development rights, or subject only to the development right to
3 withdraw and the location and dimensions of all existing
4 improvements within that real estate;

5 (3) A legally sufficient description of any real estate
6 subject to development rights, labeled to identify the rights
7 applicable to each parcel, but plats and plans need not designate
8 or label which development rights are applicable to each parcel if
9 that information is clearly delineated in the declaration.

10 (4) The extent of any encroachments by or upon any portion of
11 the common interest community;

12 (5) To the extent feasible, a legally sufficient description
13 of all easements serving or burdening any portion of the common
14 interest community;

15 (6) Except as otherwise provided in subsection (h), the
16 approximate ~~The~~ location and dimensions of any vertical unit
17 boundaries not shown or projected on plans recorded pursuant to
18 subsection (d) and that unit's identifying number;

19 (7) Except as otherwise provided in subsection (h), the
20 approximate ~~the~~ location with reference to an established datum of
21 any horizontal unit boundaries not shown or projected on plans
22 recorded pursuant to subsection (d) and that unit's identifying
23 number;

24 (8) A legally sufficient description of any real estate in

1 which the unit owners will own only an estate for years, labeled as
2 "leasehold real estate";

3 (9) The distance between noncontiguous parcels of real estate
4 comprising the common interest community;

5 (10) The approximate location and dimensions of limited common
6 elements, including porches, decks, balconies, garages, and or
7 patios, ~~other than parking spaces and the other limited common~~
8 ~~elements described in sections 2-102(2) and (4)~~ allocated as
9 limited common elements, and show or contain a narrative
10 description of any other limited common elements; and

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

13 (c) A plat may also show the intended location and dimensions
14 of any contemplated improvement to be constructed anywhere within
15 the common interest community. Any contemplated improvement shown
16 must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

17 (d) Except as otherwise provided in subsection (h), to the
18 extent not shown or projected on the plats, plans of the units must
19 show or project:

20 (1) The approximate location and dimensions of the vertical
21 boundaries of each unit and that unit's identifying number;

22 (2) The approximate location of any horizontal unit
23 boundaries, with reference to an established datum and that unit's
24 identifying number; and

1 (3) ~~Any~~ The approximate location of any units in which the
2 declarant has reserved the right to create additional units or
3 common elements (section 2- 110(c)), identified appropriately.

4 (e) Unless the declaration provides otherwise, the horizontal
5 boundaries of part of a unit located outside a building have the
6 same elevation as the horizontal boundaries of the inside part and
7 need not be depicted on the plats and plans.

8 (f) Upon exercising any development right, the declarant shall
9 record either new plats and plans necessary to conform to the
10 requirements of subsections (a), (b) and (d) or new certifications
11 of plats and plans previously recorded if those plats and plans
12 otherwise conform to the requirements of those subsections.

13 (g) ~~Any~~ A certification of a plat or plan required by this
14 section or section 2-101(b) must be made by an independent
15 (registered) surveyor, architect or engineer.

16 (h) Plats and plans need not show the location and dimensions
17 of the units' boundaries or their limited common elements if:

18 (1) The plat shows the location and dimensions of all
19 buildings containing or comprising the units; and

20 (2) The declaration includes other information that shows or
21 contains a narrative description of the general layout of the units
22 in those buildings and the limited common elements allocated to
23 those units.

24 **§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 or her
4 unit that do not impair the structural integrity or mechanical
5 systems or lessen the support of any portion of the common interest
6 community;

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

10 (3) After acquiring an adjoining unit or an adjoining part of
11 an adjoining unit, may remove or alter any intervening partition or
12 create apertures therein, even if the partition, in whole or in
13 part, is a common element, if those acts do not impair the
14 structural integrity or mechanical systems or lessen the support of
15 any portion of the common interest community. Removal of
16 partitions or creation of apertures under this paragraph is not an
17 alteration of boundaries.

18 **§36B-2-112. Relocation of boundaries between adjoining units.**

19 (a) Subject to the provisions of the declaration and other
20 provisions of law, the boundaries between adjoining units may be
21 relocated by an amendment to the declaration upon application to
22 the association by the owners of those units. If the owners of the
23 adjoining units have specified a reallocation between their units
24 of their allocated interests, the application must state the

1 proposed reallocations. Unless the executive board determines,
2 within thirty days, that the reallocations are unreasonable, the
3 association shall prepare an amendment that identifies the units
4 involved and states the reallocations. The amendment must be
5 executed by those unit owners, contain words of conveyance between
6 them, and, on recordation, be indexed in the name of the grantor
7 and the grantee, and in the grantee's index in the name of the
8 association.

9 (b) Subject to the provisions of the declaration and other
10 provisions of law, boundaries between units and common elements may
11 be relocated to incorporate common elements within a unit by an
12 amendment to the declaration upon application to the association by
13 the owner of the unit who proposes to relocate a boundary. Unless
14 the declaration provides otherwise, the amendment may be approved
15 only if persons entitled to cast at least sixty-seven percent of
16 the votes in the association, including sixty-seven percent of the
17 votes allocated to units not owned by the declarant, agree to the
18 action. The amendment may describe any fees or charges payable by
19 the owner of the affected unit in connection with the boundary
20 relocation and the fees and charges are assets of the association.
21 The amendment must be executed by the unit owner of the unit whose
22 boundary is being relocated and by the association, contain words
23 of conveyance between them, and on recordation be indexed in the
24 name of the unit owner and the association as grantor or grantee,

1 as appropriate.

2 ~~(b)~~ (c) The association (i) In a condominium or planned
3 community shall prepare and record plats or plans necessary to show
4 the altered boundaries between adjoining units and their dimensions
5 and identifying numbers, and (ii) in a cooperative shall prepare
6 and record amendments to the declaration, including any plans,
7 necessary to show or describe the altered boundaries between
8 adjoining units and their dimensions and identifying numbers.

9 **§36B-2-113. Subdivision of units.**

10 (a) If the declaration expressly so permits, a unit may be
11 subdivided into two or more units. Subject to ~~the provisions of~~
12 the declaration and ~~other provisions of~~ law other than this
13 chapter, upon application of a unit owner to subdivide a unit, the
14 association shall prepare, execute, and record an amendment to the
15 declaration, including in a condominium or planned community, the
16 plats and plans, subdividing that unit.

17 (b) The amendment to the declaration must be executed by the
18 owner of the unit to be subdivided, assign an identifying number to
19 each unit created, and reallocate the allocated interests formerly
20 allocated to the subdivided unit to the new units in any reasonable
21 manner prescribed by the owner of the subdivided unit or on any
22 other basis the declaration requires.

23 **§36B-2-116. Easement rights.**

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

6 (b) ~~In a planned community,~~ Subject to ~~the provisions of~~
 7 sections 3-102(a)(6) and 3-112, the unit owners have an easement
 8 ~~(i) in the common elements for purposes of access to their units~~
 9 ~~and (ii) to use the common elements and all real estate that must~~
 10 ~~become common elements (section 2-105(a)(6)) for all other~~
 11 ~~purposes.~~

12 (c) Subject to the declaration and rules, the unit owners have
 13 a right to use the common elements that are not limited common
 14 elements and all real estate that must become common elements
 15 (section 2-105(a)(6)) for the purposes for which they were intended.

16 **§36B-2-117. Amendment of declaration.**

17 (a) Except in cases of amendments that may be executed by a
 18 declarant under section 2-109(f) or 2-110, ~~or by~~ the association
 19 under section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or ~~by~~
 20 certain unit owners under section 2-108(b), 2-112(a), 2-113(b), or
 21 2-118(b), and except as limited by ~~subsection~~ subsections (d), (f),
 22 (g) and (h), the declaration, including any plats and plans, may be
 23 amended only by vote or agreement of unit owners of units to which
 24 at least sixty-seven percent of the votes in the association are

1 allocated, ~~or any larger majority~~ unless the declaration specifies
2 a different percentage for all amendments or for specific subjects
3 of amendment. If the declaration requires the approval of another
4 person as a condition of effectiveness, the amendment is not valid
5 without that approval. ~~The declaration may specify a smaller~~
6 ~~number only if all of the units are restricted exclusively to~~
7 ~~nonresidential use.~~

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

11 (c) Every amendment to the declaration must be recorded in
12 every county in which any portion of the common interest community
13 is located and is effective only upon recordation. An amendment,
14 except an amendment pursuant to section 2- 112(a), must be indexed
15 in the grantee's index in the name of the common interest community
16 and the association and in the grantor's index in the name of the
17 parties executing the amendment.

18 (d) Except to the extent expressly permitted or required by
19 other provisions of this chapter, no amendment may create or
20 increase special declarant rights, increase the number of units,
21 change the boundaries of any unit, or change the allocated
22 interests of a unit, or the uses to which any unit is restricted,
23 in the absence of unanimous consent of the unit owners.

24 (e) Amendments to the declaration required by this chapter to

1 be recorded by the association must be prepared, executed,
2 recorded, and certified on behalf of the association by any officer
3 of the association designated for that purpose or, in the absence
4 of designation, by the president of the association.

5 (f) An amendment to the declaration may prohibit or materially
6 restrict the permitted uses of or behavior in a unit or the number
7 or other qualifications of persons who may occupy units only by
8 vote or agreement of unit owners of units to which at least eighty
9 percent of the votes in the association are allocated, unless the
10 declaration specifies that a larger percentage of unit owners must
11 vote or agree to that amendment or that the amendment may be
12 approved by unit owners of units having at least eighty percent of
13 the votes of a specified group of units that would be affected by
14 the amendment. An amendment approved under this subsection must
15 provide reasonable protection for a use or occupancy permitted at
16 the time the amendment was adopted.

17 (g) The time limits specified in the declaration pursuant to
18 section 2-105(a)(8) (Contents of the declaration) within which
19 reserved development rights must be exercised may be extended, and
20 additional development rights may be created, if persons entitled
21 to cast at least eighty percent of the votes in the association,
22 including eighty percent of the votes allocated to units not owned
23 by the declarant, agree to that action. The agreement is effective
24 thirty days after an amendment to the declaration reflecting the

1 terms of the agreement is recorded unless all the persons holding
2 the affected special declarant rights, or security interests in
3 those rights, record a written objection within the thirty-day
4 period, in which case the amendment is void, or consent in writing
5 at the time the amendment is recorded, in which case, the amendment
6 is effective when recorded.

7 (h) A provision in the declaration creating special declarant
8 rights that have not expired may not be amended without the consent
9 of the declarant.

10 (i) If any provision of this chapter, law, or of the
11 declaration requires the consent of a holder of a security interest
12 in a unit as a condition to the effectiveness of an amendment to
13 the declaration, that consent is deemed granted if a refusal to
14 consent in a record is not received by the association within sixty
15 days after the association delivers notice of the proposed
16 amendment to the holder at an address for notice provided by the
17 holder or mails the notice to the holder by certified mail, return
18 receipt requested, at that address. If the holder has not provided
19 to the association an address for notice, the association shall
20 provide notice to the address in the security interest of record.
21 Notwithstanding this section, an amendment to the declaration that
22 affects the priority of a holder's security interest or the ability
23 of that holder to foreclose its security interest may not be
24 adopted without that holder's consent in a record if the

1 declaration requires that consent as a condition to the
2 effectiveness of the amendment: *Provided*, That this subsection (i)
3 shall not apply to an amendment which:

4 (A) Permits a unit previously restricted to residential
5 occupancy to be used for nonresidential purposes;

6 (B) Increases the share of common expenses allocated to the
7 unit in a manner disproportionate to the formula stated in the
8 declaration pursuant to section one hundred eighteen of this
9 article;

10 (C) Terminates the common interest community pursuant to
11 section one hundred eighteen of this article;

12 (D) Transfers from the association to the unit, the duty to
13 maintain a common element or limited common element previously
14 performed by the association; or

15 (E) The unit owner is contractually precluded from consenting
16 to the amendment by the terms of a planned unit development rider
17 in a recorded security instrument.

18 (j) If the declaration contains a provision requiring that
19 amendments to the declaration may be adopted only by vote or
20 agreement of unit owners of units to which more than eighty percent
21 of the votes in the association are allocated, the amendment is
22 approved:

23 (1) If:

24 (A) Unit owners of units to which at least eighty percent of

1 the votes in the association are allocated vote for or agree to the
2 proposed amendment;

3 (B) No unit owner votes against the proposed amendment; and

4 (C) Notice of the proposed amendment is delivered to the unit
5 owners holding the votes in the association which have not voted or
6 agreed to the proposed amendment and no written objection to the
7 proposed amendment is received by the association within sixty days
8 after the association delivers notice; or

9 (2) Unit owners of units to which at least eighty percent of
10 the votes in the association are allocated vote for or agree to the
11 proposed amendment but at least one unit owner objects to the
12 proposed amendment and, pursuant to an action brought by the
13 association in the circuit court of the county in which the common
14 interest community is situate against all objecting unit owners,
15 the court finds that the objecting unit owners do not have an
16 interest, different in kind from the interests of the other unit
17 owners, that the voting requirement of the declaration was intended
18 to protect.

19 **§36B-2-118. Termination of common interest community.**

20 (a) ~~Except in the case of~~ for a taking of all the units by
21 eminent domain, (Section 1-107) ~~or in the case of~~ foreclosure
22 against an entire cooperative of a security interest that has
23 priority over the declaration, or in the circumstances described in
24 Section 2-124, a common interest community may be terminated only

1 by agreement of unit owners of units to which at least eighty
2 percent of the votes in the association are allocated, or any
3 larger percentage the declaration specifies, and with any other
4 approvals required by the declaration. The declaration may specify
5 a smaller percentage only if all of the units are restricted
6 exclusively to nonresidential uses.

