

H. B. 2430

(By Delegate Skinner)

[Introduced January 27, 2015; referred to the
Committee on the Judiciary.]

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

1 the Uniform Common Interest Ownership Act; and providing for applicability of the chapter.

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

3 That §36B-1-103, §36B-1-104, §36B-1-108, §36B-1-201, §36B-1-203, §36B-1-204,
 4 §36B-1-206 and §36B-1-207 of the Code of West Virginia, 1931, as amended, be amended and
 5 reenacted; that said code be amended by adding thereto four new sections, designated §36B-1-115,
 6 §36B-1-116, §36B-1-208 and §36B-1-209; that §36B-2-103, §36B-2-105, §36B-2-106, §36B-2-109,
 7 §36B-2-112, §36B-2-113, §36B-2-116, §36B-2-117, §36B-2-118 and §36B-2-119 of said code be
 8 amended and reenacted; that said code be amended by adding thereto two new sections, designated
 9 §36B-2-123 and §36B-2-124; that §36B-3-101, §36B-3-102, §36B-3-103, §36B-3-105, §36B-3-106,
 10 §36B-3-108, §36B-3-109, §36B-3-110, §36B-3-111, §36B-3-112, §36B-3-113, §36B-3-114,
 11 §36B-3-115, §36B-3-116, §36B-3-117 and §36B-3-118 of said code be amended and reenacted; that
 12 said code be amended by adding thereto five new sections, designated §36B-3-120, §36B-3-121,
 13 §36B-3-122, §36B-3-123 and §36B-3-124; and that §36B-4-101, §36B-4-102, §36B-4-103,
 14 §36B-4-108, §36B-4-109, §36B-4-112, §36B-4-113, §36B-4-114, §36B-4-116 and §36B-4-117 of
 15 said code be amended and reenacted, all to read as follows:

16 **ARTICLE 1. GENERAL PROVISIONS.**

17 **§36B-1-103. Definitions.**

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

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

22 (A) A person "controls" a declarant if the person: (i) Is a general partner, officer, director

1 or employer of the declarant; (ii) directly or indirectly or acting in concert with one or more other
2 persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds
3 proxies representing, more than twenty percent of the voting interest in the declarant; (iii) controls
4 in any manner the election of a majority of the directors of the declarant; or (iv) has contributed more
5 than twenty percent of the capital of the declarant.

6 (B) A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer,
7 director or employer of the person; (ii) directly or indirectly or acting in concert with one or more
8 other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or
9 holds proxies representing, more than twenty percent of the voting interest in the person; (iii)
10 controls in any manner the election of a majority of the directors of the person; or (iv) has
11 contributed more than twenty percent of the capital of the person; and

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

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

15 (A) In a condominium, the undivided interest in the common elements, the common expense
16 liability, and votes in the association;

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

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

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

22 ~~(3)~~ (4) "Association" or "unit owners association" means the unit owners association

1 organized under section one hundred one, article three of this chapter.

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

5 ~~(4)~~ (6) "Common elements" means:

6 (A) In the case of: (i) A condominium or cooperative, all portions of the common interest
7 community other than the units; and

8 (ii) ~~in~~ A planned community, any real estate within a planned community which is owned
9 or leased by the association, other than a unit; and

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

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

14 ~~(6)~~ (8) "Common expense liability" means the liability for common expenses allocated to
15 each unit pursuant to section one hundred seven, article two of this chapter.

16 ~~(7)~~ (9) "Common interest community" means real estate described in a declaration with
17 respect to which a person, by virtue of ~~his~~ the person's ownership of a unit, is obligated to pay for
18 a share of real estate taxes, insurance premiums, maintenance, or improvement of, or service or other
19 expenses related to, common elements, other units, or other real estate described in a the declaration:

20 *Provided*, That any resort owner which, prior to the effective date of this article, began the
21 development of a resort and imposed fees or assessments upon owners of real estate in the resort for
22 maintenance and care of the roads, streets, alleys, sidewalks, parks, common areas and common

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

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

12 ~~(9)~~ (11) "Conversion building" means a building that at any time before creation of the
 13 common interest community was occupied wholly or partially by persons other than purchasers and
 14 persons ~~who~~ that occupy with the consent of purchasers.

15 ~~(10)~~ (12) "Cooperative" means a common interest community in which the real estate is
 16 owned by an association, each of whose members is entitled by virtue of his or her ownership
 17 interest in the association to exclusive possession of a unit.

18 ~~(11)~~ (13) "Dealer" means a person in the business of selling units for his or her own account.

19 ~~(12)~~ (14) "Declarant" means any person or group of persons acting in concert who: ~~(i)~~ (A)
 20 As part of a common promotional plan, offers to dispose of ~~his or the~~ the interest of the person or group
 21 of persons in a unit not previously disposed of; or ~~(ii)~~ (B) reserves or succeeds to any special
 22 declarant right.

1 ~~(13)~~ (15) "Declaration" means ~~any~~ the instruments, however denominated, that create a
2 common interest community, including any amendments to ~~those~~ the instruments.

3 ~~(14)~~ (16) "Development rights" means any right or combination of rights reserved by a
4 declarant in the declaration to: ~~(i)~~(A) Add real estate to a common interest community; ~~(ii)~~(B) create
5 units, common elements or limited common elements within a common interest community; ~~(iii)~~ (C)
6 subdivide units or convert units into common elements; or ~~(iv)~~ (D) withdraw real estate from a
7 common interest community.

8 ~~(15)~~ (17) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal
9 or equitable interest in a unit, but the term does not include the transfer or release of a security
10 interest.

11 ~~(16)~~ (18) "Executive board" means the body, regardless of name, designated in the
12 declaration or bylaws to act on behalf of the association.

13 ~~(17)~~ (19) "Identifying number" means a symbol or address that identifies only one unit in a
14 common interest community.

15 ~~(18)~~ (20) "Leasehold common interest community" means a common interest community in
16 which all or a portion of the real estate is subject to a lease, the expiration or termination of which
17 will terminate the common interest community or reduce its size.

18 ~~(19)~~ (21) "Limited common element" means a portion of the common elements allocated by
19 the declaration or by operation of subdivision (2) or (4), section one hundred two, article two of this
20 chapter for the exclusive use of one or more but fewer than all of the units.

21 ~~(20)~~ (22) "Master association" means an organization described in section one hundred
22 twenty, article two of this chapter, whether or not it is also an association described in section one

1 hundred one, article three of this chapter.

2 ~~(21)~~ (23) "Offering" means any advertisement, inducement, solicitation or attempt to
 3 encourage any person to acquire any interest in a unit, other than as security for an obligation. An
 4 advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium
 5 to the general public, of a common interest community not located in this state, is not an offering if
 6 the advertisement states that an offering may be made only in compliance with the law of the
 7 jurisdiction in which the common interest community is located.

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

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

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

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

21 ~~(26)~~ (28) "Real estate" means any leasehold or other estate or interest in, over, or under land,
 22 including structures, fixtures and other improvements and interest that by custom, usage or law pass

1 with a conveyance of land though not described in the contract of sale or instrument of conveyance.
2 ~~"Real estate"~~ The term includes parcels with or without upper or lower boundaries, and spaces that
3 may be filled with air or water.

