

1 **Senate Bill No. 376**

2 (By Senator Beach)

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4 [Introduced February 1, 2011; referred to the Committee on the
5 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, relating to permitting unit
12 owners' associations to institute legal action against a unit
13 owner to collect dues or assessments that are overdue or in
14 arrears to the association.

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

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

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

19 **§36B-3-102. Powers of unit owners' association.**

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

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

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

27 (3) Hire and discharge managing agents and other employees,

1 agents, and independent contractors;

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

6 (5) Make contracts and incur liabilities;

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

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

11 (8) Acquire, hold, encumber, and convey in its own name any
12 right, title, or interest to real estate or personal property, but
13 (i) common elements in a condominium or planned community may be
14 conveyed or subjected to a security interest only pursuant to
15 section ~~3-112~~ one hundred twelve of this article and (ii) part of
16 a cooperative may be conveyed, or all or part of a cooperative may
17 be subjected to a security interest, only pursuant to section ~~3-112~~
18 one hundred twelve of this article;

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

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

26 (11) Impose charges for late payment of assessments and, after
27 notice and an opportunity to be heard, levy reasonable fines for

1 violations of the declaration, bylaws, rules, and regulations of
2 the association;

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

7 (13) Provide for the indemnification of its officers and
8 executive board and maintain directors' and officers' liability
9 insurance;

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

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

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

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

20 ~~(17)~~ (18) Exercise any other powers necessary and proper for
21 the governance and operation of the association.

22 (b) The declaration may not impose limitations on the power of
23 the association to deal with the declarant which are more
24 restrictive than the limitations imposed on the power of the
25 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.

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