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

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

23 (d) In the case of a condominium or planned community
24 containing any units not having horizontal boundaries described in

1 the declaration, a termination agreement may provide for sale of
2 the common elements, but it may not require that the units be sold
3 following termination, unless the declaration as originally
4 recorded provided otherwise or all the unit owners consent to the
5 sale.

6 (e) The association, on behalf of the unit owners, may
7 contract for the sale of real estate in a common interest
8 community, but the contract is not binding on the unit owners until
9 approved pursuant to subsections (a) and (b). If any real estate
10 is to be sold following termination, title to that real estate,
11 upon termination, vests in the association as trustee for the
12 holders of all interests in the units. Thereafter, the association
13 has all powers necessary and appropriate to effect the sale. Until
14 the sale has been concluded and the proceeds thereof distributed,
15 the association continues in existence with all powers it had
16 before termination. Proceeds of the sale must be distributed to
17 unit owners and lien holders as their interests may appear, in
18 accordance with subsections (h), (i) and (j). Unless otherwise
19 specified in the termination agreement, as long as the association
20 holds title to the real estate, each unit owner and the unit
21 owner's successors in interest have an exclusive right to occupancy
22 of the portion of the real estate that formerly constituted the
23 unit. During the period of that occupancy, each unit owner and the
24 unit owner's successors in interest remain liable for all the

1 assessments and other obligations imposed on unit owners by this
2 chapter or the declaration.

3 (f) In a condominium or planned community, if the real estate
4 constituting the common interest community is not to be sold
5 following termination, title to the common elements and, in a
6 common interest community containing only units having horizontal
7 boundaries described in the declaration, title to all the real
8 estate in the common interest community, vests in the unit owners
9 upon termination as tenants in common in proportion to their
10 respective interests as provided in subsection (j), and liens on
11 the units shift accordingly. While the tenancy in common exists,
12 each unit owner and the unit owner's successors in interest have an
13 exclusive right to occupancy of the portion of the real estate that
14 formerly constituted the unit.

15 (g) Following termination of the common interest community,
16 the proceeds of ~~any~~ a sale of real estate, together with the assets
17 of the association, are held by the association as trustee for unit
18 owners and holders of liens on the units as their interests may
19 appear.

20 (h) Following termination of a condominium or planned
21 community, creditors of the association holding liens on the units,
22 which were recorded before termination, may enforce those liens in
23 the same manner as any lien holder. All other creditors of the
24 association are to be treated as if they had perfected liens on the

1 units immediately before termination.

2 (i) In a cooperative, the declaration may provide that all
3 creditors of the association have priority over any interests of
4 unit owners and creditors of unit owners. In that event, following
5 termination, creditors of the association holding liens on the
6 cooperative which were recorded before terminatinon may enforce
7 their liens in the same manner as any lien holder, and any other
8 creditor of the association is to be treated as if ~~he~~ the creditor
9 had perfected a lien against the cooperative immediatley before
10 termination. Unless the declaration provides that all creditors of
11 the association have that priority:

12 (1) The lien of each creditor of the association which was
13 perfected against the association before termination becomes, upon
14 termination, a lien against each unit owner's interest in the unit
15 as of the date the lien was perfected;

16 (2) Any other creditor of the association is to be treated
17 upon termination as if the creditor had perfected a lien against
18 each unit owner's interest immediately before termination;

19 (3) The amount of the lien of an association's creditor
20 described in paragraphs (1) and (2) against each of the unit owner's
21 interest must be proportionate to the ratio which each unit's
22 common expense liability bears to the common expense liability of
23 all the units;

24 (4) The lien of each creditor of each unit owners which was

1 perfected before termination continues as a lien against that unit
2 owner's unit as of the date the lien was perfected; ~~and~~

3 (5) The assets of the association must be distributed to all
4 unit owners and all lien holders as their interests may appear in
5 the order described above; and

6 (6) Creditors of the association are not entitled to payment
7 from any unit owner in excess of the amount of the creditor's lien
8 against that unit owner's interest.

9 (j) The respective interests of unit owners referred to in
10 subsections (e), (f), (g), (h), and (i) are as follows:

11 (1) Except as otherwise provided in paragraph (2), the
12 respective interests of unit owners are the fair market values of
13 their units, allocated interests, and any limited common elements
14 immediately before the termination, as determined by one or more
15 independent appraisers selected by the association. The decision
16 of the independent appraisers must be distributed to the unit
17 owners and becomes final unless disapproved within thirty days
18 after distribution by unit owners of units to which twenty-five
19 percent of the votes in the association are allocated. The
20 proportion of any unit owner's interest to that of all unit owners
21 is determined by dividing the fair market value of that unit
22 owner's unit and its allocated interests by the total fair market
23 values of all the units and their allocated interests.

24 (2) If any unit or any limited common element is destroyed to

1 the extent that an appraisal of the fair market value thereof
2 before destruction cannot be made, the interests of all unit owners
3 are:

4 ~~(i)~~ (A) In a condominium, their respective common element
5 interests immediately before the termination;

6 ~~(ii)~~ (B) In a cooperative, their respective ownership
7 interests immediately before the termination; and

8 ~~(iii)~~ (C) In a planned community, their respective common
9 expense liabilities immediately before the termination.

10 (k) In a condominium or planned community, except as otherwise
11 provided in subsection (l), foreclosure or enforcement of a lien or
12 encumbrance against the entire common interest community does not
13 terminate, of itself, the common interest community, and
14 foreclosure or enforcement of a lien or encumbrance against a
15 portion of the common interest community, other than withdrawable
16 real estate, does not withdraw that portion from the common
17 interest community. Foreclosure or enforcement of a lien or
18 encumbrance against withdrawable real estate⁷, or against common
19 elements that have been subjected to a security interest by the
20 association under Section 3-112, does not withdraw, of itself, that
21 real estate from the common interest community, but the person
22 taking title thereto may require from the association, upon
23 request, an amendment excluding the real estate from the common
24 interest community.

1 (1) In a condominium or planned community, if a lien or
2 encumbrance against a portion of the real estate comprising the
3 common interest community has priority over the declaration and the
4 lien or encumbrance has not been partially released, the parties
5 foreclosing the lien or encumbrance, upon foreclosure, may record an
6 instrument excluding the real estate subject to that lien or
7 encumbrance from the common interest community.

8 **§36B-2-119. Rights of secured lenders.**

9 (a) The declaration may require that all or a specified number
10 or percentage of the lenders who hold security interests
11 encumbering the units or who have extended credit to the
12 association approve specified actions of the unit owners or the
13 association as a condition to the effectiveness of those actions,
14 but no requirement for approval may operate to: (i) Deny or
15 delegate control over the general administrative affairs of the
16 association by the unit owners or the executive board, or (ii)
17 prevent the association or the executive board from commencing,
18 intervening in, or settling any litigation or proceeding, or (iii)
19 prevent any insurance trustee or the association from receiving and
20 distributing any insurance proceeds except pursuant to section
21 3-113.

22 (b) A lender who has extended credit to an association secured
23 by an assignment of income (section 3-102(14)) or an encumbrance on
24 the common elements (section 3-112) may enforce its security

1 agreement in accordance with its terms, subject to the requirements
2 of this chapter and other law. Requirements that the association
3 must deposit its periodic common charges before default with the
4 lender to which the association's income has been assigned, or
5 increase its common charges at the lender's direction by amounts
6 reasonably necessary to amortize the loan in accordance with its
7 terms, do not violate the prohibitions on lender approval contained
8 in subsection (a).

9 **§36B-2-123. Master planned communities.**

10 (a) The declaration for a common interest community may state
11 that it is a master planned community if the declarant has reserved
12 the development right to create at least five-hundred units that
13 may be used for residential purposes, and at the time of the
14 reservation that declarant owns or controls more than five-hundred
15 acres on which the units may be built.

16 (b) If the requirements of subsection (a) are satisfied, the
17 declaration for the master planned community need not state a
18 maximum number of units and need not contain any of the information
19 required by section 2-105(a) (3) through (14) until the declaration
20 is amended under subsection (c).

21 (c) When each unit in a master planned community is conveyed
22 to a purchaser, the declaration must contain:

23 (1) A sufficient legal description of the unit and all
24 portions of the master planned community in which any other units

1 have been conveyed to a purchaser; and

2 (2) All the information required by section 2-105(a)(3)
3 through (14) with respect to that real estate.

4 (d) The only real estate in a master planned community subject
5 to this chapter are units that have been declared or which are
6 being offered for sale and any other real estate described pursuant
7 to subsection (c). Other real estate that is or may become part of
8 the master planned community is only subject to other law and to
9 any other restrictions and limitations that appear of record.

10 (e) If the public offering statement conspicuously identifies
11 the fact that the community is a master planned community, the
12 disclosure requirements contained in article four apply only with
13 respect to units that have been declared or are being offered for
14 sale in connection with the public offering statement and to the
15 real estate described pursuant to subsection (c).

16 (f) Limitations in this chapter on the addition of unspecified
17 real estate (section 2-122) do not apply to a master planned
18 community.

19 (g) The period of declarant control of the association for a
20 master planned community terminates in accordance with any
21 conditions specified in the declaration or otherwise at the time
22 the declarant, in a recorded instrument and after giving notice in
23 a record to all the unit owners, voluntarily surrenders all rights
24 to control the activities of the association.

1 **§36B-2-124. Termination following catastrophe.**

2 If substantially all the units in a common interest community
3 have been destroyed or are uninhabitable and the available methods
4 for giving notice under section 3-121 of a meeting of unit owners
5 to consider termination under section 2-118 will not likely result
6 in receipt of the notice, the executive board or any other
7 interested person may commence an action in the circuit court of
8 the county in which the common interest community is situate
9 seeking to terminate the common interest community. During the
10 pendency of the action, the court may issue whatever orders it
11 considers appropriate, including appointment of a receiver. After
12 a hearing, the court may terminate the common interest community or
13 reduce its size and may issue any other order the court considers
14 to be in the best interest of the unit owners and persons holding
15 an interest in the common interest community.

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

17 **§36B-3-101. Organization of Unit Owners Association.**

18 A unit owners association must be organized no later than the
19 date the first unit in the common interest community is conveyed.
20 The membership of the association at all times consists exclusively
21 of all unit owners or, following termination of the common interest
22 community, of all former unit owners entitled to distributions of
23 proceeds under §section 2-118 or their heirs, successors, or
24 assigns. The association must have an executive board. The

1 association must be organized as a profit or nonprofit corporation,
 2 trust, ~~or~~ limited liability company, partnership, ~~or as an~~
 3 unincorporated association, or any other form of organization
 4 authorized by the law of this state.

5 **§36B-3-102. POWERS AND DUTIES OF UNIT OWNERS ASSOCIATION.**

6 (a) Except as otherwise provided in subsection (b) and ~~subject~~
 7 ~~to the~~ other provisions of ~~the declaration~~ this chapter, the
 8 association ~~even if unincorporated,~~ even if not registered: ~~may~~

9 (1) Shall adopt and may amend bylaws and may adopt and amend
 10 rules; ~~and regulations~~

11 (2) Shall adopt and may amend budgets ~~for revenues,~~
 12 ~~expenditures, and reserves~~ under Section 3-123, shall ~~and~~ collect
 13 assessments for common expenses from unit owners, and may invest
 14 funds of the association;

15 (3) May hire and discharge managing agents and other
 16 employees, agents, and independent contractors;

17 (4) May institute, defend, or intervene in litigation or in
 18 arbitration, mediation, or administrative proceedings in its own
 19 name on behalf of itself or two or more unit owners on matters
 20 affecting the common interest community, subject to section 3-124;

21 (5) May make contracts and incur liabilities;

22 (6) May regulate the use, maintenance, repair, replacement,
 23 and modification of common elements;

24 (7) May cause additional improvements to be made as a part of

1 the common elements;

2 (8) May acquire, hold, encumber, and convey in its own name
3 any right, title, or interest to real estate or personal property,
4 but:

5 ~~(i)~~(A) Common elements in a condominium or planned community
6 may be conveyed or subjected to a security interest only pursuant
7 to section 3-112 ~~section one hundred twelve of this article~~; and

8 ~~(ii)~~(B) Part of a cooperative may be conveyed, or all or part
9 of a cooperative may be subjected to a security interest, only
10 pursuant to section 3-112; ~~section one hundred twelve of this~~
11 ~~article~~

12 (9) May grant easements, leases, licenses, and concessions
13 through or over the common elements;

14 (10) May impose and receive any payments, fees, or charges
15 for:

16 (A) The use, rental, or operation of the common elements,
17 other than limited common elements described in section 2-102(2) and
18 (4); ~~subsections (1) and (4), section one hundred two, article two~~
19 ~~of this chapter~~, and

20 (B) ~~for~~ Services provided to unit owners;

21 (11) May impose charges for late payment of assessments and,
22 after notice and an opportunity to be heard, may ~~levy~~ impose
23 reasonable fines for violations of the declaration, bylaws, and
24 rules ~~and regulations~~ of the association;

1 (12) May impose reasonable charges for the preparation and
2 recordation of amendments to the declaration, resale certificates
3 required by section one hundred nine, article four of this chapter,
4 or statements of unpaid assessments;

5 (13) May provide for the indemnification of its officers and
6 executive board and maintain directors' and officers' liability
7 insurance;

8 (14) May assign its right to future income, including the
9 right to receive common expense assessments, but only to the extent
10 the declaration expressly so provides;

11 (15) May exercise any other powers conferred by the
12 declaration or bylaws;

13 (16) May exercise all other powers that may be exercised in
14 this state by legal entities of the same type as the association;

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

18 ~~(18)~~ (17) May exercise any other powers necessary and proper
19 for the governance and operation of the association;

20 (18) May require that disputes between the association and
21 unit owners or between two or more unit owners regarding the common
22 interest community be submitted to nonbinding alternative dispute
23 resolution as a prerequisite to commencement of a judicial
24 proceeding;

1 (19) May suspend any right or privilege of a unit owner that
2 fails to pay an assessment, but may not:

3 (A) Deny a unit owner or other occupant access to the owner's
4 unit; or

5 (B) Withhold services provided to a unit or a unit owner by
6 the association if the effect of withholding the service would be
7 to endanger the health, safety, or property of any person; and

8 (20) The association may, after notice, suspend a unit owner's
9 right to vote and/or right to seek election as a director or
10 officer of the association for failure of the unit owner to pay
11 assessments. The suspended rights to vote or seek election shall
12 be immediately restored to the unit owner upon payment of all past
13 due or delinquent assessments even if paid during a meeting or
14 election.