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

6 ~~(27)~~ (30) "Residential purposes" means use for dwelling or recreational purposes, or both.

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

10 ~~(28)~~ (32) "Resort" means a destination location which consists of: ~~(i)~~(A) One or more
11 persons offering recreational facilities and services such as skiing, golf, tennis or boating to the
12 general public and commercial facilities such as retail stores, restaurants and hotels or other lodging
13 accommodations; and ~~(ii)~~(B) at least one hundred residential units, a majority of which are used as
14 vacation or second homes rather than primary residences.

15 ~~(29)~~ (33) "Resort owner" means any person owning or operating substantially all of the
16 recreational facilities located within a resort, or the predecessor in title of any such person.

17 ~~(30)~~ (34) "Security interest" means an interest in real estate or personal property, created by
18 contract or conveyance, which secures payment or performance of an obligation. The term includes
19 a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales
20 contract, lease intended as security, assignment of lease or rents intended as security, pledge of an
21 ownership interest in an association, and any other consensual lien or title retention contract intended
22 as security for an obligation.

- 1 ~~(31)~~ (35) "Special declarant rights" means rights reserved for the benefit of a declarant to:
- 2 ~~(i)~~(A) Complete improvements indicated on plans and plans filed with the declaration
- 3 pursuant to section one hundred nine, article two of this chapter or, in a cooperative, to complete
- 4 improvements described in the public offering statement pursuant to subdivision (2), subsection (a),
- 5 section one hundred three, article four of this chapter;
- 6 ~~(ii)~~ (B) exercise any development right pursuant to section one hundred ten, article two of
- 7 this chapter;
- 8 ~~(iii)~~(C) maintain sales offices, management offices, signs advertising the common interest
- 9 community, and models pursuant to section one hundred fifteen, article two of this chapter;
- 10 ~~(iv)~~(D) use easements through the common elements for the purpose of making
- 11 improvements within the common interest community or within real estate which may be added to
- 12 the common interest community pursuant to section one hundred sixteen, article two of this chapter;
- 13 ~~(v)~~(E) make the common interest community subject to a master association pursuant to
- 14 section one hundred twenty, article two of this chapter;
- 15 ~~(vi)~~(F) merge or consolidate a common interest community with another common interest
- 16 community of the same form of ownership pursuant to section one hundred twenty-one, article two
- 17 of this chapter; ~~or~~
- 18 ~~(vii)~~(G) appoint or remove any officer of the association or any master association or any
- 19 executive board member during any period of declarant control pursuant to subsection (d), section
- 20 one hundred three, article three of this chapter;
- 21 (H) Control any construction, design review, or aesthetic standards committee or process;
- 22 ~~(ix)~~(I) Attend meetings of the unit owners and, except during an executive session, the

1 executive board; or

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

3 ~~(32)~~ (36) "Time share" means a right to occupy a unit or any of several units during five or
4 more separated time periods over a period of at least five years, including renewal options, whether
5 or not coupled with an estate or interest in a common interest community or a specified portion
6 thereof.

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

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

22 **§36B-1-104. No variation by agreement.**

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

6 **§36B-1-108. Supplemental general principles of law applicable.**

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

13 **§36B-1-115. Severability.**

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

18 **§36B-1-116. 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).

PART II. APPLICABILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) Any declarant electing the exemption provided in subdivision (2), subsection (a) of this
22 section shall record with the declaration the predevelopment budget which is the basis for its

1 subdivision (2), subsection (c) of this section determination of post-development annual average
 2 common expense liability.

3 **§36B-1-204. Applicability to preexisting common interest communities.**

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

21 (1) Section one hundred five of this article (separate titles and taxation);

22 (2) Section one hundred six of this article (applicability of local ordinances, regulations, and

- 1 building codes);
- 2 (3) Section one hundred seven of this article (eminent domain);
- 3 (4) Section two hundred six of this article (amendments to governing instruments);
- 4 (5) Section one hundred two, article two of this chapter (unit boundaries);
- 5 (6) Section one hundred three, article two of this chapter (construction and validity of
- 6 declaration and bylaws);
- 7 (7) Section one hundred four, article two of this chapter (description of units);
- 8 (8) Subsections (h) and (i), section one hundred seventeen, article two (amendment of
- 9 declaration);
- 10 (9) Section one hundred twenty-one, article two of this chapter (merger or consolidation of
- 11 common interest communities);
- 12 (10) Section one hundred twenty-four, article two of this chapter (termination following
- 13 catastrophe);
- 14 (11) Subdivisions (1) through (6) and (11) through (16), subsection (a), section one hundred
- 15 two, article three of this chapter (powers and duties of unit owners association);
- 16 (12) Section one hundred three, article three of this chapter (executive board members and
- 17 officers);
- 18 (13) Section one hundred eight, article three (meetings);
- 19 (14) Section one hundred eleven, article three of this chapter (tort and contract liability);
- 20 (15) Section one hundred sixteen, article three of this chapter (lien for assessments);
- 21 (16) Section one hundred eighteen, article three of this chapter (association records);
- 22 (17) Section one hundred twenty-four, article three of this chapter (litigation involving

1 declarant);

2 (18) Section one hundred nine, article four of this chapter (resale of units);

3 (19) Section one hundred seventeen, article four of this chapter (effect of violation on rights
4 of action; attorney's fees); and

5 (20) Section one hundred three of this article (definitions) to the extent necessary to construe
6 any of those sections.

7 (b) The sections described in subsection (a) apply only to events and circumstances occurring
8 after the effective date of this chapter and do not invalidate existing provisions of the declaration,
9 bylaws, or plats or plans of those common interest communities.

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

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

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

7 **§36B-1-206. Amendments to governing instruments.**

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

12 ~~(1) If the result accomplished by the amendment was permitted by law prior to this chapter,~~
 13 ~~the amendment may be made either in accordance with that law, in which case that law applies to~~
 14 ~~that amendment, or it may be made under this chapter, and~~

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

17 (b) Except as otherwise provided in subsections (i) and (j) of section one hundred seventeen,
 18 article two of this chapter, an amendment to the declaration, bylaws, or plats and plans authorized
 19 by this section ~~to be made under this chapter~~ must be adopted in conformity with applicable law and
 20 with any ~~the~~ procedures and requirements for amending the instruments specified by those
 21 instruments, or if there are none, in conformity with the amendment procedures of this chapter. If
 22 an amendment grants to ~~any a person any rights, powers or privileges~~ any right, power or privilege

1 permitted by this chapter, ~~all~~ any correlative obligations, ~~liabilities and restrictions~~ liability, or
 2 restriction in this chapter also ~~apply~~ applies to that person.

