

WEST VIRGINIA CODE CHAPTER 36B. UNIFORM COMMON INTEREST OWNERSHIP ACT

EFFECTIVE ~~1984~~ July 1, 1986

[brackets inserted with quoted reference sections]

SHARING INFORMATION – INCREASING KNOWLEDGE

CONTENT REQUIREMENTS OF THE DECLARATION FOR WV HOMEOWNERS ASSOCIATIONS

§36B-2-105. Contents of declaration.

(a) The declaration must contain:

- (1) The names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative or planned community;
- (2) The name of every county in which any part of the common interest community is situated;
- (3) A legally sufficient description of the real estate included in the common interest community;
- (4) A statement of the maximum number of units that the declarant reserves the right to create;
- (5) In a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms and its location within a building if it is within a building containing more than one unit;
- (6) A description of any limited common elements, other than those specified in section [2-102\(2\)](#) [If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.] and [\(4\)](#) [Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.], as provided in section [2-109\(b\)\(10\)](#) [Each plat must show the location and dimensions of limited common elements, including porches, balconies and patios, other than parking spaces and the other limited common elements described in sections 2-102(2) and (4)]; and, in a planned community, any real estate that is or must become common elements;
- (7) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in section [2-102\(2\)](#) [If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.] and [\(4\)](#) [Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.], together with a statement that they may be so allocated;
- (8) A description of any development rights (section [1- 103\(14\)](#)) ["Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (i) Add real estate to a common interest community; (ii) create units, common elements or limited common elements within a common interest community; (iii) subdivide units or

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<http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=36b&art=2#02>

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convert units into common elements; or (iv) withdraw real estate from a common interest community.] and other special declarant rights (section [1- 103\(29\)](#)) ["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.] reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

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

(11) An allocation to each unit of the allocated interests in the manner described in section [2-107](#) [see attached];

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

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

(14) All matters required by sections

[2-106](#) [Leasehold common interest communities.],

[2-107](#) [Allocation of allocated interests.],

[2-108](#) [Limited common elements.] ,

[2-109](#) [Plats and plans.] ,

[2-115](#) [Use for sales purposes.] ,

[2-116](#) [Easement rights.] and

[3-103\(d\)](#) [Executive board members and officers. Subject to subsection (e), the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by him, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units that may be created to unit owners other than a declarant; (ii) two years after all declarants have ceased to offer units for sale in the ordinary course of business; or (iii) two years after any right to add new units was last exercised. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.] .

(b) The declaration may contain any other matters the declarant considers appropriate.

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REFERENCED ATTACHMENT

§36B-2-107. Allocation of allocated interests.

(a) The declaration must allocate to each unit:

(i) In a condominium, a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, (section [3-115\(a\)](#)) [Assessments for common expenses] and a portion of the votes in the association;

(ii) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association (section [3-115\(a\)](#)) [Assessments for common expenses] and a portion of the votes in the association; and

(iii) In a planned community, a fraction or percentage of the common expenses of the association (section [3-115\(a\)](#)) [Assessments for common expenses] and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(d) The declaration may provide: (i) That different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter nor may units constitute a class because they are owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or one hundred percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium, the common elements are not subject to partition and any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

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