

**H. B. 2517**

(By Delegates Ferro, Walters, Perry, Fluharty, Storch, P. Smith,  
Longstreth, Trecost, Sponaugle and Reynolds)

[Introduced January 30, 2015; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201, §36B-1-203 and §36B-1-204 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §36B-1-115, §36B-1-116 and §36B-1-208; to amend and reenact §36B-2-109, §36B-2-112, §36B-2-116, §36B-2-117 and §36B-2-119 of said code; to amend said code by adding thereto two new sections, designated §36B-2-123 and §36B-2-124; to amend and reenact §36B-3-102, §36B-3-103, §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-110, §36B-3-112, §36B-3-116 and §36B-3-118 of said code; to amend said code by adding thereto five new sections, designated §36B-3-120, §36B-3-121, §36B-3-122, §36B-3-123 and §36B-3-124; and to amend and reenact §36B-4-103, §36B-4-109, §36B-4-112, §36B-4-116 and §36B-4-117 of said code, all relating to updating the Uniform Common Interest Ownership Act; and providing for applicability of the chapter.

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

That §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201, §36B-1-203 and §36B-1-204 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended

1 by adding thereto three new sections, designated §36B-1-115, §36B-1-116 and §36B-1-208; that  
 2 §36B-2-109, §36B-2-112, §36B-2-116, §36B-2-117 and §36B-2-119 of said code be amended and  
 3 reenacted; that said code be amended by adding thereto two new sections, designated §36B-2-123  
 4 and §36B-2-124; that §36B-3-102, §36B-3-103, §36B-3-105, §36B-3-106, §36B-3-108, §36B-3-110,  
 5 §36B-3-112, §36B-3-116 and §36B-3-118 of said code be amended and reenacted; that said code  
 6 be amended by adding thereto five new sections, designated §36B-3-120, §36B-3-121, §36B-3-122,  
 7 §36B-3-123 and §36B-3-124; and that §36B-4-103, §36B-4-109, §36B-4-112, §36B-4-116 and  
 8 §36B-4-117 of said code be amended and reenacted, all to read as follows:

9 **ARTICLE 1. GENERAL PROVISIONS.**

10 **§36B-1-103. Definitions.**

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

13 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under  
 14 common control with a declarant. For purposes of this definition: A person "controls" a declarant  
 15 if the person: (i) Is a general partner, officer, director or employer of the declarant; (ii) directly or  
 16 indirectly or acting in concert with one or more other persons, or through one or more subsidiaries,  
 17 owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent  
 18 of the voting interest in the declarant; (iii) controls in any manner the election of a majority of the  
 19 directors of the declarant; or (iv) has contributed more than twenty percent of the capital of the  
 20 declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer,  
 21 director or employer of the person; (ii) directly or indirectly or acting in concert with one or more  
 22 other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or

1 holds proxies representing, more than twenty percent of the voting interest in the person; (iii)  
 2 controls in any manner the election of a majority of the directors of the person; or (iv) has  
 3 contributed more than twenty percent of the capital of the person. Control does not exist if the  
 4 powers described in this paragraph are held solely as security for an obligation and are not exercised.

5 (2) "Allocated interests" means the following interests allocated to each unit: (i) In a  
 6 condominium, the undivided interest in the common elements, the common expense liability, and  
 7 votes in the association; (ii) in a cooperative, the common expense liability and the ownership  
 8 interest and votes in the association; and (iii) in a planned community, the common expense liability  
 9 and votes in the association.

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

12 ~~(3)~~ (4) "Association" or "unit owners' association" means the unit owners' association  
 13 organized under section one hundred one, article three of this chapter.

14 (5) "Bylaws" means instruments, however denominated, that contain the procedures for  
 15 conduct of the affairs of the association regardless of the form in which the association is organized,  
 16 including any amendments to the instruments.

17 ~~(4)~~ (6) "Common elements" means: (i) In a condominium or cooperative, all portions of the  
 18 common interest community other than the units; ~~and~~ (ii) in a planned community, any real estate  
 19 within a planned community owned or leased by the association, other than a unit; and (iii) in all  
 20 common interest communities, any other interests in real estate for the benefit of unit owners which  
 21 are subject to te declaration.

22 ~~(5)~~ (7) "Common expenses" means expenditures made by, or financial liabilities of, the

1 association, together with any allocations to reserves.

2 ~~(6)~~ (8) "Common expense liability" means the liability for common expenses allocated to  
3 each unit pursuant to section one hundred seven, article two of this chapter.

4 ~~(7)~~ (9) "Common interest community" means real estate described to the declaration with  
5 respect to which a person, by virtue of his or her ownership of a unit, is obligated to pay for a share  
6 of real estate taxes, insurance premiums, maintenance, ~~or~~ improvement of, or service or other  
7 expenses related to, common elements, other units, or other real estate described in a the declaration:  
8 *Provided*, That any resort owner which, prior to the effective date of this article, began the  
9 development of a resort and imposed fees or assessments upon owners of real estate in the resort for  
10 maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common  
11 facilities in and around the resort, for fire and police protection and for such other services as may  
12 be made available to owners of real estate, may also impose the same fees and assessments to be  
13 used for the same or similar purposes upon persons purchasing real estate in the resort after the  
14 effective date of this article without creating a common interest community.

15 The term does not include an arrangement described in sections two hundred-nine and two  
16 hundred-ten of this article. For purposes of this paragraph, "Ownership of a unit" does not include  
17 holding a leasehold interest of less than twenty years in a unit, including renewal options.

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

22 ~~(9)~~ (11) "Conversion building" means a building that at any time before creation of the

1 common interest community was occupied wholly or partially by persons other than purchasers and  
2 persons who occupy with the consent of purchasers.

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

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

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

11 ~~(13)~~ (15) "Declaration" means ~~any the~~ the instruments, however denominated, that create a  
12 common interest community, including any amendments to ~~those the~~ the instruments.

13 ~~(14)~~ (16) "Development rights" means any right or combination of rights reserved by a  
14 declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units,  
15 common elements or limited common elements within a common interest community; (iii) subdivide  
16 units or convert units into common elements; or (iv) withdraw real estate from a common interest  
17 community.

18 ~~(15)~~ (17) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal  
19 or equitable interest in a unit, but the term does not include the transfer or release of a security  
20 interest.

21 ~~(16)~~ (18) "Executive board" means the body, regardless of name, designated in the declaration  
22 or bylaws to act on behalf of the association.

1           ~~(17)~~ (19) "Identifying number" means a symbol or address that identifies only one unit in a  
2 common interest community.

3           ~~(18)~~ (20) "Leasehold common interest community" means a common interest community in  
4 which all or a portion of the real estate is subject to a lease, the expiration or termination of which  
5 will terminate the common interest community or reduce its size.

6           ~~(19)~~ (21) "Limited common element" means a portion of the common elements allocated by  
7 the declaration or by operation of subdivision (2) or (4), section one hundred two, article two of this  
8 chapter for the exclusive use of one or more but fewer than all of the units.