3 **§36B-1-207. Applicability to nonresidential and mixed-use common interest communities.**

4 (a) Except as otherwise provided in subsection (d), this section applies only to ~~This chapter~~
 5 ~~does not apply to a common interest planned~~ community in which all units are restricted exclusively
 6 to nonresidential purposes. ~~use unless the declaration provides that the chapter does apply to that~~
 7 ~~planned community. This chapter applies to a planned community containing both units that are~~
 8 ~~restricted exclusively to nonresidential use and other units that are not restricted, only if the~~
 9 ~~declaration so provides or the real estate comprising the units that may be used for residential~~
 10 ~~purposes would be a planned community in the absence of the units that may not be used for~~
 11 ~~residential purposes.~~

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

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

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

16 (3) In the case of a planned community or a cooperative, only sections one hundred five
 17 (Separate titles and taxation), one hundred six (applicability of local ordinance, regulations and
 18 building codes), and one hundred seven (eminent domain) of this article apply to the community.

19 (c) If this entire chapter applies to a nonresidential common interest community, the
 20 declaration may also require, subject to section one hundred twelve of this article (unconscionable
 21 agreement or term of contract), that:

22 (1) Notwithstanding section one hundred five, article three of this chapter (termination of

1 contracts and leases of declarant), and management, maintenance, operations, or employment
2 contract, lease of recreational or parking areas or facilities, and any other contract or lease between
3 the association and a declarant or an affiliate of a declarant, the declaration continues in force after
4 the declarant turns over control of the association; and

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

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

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

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

19 **§36B-1-209. Other Exempt Real Estates Arrangements.**

20 (a) An arrangement between the associations for two or more common interest communities
21 to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements
22 of real estate, or other activities specified in their arrangement or declarations does not create a

1 separate common interest community.

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

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

11 **§36B-2-103. Construction and validity of declaration and bylaws.**

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

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

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

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

20 (e) A declaration or the bylaws may not change or alter a restrictive covenant in a deed to any
 21 real estate that is or that becomes subject to the provisions of this chapter. The restrictive covenants
 22 that are in effect at the time real estate is purchased that is or that becomes subject to the provisions

1 of this chapter may not be changed or altered as to the purchaser of that real estate or as to any
2 assign, heir or beneficiary of the original purchaser unless that original purchaser, assign, heir or
3 beneficiary agrees in writing to a change of a restrictive covenant. This subdivision does not apply
4 to the change of restrictive covenants of homeowner fees if the fees do not exceed the sum of \$100
5 \$300 a year. The provisions of this section have no application to restrictive covenants which
6 contain provisions authorizing amendment when those provisions for amendment are duly followed.

7 **§36B-2-105. Contents of declaration.**

8 (a) The declaration must contain:

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

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

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

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

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

22 (6) A description of any limited common elements, other than those specified in section

1 2-102(2) and (4), as provided in section 2-109(b)(10) and, in a planned community, any real estate
2 that is or must become common elements;

3 (7) A description of any real estate, except real estate subject to development rights, that may
4 be allocated subsequently as limited common elements, other than limited common elements
5 specified in section 2-102(2) and (4), together with a statement that they may be so allocated;

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

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

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

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

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

20 (11) An allocation to each unit of the allocated interests in the manner described in section
21 2-107;

22 (12) Any restrictions ~~(i) on use, occupancy and~~ on alienation of the units, including any

1 restrictions on leasing which exceed the restrictions on leasing units which executive boards may
2 impose pursuant to section 3-102(c)(2) 3-120(d) and (ii) on the amount for which a unit may be sold
3 or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the
4 unit or to the common interest community, or on termination of the common interest community;

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

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

10 ~~(14)~~ (15) All matters required by sections 2-106, 2-107, 2- 108, 2-109, 2-115, 2-116 and
11 3-103(d).

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

15 **§36B-2-106. Leasehold common interest communitites..**

16 (a) Any lease the expiration or termination of which may terminate the common interest
17 community or reduce its size, or a memorandum thereof, must be recorded. Every lessor of those
18 leases in a condominium or planned community shall sign the declaration. The declaration must
19 state:

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

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

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

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

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

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

8 (b) After the declaration for a leasehold condominium or leasehold planned community is
9 recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest
10 of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise
11 complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit
12 owner's leasehold interest in a condominium or planned community is not affected by failure of any
13 other person to pay rent or fulfill any other covenant.

14 (c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or
15 remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all
16 unit owners subject to that reversion or remainder are acquired.

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

21 **§36B-2-109. Plats and plans.**

22 (a) Plats and plans are a part of the declaration and are required for all common interest

1 communities except cooperatives. Separate plats and plans are not required by this chapter if all the
2 information required by this section is contained in either a plat or plan. Each plat and plan must be
3 clear and legible and contain a certification that the plat or plan contains all information required by
4 this section.

5 (b) Each plat must show:

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

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

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

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

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

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

22 (7) Except as otherwise provided in subsection (h), the approximate the location with

1 reference to an established datum of any horizontal unit boundaries not shown or projected on plans
2 recorded pursuant to subsection (d) and that unit's identifying number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **§36B-2-112. Relocation of boundaries between adjoining units.**

20 (a) Subject to the provisions of the declaration and other provisions of law, the boundaries
21 between adjoining units may be relocated by an amendment to the declaration upon application to
22 the association by the owners of those units. If the owners of the adjoining units have specified a

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

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

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

1 **§36B-2-113. Subdivision of units.**

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

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

11 **§36B-2-116. Easement rights.**

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

16 (b) ~~In a planned community, Subject to the provisions of sections 3-102(a)(6) and 3-112, the~~
17 unit owners have an easement (i) in the common elements for ~~purposes of access to their units and (ii)~~
18 ~~to use the common elements and all real estate that must become common elements (section~~
19 ~~2-105(a)(6)) for all other purposes.~~

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

1 **§36B-2-117. Amendment of declaration.**

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

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

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

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

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

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

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

22 (h) A provision in the declaration creating special declarant rights that have not expired may

1 not be amended without the consent of the declarant.

2 (i) If any provision of this chapter, law, or of the declaration requires the consent of a holder
3 of a security interest in a unit as a condition to the effectiveness of an amendment to the declaration,
4 that consent is deemed granted if a refusal to consent in a record is not received by the association
5 within sixty days after the association delivers notice of the proposed amendment to the holder at
6 an address for notice provided by the holder or mails the notice to the holder by certified mail, return
7 receipt requested, at that address. If the holder has not provided to the association an address for
8 notice, the association shall provide notice to the address in the security interest of record.
9 Notwithstanding this section, an amendment to the declaration that affects the priority of a holder's
10 security interest or the ability of that holder to foreclose its security interest may not be adopted
11 without that holder's consent in a record if the declaration requires that consent as a condition to the
12 effectiveness of the amendment: *Provided*, That this subsection (i) shall not apply to an amendment
13 which:

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

16 (B) Increases the share of common expenses allocated to the unit in a manner
17 disproportionate to the formula stated in the declaration pursuant to section one hundred eighteen
18 of this article;

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

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

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

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

6 (1) If:

7 (A) 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;

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

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

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

20 **§36B-2-118. Termination of common interest community.**

21 (a) Except ~~in the case of~~ for a taking of all the units by eminent domain, (section 1-107) ~~or~~
22 ~~in the case of~~ foreclosure against an entire cooperative of a security interest that has priority over the

1 declaration, or in the circumstances described in section 2-124, a common interest community may
2 be terminated only by agreement of unit owners of units to which at least eighty percent of the votes
3 in the association are allocated, or any larger percentage the declaration specifies, and with any other
4 approvals required by the declaration. The declaration may specify a smaller percentage only if all
5 of the units are restricted exclusively to nonresidential uses.