15 (b) The declaration may not ~~impose limitations on~~ limit the
16 power of the association beyond the limitations authorized in
17 subsection(a)(18) to:

18 (1) Deal with the declarant ~~which are~~ if the limit is more
19 restrictive than the ~~limitations~~ limit imposed on the power of the
20 association to deal with other persons; or

21 (2) Institute litigation or an arbitration, mediation or
22 administrative proceeding against any person, subject to the
23 following:

24 (A) The association shall comply with section 124 of this

1 article, if applicable, before instituting any proceeding described
2 in subsection (a) of said section in connection with construction
3 defects; and

4 (B) The executive board promptly shall provide notice to the
5 unit owners of any legal proceeding in which the association is a
6 party other than proceedings involving enforcement of rules or to
7 recover unpaid assessments or other sums due the association.

8 (c) If a tenant of a unit owner violates the declaration,
9 bylaws, or rules of the association, in addition to exercising any
10 of its powers against the unit owner, the association may:

11 (1) Exercise directly against the tenant the powers described
12 in subsection (a) (11);

13 (2) After giving notice to the tenant and the unit owner and
14 an opportunity to be heard, levy reasonable fines against the
15 tenant for the violation; and

16 (3) Enforce any other rights against the tenant for the
17 violation which the unit owner as landlord could lawfully have
18 exercised under the lease or which the association could lawfully
19 have exercised directly against the unit owner, or both.

20 (d) The rights referred to in subsection (c) (3) may be
21 exercised only if the tenant or unit owner fails to cure the
22 violation within ten days after the association notifies the tenant
23 and unit owner of that violation.

24 (e) Unless a lease otherwise provides, this section does not:

1 (1) Affect rights that the unit owner has to enforce the lease
2 or that the association has under other law; or

3 (2) Permit the association to enforce a lease to which it is
4 not a party in the absence of a violation of the declaration,
5 bylaws, or rules.

6 (f) The executive board may determine whether to take
7 enforcement action by exercising the association's power to impose
8 sanctions or commencing an action for a violation of the
9 declaration, bylaws, and rules, including whether to compromise any
10 claim for unpaid assessments or other claim made by or against it.

11 The executive board does not have a duty to take enforcement action
12 if it determines that, under the facts and circumstances presented:

13 (1) The association's legal position does not justify taking
14 any or further enforcement action;

15 (2) The covenant, restriction, or rule being enforced is, or
16 is likely to be construed as, inconsistent with law;

17 (3) Although a violation may exist or may have occurred, it is
18 not so material as to be objectionable to a reasonable person or to
19 justify expending the association's resources; or

20 (4) It is not in the association's best financial or other
21 interests to pursue an enforcement action.

22 (g) The executive board's decision under subsection (f) not to
23 pursue enforcement under one set of circumstances does not prevent
24 the executive board from taking enforcement action under another

1 set of circumstances, but the executive board may not be arbitrary
2 or capricious in taking enforcement action.

3 (h) The executive board shall establish a reasonable method
4 for unit owners to communicate among themselves and with the
5 executive board on matters concerning the association.

6 **§36B-3-103. Executive board members and officers.**

7 (a) Except as otherwise provided in the declaration, the
8 bylaws, subsection (b), or other provisions of this chapter, the
9 executive board ~~may act in all instances~~ acts on behalf of the
10 association. In the performance of their duties, the officers and
11 members of the executive board ~~are required to exercise (i) if~~
12 ~~appointed by the declarant the care required of fiduciaries of the~~
13 ~~unit owners shall exercise the degree of care and loyalty to the~~
14 association required of a trustee. ~~and (ii) if elected by the unit~~
15 ~~owners, ordinary and reasonable care.~~ Officers and members of the
16 executive board not appointed by the declarant shall exercise the
17 degree of care and loyalty to the association required of an
18 officer or director of a corporation and are subject to the
19 conflict of interest rules governing directors and officers, under
20 West Virginia Code Chapter 31E. The standards of care and loyalty
21 described in this section apply regardless of the form in which the
22 association is organized.

23 (b) The executive board may not: ~~act on behalf of the~~
24 ~~association:~~

1 (1) ~~to~~ Amend the declaration except as provided in (section
2 2-117);

3 (2) ~~to~~ Terminate the common interest community (section
4 2-118);

5 (3) ~~or to~~ Elect members of the executive board, but may fill
6 vacancies in its membership for the unexpired portion of any term
7 or, if earlier, until the next regularly scheduled election of
8 executive board members; or

9 (4) Determine the qualifications, powers, ~~and~~ duties, or terms
10 of office of executive board members (section 3-103(f).), ~~but the~~
11 ~~executive board may fill vacancies in its membership for the~~
12 ~~unexpired portion of any term.~~

13 (c) The executive board shall adopt budgets as provided in
14 section 3-123. ~~Within thirty days after adoption of any proposed~~
15 ~~budget for the common interest community, the executive board shall~~
16 ~~provide a summary of the budget to all the unit owners, and shall~~
17 ~~set a date for a meeting of the unit owners to consider~~
18 ~~ratification of the budget not less than fourteen nor more than~~
19 ~~thirty days after mailing of the summary. Unless at that meeting~~
20 ~~a majority of all unit owners or any larger vote specified in the~~
21 ~~declaration reject the budget, the budget is ratified, whether or~~
22 ~~not a quorum is present. In the event the proposed budget is~~
23 ~~rejected, the periodic budget last ratified by the unit owners must~~
24 ~~be continued until such time as the unit owners ratify a subsequent~~

1 ~~budget proposed by the executive board.~~

2 (d) Subject to subsection (e), the declaration may provide for
3 a period of declarant control of the association, during which a
4 declarant, or persons designated by ~~him~~ the declarant may appoint
5 and remove the officers and members of the executive board. A
6 declarant may voluntarily surrender the right to appoint and remove
7 officers and members of the executive board before the period ends.
8 In that event, the declarant may require during the remainder of
9 the period that specified actions of the association or executive
10 board, as described in a recorded instrument executed by the
11 declarant, be approved by the declarant before they become
12 effective. Regardless of the period provided in the declaration,
13 and except as provided in section 2-123(g) (Master Planned
14 Communities), a period of declarant control terminates no later
15 than the ~~earlier~~ earliest of:

16 (i) Sixty days after conveyance of ~~seventy-five percent~~ three
17 fourths of the units that may be created to unit owners other than
18 a declarant;

19 (ii) Two years after all declarants have ceased to offer units
20 for sale in the ordinary course of business;

21 (iii) Two years after any right to add new units was last
22 exercised; or

23 (iv) The day the declarant, after giving notice in a record to
24 unit owners, records an instrument voluntarily surrendering all

1 rights to control activities of the association. ~~A declarant may~~
2 ~~voluntarily surrender the right to appoint and remove officers and~~
3 ~~members of the executive board before termination of that period,~~
4 ~~but in that event the declarant may require, for the duration of~~
5 ~~the period of declarant control, that specified actions of the~~
6 ~~association or executive board, as described in a recorded~~
7 ~~instrument executed by the declarant, be approved by the declarant~~
8 ~~before they become effective.~~

9 (e) Not later than sixty days after conveyance of ~~twenty-five~~
10 ~~percent~~ one fourth of the units that may be created to unit owners
11 other than a declarant, at least one member and not less than
12 twenty-five percent of the members of the executive board must be
13 elected by unit owners other than the declarant. Not later than
14 sixty days after conveyance of ~~fifty percent~~ one half of the units
15 that may be created to unit owners other than a declarant, not less
16 than ~~thirty-three and one-third percent~~ one third of the members of
17 the executive board must be elected by unit owners other than the
18 declarant.

19 (f) Except as otherwise provided in section 2-120(e), not
20 later than the termination of any period of declarant control, the
21 unit owners shall elect an executive board of at least three
22 members, at least a majority of whom must be unit owners. Unless
23 the declaration provides for the election of officers by the unit
24 owners, the ~~The~~ executive board shall elect the officers. The

1 executive board members and officers shall take office upon
2 election or appointment.

3 (g) ~~Notwithstanding any provision of the declaration or bylaws~~
4 ~~to the contrary, the unit owners, by a two-thirds vote of all~~
5 ~~persons present and entitled to vote at any meeting of the unit~~
6 ~~owners at which a quorum is present, may remove any member of the~~
7 ~~executive board with or without cause, other than a member~~
8 ~~appointed by the declarant. A declaration may provide for the~~
9 ~~appointment of specified positions on the executive board by~~
10 ~~persons other than the declarant during or after the period of~~
11 ~~declarant control. It also may provide a method for filling~~
12 ~~vacancies in those positions, other than by election by unit~~
13 ~~owners. However, after the period of declarant control, appointed~~
14 ~~members:~~

15 ~~(1) May not comprise more than one third of the board; and~~

16 ~~(2) Have no greater authority than any other member of the~~
17 ~~board.~~

18 ~~(h) Within thirty days after unit owners other than the~~
19 ~~declarant elect a majority of the members of the executive board,~~
20 ~~the declarant shall deliver to the association all property of the~~
21 ~~unit owners and of the association held by or controlled by the~~
22 ~~declarant, including without limitation the following items:~~

23 ~~(1) The original or a certified copy of the recorded~~
24 ~~declaration as amended; the association articles of incorporation,~~

1 if the association is incorporated; bylaws; minute books and other
2 books and records of the association; and any rules which may have
3 been promulgated;

4 (2) An accounting for association funds and financial
5 statements, from the date the association received funds and ending
6 on the date the period of declarant control ends. The financial
7 statements shall be audited by an independent certified public
8 accountant and shall be accompanied by the accountant's letter,
9 expressing either:

10 (A) The opinion that the financial statements present fairly
11 the financial position of the association in conformity with
12 generally accepted accounting principles; or

13 (B) A disclaimer of the accountant's ability to attest to the
14 fairness of the presentation of the financial information in
15 conformity with generally accepted accounting principles, and the
16 reasons therefor. The expense of the audit shall not be paid for or
17 charged to the association;

18 (3) Association funds or control thereof;

19 (4) All insurance policies then in force, in which the
20 association or its directors and officers are named as insured
21 persons;

22 (5) A roster of unit owners and mortgagees and their addresses
23 and telephone numbers, if known, as shown on the declarant's
24 records; and

1 (6) Contracts in which the association is a contracting party.

2 (i) During the period of declarant control, the declarant
 3 shall, at least every six months, provide the unit owners with a
 4 current financial statement of the association. The statement shall
 5 be on a cash basis and need not be audited by an independent
 6 accountant. It shall include, without limitation:

7 (1) All income and expenses for the calendar year to date;

8 (2) All accounts payable and receivable, including the ages of
 9 those accounts and showing all sums due to and from the declarant
 10 and affiliates of the declarant;

11 (3) The amount of any funded replacement reserves; and

12 (4) The balance of any other funds of the association.

13 **§36B-3-105. Termination of contracts and leases of declarant.**

14 (a) ~~If entered into before~~ Within two years after the
 15 executive board elected by the unit owners pursuant to section
 16 3-103(f) takes office, the association may terminate without
 17 penalty, upon not less than ninety days' notice to the other party,
 18 any of the following if it was entered into before the executive
 19 board was elected:

20 ~~(i)~~ (1) Any management, maintenance, operations, or contract,
 21 employment contract, or lease of recreational or parking areas or
 22 facilities; or

23 ~~(ii)~~ (2) Any other contract or lease between the association
 24 and a declarant or an affiliate of a declarant. or

1 ~~(iii) any contract or lease that is not bona fide or was~~
 2 ~~unconscionable to the unit owners at the time entered into under~~
 3 ~~the circumstances then prevailing, may be terminated~~

4 (b) The association may terminate without penalty ~~by the~~
 5 ~~association~~ at any time after the executive board elected by the
 6 unit owners pursuant to section 3-103(f) takes office upon not less
 7 than ninety days' notice to the other party, any contract or lease
 8 that is not bona fide or was unconscionable to the unit owners at
 9 the time entered into.

10 (c) This section does not apply to:

11 ~~(i)~~ (1) Any lease the termination of which would terminate the
 12 common interest community or reduce its size, unless the real
 13 estate subject to that lease was included in the common interest
 14 community for the purpose of avoiding the right of the association
 15 to terminate a lease under this section; or

16 ~~(ii)~~ (2) A proprietary lease.

17 **§36B-3-106. Bylaws.**

18 (a) The bylaws of the association must: ~~provide~~

19 (1) Provide the number of members of the executive board and
 20 the titles of the officers of the association;

21 (2) Provide for election by the executive board, or if the
 22 declaration requires, by unit owners, of president, treasurer,
 23 secretary, and any other officers of the association the bylaws
 24 specify;

1 (3) Specify the qualifications, powers and duties, terms of
2 office, and manner of electing and removing executive board members
3 and officers and filling vacancies;

4 (4) Specify the ~~which, if any, of its~~ powers the executive
5 board or officers may delegate to other persons or to a managing
6 agent;

7 (5) Specify the ~~which of its~~ officers who may prepare,
8 execute, certify, and record amendments to the declaration on
9 behalf of the association; ~~and~~

10 (6) Specify a method for amending the bylaws;

11 (7) Contain any provision necessary to satisfy requirements in
12 this chapter or the declaration concerning meetings, voting,
13 quorums, and other activities of the association; and

14 (8) Provide for any matter required by law of this state other
15 than this chapter to appear in the bylaws of organizations of the
16 same type as the association.