9           ~~(20)~~ (22) "Master association" means an organization described in section one hundred  
10 twenty, article two of this chapter, whether or not it is also an association described in section one  
11 hundred one, article three of this chapter.

12           ~~(21)~~ (23) "Offering" means any advertisement, inducement, solicitation or attempt to  
13 encourage any person to acquire any interest in a unit, other than as security for an obligation. An  
14 advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium  
15 to the general public, of a common interest community not located in this state, is not an offering if  
16 the advertisement states that an offering may be made only in compliance with the law of the  
17 jurisdiction in which the common interest community is located.

18           ~~(22)~~ (24) "Person" means an individual, corporation, business trust, estate, trust, partnership,  
19 limited liability company, association, joint venture, public corporation, government, governmental  
20 subdivision, ~~or~~ agency, or instrumentality, or any other legal or commercial entity. In the case of a  
21 land trust, the corpus of which is real estate, ~~however, "person" the term~~ the term means the beneficiary of  
22 the trust rather than the trust or the trustee.

1           ~~(23)~~ (25) "Planned community" means a common interest community that is not a  
2 condominium or a cooperative. A condominium or cooperative may be part of a planned  
3 community.

4           ~~(24)~~ (26) "Proprietary lease" means an agreement with the association pursuant to which a  
5 member is entitled to exclusive possession of a unit in a cooperative.

6           ~~(25)~~ (27) "Purchaser" means a person, other than a declarant or a dealer, ~~who~~ that by means  
7 of a voluntary transfer acquires a legal or equitable interest in a unit other than: (i) A leasehold  
8 interest (including renewal options) of less than twenty years; or (ii) as security for an obligation.

9           ~~(26)~~ (28) "Real estate" means any leasehold or other estate or interest in, over, or under land,  
10 including structures, fixtures and other improvements and interest that by custom, usage or law pass  
11 with a conveyance of land though not described in the contract of sale or instrument of conveyance.  
12 ~~"Real estate"~~ The term includes parcels with or without upper or lower boundaries, and spaces that  
13 may be filled with air or water.

14           (29) "Record" means information that is inscribed on a tangible medium or that is stored in  
15 an electronic or other medium and is retrievable in perceivable form.

16           ~~(27)~~ (30) "Residential purposes" means use for dwelling or recreational purposes, or both.

17           (31) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association,  
18 however dominated, which is not set forth in the declaration or bylaws and which governs the  
19 conduct of persons or the use or appearance of property.

20           ~~(28)~~ (32) "Resort" means a destination location which consists of: (i) One or more persons  
21 offering recreational facilities and services such as skiing, golf, tennis or boating to the general  
22 public and commercial facilities such as retail stores, restaurants and hotels or other lodging

1 accommodations; and (ii) at least one hundred residential units, a majority of which are used as  
2 vacation or second homes rather than primary residences.

3 ~~(29)~~ (33) "Resort owner" means any person owning or operating substantially all of the  
4 recreational facilities located within a resort, or the predecessor in title of any such person.

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

11 ~~(31)~~ (35) "Special declarant rights" means rights reserved for the benefit of a declarant to:  
12 (i) Complete improvements indicated on plans and plans filed with the declaration (section one  
13 hundred nine, article two of this chapter) or, in a cooperative, to complete improvements described  
14 in the public offering statement pursuant to subdivision (2), subsection (a), section one hundred  
15 three, article four of this chapter; (ii) exercise any development right (section one hundred ten, article  
16 two of this chapter); (iii) maintain sales offices, management offices, signs advertising the common  
17 interest community, and models (section one hundred fifteen, article two of this chapter); (iv) use  
18 easements through the common elements for the purpose of making improvements within the  
19 common interest community or within real estate which may be added to the common interest  
20 community (section one hundred sixteen, article two of this chapter); (v) make the common interest  
21 community subject to a master association (section one hundred twenty, article two of this chapter);  
22 (vi) merge or consolidate a common interest community with another common interest community

1 of the same form of ownership (section one hundred twenty-one, article two of this chapter); ~~or~~ (vii)  
 2 appoint or remove any officer of the association or any master association or any executive board  
 3 member during any period of declarant control (subsection (d), section one hundred three, article  
 4 three of this chapter); (viii) control any construction, design review, or aesthetic standards committee  
 5 or process; (ix) attend meetings of the unit owners and, except during an executive session, the  
 6 executive board; or (x) have access to the records of the association to the same extent as a unit  
 7 owner.

8 ~~(32)~~ (36) "Time share" means a right to occupy a unit or any of several units during five or  
 9 more separated time periods over a period of at least five years, including renewal options, whether  
 10 or not coupled with an estate or interest in a common interest community or a specified portion  
 11 thereof.

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

19 ~~(34)~~ (38) "Unit owner" means a declarant or other person ~~who~~ that owns a unit, or a lessee  
 20 of a unit in a leasehold common interest community whose lease expires simultaneously with any  
 21 lease, the expiration or termination of which will remove the unit from the common interest  
 22 community, but does not include a person having an interest in a unit solely as security for an

1 obligation. In a condominium or planned community, the declarant is the owner of any unit created  
2 by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which  
3 allocated interests have been allocated (section one hundred seven, article two of this chapter) until  
4 that unit has been conveyed to another person.

5 **§36B-1-104. No variation by agreement.**

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

11 **§36B-1-108. Supplemental general principles of law applicable.**

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

18 **§36B-1-115. Relation to Electronic Signatures in Global and National Commerce Act.**

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

1 **§36B-1-116. Severability.**

2 If any provision of this chapter or the application thereof to any person or circumstances is  
 3 held invalid, the invalidity does not affect other provisions or applications of this chapter which can  
 4 be given effect without the invalid provisions or applications, and to this end the provisions of this  
 5 chapter are severable.

6 **§36B-1-201. Applicability to new common interest communities.**

7 Except as otherwise provided in sections 1-202 and 1-203, this chapter applies to all common  
 8 interest communities created within this state after the effective date of this chapter. The provisions  
 9 of chapter fifty-three, acts of the Legislature, 1963, chapter one hundred twenty-nine, acts of the  
 10 Legislature, 1980, and chapter thirty-eight, acts of the Legislature, 1984, do not apply to common  
 11 interest communities created after the effective date of this chapter. Amendments to this chapter  
 12 apply to all common interest communities created after the effective date of this chapter or made  
 13 subject to this chapter by amendment of the declaration of the common interest community,  
 14 regardless of when the amendment to this chapter becomes effective.

15 **§36B-1-203. Applicability to new common interest communities - Exception for small and**  
 16 **limited expense liability planned communities.**

17 (a) If a planned community:

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

19 (2) Provides, in its declaration, that the annual average common expense liability of all units  
 20 restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid  
 21 by the association, may not exceed \$300 as adjusted pursuant to section 1-114 (adjustment of dollar  
 22 amounts), it is subject only to sections 1-105 (separate titles and taxation), 1-106 (applicability of

1 local ordinances, regulations and building codes) and 1-107 (eminent domain) unless the declaration  
2 provides that this entire chapter is applicable.