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

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

18 (d) In the case of a condominium or planned community containing any units not having
19 horizontal boundaries described in the declaration, a termination agreement may provide for sale of
20 the common elements, but it may not require that the units be sold following termination, unless the
21 declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

22 (e) The association, on behalf of the unit owners, may contract for the sale of real estate in

1 a common interest community, but the contract is not binding on the unit owners until approved
2 pursuant to subsections (a) and (b). If any real estate is to be sold following termination, title to that
3 real estate, upon termination, vests in the association as trustee for the holders of all interests in the
4 units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until
5 the sale has been concluded and the proceeds thereof distributed, the association continues in
6 existence with all powers it had before termination. Proceeds of the sale must be distributed to unit
7 owners and lien holders as their interests may appear, in accordance with subsections (h), (i) and (j).
8 Unless otherwise specified in the termination agreement, as long as the association holds title to the
9 real estate, each unit owner and the unit owner's successors in interest have an exclusive right to
10 occupancy of the portion of the real estate that formerly constituted the unit. During the period of
11 that occupancy, each unit owner and the unit owner's successors in interest remain liable for all the
12 assessments and other obligations imposed on unit owners by this chapter or the declaration.

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

21 (g) Following termination of the common interest community, the proceeds of ~~any~~ a sale of
22 real estate, together with the assets of the association, are held by the association as trustee for unit

1 owners and holders of liens on the units as their interests may appear.

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

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

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

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

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

21 (4) The lien of each creditor of each unit owners which was perfected before termination
22 continues as a lien against that unit owner's unit as of the date the lien was perfected; and

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

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

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

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

16 (2) If any unit or any limited common element is destroyed to the extent that an appraisal of
17 the fair market value thereof before destruction cannot be made, the interests of all unit owners are:

18 (i) (A) In a condominium, their respective common element interests immediately before the
19 termination;

20 (ii) (B) In a cooperative, their respective ownership interests immediately before the
21 termination; and

22 (iii) (C) In a planned community, their respective common expense liabilities immediately

1 before the termination.

2 (k) In a condominium or planned community, except as otherwise provided in subsection (l),
3 foreclosure or enforcement of a lien or encumbrance against the entire common interest community
4 does not terminate, of itself, the common interest community, and foreclosure or enforcement of a
5 lien or encumbrance against a portion of the common interest community, other than withdrawable
6 real estate, does not withdraw that portion from the common interest community. Foreclosure or
7 enforcement of a lien or encumbrance against withdrawable real estate; or against common elements
8 that have been subjected to a security interest by the association under Section 3-112, does not
9 withdraw, of itself, that real estate from the common interest community, but the person taking title
10 thereto may require from the association, upon request, an amendment excluding the real estate from
11 the common interest community.

12 (l) In a condominium or planned community, if a lien or encumbrance against a portion of
13 the real estate comprising the common interest community has priority over the declaration and the
14 lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance,
15 upon foreclosure, may record an instrument excluding the real estate subject to that lien or
16 encumbrance from the common interest community.

17 **§36B-2-119. Rights of secured lenders.**

18 (a) The declaration may require that all or a specified number or percentage of the lenders
19 who hold security interests encumbering the units or who have extended credit to the association
20 approve specified actions of the unit owners or the association as a condition to the effectiveness of
21 those actions, but no requirement for approval may operate to: (i) Deny or delegate control over the
22 general administrative affairs of the association by the unit owners or the executive board, or (ii)

1 prevent the association or the executive board from commencing, intervening in, or settling any
2 litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and
3 distributing any insurance proceeds except pursuant to section 3-113.

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

11 **§36B-2-123. Master planned communities.**

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

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

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

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

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

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

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

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

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

17 **§36B-2-124. Termination following catastrophe.**

18 If substantially all the units in a common interest community have been destroyed or are
19 uninhabitable and the available methods for giving notice under section 3-121 of a meeting of unit
20 owners to consider termination under section 2-118 will not likely result in receipt of the notice, the
21 executive board or any other interested person may commence an action in the circuit court of the
22 county in which the common interest community is situate seeking to terminate the common interest

1 community. During the pendency of the action, the court may issue whatever orders it considers
 2 appropriate, including appointment of a receiver. After a hearing, the court may terminate the
 3 common interest community or reduce its size and may issue any other order the court considers to
 4 be in the best interest of the unit owners and persons holding an interest in the common interest
 5 community.

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

7 **§36B-3-101. Organization of Unit Owners Association.**

8 A unit owners association must be organized no later than the date the first unit in the
 9 common interest community is conveyed. The membership of the association at all times consists
 10 exclusively of all unit owners or, following termination of the common interest community, of all
 11 former unit owners entitled to distributions of proceeds under section 2-118 or their heirs,
 12 successors, or assigns. The association must have an executive board. The association must be
 13 organized as a profit or nonprofit corporation, trust, or limited liability company, partnership, ~~or as~~
 14 ~~an~~ unincorporated association, or any other form of organization authorized by the law of this state.

15 **§36B-3-102. Powers and duties of unit owners association.**

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

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

19 (2) Shall adopt and may amend budgets ~~for revenues, expenditures, and reserves~~ under
 20 section 3-123, shall and collect assessments for common expenses from unit owners, and may invest
 21 funds of the association;

22 (3) May hire and discharge managing agents and other employees, agents, and independent

1 contractors;

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

5 (5) May make contracts and incur liabilities;

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

8 (7) May cause additional improvements to be made as a part of the common elements;

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

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

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

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

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

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

22 (B) for Services provided to unit owners;

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

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

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

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

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

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

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

16 ~~(18)~~ (17) May exercise any other powers necessary and proper for the governance and
17 operation of the association;

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

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

- 1 (A) Deny a unit owner or other occupant access to the owner’s unit; or
- 2 (B) Withhold services provided to a unit or a unit owner by the association if the effect of
- 3 withholding the service would be to endanger the health, safety, or property of any person; and
- 4 (20) The association may, after notice, suspend a unit owner’s right to vote and/or right to
- 5 seek election as a director or officer of the association for failure of the unit owner to pay
- 6 assessments. The suspended rights to vote or seek election shall be immediately restored to the unit
- 7 owner upon payment of all past due or delinquent assessments even if paid during a meeting or
- 8 election.
- 9 (b) The declaration may not ~~impose limitations on~~ limit the power of the association beyond
- 10 the limitations authorized in subsection(a)(18) to:
- 11 (1) Deal with the declarant ~~which are~~ if the limit is more restrictive than the ~~limitations~~ limit
- 12 imposed on the power of the association to deal with other persons; or
- 13 (2) Institute litigation or an arbitration, mediation or administrative proceeding against any
- 14 person, subject to the following:
- 15 (A) The association shall comply with section 124 of this article, if applicable, before
- 16 instituting any proceeding described in subsection (a) of said section in connection with construction
- 17 defects; and
- 18 (B) The executive board promptly shall provide notice to the unit owners of any legal
- 19 proceeding in which the association is a party other than proceedings involving enforcement of rules
- 20 or to recover unpaid assessments or other sums due the association.
- 21 (c) If a tenant of a unit owner violates the declaration, bylaws, or rules of the association, in
- 22 addition to exercising any of its powers against the unit owner, the association may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **§36B-3-103. Executive board members and officers.**