17 (b) Subject to ~~the provisions of~~ the declaration and this
18 chapter, the bylaws may provide for any other necessary or
19 appropriate matters, ~~the association deems necessary and~~
20 appropriate, including matters that could be adopted as rules.

21 **§36B-3-108. Meetings.**

22 ~~A meeting of the association must be held at least once each~~
23 ~~year. Special meetings of the association may be called by the~~
24 ~~president,~~

1 (a) The following requirements apply to unit owner meetings:

2 (1) An association shall hold a meeting of unit owners
3 annually at a time, date, and place stated in or fixed in
4 accordance with the bylaws.

5 (2) An association shall hold a special meeting of unit owners
6 to address any matter affecting the common interest community or
7 the association if its president, a majority of the executive
8 board, or by unit owners having at least twenty percent, or any
9 lower percentage specified in the bylaws, of the votes in the
10 association request that the secretary call the meeting. ~~Not less~~
11 than 10 nor more than 60 days in advance of any meeting, the
12 secretary or other officer specified in the bylaws shall cause
13 notice to be hand-delivered or sent prepaid If the association does
14 not notify unit owners of a special meeting within thirty days
15 after the requisite number or percentage of unit owners request the
16 secretary to do so, the requesting members may directly notify all
17 the unit owners of the meeting. Only matters described in the
18 meeting notice required by paragraph (3) may be considered at a
19 special meeting.

20 (3) An association shall notify unit owners of the time, date,
21 and place of each annual and special unit owners meeting not less
22 than ten days or more than sixty days before the meeting date.
23 Notice may be by any means described in Section 3-121 ~~by United~~
24 States mail to the mailing address of each unit or to any other

1 ~~mailing address designated in writing by the unit owner.~~ The notice
2 of any meeting must state the time, date and place of the meeting
3 and the items on the agenda, including:

4 (A) A statement of the general nature of any proposed
5 amendment to the declaration or bylaws;

6 (B) Any budget changes; and

7 (C) Any proposal to remove an officer or member of the
8 executive board.

9 (4) The minimum time to give notice required by paragraph (3)
10 may be reduced or waived for a meeting called to deal with an
11 emergency.

12 (5) Unit owners must be given a reasonable opportunity at any
13 meeting to comment regarding any matter affecting the common
14 interest community or the association.

15 (6) The declaration or bylaws may allow for meetings of unit
16 owners to be conducted by telephonic, video, or other conferencing
17 process, if the alternative process is consistent with subsection
18 (b) (7).

19 (b) The following requirements apply to meetings of the
20 executive board and committees of the association authorized to act
21 for the association:

22 (1) Meetings must be open to the unit owners except during
23 executive sessions. The executive board and those committees may
24 hold an executive session only during a regular or special meeting

1 of the board or a committee. No final vote or action may be taken
2 during an executive session. An executive session may be held only
3 to:

4 (A) Consult with the association's attorney concerning legal
5 matters;

6 (B) Discuss existing or potential litigation or mediation,
7 arbitration, or administrative proceedings;

8 (C) Discuss labor or personnel matters;

9 (D) Discuss contracts, leases, and other commercial
10 transactions to purchase or provide goods or services currently
11 being negotiated, including the review of bids or proposals, if
12 premature general knowledge of those matters would place the
13 association at a disadvantage; or

14 (E) Prevent public knowledge of the matter to be discussed if
15 the executive board or committee determines that public knowledge
16 would violate the privacy of any person.

17 (2) For purposes of this section, a gathering of board members
18 at which the board members do not conduct association business is
19 not a meeting of the executive board. The executive board and its
20 members may not use incidental or social gatherings of board
21 members or any other method to evade the open meeting requirements
22 of this section.

23 (3) During the period of declarant control, the executive
24 board shall meet at least four times a year. Up until the sale of

1 the 12th unit, at least two of those meetings must be held at the
2 common interest community or at a place convenient to the
3 community. Upon the sale of the 12th unit, all meetings must be
4 held at the common interest community or at a place convenient to
5 the community. After termination of the period of declarant
6 control, all executive board meetings must be at the common
7 interest community or at a place convenient to the community unless
8 the unit owners amend the bylaws to vary the location of those
9 meetings.

10 (4) At each executive board meeting, the executive board shall
11 provide a reasonable opportunity for unit owners to comment
12 regarding any matter affecting the common interest community and
13 the association.

14 (5) Unless the meeting is included in a schedule given to the
15 unit owners or the meeting is called to deal with an emergency, the
16 secretary or other officer specified in the bylaws shall give
17 notice of each executive board meeting to each board member and to
18 the unit owners. The notice must be given at least ten days before
19 the meeting and must state the time, date, place, and agenda of the
20 meeting.

21 (6) If any materials are distributed to the executive board
22 before the meeting, the executive board at the same time shall make
23 copies of those materials reasonably available to unit owners,
24 except that the board need not make available copies of unapproved

1 minutes or materials that are to be considered in executive
2 session.

3 (7) Unless the declaration or bylaws otherwise provide, the
4 executive board may meet by telephonic, video, or other
5 conferencing process if:

6 (A) The meeting notice states the conferencing process to be
7 used and provides information explaining how unit owners may
8 participate in the conference directly or by meeting at a central
9 location or conference connection; and

10 (B) The process provides all unit owners the opportunity to
11 hear or perceive the discussion and to comment as provided in
12 paragraph (4).

13 (8) After termination of the period of declarant control, unit
14 owners may amend the bylaws to vary the procedures for meetings
15 described in paragraph (7).

16 (9) Instead of meeting, the executive board may act by
17 unanimous consent as documented in a record authenticated by all
18 its members. The secretary promptly shall give notice to all unit
19 owners of any action taken by unanimous consent. After termination
20 of the period of declarant control, the executive board may act by
21 unanimous consent only to undertake ministerial actions or to
22 implement actions previously taken at a meeting of the executive
23 board.

24 (10) Even if an action by the executive board is not in

1 compliance with this section, it is valid unless set aside by a
 2 court. A challenge to the validity of an action of the executive
 3 board for failure to comply with this section may not be brought
 4 more than sixty days after the minutes of the executive board of
 5 the meeting at which the action was taken are approved or the
 6 record of that action is distributed to unit owners, whichever is
 7 later.

8 **§36B-3-109. QUORUM.**

9 (a) Unless the bylaws otherwise provide ~~otherwise~~, a quorum
 10 is present throughout any meeting of the ~~association~~ unit owners if
 11 persons entitled to cast twenty percent of the votes ~~that may be~~
 12 ~~cast for election of the executive board~~ in the association:

13 (1) Are present in person or by proxy at the beginning of the
 14 meeting;

15 (2) Have cast absentee ballots solicited in accordance with
 16 Section 3-110 (c) (4) which have been delivered to the secretary in
 17 a timely manner; or

18 (3) Are present by any combination of paragraphs (1) and (2).

19 (b) Unless the bylaws specify a larger ~~percentage number~~, a
 20 quorum of the executive board is ~~deemed~~ present for purposes of
 21 determining the validity of any action ~~throughout any~~ taken at a
 22 meeting of the executive board only if individuals ~~persons~~ entitled
 23 to cast ~~fifty percent~~ a majority of the votes on that board are
 24 present at the time a vote regarding that action is taken. ~~at the~~

1 ~~beginning of the meeting. If a quorum is present when a vote is~~
2 ~~taken, the affirmative vote of a majority of the board members~~
3 ~~present is the act of the executive board unless a greater vote is~~
4 ~~required by the declaration or bylaws.~~

5 **§36B-3-110. Voting; proxies; ballots.**

6 (a) Unless prohibited or limited by the declaration or bylaws,
7 unit owners may vote at a meeting in person, by absentee ballot
8 pursuant to subsection (b) (4), by a proxy pursuant to subsection
9 (c) or, when a vote is conducted without a meeting, by electronic
10 or paper ballot pursuant to subsection (d).

11 (b) At a meeting of unit owners the following requirements
12 apply:

13 (1) Unit owners who are present in person may vote by voice
14 vote, show of hands, standing, or any other method for determining
15 the votes of unit owners, as designated by the person presiding at
16 the meeting.

17 (2) If only one of several owners of a unit is present, that
18 owner is entitled to cast all the votes allocated to that unit. If
19 more than one of the owners are present, the votes allocated to the
20 unit may be cast only in accordance with the agreement of a
21 majority in interest of the owners, unless the declaration
22 expressly provides otherwise. There is majority agreement if any
23 one of the owners casts the votes allocated to the unit without
24 protest being made promptly to the person presiding over the

1 meeting by any of the other owners of the unit.

2 (3) Unless a greater number or fraction of the votes in the
3 association is required by this chapter or the declaration, a
4 majority of the votes cast determines the outcome of any action of
5 the association.

6 (4) Subject to subsection (a), a unit owner may vote by
7 absentee ballot without being present at the meeting. The
8 association promptly shall deliver an absentee ballot to an owner
9 that requests it if the request is made at least three days before
10 the scheduled meeting. Votes cast by absentee ballot must be
11 included in the tally of a vote taken at that meeting.

12 (5) When a unit owner votes by absentee ballot, the
13 association must be able to verify that the ballot is cast by the
14 unit owner having the right to do so.

15 (c) Except as otherwise provided in the declaration or bylaws,
16 the following requirements apply with respect to proxy voting:

17 (1) Votes allocated to a unit may be cast pursuant to a
18 directed or undirected proxy duly executed by a unit owner.

19 (2) If a unit is owned by more than one person, each owner of
20 the unit may vote or register protest to the casting of votes by
21 the other owners of the unit through a duly executed proxy.

22 (3) A unit owner may revoke a proxy given pursuant to this
23 section only by actual notice of revocation to the person presiding
24 over a meeting of the association.

1 (4) A proxy is void if it is not dated or purports to be
2 revocable without notice.

3 (5) A proxy is valid only for the meeting at which it is cast
4 and any recessed session of that meeting.

5 (6) A person may not cast undirected proxies representing more
6 than fifteen percent of the votes in the association, unless the
7 undirected proxies are for units under common ownership.

8 (d) Unless prohibited or limited by the declaration or bylaws,
9 an association may conduct a vote without a meeting. In that
10 event, the following requirements apply:

11 (1) The association shall notify the unit owners that the vote
12 will be taken by ballot.

13 (2) The association shall deliver a paper or electronic ballot
14 to every unit owner entitled to vote on the matter.

15 (3) The ballot must set forth each proposed action and provide
16 an opportunity to vote for or against the action.

17 (4) When the association delivers the ballots, it shall also:

18 (A) Indicate the number of responses needed to meet the quorum
19 requirements;

20 (B) State the percent of votes necessary to approve each
21 matter other than election of directors;

22 (C) Specify the time and date by which a ballot must be
23 delivered to the association to be counted, which time and date may
24 not be fewer than three days after the date the association

1 delivers the ballot; and

2 (D) Describe the time, date, and manner by which unit owners
3 wishing to deliver information to all unit owners regarding the
4 subject of the vote may do so.

5 (5) Except as otherwise provided in the declaration or bylaws,
6 a ballot is not revoked after delivery to the association by death
7 or disability or attempted revocation by the person that case that
8 vote.

9 (6) Approval by ballot pursuant to this subsection is valid
10 only if the number of votes cast by ballot equals or exceeds the
11 quorum required to be present at a meeting authorizing the action.

12 (e) If the declaration requires that votes on specified
13 matters affecting the common interest community be cast by lessees
14 rather than unit owners of leased units:

15 (1) This section applies to lessees as if they were unit
16 owners.

17 (2) Unit owners that have leased their units to other persons
18 may not cast votes on those specified matters; and

19 (3) Lessees are entitled to notice of meetings, access to
20 records, and other rights respecting these matters as if they were
21 unit owners.

22 (f) Unit owners must also be given notice of all meetings at
23 which lessees are entitled to vote.

24 (g) Votes allocated to a unit owned by the association must be

1 cast in any vote of the unit owners in the same proportion as the
2 votes cast on the matter by unit owners other than the association.

3 **§36B-3-111. Tort and contract liability; tolling of limitation**
4 **period.**

5 (a) A unit owner is not liable, solely by reason of being a
6 unit owner, for an injury or damage out of the condition or use of
7 the common elements. Neither the association nor any unit owner
8 except the declarant is liable for that declarant's torts in
9 connection with any part of the common interest community which
10 that declarant has the responsibility to maintain.

11 (b) An action alleging a wrong done by the association,
12 including an action arising out of the condition or use of the
13 common elements, may be maintained only against the association and
14 not against any unit owner. If the wrong occurred during any
15 period of declarant control and the association gives the declarant
16 reasonable notice of and an opportunity to defend against the
17 action, the declarant who then controlled the association is liable
18 to the association or to any unit owner for all tort losses not
19 covered by insurance suffered by the association or that unit
20 owner, and all costs that the association would not have incurred
21 but for a breach of contract or other wrongful act or omission.
22 Whenever the declarant is liable to the association under this
23 section, the declarant is also liable for all expenses of
24 litigation, including reasonable attorney's fees, incurred by the

1 association.

