

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4623

BY DELEGATES PHILLIPS AND DOYLE

[Introduced February 10, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §36B-1-103 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §36B-3-108 and §36B-3-110 of said code, all relating to the Uniform
3 Common Interest Ownership Act; defining “electronic”; establishing requirements for the
4 holding of meetings; and creating procedures for voting and proxy voting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§36B-1-103. Definitions.

1 In the declaration and bylaws (§36B-3-106 of this code), unless specifically provided
2 otherwise or the context otherwise requires, and in this chapter:

3 ~~(4)~~ “Affiliate of a declarant” means any person who controls, is controlled by, or is under
4 common control with a declarant. A person “controls” a declarant if the person: ~~(i)~~ (A) Is a general
5 partner, officer, director or employer of the declarant; ~~(ii)~~ (B) Directly or indirectly or acting in
6 concert with one or more other persons, or through one or more subsidiaries, owns, controls,
7 holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest
8 in the declarant; ~~(iii)~~ (C) Controls in any manner the election of a majority of the directors of the
9 declarant; or (iv) (D) Has contributed more than 20 percent of the capital of the declarant. A person
10 “is controlled by” a declarant if the declarant: (i) Is a general partner, officer, director or employer
11 of the person; (ii) Directly or indirectly or acting in concert with one or more other persons, or
12 through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies
13 representing, more than 20 percent of the voting interest in the person; (iii) Controls in any manner
14 the election of a majority of the directors of the person; or (iv) Has contributed more than 20
15 percent of the capital of the person. Control does not exist if the powers described in this
16 paragraph are held solely as security for an obligation and are not exercised.

17 ~~(2)~~ “Allocated interests” means the following interests allocated to each unit: ~~(i)~~ (A) In a
18 condominium, the undivided interest in the common elements, the common expense liability, and
19 votes in the association; ~~(ii)~~ (B) In a cooperative, the common expense liability and the ownership

interest and votes in the association; and ~~(iii)~~ (C) In a planned community, the common expense liability and votes in the association.

~~(3)~~ "Association" or "unit owners' association" means the unit owners' association organized under §36B-3-101.

~~(4)~~ "Common elements" means: ~~(i)~~ (A) In a condominium or cooperative, all portions of the common interest community other than the units; and ~~(ii)~~ (B) In a planned community, any real estate within a planned community owned or leased by the association, other than a unit.

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

~~(6)~~ "Common expense liability" means the liability for common expenses allocated to each unit pursuant to §36B-2-107 of this code.

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

"Ownership of a unit" does not include holding a leasehold interest of less than 20 years in a unit, including renewal options.

~~(8)~~ "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is

not a condominium unless the undivided interest in the common elements are vested in the unit owners.

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

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

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

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

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

~~(14)~~ "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: ~~(i)~~ (A) Add real estate to a common interest community; ~~(ii)~~ (B) Create units, common elements or limited common elements within a common interest community; ~~(iii)~~ (C) Subdivide units or convert units into common elements; or ~~(iv)~~ (D) Withdraw real estate from a common interest community.

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

"Electronic" means, relating to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

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

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

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

77 ~~(19)~~ "Limited common element" means a portion of the common elements allocated by the
78 declaration or by operation of §36B-2-102(2) or §36B-2-102(4), of this code for the exclusive use
79 of one or more but fewer than all of the units.

80 ~~(20)~~ "Master association" means an organization described in §36B-2-120 of this code,
81 whether or not it is also an association described in §36B-3-101 of this code.

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

88 ~~(22)~~ "Person" means an individual, corporation, business trust, estate, trust, partnership,
89 association, joint venture, government, governmental subdivision, or agency, or other legal or
90 commercial entity. In the case of a trust, the corpus of which is real estate, however, "person"
91 means the beneficiary of the trust rather than the trust or the trustee.

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

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

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

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

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

~~(28)~~ "Resort" means a destination location which consists of: ~~(i)~~ (A) One or more persons offering recreational facilities and services such as skiing, golf, tennis or boating to the general public and commercial facilities such as retail stores, restaurants and hotels or other lodging accommodations; and ~~(ii)~~ (B) At least 100 residential units, a majority of which are used as vacation or second homes rather than primary residences.

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

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

~~(31)~~ "Special declarant rights" means rights reserved for the benefit of a declarant to: ~~(i)~~ (A) Complete improvements indicated on plans and plans filed with the declaration (§36B-2-109 of this code) or, in a cooperative, to complete improvements described in the public offering statement pursuant to §36B-4-103(a)(2) of this code; ~~(ii)~~ (B) Exercise any development right

(§36B-2-110 of this code); ~~(iii)~~ (C) Maintain sales offices, management offices, signs advertising the common interest community, and models (§36B-2-115 of this code); ~~(iv)~~ (D) Use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community (§36B-2-116 of this code); ~~(v)~~ (E) Make the common interest community subject to a master association (§36B-2-120 of this code); ~~(vi)~~ (F) Merge or consolidate a common interest community with another common interest community of the same form of ownership (§36B-2-121 of this code); or ~~(vii)~~ (I) Appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control (§36B-3-103(d) of this code).