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

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

- 1 ~~(1) to Amend the declaration except as provided in (section 2-117);~~
- 2 ~~(2) to Terminate the common interest community (section 2-118);~~
- 3 ~~(3) or to Elect members of the executive board but may fill vacancies in its membership for~~
4 ~~the unexpired portion of any term or, if earlier, until the next regularly scheduled election of~~
5 ~~executive board members; or~~
- 6 ~~(4) Determine the qualifications, powers, and duties, or terms of office of executive board~~
7 ~~members (section 3-103(f).), but the executive board may fill vacancies in its membership for the~~
8 ~~unexpired portion of any term.~~
- 9 ~~(c) The executive board shall adopt budgets as provided in section 3-123. Within thirty days~~
10 ~~after adoption of any proposed budget for the common interest community, the executive board shall~~
11 ~~provide a summary of the budget to all the unit owners, and shall set a date for a meeting of the unit~~
12 ~~owners to consider ratification of the budget not less than fourteen nor more than thirty days after~~
13 ~~mailing of the summary. Unless at that meeting a majority of all unit owners or any larger vote~~
14 ~~specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is~~
15 ~~present. In the event the proposed budget is rejected, the periodic budget last ratified by the unit~~
16 ~~owners must be continued until such time as the unit owners ratify a subsequent budget proposed~~
17 ~~by the executive board.~~
- 18 ~~(d) Subject to subsection (e), the declaration may provide for a period of declarant control~~
19 ~~of the association, during which a declarant, or persons designated by him the declarant may appoint~~
20 ~~and remove the officers and members of the executive board. A declarant may voluntarily surrender~~
21 ~~the right to appoint and remove officers and members of the executive board before the period ends.~~
22 ~~In that event, the declarant may require during the remainder of the period that specified actions of~~

1 the association or executive board, as described in a recorded instrument executed by the declarant,
2 be approved by the declarant before they become effective. Regardless of the period provided in the
3 declaration, and except as provided in section 2-123(g) (master planned communities), a period of
4 declarant control terminates no later than the ~~earlier~~ earliest of:

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

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

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

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

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

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

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

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

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

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

20 (1) The original or a certified copy of the recorded declaration as amended; the association
21 articles of incorporation, if the association is incorporated; bylaws; minute books and other books
22 and records of the association; and any rules which may have been promulgated;

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

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

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

10 (3) Association funds or control thereof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (c) This section does not apply to:

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

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

2 **§36B-3-106. Bylaws.**

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

4 (1) Provide the number of members of the executive board and the titles of the officers of the
5 association;

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

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

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

12 (5) Specify the ~~Which of its~~ officers who may prepare, execute, certify, and record
13 amendments to the declaration on behalf of the association; ~~and~~

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

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

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

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

22 **§36B-3-108. Meetings.**

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

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

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

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

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

22 (A) A statement of the general nature of any proposed amendment to the declaration or

1 bylaws;

2 (B) Any budget changes; and

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

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

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

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

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

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

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

18 (B) Discuss existing or potential litigation or mediation, arbitration, or administrative
19 proceedings;

20 (C) Discuss labor or personnel matters;

21 (D) Discuss contracts, leases, and other commercial transactions to purchase or provide goods
22 or services currently being negotiated, including the review of bids or proposals, if premature general

1 knowledge of those matters would place the association at a disadvantage; or

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

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

8 (3) During the period of declarant control, the executive board shall meet at least four times
9 a year. Up until the sale of the 12th unit, at least two of those meetings must be held at the common
10 interest community or at a place convenient to the community. Upon the sale of the 12th unit, all
11 meetings must be held at the common interest community or at a place convenient to the
12 community. After termination of the period of declarant control, all executive board meetings must
13 be at the common interest community or at a place convenient to the community unless the unit
14 owners amend the bylaws to vary the location of those meetings.

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

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

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

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

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

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

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

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

19 (10) Even if an action by the executive board is not in compliance with this section, it is valid
20 unless set aside by a court. A challenge to the validity of an action of the executive board for failure
21 to comply with this section may not be brought more than sixty days after the minutes of the
22 executive board of the meeting at which the action was taken are approved or the record of that

1 action is distributed to unit owners, whichever is later.

2 **§36B-3-109. Quorum.**

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

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

7 (2) Have cast absentee ballots solicited in accordance with section 3-1-10 (c)(4) which have
8 been delivered to the secretary in a timely manner; or

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

10 (b) Unless the bylaws specify a larger ~~percentage~~ number, a quorum of the executive board
11 ~~is deemed~~ present for purposes of determining the validity of any action throughout any taken at a
12 meeting of the executive board only if individuals persons entitled to cast ~~fifty percent~~ a majority of
13 the votes on that board are present at the time a vote regarding that action is taken. at the beginning
14 ~~of the meeting.~~ If a quorum is present when a vote is taken, the affirmative vote of a majority of the
15 board members present is the act of the executive board unless a greater vote is required by the
16 declaration or bylaws.

17 **§36B-3-110. Voting; proxies; ballots.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the ballot; and

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

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

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

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

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

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

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

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

17 (g) Votes allocated to a unit owned by the association must be cast in any vote of the unit
18 owners in the same proportion as the votes cast on the matter by unit owners other than the
19 association.

20 **§36B-3-111. Tort and contract liability; tolling of limitation period.**

21 (a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage
22 out of the condition or use of the common elements. Neither the association nor any unit owner

1 except the declarant is liable for that declarant's torts in connection with any part of the common
2 interest community which that declarant has the responsibility to maintain.

3 **(b)** An action alleging a wrong done by the association, including an action arising out of the
4 condition or use of the common elements, may be maintained only against the association and not
5 against any unit owner. If the wrong occurred during any period of declarant control and the
6 association gives the declarant reasonable notice of and an opportunity to defend against the action,
7 the declarant who then controlled the association is liable to the association or to any unit owner for
8 all tort losses not covered by insurance suffered by the association or that unit owner, and all costs
9 that the association would not have incurred but for a breach of contract or other wrongful act or
10 omission. Whenever the declarant is liable to the association under this section, the declarant is also
11 liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

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

17 **§36B-3-112. Conveyance or encumbrance of common elements.**

18 **(a)** In a condominium or planned community, portions of the common elements may be
19 conveyed or subjected to a security interest by the association if persons entitled to cast at least
20 eighty percent of the votes in the association, including eighty percent of the votes allocated to units
21 not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but
22 all owners of units to which any limited common element is allocated must agree in order to convey

1 that limited common element or subject it to a security interest. The declaration may specify a
2 smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds
3 of the sale are an asset of the association, but the proceeds of the sale of limited common elements
4 must be distributed equitably among the owners of units to which the limited common elements were
5 allocated.

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

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

1 of the common interest community is situate, and is effective only upon recordation.

