

1 **H. B. 3109**

2
3 (By Delegates Morgan, Crosier, Shaver, Hartman,
4 Iaquina and Talbott)

5 [Introduced February 11, 2011; referred to the
6 Committee on the Judiciary.]

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10 A BILL to amend and reenact §36B-3-102 of the Code of West
11 Virginia, 1931, as amended, permitting unit owners'
12 associations to institute legal action against a unit owner to
13 collect dues or assessments that are overdue or in arrears to
14 the association; and setting forth the types of legal actions
15 permitted.

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

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

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

20 **§36B-3-102. Powers of unit owners' association.**

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

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

25 (2) Adopt and amend budgets for revenues, expenditures, and

1 reserves and collect assessments for common expenses from unit
2 owners;

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

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

9 (5) Make contracts and incur liabilities;

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

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

14 (8) Acquire, hold, encumber, and convey in its own name any
15 right, title, or interest to real estate or personal property, but:

16 (i) Common elements in a condominium or planned community may be
17 conveyed or subjected to a security interest only pursuant to
18 section ~~3-112~~ one hundred twelve of this article and (ii) part of
19 a cooperative may be conveyed, or all or part of a cooperative may
20 be subjected to a security interest, only pursuant to section ~~3-112~~
21 one hundred twelve of this article;

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

24 (10) Impose and receive any payments, fees, or charges for the
25 use, rental, or operation of the common elements, other than

1 limited common elements described in ~~sections 2-102(2) and (4)~~
2 subsections (1) and (4), section one hundred two, article two of
3 this chapter, and for services provided to unit owners;

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

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

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

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

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

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

22 (17) Institute litigation or administrative proceedings in its
23 own name against a unit owner for the collection of dues or
24 assessments that are overdue or in arrears, including, but not
25 limited to, monetary damages, placing liens on real and personal

1 property that prohibit the sale of that property until all late
2 fees and assessments are paid in full, garnishee wages of the
3 delinquent unit owner and requesting the court to deny services and
4 amenities that would otherwise be provided to those delinquent unit
5 owners; and

6 ~~(17)~~ (18) Exercise any other powers necessary and proper for
7 the governance and operation of the association.

8 (b) The declaration may not impose limitations on the power of
9 the association to deal with the declarant which are more
10 restrictive than the limitations imposed on the power of the
11 association to deal with other persons.

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

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