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## West Virginia Community Associations – The New Frontier

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West Virginia is becoming the new frontier in the development of community associations in the Washington DC metropolitan area. Community association developers have recently been expanding into new markets over the Virginia and Maryland borders into West Virginia. This memorandum gives a basic understanding of the rules governing community associations in West Virginia.

West Virginia community associations are governed mainly by the Uniform Common Interest Ownership Act (“UCIOA”). This is a model act that has been adopted in only a few states, though many more states have adopted portions of the act and incorporated them into their own statutes.

The West Virginia version of UCIOA only applies to those communities that are developed as common interest communities under UCIOA, which can include condominiums (so long as the undivided interests in the common elements are vested to all unit owners), homeowners associations (to include

associations that have both residential and commercial units if the declaration provides for it), and planned communities.

In some ways, West Virginia’s UCIOA provides associations with more powers than the statutes pertaining to associations in neighboring jurisdictions. For example, under West Virginia law associations may impose and receive payments, fees or charges for the use, rental or operation of the common elements (other than limited common elements) and for services provided to owners. These powers do not need to already be provided for in an association’s governing documents.

With respect to collections, West Virginia’s UCIOA provides that the association has a lien on a unit for any assessment levied against that unit, as well as any fines that may have been imposed against the unit owner. Additionally, unless the declaration provides otherwise, the UCIOA allows associations to also collect their administrative fees, charges, late charges, and interest. This language is

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much broader than in some neighboring states and grants the association the power to record liens for not only the unpaid principal balance of assessments or fines but also most of costs associated with collections and covenants violations. Furthermore, the West Virginia UCIOA contains a 6-month super-priority clause for unpaid assessments. This means that in the event of foreclosure by a fist trust mortgagee, the association is entitled to up to 6 months of back assessments. This provision is similar to the super priority language that has been adopted by the District of Columbia for condominium assessments.

As noted above, West Virginia's UCIOA specifically allows for associations to levy reasonable fines for violations of the governing documents and rules and regulations of the association, after notice and an opportunity to be heard, which is similar to the process required in Virginia and Maryland. Furthermore, if the association's Bylaws do not specify a quorum, the minimum quorum requirement for meetings of the membership is equal to the presence or participation of those persons entitled to cast 20% of the total votes of the association.

One of the more unique provisions of West Virginia law is that if a person fails to comply with the provisions of the UCIOA, the association, a person or group of persons has an automatic cause for relief under statute. This means that

both association members and non-members can be liable for a violation of UCIOA. Additionally, if a violation of UCIOA is willful in nature, the court can award punitive damages. This punitive component is very different from the community association statutes in Maryland, Virginia and the District and it appears consistent with the many different consumer protection statutes at work in West Virginia. While consumer protection statutes can frequently prove beneficial to the members of community associations, they are distinct from neighboring jurisdictions' enforcement provisions.

However, West Virginia's consumer protection statutes are not as beneficial to associations when it comes to collecting past due assessments. While suits can still be filed for outstanding assessments, the collection of attorneys' fees, even if provided for in an association's governing documents, are not generally permitted by the West Virginia courts. As such, traditional collection techniques may not be best for all West Virginia associations.

This list is not exhaustive of notable components of West Virginia laws affecting community associations. As always, if you have a particular question about the laws affecting your West Virginia association, please do not hesitate to contact one of the West Virginia licensed attorneys named at the top of this article.