2 (c) Except as provided in Section 4-116(d) with respect to
3 warranty claims, any statute of limitation affecting the
4 association's right of action against a declarant under this
5 chapter is tolled until the period of declarant control terminates.
6 A unit owner is not precluded from maintaining an action
7 contemplated by this section because he or she is a unit owner or
8 a member or officer of the association. Liens resulting from
9 judgments against the association are governed by section 3-117.

10 **§36B-3-112. Conveyance or encumbrance of common elements.**

11 (a) In a condominium or planned community, portions of the
12 common elements may be conveyed or subjected to a security interest
13 by the association if persons entitled to cast at least eighty
14 percent of the votes in the association, including eighty percent
15 of the votes allocated to units not owned by a declarant, or any
16 larger percentage the declaration specifies, agree to that action;
17 but all owners of units to which any limited common element is
18 allocated must agree in order to convey that limited common element
19 or subject it to a security interest. The declaration may specify
20 a smaller percentage only if all of the units are restricted
21 exclusively to nonresidential uses. Proceeds of the sale are an
22 asset of the association, but the proceeds of the sale of limited
23 common elements must be distributed equitably among the owners of
24 units to which the limited common elements were allocated.

1 (b) Part of a cooperative may be conveyed and all or part of
2 a cooperative may be subjected to a security interest by the
3 association if persons entitled to cast at least eighty percent of
4 the votes in the association, including eighty percent of the votes
5 allocated to units not owned by a declarant, or any larger
6 percentage the declaration specified, agree to that action; but, if
7 fewer than all of the units or limited common elements are to be
8 conveyed or subjected to a security interest, then all unit owners
9 of those units, or the units to which those limited common elements
10 are allocated, must agree in order to convey those units or limited
11 common elements or subject them to a security interest. The
12 declaration may specify a smaller percentage only if all of the
13 units are restricted exclusively to nonresidential uses. Proceeds
14 of the sale are an asset of the association. Any purported
15 conveyance or other voluntary transfer of an entire cooperative,
16 unless made pursuant to section 2-118, is void.

17 (c) An agreement to convey common elements in a condominium or
18 planned community, or to subject them to a security interest, or in
19 a cooperative, an agreement to convey any part of a cooperative or
20 subject it to a security interest, must be evidenced by the
21 execution of an agreement, or ratifications thereof, in the same
22 manner as a deed, by the requisite number of unit owners. The
23 agreement must specify a date after which the agreement will be
24 void unless recorded before that date. The agreement and all

1 ratifications thereof must be recorded in every county in which a
2 portion of the common interest community is situate, and is
3 effective only upon recordation.

4 (d) The association, on behalf of the unit owners, may
5 contract to convey an interest in a common interest community
6 pursuant to subsection (a), but the contract is not enforceable
7 against the association until approved pursuant to subsections (a),
8 (b), and (c). Thereafter, the association has all powers necessary
9 and appropriate to effect the conveyance or encumbrance, including
10 the power to execute deeds or other instruments.

11 (e) Unless made pursuant to this section, any purported
12 conveyance, encumbrance, judicial sale, or other voluntary transfer
13 of common elements or of any other part of a cooperative is void.

14 (f) A conveyance or encumbrance of common elements or of a
15 cooperative pursuant to this section does not deprive any unit of
16 its rights of access and support.

17 (g) Unless the declaration otherwise provides, ~~a conveyance or~~
18 ~~encumbrance of common elements pursuant to this section does not~~
19 ~~affect the priority or validity of preexisting encumbrances~~ if the
20 holders of first security interests on eighty percent of the units
21 that are subject to security interests on the day the unit owners'
22 agreement under subsection (c) is recorded:

23 (1) A conveyance of common elements pursuant to this section
24 terminates both the undivided interests in those common elements

1 allocated to the units and the security interests in those
2 undivided interests held by all persons holding security interests
3 in the units; and

4 (2)An encumbrance of common elements pursuant to this section
5 has priority over all preexisting encumbrances on the undivided
6 interests in those common elements held by all persons holding
7 security interests in the units.

8 (h) The consents by holders of first security interests on
9 units described in subsection (g), or a certificate of the
10 secretary affirming that those consents have been received by the
11 association, may be recorded at any time before the date on which
12 the agreement under subsection (c) becomes void. Consents or
13 certificates so recorded are valid from the date they are recorded
14 for purposes of calculating the percentage of consenting first
15 security interest holders, regardless of later sales or
16 encumbrances on those units. Even if the required percentage of
17 first security interest holders so consent, a conveyance or
18 encumbrance of common elements does not affect interests having
19 priority over the declaration, or created by the association after
20 the declaration was recorded.

21 (i) In a cooperative, the association may acquire, hold,
22 encumber, or convey a proprietary lease without complying with this
23 section.

24 **§36B-3-113. INSURANCE.**

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

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

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

22 (3) Fidelity insurance.

23 (b) In the case of a building ~~that is part of a cooperative or~~
24 that contains units ~~having~~ divided by horizontal boundaries

1 described in the declaration, or vertical boundaries that comprise
2 common walls between units, the insurance maintained under
3 subsection (a) (1), to the extent reasonably available, must include
4 the units, but need not include improvements and betterments
5 installed by unit owners.

6 (c) If the insurance described in subsections (a) and (b) is
7 not reasonably available, the association promptly shall cause
8 notice of that fact to be ~~hand-delivered or sent prepaid by United~~
9 ~~States mail~~ given to all unit owners. The declaration may require
10 the association to carry any other insurance, and the association
11 ~~in any event~~ may carry any other insurance it considers appropriate
12 to protect the association or the unit owners.

13 (d) Insurance policies carried pursuant to subsections (a) and
14 (b) must provide that:

15 (1) Each unit owner is an insured person under the policy with
16 respect to liability arising out of ~~his~~ the owner's interest in the
17 common elements or membership in the association;

18 (2) The insurer waives its right to subrogation under the
19 policy against any unit owner or member of ~~his~~ the owner's
20 household;

21 (3) No act or omission by ~~any~~ a unit owner, unless acting
22 within the scope of ~~his~~ the owner's ~~scope of his~~ authority on
23 behalf of the association, ~~will~~ voids the policy or ~~be~~ is a
24 condition to recovery under the policy; and

1 (4) If, at the time of a loss under the policy, there is other
2 insurance in the name of a unit owner covering the same risk
3 covered by the policy, the association's policy provides primary
4 insurance.

5 (e) Any loss covered by the property policy under subsections
6 (a)(1) and (b) must be adjusted with the association, but the
7 insurance proceeds for that loss are payable to any insurance
8 trustee designated for that purpose, or otherwise to the
9 association, and not to any holder of a security interest. The
10 insurance trustee or the association shall hold any insurance
11 proceeds in trust for the association, unit owners, and lien
12 holders as their interests may appear. Subject to ~~the provisions~~
13 ~~of~~ subsection (h), the proceeds must be disbursed first for the
14 repair or ~~restoration~~ replacement of the damaged property, and the
15 association, unit owners, and lien holders are not entitled to
16 receive payment of any portion of the proceeds unless there is a
17 surplus of proceeds after the property has been completely repaired
18 or ~~restored~~ replaced, or the common interest community is
19 terminated.

20 (f) An insurance policy issued to the association does not
21 prevent a unit owner from obtaining insurance for ~~his~~ the owner's
22 own benefit.

23 (g) An insurer that has issued an insurance policy under this
24 section shall issue certificates or memoranda of insurance to the

1 association and, upon ~~written~~ request made in a record, to any unit
 2 owner or holder of a security interest. The insurer issuing the
 3 policy may not cancel or refuse to renew it until ~~30~~ thirty days
 4 after notice of the proposed cancellation or nonrenewal has been
 5 mailed to the association, each unit owner and each holder of a
 6 security interest to whom a certificate or memorandum of insurance
 7 has been issued at their respective last known addresses.

8 (h) Any portion of the common interest community for which
 9 insurance is required under this section which is damaged or
 10 destroyed must be repaired or replaced promptly by the association
 11 unless:

12 ~~(i)~~ (1) The common interest community is terminated, in which
 13 case ~~S~~section 2-118 applies;

14 ~~(ii)~~ (2) Repair or replacement would be illegal; ~~under any~~
 15 ~~state or local statute or ordinance governing health or safety,~~ or

16 ~~(iii)~~ (3) Eighty percent of the unit owners, including every
 17 owner of a unit or assigned limited common element that will not be
 18 rebuilt, vote not to rebuild.

19 (i) The cost of repair or replacement in excess of insurance
 20 proceeds, deductibles, and reserves is a common expense. If the
 21 entire common interest community is not repaired or replaced:

22 ~~(i)~~ (1) The insurance proceeds attributable to the damaged
 23 common elements must be used to restore the damaged area to a
 24 condition compatible with the remainder of the common interest

1 community; and

2 ~~(ii)~~(2) Except to the extent that other persons will be
3 distributees (section 2-105(a)(12)(ii)):

4 (A) The insurance proceeds attributable to units and limited
5 common elements that are not ~~rebuilt~~ repaired or replaced must be
6 distributed to the owners of those units and the owners of the
7 units to which those limited common elements were allocated, or to
8 lien holders, as their interests may appear; and

9 (B) The remainder of the proceeds must be distributed to all
10 the unit owners or lien holders, as their interests may appear, as
11 follows:

12 ~~(i)~~(i) In a condominium, in proportion to the common element
13 interests of all the units; and

14 ~~(2)~~(ii) In a cooperative or planned community, in proportion
15 to the common expense liabilities of all the units.

16 (j) If the unit owners vote not to rebuild any unit, that
17 unit's allocated interests are automatically reallocated upon the
18 vote as if the unit had been condemned under section 1-107(a), and
19 the association promptly shall prepare, execute, and record an
20 amendment to the declaration reflecting the reallocations.

21 ~~(i)~~ (k) ~~The provisions of~~ This section may be varied or waived
22 in the case of a common interest community all of whose units are
23 restricted to nonresidential use.

24 **§36B-3-114. Surplus Funds.**

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

7 **§36B-3-115. Assessments.**

8 (a) Until the association makes a common expense assessment,
9 the declarant shall pay all common expenses. After an assessment
10 has been made by the association, assessments must be made at least
11 annually, based on a budget adopted at least annually by the
12 association.

13 (b) Except for assessments under subsections (c), (d), and
14 (e), or as otherwise provided in this chapter, all common expenses
15 must be assessed against all the units in accordance with the
16 allocations set forth in the declaration pursuant to section
17 2-107(a) and (b). The association may charge interest on any ~~Any~~
18 ~~past due common expense assessment or portion installment~~ thereof
19 ~~bears interest~~ at the rate established by the association, not
20 exceeding eighteen percent per year.

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

22 (1) ~~Any~~ A common expense associated with the maintenance,
23 repair, or replacement of a limited common element must be assessed
24 against the units to which that limited common element is assigned,

1 equally, or in any other proportion the declaration provides;

2 (2) ~~Any~~ A common expense ~~or portion thereof~~ benefiting fewer
3 than all of the units or their owners ~~must~~ may be assessed
4 exclusively against the units or unit owners benefitted; and

5 (3) The costs of insurance must be assessed in proportion to
6 risk, and the costs of utilities must be assessed in proportion to
7 usage.

8 (d) Assessments to pay a judgment against the association
9 (section 3-117(a)) may be made only against the units in the common
10 interest community at the time the judgment was entered, in
11 proportion to their common expense liabilities.

12 (e) If damage to a unit or other part of the common interest
13 community, or if any other common expense is caused by the willful
14 misconduct or gross negligence of any unit owner or a guest or
15 invitee of a unit owner, the association may assess that expense
16 exclusively against ~~his unit.~~ that owner's unit, even if the
17 association maintains insurance with respect to that damage or
18 common expense.

19 (f) If common expense liabilities are reallocated, common
20 expense assessments and any installment thereof not yet due must be
21 recalculated in accordance with the reallocated common expense
22 liabilities.

23 **§36B-3-116. Lien for sums due association; enforcement.**

24 (a) The association has a statutory lien on a unit for any

1 assessment ~~levied against~~ attributable to that unit or fines
2 imposed against its unit owner ~~from the time the assessment or fine~~
3 ~~becomes due~~. Unless the declaration otherwise provides, reasonable
4 attorney's fees and costs, other fees, charges, late charges,
5 fines, and interest charged pursuant to section 3-102(a) (10), (11),
6 and (12), and any other sums due to the association under the
7 declaration, this chapter, or as a result of an administrative,
8 arbitration, mediation, or judicial decision are enforceable in the
9 same manner as unpaid assessments under this section. If an
10 assessment is payable in installments, the lien is for the full
11 amount of the assessment ~~is a lien~~ from the time the first
12 installment thereof becomes due.

13 (b) A lien under this section is prior to all other liens and
14 encumbrances on a unit except:

15 ~~(i)~~(1) Liens and encumbrances recorded before the recordation
16 of the declaration and, in a cooperative, liens and encumbrances
17 ~~which~~ that the association creates, assumes, or takes subject to;

18 ~~(ii)~~(2) Except as otherwise provided in subsection (c), a
19 first security interest on the unit recorded before the date on
20 which the assessment sought to be enforced became delinquent⁷; or,
21 in a cooperative, the first security interest encumbering only the
22 unit owner's interest and perfected before the date on which the
23 assessment sought to be enforced became delinquent⁷; and

24 ~~(iii)~~(3) Liens for real estate taxes and other governmental

1 assessments or charges against the unit or cooperative.