3 (b) The exemption provided in subdivision (2), subsection (a) of this article applies only if:

4 (1) The declarant reasonably believes in good faith that the maximum stated assessment will  
5 be sufficient to pay the expenses of the planned community; and

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

9 (c) If the exemption provided in subdivision (2), subsection (a) of this article was included  
10 in a declaration recorded prior to July 1, 2015:

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

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

18 (3) If the declarant no longer owns any unit, the declaration may be amended by sixty-seven  
19 percent of the units to allow the association to meet its actual financial needs, notwithstanding any  
20 provision in the declaration to the contrary. An amendment made in accordance with this subsection  
21 will not cause the community to be subject to any greater provisions of this chapter than set forth in  
22 subdivision (2), subsection (a) of this article.

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

5 **§36B-1-204. Applicability to preexisting common interest communities.**

6            ~~(a) Except as provided in section 1-205, Same; exception for small preexisting cooperatives~~  
 7 ~~and planned communities, sections 1-105 (separate titles and taxation), 1-106 (Applicability of local~~  
 8 ~~ordinances, regulations and building codes), 1-107 (Eminent domain), 2-103 (Construction and~~  
 9 ~~validity of declaration and bylaws), 2-104 (Description of units), 2-121 (Merger or consolidation of~~  
 10 ~~common interest communities), 3-102(a)(1) through (6) and (11) through (16) (Powers of unit~~  
 11 ~~owners' association), 3-111 (Tort and contract liability), 3-116 (Lien for assessments), 3-118~~  
 12 ~~(Association records), 4-109 (Resales of units), and 4-117 (Effect of violation on rights of action;~~  
 13 ~~attorney's fees), and section 1-103 (Definitions) to the extent necessary in construing any of those~~  
 14 ~~sections, apply to all common interest communities created in this state before the effective date of~~  
 15 ~~this chapter; but those sections apply only with respect to events and circumstances occurring after~~  
 16 ~~the effective date of this chapter and do not invalidate existing provisions of the declaration, bylaws~~  
 17 ~~or plats or plans of those common interest communities. Except for a cooperative or planned~~  
 18 community described in section 1-205 (Same-Exception for small preexisting cooperatives and  
 19 planned communities), or a nonresidential common interest community described in section 1-207,  
 20 (Same; Exception for Small Preexisting Cooperatives and Planned Communities), the following  
 21 apply to a common interest community created in this state before the effective date of this article:

22            (1) Section 1-105 (Separate Titles and Taxation);

- 1       (2) Section 1-106 (Applicability of Local Ordinances, Regulations, and Building Codes);  
2       (3) Section 1-107 (Eminent Domain);  
3       (4) Section 1-206 (Amendments to Governing Instruments);  
4       (5) Section 2-102 (Unit Boundaries);  
5       (6) Section 2-103 (Construction and Validity of Declaration and Bylaws);  
6       (7) Section 2-104 (Description of Units);  
7       (8) Section 2-117(h) and (i) (Amendments to Declaration);  
8       (9) Section 2-121 (Merger or Consolidation of Common Interest Communities);  
9       (10) Section 2-124 (Termination Following Catastrophe);  
10       (11) Section 3-102(a)(1) through (6) and (11) through (16) (Powers of Unit Owners’  
11 Association);  
12       (12) Section 3-103 (Executive Board Members and Officers);  
13       (13) Section 3-111 (Tort and Contract Liability);  
14       (14) Section 3-116 (Lien for Assessments);  
15       (15) Section 3-118 (Association Records);  
16       (16) Section 3-124 (Litigation Involving Declarant);  
17       (17) Section 4-109 (Resales of Units);  
18       (18) Section 4-117 (Effect of Violation on Rights of Action; Attorney’s Fees); and  
19       (19) Section 1-103 (Definitions) to the extent necessary to construe any of those sections.  
20       (b) The sections described in subsection (a) apply only to events and circumstances occurring  
21 after the effective date of this chapter and do not invalidate existing provisions of the declaration,  
22 by laws, or plats or plans of those common interest communities.

1           ~~(b)~~ (c) The provisions of chapter one hundred fifty-three, Acts of the Legislature, 1963,  
2 chapter one hundred twenty-nine, Acts of the Legislature, 1980, or of chapter thirty-eight, Acts of  
3 the Legislature, 1984, do not apply to condominiums or other common interest communities created  
4 after the effective date of this chapter and do not invalidate any amendment to the declaration, rules,  
5 bylaws, plats and plans and code of regulations of any condominium or common interest community  
6 created before the effective date of this chapter if the amendment would be permitted by this chapter.  
7 The amendment must be adopted in conformity with the procedures and requirements specified by  
8 those instruments and by chapter one hundred fifty-three, Acts of the Legislature, 1963. If the  
9 amendment grants to any person any rights, powers or privileges permitted by this chapter, all  
10 correlative obligations, liabilities and restrictions in this chapter also apply to that person.

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

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

20 **§36B-1-208. Other Exemption Real Estates Arrangements.**

21           (a) An arrangement between the associations for two or more common interest communities  
22 to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements

1 of real estate, or other activities specified in their arrangement or declarations does not create a  
 2 separate common interest community.

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

10 **ARTICLE 2. CREATION, ALTERATION AND TERMINATION OF COMMON**  
 11 **INTEREST COMMUNITIES.**

12 **§36B-2-109. Plats and plans.**

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

18 (b) Each plat must show:

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

21 (2) The location and dimensions of all real estate not subject to development rights or subject  
 22 only to the development right to withdraw and the location and dimensions of all existing

1 improvements within that real estate;

2 (3) A legally sufficient description of any real estate subject to development rights, labeled  
3 to identify the rights applicable to each parcel;

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

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

8 (6) The location and dimensions of any vertical unit boundaries not shown or projected on  
9 plans recorded pursuant to subsection (d) and that unit's identifying number;

10 (7) The location with reference to an established datum of any horizontal unit boundaries not  
11 shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

12 (8) A legally sufficient description of any real estate in which the unit owners will own only  
13 an estate for years, labeled as "leasehold real estate";

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

16 (10) The location and dimensions of limited common elements, including porches, balconies  
17 and patios, other than parking spaces and the other limited common elements described in sections  
18 2-102(2) and (4); and

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

21 (c) A plat may also show the intended location and dimensions of any contemplated  
22 improvement to be constructed anywhere within the common interest community. Any

1 contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE  
2 BUILT."

3 (d) To the extent not shown or projected on the plats, plans of the units must show or project:

4 (1) The location and dimensions of the vertical boundaries of each unit and that unit's  
5 identifying number;

6 (2) Any horizontal unit boundaries, with reference to an established datum and that unit's  
7 identifying number; and

8 (3) Any units in which the declarant has reserved the right to create additional units or  
9 common elements (section 2- 110(c)), identified appropriately.

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

13 (f) Upon exercising any development right, the declarant shall record either new plats and  
14 plans necessary to conform to the requirements of subsections (a), (b) and (d) or new certifications  
15 of plats and plans previously recorded if those plats and plans otherwise conform to the requirements  
16 of those subsections.