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

~~(33)~~ "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to §36B-2-105(a)(5) of this code. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(34) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease, the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the owner of any unit created by the declaration. In a cooperative, the declarant is treated as the owner of any unit to which allocated

148 interests have been allocated (§36B-2-107 of this code) until that unit has been conveyed to
149 another person.

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

§36B-3-108. Meetings.

1 (a) A meeting of the association ~~must~~ shall be held at least once each year. Special
2 meetings of the association may be called by the president, a majority of the executive board, or
3 by unit owners having 20 percent, or any lower percentage specified in the bylaws, of the votes
4 in the association. Not less than 10 nor more than 60 days in advance of any meeting, the
5 secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent
6 prepaid by United States mail to the mailing address of each unit or to any other mailing address
7 designated in writing by the unit owner. The notice of any meeting must state the time and place
8 of the meeting and the items on the agenda, including the general nature of any proposed
9 amendment to the declaration or bylaws, any budget changes, and any proposal to remove an
10 officer or member of the executive board.

11 (b) A meeting of unit owners is required to be held at a physical location if the meeting is:

12 (1) Conducted by a means of communication that enables owners in different locations to
13 communicate in real time to the same extent as if they were physically present in the same
14 location; and

15 (2) Not expressly prohibited by the declaration or bylaws.

16 (c) In the notice for a meeting held at the physical location, the executive board may notify
17 all unit owners that they may participate remotely in the meeting by a means of communication
18 consistent with subsection (b) (1) of this section.

§36B-3-110. Voting; proxies.

1 ~~(a) If only one of several owners of a unit is present at a meeting of the association, that~~
2 ~~owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are~~
3 ~~present, the votes allocated to that unit may be cast only in accordance with the agreement of a~~

~~majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.~~

If unit owners attend the meeting by a means of communication under §36B-3-108 of this code, the association shall implement reasonable measures to verify the identity of each unit owner attending remotely.

(b) Except as otherwise provided in the declaration or bylaws, unit owners may vote by proxy subject to the following requirements:

~~(b) (1) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.~~
When a unit owner votes by proxy, the association shall be able to verify the identity of the unit owner and the proxy holder;

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

(3) A proxy is void if it is not dated or purports to be revocable without notice;

~~A proxy terminates one year after its date unless it specifies a shorter term.~~

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

(5) A person may not cast undirected proxies representing more than 15 percent of the votes in the association.

(c) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. If that occurs, the following requirements apply:

(1) The association shall notify the unit owners that the vote shall be taken by ballot without a meeting; and

30 (2) With the notice the association shall deliver instructions for casting a ballot:

31 (A) A paper ballot to every unit owner except a unit owner that has consented in a record
32 to electronic voting; and

33 (B) If the association allows electronic voting, instructions for electronic voting. A unit
34 owner's casting of an electronic ballot is consent to the owner's use of electronic voting.

35 (3) The ballot shall set forth each proposed action and provide an opportunity to vote for
36 or against the action;

37 (4) The association shall state in the notice:

38 (A) The percent of votes necessary to approve each matter other than election of directors;

39 (B) Specify the time and date by which a ballot shall be delivered to the association to be
40 counted, which time and date may not be fewer than three days after the date the association
41 delivers the ballot; and

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

44 (5) A unit owner may revoke a ballot before the time and date by which the ballot shall be
45 delivered to the association under paragraph (4) of this subsection. Except as otherwise provided
46 in the declaration or bylaws, a ballot is not revoked by death or disability after delivery to the
47 association;

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

50 (7) The association shall verify that each paper and electronic ballot is cast by the unit
51 owner having a right to do so; and

52 (8) If the association allows electronic ballots, the association shall create a record of
53 electronic votes that is capable of retention, retrieval, and review.

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

~~(i) (1) The provisions of subsections (a) and (b) apply~~ This section applies to lessees as if they were unit owners;

~~(ii) (2)~~ Unit owners who have leased their units to other persons may not cast votes on those specified matters; and

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

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

~~(f) No votes~~ Votes allocated to a unit owned by the association ~~may~~ shall be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

~~(g) Unless a different number or fraction of the votes in an association is required by this section or the declaration, a majority of the votes cast determines the outcome of any vote taken at a meeting or without a meeting,~~

(h) When a unit is owned by more than one person:

(1) If only one of those owners casts a vote, that vote shall be counted as casing all votes allocated to that unit by the declaration;

(2) Unless the declaration requires that all votes cast by multiple owners of a unit shall be counted in the manner described in declaration, if more than one of the owners of a unit casts a vote for that unit, no votes from any owner of that unit may be counted.

NOTE: The purpose of this bill is to amend provisions of the Uniform Common Interest Ownership Act; defining "electronic"; establishing requirements for the holding of meetings; and creating procedures for voting and proxy voting.

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