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

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

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

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

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

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

21 (h) The consents by holders of first security interests on units described in subsection (g), or
22 a certificate of the secretary affirming that those consents have been received by the association, may

1 be recorded at any time before the date on which the agreement under subsection (c) becomes void.
 2 Consents or certificates so recorded are valid from the date they are recorded for purposes of
 3 calculating the percentage of consenting first security interest holders, regardless of later sales or
 4 encumbrances on those units. Even if the required percentage of first security interest holders so
 5 consent, a conveyance or encumbrance of common elements does not affect interests having priority
 6 over the declaration, or created by the association after the declaration was recorded.

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

9 **§36B-3-113. Insurance.**

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

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

20 (2) Commercial general liability insurance, including medical payments insurance, in an
 21 amount determined by the executive board but not less than any amount specified in the declaration,
 22 covering all occurrences commonly insured against ~~for death,~~ bodily injury; and property damage

1 arising out of or in connection with the use, ownership, or maintenance of the common elements and,
2 in cooperatives, also of all units; and

3 (3) Fidelity insurance.

4 (b) In the case of a building ~~that is part of a cooperative or~~ that contains units having divided
5 by horizontal boundaries described in the declaration, or vertical boundaries that comprise common
6 walls between units, the insurance maintained under subsection (a)(1), to the extent reasonably
7 available, must include the units, but need not include improvements and betterments installed by
8 unit owners.

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

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

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

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

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

22 (4) If, at the time of a loss under the policy, there is other insurance in the name of a unit

1 owner covering the same risk covered by the policy, the association's policy provides primary
2 insurance.

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

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

14 (g) An insurer that has issued an insurance policy under this section shall issue certificates
15 or memoranda of insurance to the association and, upon ~~written~~ request made in a record, to any unit
16 owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to
17 renew it until ~~30~~ thirty days after notice of the proposed cancellation or nonrenewal has been mailed
18 to the association, each unit owner and each holder of a security interest to whom a certificate or
19 memorandum of insurance has been issued at their respective last known addresses.

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

- 1 ~~(i)~~ (1) The common interest community is terminated, in which case section 2-118 applies;
- 2 ~~(ii)~~ (2) Repair or replacement would be illegal; ~~under any state or local statute or ordinance~~
- 3 ~~governing health or safety~~; or
- 4 ~~(iii)~~ (3) Eighty percent of the unit owners, including every owner of a unit or assigned limited
- 5 common element that will not be rebuilt, vote not to rebuild.
- 6 (i) The cost of repair or replacement in excess of insurance proceeds, deductibles, and
- 7 reserves is a common expense. If the entire common interest community is not repaired or replaced:
- 8 ~~(i)~~(1) The insurance proceeds attributable to the damaged common elements must be used
- 9 to restore the damaged area to a condition compatible with the remainder of the common interest
- 10 community; and
- 11 ~~(ii)~~(2) Except to the extent that other persons will be distributees (section 2-105(a)(12)(ii)):
- 12 (A) The insurance proceeds attributable to units and limited common elements that are not
- 13 ~~rebuilt~~ repaired or replaced must be distributed to the owners of those units and the owners of the
- 14 units to which those limited common elements were allocated, or to lien holders, as their interests
- 15 may appear; and
- 16 (B) The remainder of the proceeds must be distributed to all the unit owners or lien holders,
- 17 as their interests may appear, as follows:
- 18 ~~(+)~~(i) In a condominium, in proportion to the common element interests of all the units; and
- 19 ~~(-)~~(ii) In a cooperative or planned community, in proportion to the common expense
- 20 liabilities of all the units.
- 21 (j) If the unit owners vote not to rebuild any unit, that unit's allocated interests are
- 22 automatically reallocated upon the vote as if the unit had been condemned under section 1-107(a),

1 and the association promptly shall prepare, execute, and record an amendment to the declaration
2 reflecting the reallocations.

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

5 **§36B-3-114. Surplus Funds.**

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

10 **§36B-3-115. Assessments.**

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

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

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

20 (1) ~~Any~~ A common expense associated with the maintenance, repair, or replacement of a
21 limited common element must be assessed against the units to which that limited common element
22 is assigned, equally, or in any other proportion the declaration provides;

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

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

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

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

13 (f) If common expense liabilities are reallocated, common expense assessments and any
 14 installment thereof not yet due must be recalculated in accordance with the reallocated common
 15 expense liabilities.

16 **§36B-3-116. Lien for ~~assessments~~ sums due association; enforcement.**

17 (a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable
 18 to that unit or fines imposed against its unit owner from the time the assessment or fine becomes due.
 19 Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges,
 20 late charges, fines, and interest charged pursuant to section 3-102(a)(10), (11), and (12), and any
 21 other sums due to the association under the declaration, this chapter, or as a result of an
 22 administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as

1 unpaid assessments under this section. If an assessment is payable in installments, the lien is for the
 2 full amount of the assessment ~~is a lien~~ from the time the first installment thereof becomes due.

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

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

7 ~~(ii)~~(2) Except as otherwise provided in subsection (c), a first security interest on the unit
 8 recorded before the date on which the assessment sought to be enforced became delinquent; or, in
 9 a cooperative, the first security interest encumbering only the unit owner's interest and perfected
 10 before the date on which the assessment sought to be enforced became delinquent;; and

11 ~~(iii)~~(3) Liens for real estate taxes and other governmental assessments or charges against the
 12 unit or cooperative.

13 ~~(c)~~ The A lien under this section is also prior to all security interests described in subsection
 14 (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic
 15 budget adopted by the association pursuant to section 3-115(a) which would have become due in the
 16 absence of acceleration during the six months immediately preceding institution of an action to
 17 enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing
 18 the association's lien. This subsection Subsection (b) and this subsection ~~does~~ do not affect the
 19 priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by
 20 the association. ~~(The lien under this section is not subject to the provisions of (insert appropriate~~
 21 ~~reference to state homestead, dower and curtesy, or other exemptions).)~~ A lien under this section
 22 shall be void, as to creditors, and subsequent purchasers for valuable consideration without notice,

1 until and except from the time that it is duly admitted to record in all counties wherein the unit
 2 situate. This followings our recording statute.

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

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

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

9 ~~(f)~~(g) A judgment or decree in any action brought under this section must include costs and
 10 reasonable attorney's fees for the prevailing party and shall relate back for purposes of priority to the
 11 date the association lien was recorded in the county clerk's office, and shall bear interest at the rate
 12 set by the association for the original lien, not to exceed eighteen percent pursuant to section
 13 36B-3-115(b).

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

21 ~~(h)~~ For the purpose of perfecting and preserving its lien, the association shall given notice
 22 to the unit owner in the manner set forth in section one, article two, chapter fifty-six of this code, or

1 by registered or certified mail, return receipt requested, and in a form reasonably calculated to inform
2 the owner of his liability for payment of the assessment. The lien shall be discharged as to
3 subsequent purchasers for value without notice unless the association shall cause to be recorded a
4 notice of the lien in the office of the clerk of the county commission of any county wherein any part
5 of the condominium is located. The notice shall contain:

- 6 (1) A legally sufficient description of the unit;
- 7 (2) The name or names of the owners of the unit;
- 8 (3) The amount of unpaid assessments due together with the date when each fell due; and
- 9 (4) the date of the recordation.