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

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

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

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

4 **§36B-2-112. Relocation of boundaries between adjoining units.**

5           (a) Subject to the provisions of the declaration and other provisions of law, the boundaries  
6 between adjoining units may be relocated by an amendment to the declaration upon application to  
7 the association by the owners of those units. If the owners of the adjoining units have specified a  
8 reallocation between their units of their allocated interests, the application must state the proposed  
9 reallocations. Unless the executive board determines, within thirty days, that the reallocations are  
10 unreasonable, the association shall prepare an amendment that identifies the units involved and states  
11 the reallocations. The amendment must be executed by those unit owners, contain words of  
12 conveyance between them, and, on recordation, be indexed in the name of the grantor and the  
13 grantee, and in the grantee's index in the name of the association.

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

1 and by the association, contain words of conveyance between them, and on recordation be indexed  
 2 in the name of the unit owner and the association as grantor or grantee, as appropriate.

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

8 **§36B-2-116. Easement rights.**

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

13        ~~(b) In a planned community, subject~~ Subject to ~~the provisions of~~ sections 3-102(a)(6) and  
 14 3-112, the unit owners have an easement ~~(i)~~ in the common elements for ~~purposes of~~ access to their  
 15 units. ~~(ii) to use the common elements and all real estate that must become common elements~~  
 16 ~~(section 2-105(a)(6)) for all other purposes.~~

17        (c) Subject to the declaration and rules, the unit owners have a right to use the common  
 18 elements that are not limited common elements and all real estate that must become common  
 19 elements for the purposes for which they were intended.

20 **§36B-2-117. Amendment of declaration.**

21        (a) Except in cases of amendments that may be executed by a declarant under section  
 22 2-109(f) or 2-110, ~~or by~~ the association under section 1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113,

1 or by certain unit owners under section 2-108(b), 2-112(a), 2-113(b), or 2-118(b), and except as  
2 limited by ~~subsection~~ subsections (d),(f), (g) and (h), the declaration, including any plats and plans,  
3 may be amended only by vote or agreement of unit owners of units to which at least sixty-seven  
4 percent of the votes in the association are allocated, ~~or any larger majority~~ unless the declaration  
5 specifies a different percentage for all amendments or for specific subjects of amendment. If the  
6 declaration requires the approval of another person as a condition of effectiveness, the amendment  
7 is not valid without that approval. The declaration may specify a smaller number only if all of the  
8 units are restricted exclusively to nonresidential use.

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

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

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

20 (e) Amendments to the declaration required by this chapter to be recorded by the association  
21 must be prepared, executed, recorded, and certified on behalf of the association by any officer of the  
22 association designated for that purpose or, in the absence of designation, by the president of the

1 association.

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

10 (g) The time limits specified in the declaration pursuant to section 2-105(a)(8) (Contents of  
11 the Declaration) within which reserved development rights must be exercised may be extended, and  
12 additional development rights may be created, if persons entitled to cast at least eighty percent of the  
13 votes in the association, including eighty percent of the votes allocated to units not owned by the  
14 declarant, agree to that action. The agreement is effective thirty days after an amendment to the  
15 declaration reflecting the terms of the agreement is recorded unless all the persons holding the  
16 affected special declarant rights, or security interests in those rights, record a written objection within  
17 the thirty-day period, in which case the amendment is void, or consent in writing at the time the  
18 amendment is recorded, in which case, the amendment is effective when recorded.

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

21 (i) If any provision of this chapter, law, or of the declaration requires the consent of a holder  
22 of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration,

1 that consent is deemed granted if a refusal to consent in a record is not received by the association  
2 within sixty days after the association delivers notice of the proposed amendment to the holder at  
3 an address for notice provided by the holder or mails the notice to the holder by certified mail, return  
4 receipt requested, at that address. If the holder has not provided to the association an address for  
5 notice, the association shall provide notice to the address in the security interest of record.  
6 Notwithstanding this section, an amendment to the declaration that affects the priority of a holder's  
7 security interest or the ability of that holder to foreclose its security interest may not be adopted  
8 without that holder's consent in a record if the declaration requires that consent as a condition to the  
9 effectiveness of the amendment: *Provided*, That this subsection (i) does not apply to amendments  
10 which: (A) Permit a unit previously restricted to residential occupancy to be used for nonresidential  
11 purposes; (B) increases the share of common expenses allocated to the unit in a manner  
12 disproportionate to the formula stated in the declaration pursuant to section one hundred eighteen  
13 of this article; (C) terminates the common interest community pursuant to section one hundred  
14 eighteen of this article; (D) transfers from the association to the unit, the duty to maintain and  
15 common element or limited common element previously performed by the association; or (E) the  
16 unit owner is contractually precluded from consenting to by the terms of a planned unit development  
17 rider in a recorded security instrument.

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

21 (l) If:

22 (A) Unit owners of units to which at least eighty percent of the votes in the association are

1 allocated vote for or agree to the proposed amendment;

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

3 (C) Notice of the proposed amendment is delivered to the unit owners holding the votes in

4 the association which have not voted or agreed to the proposed amendment and no written objection

5 to the proposed amendment is received by the association within sixty days after the association

6 delivers notice; or

7 (2) Unit owners of units to which at least eighty percent of the votes in the association are

8 allocated vote for or agree to the proposed amendment but at least one unit owner objects to the

9 proposed amendment and, pursuant to an action brought by the association in a the circuit court of

10 the county in which the common interest community is situate against all objecting unit owners, the

11 court finds that the objecting unit owners do not have an interest, different in kind from the interests

12 of the other unit owners, that the voting requirement of the declaration was intended to protect.

13 **§36B-2-119. Rights of secured lenders.**

14 (a) The declaration may require that all or a specified number or percentage of the lenders

15 who hold security interests encumbering the units or who have extended credit to the association

16 approve specified actions of the unit owners or the association as a condition to the effectiveness of

17 those actions, but no requirement for approval may operate to: (i) Deny or delegate control over the

18 general administrative affairs of the association by the unit owners or the executive board, or (ii)

19 prevent the association or the executive board from commencing, intervening in, or settling any

20 litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and

21 distributing any insurance proceeds except pursuant to section 3-113.

22 (b) A lender who has extended credit to an association secured by an assignment of income

1 (section 3-102(14)) or an encumbrance on the common elements (section 3-112) may enforce its  
2 security agreement in accordance with its terms, subject to the requirements of this chapter and other  
3 law. Requirements that the association must deposit its periodic common charges before default  
4 with the lender to which the association's income has been assigned, or increase its common charges  
5 at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with  
6 its terms, do not violate the prohibitions on lender approval contained in subsection (a).

7 **§36B-2-123. Master planned communities.**

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

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

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

17 (i) A sufficient legal description of the unit and all portions of the master planned community  
18 in which any other units have been conveyed to a purchaser; and

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

21 (d) The only real estate in a master planned community subject to this chapter are units that  
22 have been declared or which are being offered for sale and any other real estate described pursuant

1 to subsection (c). Other real estate that is or may become part of the master planned community is  
2 only subject to other law and to any other restrictions and limitations that appear of record.