2 ~~(c)~~ The A lien under this section is also prior to all
 3 security interests described in subsection (b) (2) ~~clause (ii) above~~
 4 to the extent of both the common expense assessments based on the
 5 periodic budget adopted by the association pursuant to section
 6 3-115(a) which would have become due in the absence of acceleration
 7 during the six months immediately preceding institution of an
 8 action to enforce the lien and reasonable attorney's fees and costs
 9 incurred by the association in foreclosing the association's lien.
 10 ~~This subsection~~ Subsection (b) and this subsection does do not
 11 affect the priority of mechanics' or materialmen's liens, or the
 12 priority of liens for other assessments made by the association.
 13 ~~(The lien under this section is not subject to the provisions of~~
 14 ~~(insert appropriate reference to state homestead, dower and~~
 15 ~~curtesy, or other exemptions).)~~ A lien under this section shall be
 16 void, as to creditors, and subsequent purchasers for valuable
 17 consideration without notice, until and except from the time that
 18 it is duly admitted to record in all counties wherein the unit
 19 situate. This followings our recording statute.

20 ~~(c)~~ (d) Unless the declaration otherwise provides, if two or
 21 more associations have liens for assessments created at any time on
 22 the same property, those liens have equal priority.

23 ~~(d)~~ (e) A lien for unpaid assessments is extinguished unless
 24 proceedings to enforce the lien are instituted within three years

1 after the full amount of the assessments becomes due.

2 ~~(e)~~(f) This section does not prohibit actions against unit
3 owners to recover sums for which subsection (a) creates a lien or
4 prohibit an association from taking a deed in lieu of foreclosure.

5 ~~(f)~~(g) A judgment or decree in any action brought under this
6 section must include costs and reasonable attorney's fees for the
7 prevailing party and shall relate back for purposes of priority to
8 the date the association lien was recorded in the county clerk's
9 office, and shall bear interest at the rate set by the association
10 for the original lien, not to exceed eighteen percent pursuant to
11 Section 36B-3-115(b).

12 ~~(g)~~(h) The association upon ~~written~~ request made in a record
13 shall furnish to a unit owner, a statement setting forth the amount
14 of unpaid assessments against the unit. If the unit owner's
15 interest is real estate, the statement must be in recordable form.
16 The statement must be furnished within ten business days after
17 receipt of the request and is binding on the association, the
18 executive board, and every unit owner. The trustee or trustees
19 under a record deed of trust encumbering a unit, or judicially
20 appointed commissioner charged with the sale of a unit, has the
21 same rights under this paragraph as the owner of the encumbered
22 unit.

23 ~~(h)~~ For the purpose of perfecting and preserving its lien, the
24 association shall given notice to the unit owner in the manner set

~~1 forth in section one, article two, chapter fifty six of this code,
2 or by registered or certified mail, return receipt requested, and
3 in a form reasonably calculated to inform the owner of his
4 liability for payment of the assessment. The lien shall be
5 discharged as to subsequent purchasers for value without notice
6 unless the association shall cause to be recorded a notice of the
7 lien in the office of the clerk of the county commission of any
8 county wherein any part of the condominium is located. The notice
9 shall contain:~~

- ~~10 (1) A legally sufficient description of the unit;~~
- ~~11 (2) The name or names of the owners of the unit;~~
- ~~12 (3) The amount of unpaid assessments due together with the
13 date when each fell due; and~~
- ~~14 (4) the date of the recordation.~~

~~15 The clerk of the county commission in whose office the notice
16 is recorded shall index the notice in the appropriate deedbooks and
17 lien books in the name of the unit owners and of the association.
18 The cost of recordation shall be assessed against any unit owner
19 found to be delinquent in a subsequent proceeding to enforce the
20 lien.~~

~~21 Upon payment of the assessment, the association shall execute
22 a written release of the lien in a manner set forth in section one,
23 article twelve, chapter thirty-eight of this code. This release
24 shall be recorded, at the expense of the association, in the clerk~~

1 ~~of the county commission wherein the notice of the lien was filed.~~

2 (i) ~~At any time before the association has disposed of a unit~~
3 ~~in a cooperative or entered into a contract for its disposition~~
4 ~~under the power of sale, the unit owners or the holder of any~~
5 ~~subordinate security interest may cure the unit owner's default and~~
6 ~~prevent the sale or other disposition by tendering the performance~~
7 ~~due under the security agreement, including any amounts due because~~
8 ~~of exercise of a right to accelerate, plus the reasonable expenses~~
9 ~~of proceeding to foreclosure incurred to the time of tender,~~
10 ~~including reasonable attorney fee's of the creditor. In a~~
11 cooperative, upon nonpayment of an assessment on a unit, the unit
12 owner may be evicted in the same manner as provided by law in the
13 case of an unlawful holdover by a commercial tenant, and the lien
14 may be foreclosed as provided by this section.

15 (j) For the purpose of facilitating requests to the
16 association by trustees and judicially appointed commissioners, the
17 association shall at all times record its notice address in either
18 the office of the West Virginia Secretary of State, or in the
19 office of the clerk of the county commission of each county in
20 which the common interest community is located.

21 (k) The association's lien may be foreclosed as provided in
22 this subsection and subsection (p) of this section:

23 (l) In a condominium or planned community, the association's
24 lien must be foreclosed in like manner as a mortgage on real

1 estate;

2 (2) In a cooperative whose unit owners' interests in the units
3 are real estate, the association's lien must be foreclosed in like
4 manner as a mortgage on real estate or by power of sale under
5 subsection (1); and

6 (3) In a cooperative whose unit owners' interests in the units
7 are personal property, the association's lien must be foreclosed in
8 like manner as a security interest; and

9 (4) In a foreclosure under [insert reference to state power of
10 sale statute], the association shall give the notice required by
11 statute or, if there is no such requirement, reasonable notice of
12 its action to all lien holders of the unit whose interest would be
13 affected:

14 (1) If the unit owner's interest in a unit in a cooperative is
15 real estate, the following requirements apply:

16 (1) The association, upon nonpayment of assessments and
17 compliance with this subsection, may sell that unit at a public
18 sale or by private negotiation, and at any time, date, and place.
19 The association shall give to the unit owner and any lessee of the
20 unit owner reasonable notice in a record of the time, date, and
21 place of any public sale or, if a private sale is intended, of the
22 intention of entering into a contract to sell and of the time and
23 date after which a private disposition may be made. The same
24 notice must also be sent to any other person that has a recorded

1 interest in the unit which would be cut off by the sale, but only
2 if the recorded interest was on record seven weeks before the date
3 specified in the notice as the date of any public sale or seven
4 weeks before the date specified in the notice as the date after
5 which a private sale may be made. The notices required by this
6 subsection may be sent to any address reasonable in the
7 circumstances. A sale may not be held until five weeks after the
8 sending of the notice. The association may buy at any public sale
9 and, if the sale is conducted by a fiduciary or other person not
10 related to the association, at a private sale.

11 (2) Unless otherwise agreed, the unit owner is liable for any
12 deficiency in a foreclosure sale.

13 (3) The proceeds of a foreclosure sale must be applied in the
14 following order:

15 (A) The reasonable expenses of sale;

16 (B) The reasonable expenses of securing possession before
17 sale; the reasonable expenses of holding, maintaining, and
18 preparing the unit for sale, including payment of taxes and other
19 governmental charges and premiums on insurance; and, to the extent
20 provided for by agreement between the association and the unit
21 owner, reasonable attorney's fees, costs, and other legal expenses
22 incurred by the association;

23 (C) Satisfaction of the association's lien;

24 (D) Satisfaction in the order of priority of any subordinate

1 claim of record; and

2 (E) Remittance of any excess to the unit owner.

3 (4) A good faith purchaser for value acquires the unit free of
4 the association's debt that gave rise to the lien under which the
5 foreclosure sale occurred and any subordinate interest, even though
6 the association or other person conducting the sale failed to
7 comply with this section. The person conducting the sale shall
8 execute a conveyance to the purchaser sufficient to convey the unit
9 and stating that it is executed by the person after a foreclosure
10 of the association's lien by power of sale and that the person was
11 empowered to make the sale. Signature and title or authority of
12 the person signing the conveyance as grantor and a recital of the
13 facts of nonpayment of the assessment and of the giving of the
14 notices required by this subsection are sufficient proof of the
15 facts recited and of the authority to sign. Further proof of
16 authority is not required even though the association is named as
17 grantee in the conveyance.

18 (5) At any time before the association has disposed of a unit
19 in a cooperative or entered into a contract for its disposition
20 under the power of sale, the unit owners or the holder of any
21 subordinate security interest may cure the unit owner's default and
22 prevent sale or other disposition by tendering the performance due
23 under the security agreement, including any amounts due because of
24 exercise of a right to accelerate, plus the reasonable expenses of

1 proceeding to foreclosure incurred to the time of tender, including
2 reasonable attorney's fees and costs of the creditor.

3 (m) In an action by an association to collect assessments or
4 to foreclose a lien on a unit under this section, the court may
5 appoint a receiver to collect all sums alleged to be due and owing
6 to a unit owner before commencement or during pendency of the
7 action. The receivership is governed by [insert state law
8 generally applicable to receiverships]. The court may order the
9 receiver to pay any sums held by the receiver to the association
10 during pendency of the action to the extent of the association's
11 common expense assessments based on a periodic budget adopted by
12 the association pursuant to Section 3-115.

13 (n) An association may not commence an action to foreclose a
14 lien on a unit under this section unless:

15 (1) The unit owner, at the time the action is commenced, owes
16 a sum equal to at least [three] months of common expense
17 assessments based on the periodic budget last adopted by the
18 association pursuant to Section 3-115(a) and the unit owner has
19 failed to accept or comply with a payment plan offered by the
20 association; and

21 (2) The executive board votes to commence a foreclosure action
22 specifically against that unit.

23 (o) Unless the parties otherwise agree, the association shall
24 apply any sums paid by unit owners that are delinquent in paying

1 assessments in the following order:

2 (1) Unpaid assessments;

3 (2) Late charges;

4 (3) Reasonable attorney's fees and costs and other reasonable
5 collection charges; and

6 (4) All other unpaid fees, charges, fines, penalties,
7 interest, and late charges.

8 (p) If the only sums due with respect to a unit are fines and
9 related sums imposed against the unit, a foreclosure action may not
10 be commenced against the unit unless the association has a judgment
11 against the unit owner for the fines and related sums and has
12 perfected a judgment lien against the unit under [insert reference
13 to state statute on perfection of judgments].

14 (q) Every aspect of a foreclosure, sale, or other disposition
15 under this section, including the method, advertising, time, date,
16 place, and terms, must be commercially reasonable.

17 **§36B-3-117. OTHER LIENS.**

18 (a) In a condominium or planned community:

19 (1) Except as otherwise provided in paragraph (2), a judgment
20 for money against the association ~~(if recorded)~~, is not a lien on
21 the common elements, but is a lien in favor of the judgment lien
22 holder against all of the other real estate of the association and
23 all of the units in the common interest community at the time the
24 judgment was entered. No other property of a unit owner is subject

1 to the claims of creditors of the association.

2 (2) If the association has granted a security interest in the
3 common elements to a creditor of the association pursuant to
4 Section 3-112, the holder of that security interest shall exercise
5 its right against the common elements before its judgment lien on
6 any unit may be enforced.

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

22 (4) A judgment against the association must be indexed in the
23 name of the common interest community and the association and, when
24 so indexed, is notice of the lien against the units.

1 (b) In a cooperative:

2 (1) If the association receives notice of an impending
3 foreclosure on all or any portion of the association's real estate,
4 the association shall promptly transmit a copy of that notice to
5 each unit owner of a unit located within the real estate to be
6 foreclosed. Failure of the association to transmit the notice does
7 not affect the validity of the foreclosure.

8 (2) Whether ~~or not~~ a unit owner's unit is subject to the
9 claims of the association's creditors, no other property of a unit
10 owner is subject to those claims.

11 **§36B-3-118. Association records.**

12 (a) An association must retain the following:

13 (1) Detailed records of receipts and expenditures affecting
14 the operation and administration of the association and other
15 appropriate accounting records;

16 (2) Minutes of all meetings of its unit owners and executive
17 board other than executive sessions, a record of all actions taken
18 by the unit owners or executive board without a meeting, and a
19 record of all actions taken by a committee in place of the
20 executive board on behalf of the association;

21 (3) The names of unit owners in a form that permits
22 preparation of a list of the names of all owners and the addresses
23 at which the association communicates with them, in alphabetical
24 order showing the number of votes each owner is entitled to cast;

1 (4) Its original or restated organizational documents, if
2 required by law other than this chapter, bylaws and all amendments
3 to them, and all rules currently in effect;

4 (5) All financial statements and tax returns of the
5 association for the past three years;

6 (6) A list of the names and addresses of its current executive
7 board members and officers;

8 (7) Its most recent annual report delivered to the Secretary
9 of State, if any;

10 (8) Financial and other records sufficiently detailed to
11 enable the association to comply with section 4-109;

12 (9) Copies of current contracts to which it is a party;

13 (10) Records of executive board or committee actions to
14 approve or deny any requests for design or architectural approval
15 from unit owners; and

16 (11) Ballots, proxies, and other records related to voting by
17 unit owners for one year after the election, action, or vote to
18 which they relate.

19 (b) Subject to subsections (c) and (d), all records retained
20 by an association must be available for examination and copying by
21 a unit owner or the owner's authorized agent;

22 (1) During reasonable business hours or at a mutually
23 convenient time and location; and

24 (2) Upon five days' notice in a record reasonably identifying

1 the specific records of the association requested.