10 The clerk of the county commission in whose office the notice is recorded shall index the
11 notice in the appropriate deedbooks and lien books in the name of the unit owners and of the
12 association. The cost of recordation shall be assessed against any unit owner found to be delinquent
13 in a subsequent proceeding to enforce the lien.

14 Upon payment of the assessment, the association shall execute a written release of the lien
15 in a manner set forth in section one, article twelve, chapter thirty-eight of this code. This release shall
16 be recorded, at the expense of the association, in the clerk of the county commission wherein the
17 notice of the lien was filed:

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

1 ~~to the time of tender, including reasonable attorney fee's of the creditor.~~ In a cooperative, upon
2 nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as
3 provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be
4 foreclosed as provided by this section.

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

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

11 (1) In a condominium or planned community, the association's lien must be foreclosed in like
12 manner as a mortgage on real estate;

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

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

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

21 (l) If the unit owner's interest in a unit in a cooperative is real estate, the following
22 requirements apply:

1 (1) The association, upon nonpayment of assessments and compliance with this subsection,
2 may sell that unit at a public sale or by private negotiation; and at any time, date, and place. The
3 association shall give to the unit owner and any lessee of the unit owner reasonable notice in a record
4 of the time, date, and place of any public sale or, if a private sale is intended, of the intention of
5 entering into a contract to sell and of the time and date after which a private disposition may be
6 made. The same notice must also be sent to any other person that has a recorded interest in the unit
7 which would be cut off by the sale, but only if the recorded interest was on record seven weeks
8 before the date specified in the notice as the date of any public sale or seven weeks before the date
9 specified in the notice as the date after which a private sale may be made. The notices required by
10 this subsection may be sent to any address reasonable in the circumstances. A sale may not be held
11 until five weeks after the sending of the notice. The association may buy at any public sale and, if
12 the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

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

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

15 (A) The reasonable expenses of sale;

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

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

22 (D) Satisfaction in the order of priority of any subordinate claim of record; and

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

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

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

18 (m) In an action by an association to collect assessments or to foreclose a lien on a unit under
19 this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit
20 owner before commencement or during pendency of the action. The receivership is governed by
21 [insert state law generally applicable to receiverships]. The court may order the receiver to pay any
22 sums held by the receiver to the association during pendency of the action to the extent of the

1 association's common expense assessments based on a periodic budget adopted by the association
2 pursuant to section 3-115.

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

5 (1) The unit owner, at the time the action is commenced, owes a sum equal to at least three
6 months of common expense assessments based on the periodic budget last adopted by the association
7 pursuant to section 3-115(a) and the unit owner has failed to accept or comply with a payment plan
8 offered by the association; and

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

10 (o) Unless the parties otherwise agree, the association shall apply any sums paid by unit
11 owners that are delinquent in paying assessments in the following order:

12 (1) Unpaid assessments;

13 (2) Late charges;

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

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

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

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

22 **§36B-3-117. Other liens.**

1 (a) In a condominium or planned community:

2 (1) Except as otherwise provided in paragraph (2), a judgment for money against the
3 association (if recorded), is not a lien on the common elements, but is a lien in favor of the judgment
4 lien holder against all of the other real estate of the association and all of the units in the common
5 interest community at the time the judgment was entered. No other property of a unit owner is
6 subject to the claims of creditors of the association.

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

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

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

22 (b) In a cooperative:

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

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

7 **§36B-3-118. Association records.**

8 (a) An association must retain the following:

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

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

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

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

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

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

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

- 1 (8) Financial and other records sufficiently detailed to enable the association to comply with
2 section 4-109;
- 3 (9) Copies of current contracts to which it is a party;
- 4 (10) Records of executive board or committee actions to approve or deny any requests for
5 design or architectural approval from unit owners; and
- 6 (11) Ballots, proxies, and other records related to voting by unit owners for one year after the
7 election, action, or vote to which they relate.
- 8 (b) Subject to subsections (c) and (d), all records retained by an association must be available
9 for examination and copying by a unit owner or the owner’s authorized agent;
- 10 (1) During reasonable business hours or at a mutually convenient time and location; and
- 11 (2) Upon five days’ notice in a record reasonably identifying the specific records of the
12 association requested.
- 13 (c) Records retained by an association may be withheld from inspection and copying to the
14 extent that they concern:
- 15 (1) Personnel, salary, and medical records relating to specific individuals;
- 16 (2) Contracts, leases, and other commercial transactions to purchase or provide goods or
17 services, currently being negotiated;
- 18 (3) Existing or potential litigation or mediation, arbitration, or administrative proceedings;
- 19 (4) Existing or potential matters involving federal, state, or local administrative or other
20 formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or
21 rules;
- 22 (5) Communications with the association’s attorney which are otherwise protected by the

1 attorney-client privilege or the attorney work-product doctrine;

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

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

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

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

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

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

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

12 **§36B-3-120. Rules.**

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

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

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

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

21 (c) An association may adopt rules to establish and enforce construction and design criteria
22 and aesthetic standards if the declaration so provides. If the declaration so provides, the association

1 shall adopt procedures for enforcement of those standards and for approval of construction
2 applications, including a reasonable time within which the association must act after an application
3 is submitted and the consequences of its failure to act.

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

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

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

14 (1) Implement a provision of the declaration;

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

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

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

22 (h) Every rule must be reasonable.

1 **§36B-3-121. Notice to unit owners.**

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

5 (1) Hand delivery to each unit owner;

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

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

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

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

12 **§36B-3-122. Removal of officers and directors.**

13 (a) Notwithstanding any provision of the declaration or bylaws to the contrary, unit owners
14 present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a
15 quorum is present, may remove any member of the executive board and any officer elected by the
16 unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the
17 number of votes cast in opposition to removal, but:

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

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

22 (3) The unit owners may not consider whether to remove a member of the executive board

1 or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed
2 in the notice of the meeting.

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

6 **§36B-3-123. Adoption of budgets; special assessments.**

7 (a) The executive board, at least annually, shall adopt a proposed budget for the common
8 interest community for consideration by the unit owners. Not later than thirty days after adoption
9 of a proposed budget, the executive board shall provide to all the unit owners a summary of the
10 budget, including any reserves, and a statement of the basis on which any reserves are calculated and
11 funded. Simultaneously, the board shall set a date not less than ten days or more than sixty days after
12 providing the summary for a meeting of the unit owners to consider ratification of the budget.
13 Unless at that meeting a majority of all unit owners or any larger number specified in the declaration
14 reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is
15 rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent
16 budget.

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

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

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

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

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

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

8 **§36B-3-124. Litigation involving declarant.**

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

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

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

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

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

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

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

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

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

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

21 (1) The association against a person to which notice was directed which fails to submit a
22 timely remediation plan, the plan of which is not acceptable, or which fails to pursue diligent

1 implementation of that plan; or

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

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

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

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

12 **ARTICLE 4. PROTECTION OF PURCHASERS.**

13 **§36B-4-101. Applicability; waiver.**

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

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

19 (1) A gratuitous disposition of a unit;

20 (2) A disposition pursuant to court order;

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

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

1 (5) A disposition to a dealer; or

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

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

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

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

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

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

14 **§36B-4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.**

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

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

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

10 (d) If a unit is part of a common interest community and is part of any other real estate regime
11 in connection with the sale of which the delivery of a public offering statement is required under the
12 laws of this state, a single public offering statement conforming to the requirements of sections
13 4-103, 4-104, 4-105, and 4-106 as those requirements relate to each regime in which the unit is
14 located, and to any other requirements imposed under the laws of this state, may be prepared and
15 delivered in lieu of providing two or more public offering statements.