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

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

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

13 **§36B-2-124. Termination following catastrophe.**

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

1 community.

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

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

4 (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the  
5 association, even if unincorporated, may:

6 (1) Adopt and amend bylaws and rules and regulations;

7 (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect  
8 assessments for common expenses from unit owners;

9 (3) Hire and discharge managing agents and other employees, agents, and independent  
10 contractors;

11 (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name  
12 on behalf of itself or two or more unit owners on matters affecting the common interest community;

13 (5) Make contracts and incur liabilities;

14 (6) Regulate the use, maintenance, repair, replacement, and modification of common  
15 elements;

16 (7) Cause additional improvements to be made as a part of the common elements;

17 (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real  
18 estate or personal property, but: (i) Common elements in a condominium or planned community may  
19 be conveyed or subjected to a security interest only pursuant to section one hundred twelve of this  
20 article; and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be  
21 subjected to a security interest, only pursuant to section one hundred twelve of this article;

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

1 (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the  
2 common elements, other than limited common elements described in subsections (1) and (4), section  
3 one hundred two, article two of this chapter, and for services provided to unit owners;

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

7 (12) Impose reasonable charges for the preparation and recordation of amendments to the  
8 declaration, resale certificates required by section one hundred nine, article four of this chapter, or  
9 statements of unpaid assessments;

10 (13) Provide for the indemnification of its officers and executive board and maintain  
11 directors' and officers' liability insurance;

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

14 (15) Exercise any other powers conferred by the declaration or bylaws;

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

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

19 (18) Exercise any other powers necessary and proper for the governance and operation of the  
20 association;

21 (19) May require that disputes between the association and unit owners or between two or  
22 more unit owners regarding the common interest community be submitted to nonbinding alternative

1 dispute resolution as a prerequisite to commencement of a judicial proceeding;

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

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

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

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

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

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

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

18 (A) The association shall comply with section 124 of this article, if applicable, before  
19 instituting any proceeding described in subsection (a) of said section in connection with construction  
20 defects; and

21 (B) The executive board promptly shall provide notice to the unit owners of any legal  
22 proceeding in which the association is a party other than proceedings involving enforcement of rules

1 or to recover unpaid assessments or other sums due the association.

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

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

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

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

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

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

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

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

18 (f) The executive board may determine whether to take enforcement action by exercising the  
19 association's power to impose sanctions or commencing an action for a violation of the declaration,  
20 bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim  
21 made by or against it. The executive board does not have a duty to take enforcement action if it  
22 determines that, under the facts and circumstances presented:

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

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

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

6 (4) It is not in the association’s best financial or other interests to pursue an enforcement  
7 action.

8 (g) The executive board’s decision under subsection (f) not to pursue enforcement under one  
9 set of circumstances does not prevent the executive board from taking enforcement action under  
10 another set of circumstances, but the executive board may not be arbitrary or capricious in taking  
11 enforcement action.

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

14 **§36B-3-103. Executive board members and officers.**

15 (a) Except as otherwise provided in the declaration, the bylaws, subsection (b), or other  
16 provisions of this chapter, the executive board ~~may act in all instances~~ acts on behalf of the  
17 association. In the performance of their duties, the officers and members of the executive board ~~are~~  
18 ~~required to exercise (i) if appointed by the declarant the care required of fiduciaries of the unit~~  
19 ~~owners~~ shall exercise the degree of care and loyalty to the association required of a trustee. ~~and (ii)~~  
20 ~~if elected by the unit owners, ordinary and reasonable care.~~

21 (b) Officers and members of the executive board not appointed by the declarant shall exercise  
22 the degree of care and loyalty to the association required of an officer or director of a corporation

1 organized, and are subject to the conflict of interest rules governing directors and officers, under  
 2 West Virginia Code Chapter 31E. The standards of care and loyalty described in this section apply  
 3 regardless of the form in which the association is organized.

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

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

6 (2) Amend the bylaws;

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

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

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

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

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

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

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

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

15 (iv) The day the declarant, after giving notice in a record to unit owners, records an  
16 instrument voluntarily surrendering all rights to control activities of the association. ~~A declarant may~~  
17 ~~voluntarily surrender the right to appoint and remove officers and members of the executive board~~  
18 ~~before termination of that period, but in that event the declarant may require, for the duration of the~~  
19 ~~period of declarant control, that specified actions of the association or executive board, as described~~  
20 ~~in a recorded instrument executed by the declarant, be approved by the declarant before they become~~  
21 ~~effective.~~

22 (e) Not later than sixty days after conveyance of ~~twenty-five percent~~ one-fourth of the units

1 that may be created to unit owners other than a declarant, at least one member and not less than  
 2 twenty-five percent of the members of the executive board must be elected by unit owners other than  
 3 the declarant. Not later than sixty days after conveyance of ~~fifty percent~~ one-half of the units that  
 4 may be created to unit owners other than a declarant, not less than ~~thirty-three and one-third percent~~  
 5 one third of the members of the executive board must be elected by unit owners other than the  
 6 declarant.

7 (f) Except as otherwise provided in section 2-120(e), not later than the termination of any  
 8 period of declarant control, the unit owners shall elect an executive board of at least three members,  
 9 at least a majority of whom must be unit owners. Unless the declaration provides for the election of  
 10 officers by the unit owners, the ~~The~~ executive board shall elect the officers. The executive board  
 11 members and officers shall take office upon election or appointment.

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

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

21 (2) Have no greater authority than any other member of the board.

22 **§36B-3-105. Termination of contracts and leases of declarant.**

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

5           (i) Any management, maintenance, operations, or contract, employment contract, or lease of  
6 recreational or parking areas or facilities; or

7           (ii) Any other contract or lease between the association and a declarant or an affiliate of a  
8 declarant.; or

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

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

15           (c) This section does not apply to:

16           (i) Any lease the termination of which would terminate the common interest community or  
17 reduce its size, unless the real estate subject to that lease was included in the common interest  
18 community for the purpose of avoiding the right of the association to terminate a lease under this  
19 section; or

20           (ii) A proprietary lease.

21 **§36B-3-106. Bylaws.**

22           (a) The bylaws of the association must provide:

1 (1) The number of members of the executive board and the titles of the officers of the  
2 association;

3 (2) Election by the executive board of president, treasurer, secretary, and any other officers  
4 of the association the bylaws specify;

5 (3) The qualifications, powers and duties, terms of office, and manner of electing and  
6 removing executive board members and officers and filling vacancies;

7 (4) Which, if any, of its powers the executive board or officers may delegate to other persons  
8 or to a managing agent;

9 (5) Which of its officers may prepare, execute, certify, and record amendments to the  
10 declaration on behalf of the association; ~~and~~

11 (6) A method for amending the bylaws;

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

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

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

19 **§36B-3-108. Meetings.**

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

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

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

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

13           (3) An association shall notify unit owners of the time, date, and place of each annual and  
14 special unit owners meeting not less than ten days or more than sixty days before the meeting date.  
15 Notice may be by any means described in section 3-121. by United States mail to the mailing address  
16 of each unit or to any other mailing address designated in writing by the unit owner. The notice of  
17 any meeting must state the time, date and place of the meeting and the items on the agenda,  
18 including:

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

21           (B) Any budget changes; and

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

1           (4) The minimum time to give notice required by subdivision (3) of this section may be  
2 reduced or waived for a meeting called to deal with an emergency.