2 (c) Records retained by an association may be withheld from
3 inspection and copying to the extent that they concern:

4 (1) Personnel, salary, and medical records relating to
5 specific individuals;

6 (2) Contracts, leases, and other commercial transactions to
7 purchase or provide goods or services, currently being negotiated;

8 (3) Existing or potential litigation or mediation,
9 arbitration, or administrative proceedings;

10 (4) Existing or potential matters involving federal, state, or
11 local administrative or other formal proceedings before a
12 governmental tribunal for enforcement of the declaration, bylaws,
13 or rules;

14 (5) Communications with the association's attorney which are
15 otherwise protected by the attorney-client privilege or the
16 attorney work-product doctrine;

17 (6) Information the disclosure of which would violate law
18 other than this chapter;

19 (7) Records of an executive session of the executive board; or

20 (8) Individual unit files other than those of the requesting
21 owner.

22 (d) An association may charge a reasonable fee for providing
23 copies of any records under this section and for supervising the
24 unit owner's inspection.

1 (e) A right to copy records under this section includes the
2 right to receive copies by photocopying or other means, including
3 copies through an electronic transmission if available upon request
4 by the unit owner.

5 (f) An association is not obligated to compile or synthesize
6 information.

7 (g) Information provided pursuant to this section may not be
8 used for commercial purposes.

9 **§36B-3-120. Rules.**

10 (a) Before adopting, amending, or repealing any rule, the
11 executive board shall give all unit owners notice of:

12 (1) Its intention to adopt, amend, or repeal a rule and
13 provide the text of the rule or the proposed change; and

14 (2) A date on which the executive board will act on the
15 proposed rule or amendment after considering comments from unit
16 owners.

17 (b) Following adoption, amendment, or repeal of a rule, the
18 association shall notify the unit owners of its action and provide
19 a copy of any new or revised rule.

20 (c) An association may adopt rules to establish and enforce
21 construction and design criteria and aesthetic standards if the
22 declaration so provides. If the declaration so provides, the
23 association shall adopt procedures for enforcement of those
24 standards and for approval of construction applications, including

1 a reasonable time within which the association must act after an
2 application is submitted and the consequences of its failure to
3 act.

4 (d) A rule regarding displaying of the flag of the United
5 States must be consistent with federal law. In addition, the
6 association may not prohibit display on a unit or on a limited
7 common element adjoining a unit of the flag of this state, or signs
8 regarding candidates for public or association office or ballot
9 questions, but the association may adopt rules governing the time,
10 place, size, number, and manner of those displays.

11 (e) Unit owners may peacefully assemble on the common elements
12 to consider matters related to the common interest community, but
13 the association may adopt rules governing the time, place, and
14 manner of those assemblies.

15 (f) An association may adopt rules that affect the use of or
16 behavior in units that may be used for residential purposes, only
17 to:

18 (1) Implement a provision of the declaration;

19 (2) Regulate any behavior in or occupancy of a unit which
20 violates the declaration or adversely affects the use and enjoyment
21 of other units or the common elements by other unit owners; or

22 (3) Restrict the leasing of residential units to the extent
23 those rules are reasonably designed to meet underwriting
24 requirements of institutional lenders that regularly make loans

1 secured by first mortgages on units in common interest communities
2 or regularly purchase those mortgages.

3 (g) An association's internal business operating procedures
4 need not be adopted as rules.

5 (h) Every rule must be reasonable.

6 **§36B-3-121. Notice to unit owners.**

7 (a) An association shall deliver any notice required to be
8 given by the association under this chapter to any mailing or
9 electronic mail address a unit owner designates. Otherwise, the
10 association may deliver notices by:

11 (1) Hand delivery to each unit owner;

12 (2) Hand delivery, United States mail postage paid, or
13 commercially reasonable delivery service to the mailing address of
14 each unit;

15 (3) Electronic means, if the unit owner has given the
16 association an electronic address; or

17 (4) Any other method reasonably calculated to provide notice
18 to the unit owner.

19 (b) The ineffectiveness of a good faith effort to deliver
20 notice by an authorized means does not invalidate action taken at
21 or without a meeting.

22 **§36B-3-122. Removal of officers and directors.**

23 (a) Notwithstanding any provision of the declaration or bylaws
24 to the contrary, unit owners present in person, by proxy, or by

1 absentee ballot at any meeting of the unit owners at which a quorum
2 is present, may remove any member of the executive board and any
3 officer elected by the unit owners, with or without cause, if the
4 number of votes cast in favor of removal exceeds the number of
5 votes cast in opposition to removal, but:

6 (1) A member appointed by the declarant may not be removed by
7 a unit owner vote during the period of declarant control;

8 (2) A member appointed under subdivision 3-103(g) may be
9 removed only by the person that appointed that member; and

10 (3) The unit owners may not consider whether to remove a
11 member of the executive board or an officer elected by the unit
12 owners at a meeting of the unit owners unless that subject was
13 listed in the notice of the meeting.

14 (b) At any meeting at which a vote to remove a member of the
15 executive board or an officer is to be taken, the member or officer
16 being considered for removal must have a reasonable opportunity to
17 speak before the vote.

18 **§36B-3-123. Adoption of budgets; special assessments.**

19 (a) The executive board, at least annually, shall adopt a
20 proposed budget for the common interest community for consideration
21 by the unit owners. Not later than thirty days after adoption of
22 a proposed budget, the executive board shall provide to all the
23 unit owners a summary of the budget, including any reserves, and a
24 statement of the basis on which any reserves are calculated and

1 funded. Simultaneously, the board shall set a date not less than
2 ten days or more than sixty days after providing the summary for a
3 meeting of the unit owners to consider ratification of the budget.
4 Unless at that meeting a majority of all unit owners or any larger
5 number specified in the declaration reject the budget, the budget
6 is ratified, whether or not a quorum is present. If a proposed
7 budget is rejected, the budget last ratified by the unit owners
8 continues until unit owners ratify a subsequent budget.

9 (b) The executive board, at any time, may propose a special
10 assessment. Except as otherwise provided in subsections (c) and
11 (d), the assessment is effective only if the executive board
12 follows the procedures for ratification of a budget described in
13 subsection (a) and the unit owners do not reject the proposed
14 assessment.

15 (c) If the executive board determines by a two-thirds vote
16 that a special assessment is necessary to respond to an emergency:

17 (1) The special assessment becomes effective immediately in
18 accordance with the terms of the vote;

19 (2) Notice of the emergency assessment must be provided
20 promptly to all unit owners; and

21 (3) The executive board may spend the funds paid on account of
22 the emergency assessment only for the purposes described in the
23 vote.

24 (d) The board may not levy a special assessment for the

1 purpose of circumventing the annual budget requirements of
2 subsection (a).

3 **§36B-3-124. Litigation involving declarant.**

4 (a) The following requirements apply to an association's
5 authority under subdivision 3-102(a)(4) to institute and maintain
6 a proceeding alleging a construction defect with respect to the
7 common interest community, whether by litigation, mediation,
8 arbitration, or administratively, against a declarant or an
9 employee, independent contractor, or other person directly or
10 indirectly providing labor or materials to a declarant:

11 (1) Subject to subsection (e), before the association
12 institutes a proceeding described in this section, it shall provide
13 notice in a record of its claims to the declarant and those persons
14 that the association seeks to hold liable for the claimed defects.
15 The text of the notice may be in any form reasonably calculated to
16 give notice of the general nature of the association's claims,
17 including a list of the claimed defects. The notice may be
18 delivered by any method of service and may be addressed to any
19 person if the method of service used:

20 (A) Provides actual notice to the person named in the claim;
21 or

22 (B) Would be sufficient to give notice to the person in
23 connection with commencement of an action by the association
24 against the person.

1 (2) Subject to subsection (e), the association may not
2 institute a proceeding against a person until forty-five days after
3 the association sends notice of its claim to that person.

4 (3) During the period described in subdivision (2), the
5 declarant and any other person to which the association gave notice
6 may present to the association a plan to repair or otherwise remedy
7 the construction defects described in the notice. If the
8 association does not receive a timely remediation plan from a
9 person to which it gave notice, or if the association does not
10 accept the terms of any plan submitted, the association may
11 institute a proceeding against the person.

12 (4) If the association receives one or more timely remediation
13 plans, the executive board shall consider promptly those plans and
14 notify the persons to which it directed notice whether the plan is
15 acceptable as presented, acceptable with stated conditions, or not
16 accepted.

17 (5) If the association accepts a remediation plan from a
18 person the association seeks to hold liable for the claimed defect,
19 or if a person agrees to stated conditions to an otherwise
20 acceptable plan, the parties shall agree on a period for
21 implementation of the plan. The association may not institute a
22 proceeding against the person during the time the plan is being
23 diligently implemented.

24 (6) Except as otherwise provided in subdivision 4-116(d) for

1 warranty claims, any statute of limitation affecting the
2 association's right of action against a declarant or other person
3 is tolled during the period described in subdivision (2) and during
4 any extension of that time because a person to which notice was
5 directed has commenced and is diligently pursuing the remediation
6 plan.

7 (b) After the time described in subsection (a)(2) expires,
8 whether or not the association agrees to any remediation plan, a
9 proceeding may be instituted by:

10 (1) The association against a person to which notice was
11 directed which fails to submit a timely remediation plan, the plan
12 of which is not acceptable, or which fails to pursue diligent
13 implementation of that plan; or

14 (2) A unit owner with respect to the owner's unit and any
15 limited common elements assigned to that unit, regardless of any
16 action of the association.

17 (c) This section does not preclude the association from making
18 repairs necessary to mitigate damages or to correct any defect that
19 poses a significant and immediate health or safety risk.

20 (d) Subject to the other provisions of this subsection, the
21 determination of whether and when the association may institute a
22 proceeding described in this subsection may be made by the
23 executive board. The declaration may not require a vote by any
24 number or percent of unit owners as a condition to institution of

1 a proceeding.

2 (e) This subsection does not prevent an association from
 3 seeking equitable relief at any time without complying with
 4 subsection (a) (1) or (2).

5 **ARTICLE 4. PROTECTION OF PURCHASERS.**

6 **§36B-4-101. Applicability; waiver.**

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

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

13 (1) A gratuitous disposition of a unit;

14 (2) A disposition pursuant to court order;

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

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

18 (5) A disposition to a dealer; or

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

21 ~~(7) A disposition of a unit in a planned community in which~~
 22 ~~the declaration limits the maximum annual assessment of any unit to~~
 23 ~~not more than five hundred dollars, as adjusted pursuant to section~~
 24 ~~1-114 (Adjustment of dollar amounts) if:~~

1 ~~(i) The declarant has a reasonable and good faith belief that~~
2 ~~the maximum stated assessment will be sufficient to pay the~~
3 ~~expenses of the planned community;~~

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

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

10 (6) A disposition of a unit restricted to nonresidential
11 purposes.

12 **§36B-4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.**

13 (a) Except as otherwise provided in subsection (b), a
14 declarant, before offering any interest in a unit to the public,
15 shall prepare a public offering statement conforming to the
16 requirements of sections 4-103, 4-104, 4-105, and 4-106.

17 (b) A declarant may transfer responsibility for preparation of
18 all or a part of the public offering statement to a successor
19 declarant (section 3-104) or to a dealer ~~who~~ that intends to offer
20 units in the common interest community. In the event of any such
21 transfer, the transferor shall provide the transferee with any
22 information necessary to enable the transferee to fulfill the
23 requirements of subsection (a).

24 (c) Any declarant or dealer ~~who~~ that offers a unit to a

1 purchaser shall deliver a public offering statement in the manner
2 prescribed in ~~subsection~~ section 4-108(a). The ~~person~~ declarant or
3 dealer ~~who~~ that prepared all or a part of the public offering
4 statement is liable under sections 4-108 and 4-117 for any false or
5 misleading statement set forth therein or for any omission of a
6 material fact therefrom. ~~with respect to that portion of the public~~
7 ~~offering statement which he prepared. If a declarant did not~~
8 ~~prepare any part of a public offering statement that he delivers,~~
9 ~~he is not liable for any false or misleading statement set forth~~
10 ~~therein or for any omission of a material fact therefrom unless he~~
11 ~~had actual knowledge of the statement or omission or, in the~~
12 ~~exercise of reasonable care, should have known of the statement or~~
13 ~~omission.~~

14 (d) If a unit is part of a common interest community and is
15 part of any other real estate regime in connection with the sale of
16 which the delivery of a public offering statement is required under
17 the laws of this state, a single public offering statement
18 conforming to the requirements of sections 4-103, 4-104, 4-105, and
19 4-106 as those requirements relate to each regime in which the unit
20 is located, and to any other requirements imposed under the laws of
21 this state, may be prepared and delivered in lieu of providing two
22 or more public offering statements.

23 **§36B-4-103. Public offering statement; general provisions.**

24 (a) Except as provided in subsection (b), a public offering

1 statement must contain or fully and accurately disclose:

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

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

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

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

21 (5) The financial information required by subsection (b). ~~Any~~
22 ~~current balance sheet and a projected budget for the association,~~
23 ~~either within or as an exhibit to the public offering statement,~~
24 ~~for one year after the date of the first conveyance to a purchaser~~

1 ~~and thereafter the current budget of the association, a statement~~
2 ~~of who prepared the budget and a statement of the budget's~~
3 ~~assumptions concerning occupancy and inflation factors. The budget~~
4 ~~must include, without limitation:~~

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

8 ~~(ii) A statement of any other reserves;~~

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

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

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

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

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

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

1 declarant;

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

5 (11) A statement that:

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

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

21 ~~(iii)~~ (C) If a purchaser receives the public offering
22 statement more than fifteen days before signing a contract, he or
23 she cannot may not cancel the contract;

24 (12) A statement of any unsatisfied judgments or pending suits

1 action against the association and the status of any pending ~~suits~~
2 action material to the common interest community of which a
3 declarant has actual knowledge;

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

9 (14) Any restraints on alienation of any portion of the common
10 interest community and any restrictions:

11 ~~(i)~~ (A) On use, occupancy, and alienation of the units; and
12 ~~(ii)~~ (B) On the amount for which a unit may be sold or on the
13 amount that may be received by a unit owner on sale, condemnation
14 or casualty loss to the unit or to the common interest community or
15 on termination of the common interest community;

16 (15) A description of the insurance coverage provided for the
17 benefit of unit owners;

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

21 (17) The extent to which financial arrangements have been
22 provided for completion of all improvements that the declarant is
23 obligated to build pursuant to section 4-119 (Declarant's
24 obligation to complete and restore);

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

3 (19) ~~All~~ Any other unusual and material circumstances,
4 features and characteristics of the common interest community and
5 the units; ~~and~~

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

14 (21) A description of any arrangement described in section
15 1-209 binding the association.