16 **§36B-4-103. Public offering statement; general provisions.**

17 (a) Except as provided in subsection (b), a public offering statement must contain or fully and
18 accurately disclose:

19 (1) The name and principal address of the declarant and of the common interest community
20 and a statement that the common interest community is ~~either~~ a condominium, cooperative or
21 planned community;

22 (2) A general description of the common interest community, including to the extent possible,

- 1 the types, number, and declarant's schedule of commencement and completion of construction of
2 buildings and amenities that the declarant anticipates including in the common interest community;
- 3 (3) The number of units in the common interest community;
- 4 (4) Copies and a brief narrative description of the significant features of the declaration, other
5 than any plats and plans and any other recorded covenants, conditions, restrictions and reservations
6 affecting the common interest community; the bylaws and any rules or regulations of the association;
7 copies of any contracts and leases to be signed by purchasers at closing and a brief narrative
8 description of any contracts or leases that will or may be subject to cancellation by the association
9 under section 3-105;
- 10 (5) The financial information required by subsection (b). ~~Any current balance sheet and a
11 projected budget for the association, either within or as an exhibit to the public offering statement,
12 for one year after the date of the first conveyance to a purchaser and thereafter the current budget of
13 the association, a statement of who prepared the budget and a statement of the budget's assumptions
14 concerning occupancy and inflation factors. The budget must include, without limitation:~~
- 15 (i) ~~A statement of the amount or a statement that there is no amount, included in the budget
16 as a reserve for repairs and replacement;~~
- 17 (ii) ~~A statement of any other reserves;~~
- 18 (iii) ~~The projected common expense assessment by category of expenditures for the
19 association; and~~
- 20 (iv) ~~The projected monthly common expense assessment for each type of unit;~~
- 21 (6) Any services not reflected in the budget that the declarant provides, or expenses that he
22 or she pays and which he or she expects may become at any subsequent time a common expense of

1 the association and the projected common expense assessment attributable to each of those services
2 or expenses for the association and for each type of unit;

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

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

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

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

10 (11) A statement that:

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

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

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

1 (12) A statement of any unsatisfied judgments or pending ~~suits~~ action against the association
2 and the status of any pending ~~suits~~ action material to the common interest community of which a
3 declarant has actual knowledge;

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

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

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

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

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

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

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

21 (19) ~~Any~~ Any other unusual and material circumstances, features and characteristics of the
22 common interest community and the units; ~~and~~

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

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

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

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

14 (B) A statement of any other reserves;

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

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

18 ~~(b)~~ (c) If a common interest community composed of not more than twelve units is not
 19 subject to any development rights right and no power is reserved to a declarant to make the common
 20 interest community part of a larger common interest community, group of common interest
 21 communities, or other real estate, a public offering statement may ~~but need not~~ include the
 22 information otherwise required by paragraphs subdivisions (9), (10), (15), (16), (17), (18) and (19)

1 of subsection (a) of this section and the narrative descriptions of documents required by subsection
2 (a)(4).

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

5 **§36B-4-108. Purchaser's right to cancel.**

6 (a) A person required to deliver a public offering statement pursuant to section 4-102(c) shall
7 provide a purchaser with a copy of the public offering statement and all amendments thereto before
8 conveyance of the unit, and not later than the date of any contract of sale. Unless a purchaser is
9 given the public offering statement more than fifteen days before execution of a contract for the
10 purchase of a unit, the purchaser, before conveyance, may cancel the contract within fifteen days
11 after first receiving the public offering statement.

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

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

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

4 **§36B-4-109. Resales of units.**

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

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

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

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

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

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

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

- 1 (7) The current operating budget of the association;
- 2 (8) A statement of any unsatisfied judgments against the association and the status of any
3 pending suits in which the association is a defendant;
- 4 (9) A statement describing any insurance coverage provided for the benefit of unit owners;
- 5 (10) A statement as to whether the executive board has ~~knowledge that any~~ given or received
6 notice in a record that any existing uses, occupancies, alterations or improvements in or to the unit
7 or to the limited common elements assigned thereto violate any provision of the declaration;
- 8 (11) A statement as to whether the executive board has ~~knowledge of any violations of the~~
9 ~~health~~ received notice in a record from a governmental agency of any violation of environmental,
10 health, or building codes with respect to the unit, the limited common elements assigned thereto, or
11 any other portion of the common interest community which has not been cured;
- 12 (12) A statement of the remaining term of any leasehold estate affecting the common interest
13 community and the provisions governing any extension or renewal thereof;
- 14 (13) A statement of any restrictions in the declaration affecting the amount that may be
15 received by a unit owner upon sale, condemnation, casualty loss to the unit or the common interest
16 community, or termination of the common interest community; ~~and~~
- 17 (14) In a cooperative, an accountant's statement, if any was prepared, as to the deductibility
18 for federal income tax purposes by the unit owner of real estate taxes and interest paid by the
19 association;
- 20 (15) A statement describing any pending sale or encumbrance of common elements; and
- 21 (16) A statement disclosing the effect on the unit to be conveyed of any restrictions on the
22 owner's right to use or occupy the unit or to lease the unit to another person.

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

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

10 **§36B-4-112. Conversion buildings.**

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

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

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

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

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

19 **§36B-4-113. Express warranties of quality.**

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

22 (1) Any affirmation of fact or promise which relates to the unit, its use, or rights appurtenant

1 thereto, area improvements to the common interest community that would directly benefit the unit,
2 or the right to use or have the benefit of facilities not located in the common interest community,
3 creates an express warranty that the unit and related rights and uses will conform to the affirmation
4 or promise;

5 (2) Any model or description of the physical characteristics of the common interest
6 community, including plans and specifications of or for improvements, creates an express warranty
7 that the common interest community will conform to the model or description unless the model or
8 description clearly discloses that it is only proposed or is subject to change;

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

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

14 (b) Neither formal words, such as “warranty” or “guarantee,” nor a specific intention to make
15 a warranty, are necessary to create an express warranty of quality, but a statement purporting to be
16 merely an opinion or commendation of the real estate or its value does not create a warranty.

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

19 **§36B-4-114. Implied warranties of quality.**

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

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

5 (1) Free from defective materials; and

6 (2) Constructed in accordance with applicable law, according to sound engineering and
7 construction standards, and in a workmanlike manner.

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

11 (d) Warranties imposed by this section may be excluded or modified as specified in section
12 4-115.

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

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

17 **§36B-4-116. Statute of limitations for warranties.**

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

1 instrument executed by the purchaser.

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

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

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

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

13 (ii) (B) a common element within any other portion of the common interest community, at
14 the time the first unit is conveyed to 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.

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

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

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