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

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

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

10           (1) Meetings must be open to the unit owners except during executive sessions. The  
11 executive board and those committees may hold an executive session only during a regular or special  
12 meeting of the board or a committee. No final vote or action may be taken during an executive  
13 session. An executive session may be held only to:

14           (A) Consult with the association’s attorney concerning legal matters;

15           (B) Discuss existing or potential litigation or mediation, arbitration, or administrative  
16 proceedings;

17           (C) Discuss labor or personnel matters;

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

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

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

5           (3) During the period of declarant control, the executive board shall meet at least four times  
6 a year. At least one of those meetings must be held at the common interest community or at a place  
7 convenient to the community. After termination of the period of declarant control, all executive  
8 board meetings must be at the common interest community or at a place convenient to the  
9 community unless the unit owners amend the bylaws to vary the location of those meetings.

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

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

18           (6) If any materials are distributed to the executive board before the meeting, the executive  
19 board at the same time shall make copies of those materials reasonably available to unit owners,  
20 except that the board need not make available copies of unapproved minutes or materials that are to  
21 be considered in executive session.

22           (7) Unless the declaration or bylaws otherwise provide, the executive board may meet by

1 telephonic, video, or other conferencing process if:

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

5 (B) The process provides all unit owners the opportunity to hear or perceive the discussion  
6 and to comment as provided in subdivision (4) of this subsection.

7 (8) After termination of the period of declarant control, unit owners may amend the bylaws  
8 to vary the procedures for meetings described in subdivision (7) of this subsection.

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

14 (10) Even if an action by the executive board is not in compliance with this section, it is valid  
15 unless set aside by a court. A challenge to the validity of an action of the executive board for failure  
16 to comply with this section may not be brought more than sixty days after the minutes of the  
17 executive board of the meeting at which the action was taken are approved or the record of that  
18 action is distributed to unit owners, whichever is later.

19 **§36B-3-110. Voting; proxies; ballots.**

20 (a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a  
21 meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection  
22 (c) or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to

1 subsection (d).

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

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

6 (a) (2) If only one of several owners of a unit is present at a meeting of the association, that  
7 owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are  
8 present, the votes allocated to that unit may be cast only in accordance with the agreement of a  
9 majority in interest of the owners, unless the declaration expressly provides otherwise. There is  
10 majority agreement if any one of the owners casts the votes allocated to ~~that~~ the unit without protest  
11 being made promptly to the person presiding over the meeting by any of the other owners of the unit.

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

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

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

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

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

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

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

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

8           (5) A proxy ~~terminates one year after its date, unless it specifies a shorter term~~ is valid only  
9 for the meeting at which it is cast and any recessed session of that meeting.

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

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

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

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

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

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

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

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

1            (C) Specify the time and date by which a ballot must be delivered to the association to be  
2 counted, which time and date may not be fewer than three days after the date the association delivers  
3 the ballot; and

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

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

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

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

13            (i) ~~The provisions of subsections (a) and (b) apply~~ This section applies to lessees as if they  
14 were unit owners;

15            (ii) Unit owners who have leased their units to other persons may not cast votes on those  
16 specified matters; and

17            (iii) Lessees are entitled to notice of meetings, access to records, and other rights respecting  
18 these matters as if they were unit owners.

19            ~~(f)~~ (f) Unit owners must also be given notice ~~in the manner provided in section 3-108,~~ of all  
20 meetings at which lessees are entitled to vote.

21            ~~(g)~~ (g) ~~No votes~~ Votes allocated to a unit owned by the association ~~may~~ must be cast in any  
22 vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other

1 than the association.

2 **§36B-3-112. Conveyance or encumbrance of common elements.**

3 (a) In a condominium or planned community, portions of the common elements may be  
4 conveyed or subjected to a security interest by the association if persons entitled to cast at least  
5 eighty percent of the votes in the association, including eighty percent of the votes allocated to units  
6 not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but  
7 all owners of units to which any limited common element is allocated must agree in order to convey  
8 that limited common element or subject it to a security interest. The declaration may specify a  
9 smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds  
10 of the sale are an asset of the association.

11 (b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected  
12 to a security interest by the association if persons entitled to cast at least eighty percent of the votes  
13 in the association, including eighty percent of the votes allocated to units not owned by a declarant,  
14 or any larger percentage the declaration specified, agree to that action; but, if fewer than all of the  
15 units or limited common elements are to be conveyed or subjected to a security interest, then all unit  
16 owners of those units, or the units to which those limited common elements are allocated, must agree  
17 in order to convey those units or limited common elements or subject them to a security interest.  
18 The declaration may specify a smaller percentage only if all of the units are restricted exclusively  
19 to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported  
20 conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to section  
21 2-118, is void.

22 (c) An agreement to convey common elements in a condominium or planned community, or

1 to subject them to a security interest, or in a cooperative, an agreement to convey any part of a  
2 cooperative or subject it to a security interest, must be evidenced by the execution of an agreement,  
3 or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The  
4 agreement must specify a date after which the agreement will be void unless recorded before that  
5 date. The agreement and all ratifications thereof must be recorded in every county in which a portion  
6 of the common interest community is situated, and is effective only upon recordation.

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

12 (e) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial  
13 sale, or other voluntary transfer 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 cooperative pursuant to this  
15 section does not deprive any unit of its rights of access and support.

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

20 (1) A conveyance of common elements pursuant to this section terminates both the undivided  
21 interests in those common elements allocated to the units and the security interests in those  
22 undivided interests held by all persons holding security interests in the units; and

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

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

12           ~~(h)~~ (i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary  
13 lease without complying with this section.

14 **§36B-3-116. Lien for assessments.**

15           (a) The association has a lien on a unit for any assessment levied against that unit or fines  
16 imposed against its unit owner from the time the assessment or fine becomes due. Unless the  
17 declaration otherwise provides, fees, charges, late charges, fines and interest charged pursuant to  
18 section 3- 102(a)(10), (11) and (12) are enforceable as assessments under this section. If an  
19 assessment is payable in installments, the full amount of the assessment is a lien from the time the  
20 first installment thereof becomes due.