16 (b) The public offering statement must contain any current
17 balance sheet and a projected budget for the association, either
18 within or as an exhibit to the public offering statement, for one
19 year after the date of the first conveyance to a purchaser, and
20 thereafter the current budget of the association, a statement of
21 who prepared the budget, and a statement of the budget's
22 assumptions concerning occupancy and inflation factors. The budget
23 must include:

24 (A) A statement of the amount, or a statement that there is no

1 amount, included in the budget as a reserve for repairs and
2 replacement;

3 (B) A statement of any other reserves;

4 (C) The proposed common expense assessment by category of
5 expenditures for the association; and

6 (D) The projected monthly common expense assessment for each
7 type of unit.

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

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

20 **§36B-4-108. Purchaser's right to cancel.**

21 (a) A person required to deliver a public offering statement
22 pursuant to section 4-102(c) shall provide a purchaser with a copy
23 of the public offering statement and all amendments thereto before
24 conveyance of the unit, and not later than the date of any contract

1 of sale. Unless a purchaser is given the public offering statement
2 more than fifteen days before execution of a contract for the
3 purchase of a unit, the purchaser, before conveyance, may cancel
4 the contract within fifteen days after first receiving the public
5 offering statement.

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

12 (c) If a person required to deliver a public offering
13 statement pursuant to section 4-102(c) fails to provide a purchaser
14 to whom a unit is conveyed with that public offering statement and
15 all amendments thereto as required by subsection (a), the
16 purchaser, in addition to any rights to damages or other relief, is
17 entitled to receive from that person an amount equal to ten percent
18 of the sale price of the unit, plus ten percent of the share,
19 proportionate to his common expense liability, of any indebtedness
20 of the association secured by security interests encumbering the
21 common interest community. ~~Provided, That purchaser show that he or~~
22 ~~she has been actually damaged as a result of the failure to provide~~
23 ~~such offering statement and that his or her action to recover such~~
24 ~~damage and the penalty provided in this subsection is instituted~~

1 ~~within three years from the date on which purchaser's right of~~
2 ~~action shall have accrued.~~

3 **§36B-4-109. Resales of units.**

4 (a) Except in the case of a sale in which delivery of a public
5 offering statement is required, or unless exempt under section
6 4-101(b), a unit owner shall furnish to a purchaser before
7 ~~execution of any contract for sale of a unit, or otherwise by~~
8 ~~conveyance, a copy of the declaration (other than any plats and~~
9 ~~plans), the earlier of conveyance or transfer of the right to~~
10 ~~possession of a unit, a copy of the declaration, other than any~~
11 ~~plats and plans,~~ the bylaws, the rules or regulations of the
12 association, and a certificate containing:

13 (1) A statement disclosing the effect on the proposed
14 disposition of any right of first refusal or other restraint on the
15 free alienability of the unit held by the association;

16 (2) A statement setting forth the amount of the ~~monthly~~
17 periodic common expense assessment and any unpaid common expense or
18 special assessment currently due and payable from the selling unit
19 owner;

20 (3) A statement of any other fees payable by the owner of the
21 unit being sold; ~~unit owners;~~

22 (4) A statement of any capital expenditures ~~anticipated~~
23 approved by the association for the current and ~~two next~~ succeeding
24 fiscal years;

1 (5) A statement of the amount of any reserves for capital
2 expenditures and of any portions of those reserves designated by
3 the association for any specified projects;

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

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

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

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

12 (10) A statement as to whether the executive board has
13 ~~knowledge that any given or received notice in a record that any~~
14 existing uses, occupancies, alterations or improvements in or to
15 the unit or to the limited common elements assigned thereto violate
16 any provision of the declaration;

17 (11) A statement as to whether the executive board has
18 ~~knowledge of any violations of the health~~ received notice in a
19 record from a governmental agency of any violation of
20 environmental, health, or building codes with respect to the unit,
21 the limited common elements assigned thereto, or any other portion
22 of the common interest community which has not been cured;

23 (12) A statement of the remaining term of any leasehold estate
24 affecting the common interest community and the provisions

1 governing any extension or renewal thereof;

2 (13) A statement of any restrictions in the declaration
3 affecting the amount that may be received by a unit owner upon
4 sale, condemnation, casualty loss to the unit or the common
5 interest community, or termination of the common interest
6 community; and

7 (14) In a cooperative, an accountant's statement, if any was
8 prepared, as to the deductibility for federal income tax purposes
9 by the unit owner of real estate taxes and interest paid by the
10 association;

11 (15) A statement describing any pending sale or encumbrance of
12 common elements; and

13 (16) A statement disclosing the effect on the unit to be
14 conveyed of any restrictions on the owner's right to use or occupy
15 the unit or to lease the unit to another person.

16 (b) The association, within ten days after a request by a unit
17 owner, shall furnish a certificate containing the information
18 necessary to enable the unit owner to comply with this section. A
19 unit owner providing a certificate pursuant to subsection (a) is
20 not liable to the purchaser for any erroneous information provided
21 by the association and included in the certificate.

22 (c) A purchaser is not liable for any unpaid assessment or fee
23 greater than the amount set forth in the certificate prepared by
24 the association. A unit owner is not liable to a purchaser for the

1 failure or delay of the association to provide the certificate in
2 a timely manner, but the purchase contract is voidable by the
3 purchaser until the certificate has been provided and for five days
4 thereafter or until conveyance, whichever first occurs.

5 **§36B-4-112. Conversion buildings.**

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

24 (b) For sixty days after delivery or mailing of the notice

1 described in subsection (a), the person required to give the notice
2 shall offer to convey each unit or proposed unit occupied for
3 residential use to the tenant who leases that unit. If a tenant
4 fails to purchase the unit during that sixty day period, the
5 offeror may not offer to dispose of an interest in that unit during
6 the following one hundred eighty days at a price or on terms more
7 favorable to the offeree than the price or terms offered to the
8 tenant. This subsection does not apply to any unit in a conversion
9 building if that unit will be restricted exclusively to
10 nonresidential use or the boundaries of the converted unit do not
11 substantially conform to the dimensions of the residential unit
12 before conversion.

13 (c) If a seller, in violation of subsection (b), conveys a
14 unit to a purchaser for value who has no knowledge of the
15 violation, the recordation of the deed conveying the unit or, in a
16 cooperative, the conveyance of the unit, extinguishes any right a
17 tenant may have under subsection (b) to purchase that unit if the
18 deed states that the seller has complied with subsection (b), but
19 the conveyances does not affect the right of a tenant to recover
20 damages from the seller for a violation of subsection (b).

21 (d) If a notice of conversion specifies a date by which a unit
22 or proposed unit must be vacated and otherwise complies with the
23 provisions of applicable law, the notice also constitutes a notice
24 to vacate specified by that statute.

1 ~~(d)~~ (e) Nothing in this section permits termination of a lease
2 by a declarant in violation of its terms.

3 **§36B-4-113. Express warranties of quality.**

4 (a) Express warranties made by ~~any seller~~ a declarant to a
5 purchaser of a unit, if relied upon by the purchaser, are created
6 as follows:

7 (1) Any affirmation of fact or promise which relates to the
8 unit, its use, or rights appurtenant thereto, area improvements to
9 the common interest community that would directly benefit the unit,
10 or the right to use or have the benefit of facilities not located
11 in the common interest community, creates an express warranty that
12 the unit and related rights and uses will conform to the
13 affirmation or promise;

14 (2) Any model or description of the physical characteristics
15 of the common interest community, including plans and
16 specifications of or for improvements, creates an express warranty
17 that the common interest community will conform to the model or
18 description unless the model or description clearly discloses that
19 it is only proposed or is subject to change;

20 (3) Any description of the quantity or extent of the real
21 estate comprising the common interest community, including plats or
22 surveys, creates an express warranty that the common interest
23 community will conform to the description, subject to customary
24 tolerances; and

1 (4) A provision that a purchaser may put a unit only to a
2 specified use is an express warranty that the specified use is
3 lawful.

4 (b) Neither formal words, such as "warranty" or "guarantee,"
5 nor a specific intention to make a warranty, are necessary to
6 create an express warranty of quality, but a statement purporting
7 to be merely an opinion or commendation of the real estate or its
8 value does not create a warranty.

9 (c) Any conveyance of a unit transfers to the purchaser all
10 express warranties of quality made by ~~previous sellers.~~ the
11 declarant.

12 **§36B-4-114. IMPLIED WARRANTIES OF QUALITY.**

13 (a) A declarant and any dealer warrants that a unit will be in
14 at least as good condition at the earlier of the time of the
15 conveyance or delivery of possession as it was at the time of
16 contracting, reasonable wear and tear excepted.

17 (b) A declarant and any dealer impliedly warrants that a unit
18 and the common elements in the common interest community are
19 suitable for the ordinary uses of real estate of its type and that
20 any improvements made or contracted for by ~~him,~~ the declarant or
21 dealer, or made by any person before the creation of the common
22 interest community, will be:

23 (1) Free from defective materials; and

24 (2) Constructed in accordance with applicable law, according

1 to sound engineering and construction standards, and in a
2 workmanlike manner.

3 (c) ~~In addition,~~ A declarant and any dealer warrants to a
4 purchaser of a unit that may be used for residential use that an
5 existing use, continuation of which is contemplated by the parties,
6 does not violate applicable law at the earlier of the time of
7 conveyance or delivery of possession.

8 (d) Warranties imposed by this section may be excluded or
9 modified as specified in Section 4-115.

10 (e) For purposes of this section, improvements made or
11 contracted for by an affiliate of a declarant (section 1-103(1))
12 are made or contracted for by the declarant.

13 (f) Any conveyance of a unit transfers to the purchaser all of
14 the declarant's implied warranties of quality.

15 **§36B-4-116. Statute of limitations for warranties.**

16 (a) Unless a period of limitation is tolled under section
17 3-111 or affected by subsection (d), a judicial proceeding for
18 breach of any obligation arising under section 4-113 or 4-114 must
19 be commenced within six years after the cause of action accrues,
20 but the parties may agree to reduce the period of limitation to not
21 less than two years. With respect to a unit that may be occupied
22 for residential use, an agreement to reduce the period of
23 limitation must be evidenced by a separate instrument executed by
24 the purchaser.

1 (b) Subject to subsection (c), a cause of action for breach of
2 warranty of quality, regardless of the purchaser's lack of
3 knowledge of the breach, accrues:

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

9 (2) As to each common element, at the time the common element
10 is completed or, if later, as to:

11 ~~(i)~~ (A) A common element that ~~may be~~ is added to the common
12 interest community ~~or portion thereof,~~ by exercise of development
13 rights, at the time the first unit ~~therein~~ which was added to the
14 condominium by the same exercise of development rights is conveyed
15 to a bona fide purchaser; or

16 ~~(ii)~~ (B) a common element within any other portion of the
17 common interest community, at the time the first unit is conveyed
18 to a bona fide purchaser.

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

24 (d) During the period of declarant control, the association

1 may authorize an independent committee of the executive board to
2 evaluate and enforce any warranty claims involving the common
3 elements, and to compromise those claims. Only members of the
4 executive board elected by unit owners other than the declarant and
5 other persons appointed by those independent members may serve on
6 the committee, and the committee's decision must be free of any
7 control by the declarant or any member of the executive board or
8 officer appointed by the declarant. All costs reasonably incurred
9 by the committee, including attorney's fees, are common expenses,
10 and must be added to the budget annually adopted by the association
11 under section 3-115. If the committee is so created, the period of
12 limitation for a warranty claim considered by the committee begins
13 to run from the date of the first meeting of the committee.

14 **§36B-4-117. Effect of violations on rights of action; attorney's**
15 **fees.**

16 (a) If a declarant or any other person subject to this chapter
17 fails to comply with any of its provisions or any provision of the
18 declaration or bylaws, any person or class of persons adversely
19 affected by the failure to comply has a claim for appropriate
20 relief. A declarant, association, unit owner, or any other person
21 subject to this chapter may bring an action to enforce a right
22 granted or obligation imposed by this chapter, the declaration, or
23 the bylaws. Punitive damages may be awarded for a willful failure
24 to comply with this chapter. The court in an appropriate case, may

1 award reasonable attorney's fees and costs.

2 (b) Parties to a dispute arising under this chapter, the
3 declaration, or the bylaws may agree to resolve the dispute by any
4 form of binding or nonbinding alternative dispute resolution, but:

5 (1) A declarant may agree with the association to do so only
6 after the period of declarant control has expired unless the
7 agreement is made with an independent committee of the executive
8 board elected pursuant to subdivision 4-116(d); and

9 (2) An agreement to submit to any form of binding alternative
10 dispute resolution must be in a record authenticated by the
11 parties.

NOTE: The purpose of this bill is to update the Uniform Common Interest Ownership Act.

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

§36B-1-115, §36B-1-116, §36B-1-208, §36B-1-209, §36B-2-123, §36B-2-124, §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123 and §36B-3-124 are new; therefore, they have been completely underscored.

§36B-3-110, §36B-3-111 and §36B-3-118 have been completely rewritten; therefore they have been completely underscored.