21           (b) A lien under this section is prior to all other liens and encumbrances on a unit except: (i)  
22 Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative,

1 liens and encumbrances which the association creates, assumes, or takes subject to; (ii) a first  
2 security interest on the unit recorded before the date on which the assessment sought to be enforced  
3 became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's  
4 interest and perfected before the date on which the assessment sought to be enforced became  
5 delinquent; and (iii) liens for real estate taxes and other governmental assessments or charges against  
6 the unit or cooperative. The lien is also prior to all security interests described in clause (ii) above  
7 to the extent of the common expense assessments based on the periodic budget adopted by the  
8 association pursuant to section 3-115(a) which would have become due in the absence of  
9 acceleration during the six months immediately preceding institution of an action to enforce the lien.  
10 This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of  
11 liens for other assessments made by the association. (The lien under this section is not subject to the  
12 provisions of (insert appropriate reference to state homestead, dower and curtesy, or other  
13 exemptions)).

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

16 (d) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are  
17 instituted within three years after the full amount of the assessments becomes due.

18 (e) This section does not prohibit actions to recover sums for which subsection (a) creates  
19 a lien or prohibit an association from taking a deed in lieu of foreclosure.

20 (f) A judgment or decree in any action brought under this section must include costs and  
21 reasonable attorney's fees for the prevailing party.

22 (g) The association upon written request shall furnish to a unit owner a statement setting forth

1 the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the  
2 statement must be in recordable form. The statement must be furnished within ten business days  
3 after receipt of the request and is binding on the association, the executive board, and every unit  
4 owner.

5 ~~(h) For the purpose of perfecting and preserving its lien, the association shall give notice to~~  
6 ~~the unit owner in the manner set forth in section one (§56-2-1), article two, chapter fifty-six of this~~  
7 ~~code, or by registered or certified mail, return receipt requested, and in a form reasonably calculated~~  
8 ~~to inform the owner of his or her liability for payment of the assessment. The lien shall be~~  
9 ~~discharged as to subsequent purchasers for value without notice unless the association shall cause~~  
10 ~~to be recorded a notice of the lien in the office of the clerk of the county commission of any county~~  
11 ~~wherein any part of the condominium is located. The notice shall contain:~~

12 ~~(1) A legally sufficient description of the unit;~~

13 ~~(2) The name or names of the owners of the unit;~~

14 ~~(3) The amount of unpaid assessments due together with the date when each fell due; and~~

15 ~~(4) The date of recordation.~~

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

20 ~~Upon payment of the assessment, the association shall execute a written release of the lien~~  
21 ~~in the manner set forth in section one (§38-12-1), article twelve, chapter thirty-eight of this code.~~

22 ~~This release shall be recorded, at the expense of the association, in the office of the clerk of the~~

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

2 ~~(i) At any time before the association has disposed of a unit in a cooperative or entered into~~  
3 ~~a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate~~  
4 ~~security interest may cure the unit owner's default and prevent sale or other disposition by tendering~~  
5 ~~the performance due under the security agreement, including any amounts due because of exercise~~  
6 ~~of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time~~  
7 ~~of tender, including reasonable attorney's fees of the creditor.~~

8 (h) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be  
9 evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial  
10 tenant, and the lien may be foreclosed as provided by this section.

11 (i) For the purpose of facilitating requests to the association by trustees and judicially  
12 appointed commissioners, the association shall at all times record its notice address in either the  
13 office of the West Virginia Secretary of State, or in the office of the clerk of the county commission  
14 of each county in which the common interest community is located.

15 **§36B-3-118. Association records.**

16 (a) An association must retain the following:

17 (1) Detailed records of receipts and expenditures affecting the operation and administration  
18 of the association and other appropriate accounting records;

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

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

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

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

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

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

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

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

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

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

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

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

19           (2) Upon five days notice in a record reasonably identifying the specific records of the  
20 association requested.

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

- 1       (1) Personnel, salary, and medical records relating to specific individuals;
- 2       (2) Contracts, leases, and other commercial transactions to purchase or provide goods or  
3 services, currently being negotiated;
- 4       (3) Existing or potential litigation or mediation, arbitration, or administrative proceedings;
- 5       (4) Existing or potential matters involving federal, state, or local administrative or other  
6 formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or  
7 rules;
- 8       (5) Communications with the association’s attorney which are otherwise protected by the  
9 attorney-client privilege or the attorney work-product doctrine;
- 10       (6) Information the disclosure of which would violate law other than this chapter;
- 11       (7) Records of an executive session of the executive board; or
- 12       (8) Individual unit files other than those of the requesting owner.
- 13       (d) An association may charge a reasonable fee for providing copies of any records under this  
14 section and for supervising the unit owner’s inspection.
- 15       (e) A right to copy records under this section includes the right to receive copies by  
16 photocopying or other means, including copies through an electronic transmission if available upon  
17 request by the unit owner.
- 18       (f) An association is not obligated to compile or synthesize information.
- 19       (g) Information provided pursuant to this section may not be used for commercial purposes.

20 **§36B-3-120. Rules.**

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

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

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

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

7       (c) An association may adopt rules to establish and enforce construction and design criteria  
8 and aesthetic standards if the declaration so provides. If the declaration so provides, the association  
9 shall adopt procedures for enforcement of those standards and for approval of construction  
10 applications, including a reasonable time within which the association must act after an application  
11 is submitted and the consequences of its failure to act.

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

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

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

22       (1) Implement a provision of the declaration;

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

4           (3) Restrict the leasing of residential units to the extent those rules are reasonably designed  
5 to meet underwriting requirements of institutional lenders that regularly make loans secured by first  
6 mortgages on units in common interest communities or regularly purchase those mortgages.

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

8           (h) Every rule must be reasonable.

9 **§36B-3-121. Notice to unit owners.**

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

13           (1) Hand delivery to each unit owner;

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

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

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

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

20 **§36B-3-122. Removal of officers and directors.**

21           (a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners  
22 present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a

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

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

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

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

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

14 **§36B-3-123. Adoption of budgets; Special assessments.**

15 (a) The executive board, at least annually, shall adopt a proposed budget for the common  
16 interest community for consideration by the unit owners. Not later than thirty days after adoption  
17 of a proposed budget, the executive board shall provide to all the unit owners a summary of the  
18 budget, including any reserves, and a statement of the basis on which any reserves are calculated and  
19 funded. Simultaneously, the board shall set a date not less than ten days or more than sixty days after  
20 providing the summary for a meeting of the unit owners to consider ratification of the budget.  
21 Unless at that meeting a majority of all unit owners or any larger number specified in the declaration  
22 reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is

1 rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent  
2 budget.

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

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

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

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

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

14 (d) The board may not levy a special assessment for the purpose of circumventing the annual  
15 budget requirements of subsection (a).

16 **§36B-3-124. Litigation involving declarant.**

17 (a) The following requirements apply to an association's authority under subdivision  
18 3-102(a)(4) to institute and maintain a proceeding alleging a construction defect with respect to the  
19 common interest community, whether by litigation, mediation, arbitration, or administratively,  
20 against a declarant or an employee, independent contractor, or other person directly or indirectly  
21 providing labor or materials to a declarant:

22 (1) Subject to subsection (e), before the association institutes a proceeding described in this

1 section, it shall provide notice in a record of its claims to the declarant and those persons that the  
2 association seeks to hold liable for the claimed defects. The text of the notice may be in any form  
3 reasonably calculated to give notice of the general nature of the association's claims, including a list  
4 of the claimed defects. The notice may be delivered by any method of service and may be addressed  
5 to any person if the method of service used:

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

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

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

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

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

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

1 (6) Except as otherwise provided in subdivision 4-116(d) for warranty claims, any statute of  
2 limitation affecting the association's right of action against a declarant or other person is tolled  
3 during the period described in subdivision (2) and during any extension of that time because a person  
4 to which notice was directed has commenced and is diligently pursuing the remediation plan.

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

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

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

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

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

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

20 **ARTICLE 4. PROTECTION OF PURCHASERS.**

21 **§36B-4-103. Public offering statement; general provisions.**

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

1 accurately disclose:

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

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

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

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

15 (5) Any current balance sheet and a projected budget for the association, either within or as  
16 an exhibit to the public offering statement, for one year after the date of the first conveyance to a  
17 purchaser and thereafter the current budget of the association, a statement of who prepared the  
18 budget and a statement of the budget's assumptions concerning occupancy and inflation factors. The  
19 budget must include, without limitation:

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

22 (B) A statement of any other reserves;

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

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

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

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

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

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

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

15 (11) A statement that:

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

18 (B) If a declarant fails to provide a public offering statement to a purchaser before conveying  
19 a unit, that purchaser may recover from the declarant ten percent of the sales price of the unit plus  
20 ten percent of the share, proportionate to his or her common expense liability, of any indebtedness  
21 of the association secured by security interests encumbering the common interest community:

22 *Provided*, That purchaser is required to show that he or she has been actually damaged as a result

1 of the failure to provide such offering statement and that his or her action to recover such damage  
2 and the penalty provided in this paragraph is instituted within three years from the date on which  
3 purchaser's right of action shall have accrued; and

4 (C) If a purchaser receives the public offering statement more than fifteen days before signing  
5 a contract, he or she cannot cancel the contract;

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

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

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

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

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

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

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

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

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

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

11 (b) The public offering statement must contain any current balance sheet and a projected  
12 budget for the association, either within or as an exhibit to the public offering statement, for one year  
13 after the date of the first conveyance to a purchaser, and thereafter the current budget of the  
14 association, a statement of who prepared the budget, and a statement of the budget's assumptions  
15 concerning occupancy and inflation factors. The budget must include:

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

18 (2) A statement of any other reserves;

19 (3) The proposed common expense assessment by category of expenditures for the  
20 association; and

21 (4) The projected monthly common expense assessment for each type of unit.

22 ~~(b)~~ (c) If a common interest community composed of not more than twelve units is not

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

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

8 **§36B-4-109. Resales of units.**

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

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

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

19 (3) A statement of any other fees payable by unit owners;

20 (4) A statement of any capital expenditures anticipated by the association for the current and  
21 two next succeeding fiscal years;

22 (5) A statement of the amount of any reserves for capital expenditures and of any portions

1 of those reserves designated by the association for any specified projects;

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

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

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

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

8 (10) A statement as to whether the executive board has knowledge that any alterations or  
9 improvements to the unit or to the limited common elements assigned thereto violate any provision  
10 of the declaration;

11 (11) A statement as to whether the executive board has knowledge of any violations of the  
12 health or building codes with respect to the unit, the limited common elements assigned thereto, or  
13 any other portion of the common interest community;

14 (12) A statement of the remaining term of any leasehold estate affecting the common interest  
15 community and the provisions governing any extension or renewal thereof;

16 (13) A statement of any restrictions in the declaration affecting the amount that may be  
17 received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest  
18 community, or termination of the common interest community; ~~and~~

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

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

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

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

7           (c) A purchaser is not liable for any unpaid assessment or fee greater than the amount set  
8 forth in the certificate prepared by the association. A unit owner is not liable to a purchaser for the  
9 failure or delay of the association to provide the certificate in a timely manner, but the purchase  
10 contract is voidable by the purchaser until the certificate has been provided and for five days  
11 thereafter or until conveyance, whichever first occurs.

12 **§36B-4-112. Conversion buildings.**

13           (a) A declarant of a common interest community containing conversion buildings, and any  
14 dealer who intends to offer units in such a common interest community, shall give each of the  
15 residential tenants and any residential subtenant in possession of a portion of a conversion building  
16 notice of the conversion and provide those persons with the public offering statement no later than  
17 one hundred twenty days before the tenants and any subtenant in possession are required to vacate.  
18 The notice must set forth generally the rights of tenants and subtenants under this section and must  
19 be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at  
20 the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant  
21 may be required to vacate upon less than one hundred twenty days' notice, except by reason of  
22 nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the

1 premises, and the terms of the tenancy may not be altered during that period. Failure to give notice  
2 as required by this section is a defense to an action for possession.

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

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

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

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

21 **§36B-4-116. Statute of limitations for warranties.**

22 (a) A judicial proceeding for breach of any obligation arising under section 4-113 or 4-114

1 must be commenced within six years after the cause of action accrues, but the parties may agree to  
2 reduce the period of limitation to not less than two years. With respect to a unit that may be  
3 occupied for residential use, an agreement to reduce the period of limitation must be evidenced by  
4 a separate instrument executed by the purchaser.

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

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

10 (2) As to each common element, at the time the common element is completed or, if later,  
11 as to (i) a common element that may be added to the common interest community or portion thereof,  
12 at the time the first unit therein is conveyed to a bona fide purchaser, or (ii) a common element  
13 within any other portion of the common interest community, at the time the first unit is conveyed to  
14 a bona fide purchaser.

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

19 (d) During the period of declarant control, the association may authorize an independent  
20 committee of the executive board to evaluate and enforce any warranty claims involving the common  
21 elements, and to compromise those claims. Only members of the executive board elected by unit  
22 owners other than the declarant and other persons appointed by those independent members may

1 serve on the committee, and the committee's decision must be free of any control by the declarant  
2 or any member of the executive board or officer appointed by the declarant. All costs reasonably  
3 incurred by the committee, including attorney's fees, are common expenses, and must be added to  
4 the budget annually adopted by the association under section 3-115. If the committee is so created,  
5 the period of limitation for a warranty claim considered by the committee begins to run from the date  
6 of the first meeting of the committee.

7 **§36B-4-117. Effect of violations on rights of action; attorney's fees.**

8 (a) If a declarant or any other person subject to this chapter fails to comply with any of its  
9 provisions or any provision of the declaration or bylaws, any person or class of persons adversely  
10 affected by the failure to comply has a claim for appropriate relief. A declarant, association, unit  
11 owner, or any other person subject to this chapter may bring an action to enforce a right granted or  
12 obligation imposed by this chapter, the declaration, or the bylaws. Punitive damages may be awarded  
13 for a willful failure to comply with this chapter. The court in an appropriate case, may award  
14 reasonable attorney's fees and costs.

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

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

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

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

§36B-1-115, §36B-1-116, §36B-1-208, §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-3-118 has been completely rewritten; therefore, it has been completely underscored.

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