

Chapter 16

Common Interest Communities, Condominiums and Planned Unit Developments

Overview

What is a Common Interest Community

A common interest community is a subdivision containing common land, often including recreational amenities. That common property is typically owned by an association of the homeowners (HOA), to which they all must belong and pay lien-supported assessments for a proportionate share of the expenses of the HOA.

Condominiums and planned unit developments (PUDs) are common interest communities.

Basic VA Requirements

There are VA requirements applicable to **all properties** located in either a PUD or condominium. Also, **condominiums** (but not PUDs) must be **approved** by VA before any lots or units in the project are eligible for VA loan guaranty.

References: See Section 16-A

- *Requirements Applicable to All Properties in Common Interest Communities*, and
 - *Condominium Approval Procedures*.
-

VA Approved Condominium List

A nationwide list of VA-approved condominiums, the *Condominiums, Planned Unit Developments and Builders* list, can be reached via **The Appraisal System (TAS)**.

The internet address is <http://condopudbuilder.vba.va.gov>.

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Overview, Continued

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Section A

Requirements for Properties in Common Interest Communities

Overview

Basic VA Policy VA's goal is to help protect the interests of veterans and the Government by ensuring that all properties located in a common interest community meet VA regulatory requirements. Meeting this goal as efficiently and cost effectively as possible serves the best interests of all program participants involved.

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16-A.01 Requirements Applicable to All Properties in Common Interest Communities

Introduction While only condominiums must be approved by VA, lots or units securing VA loans in condominiums and other planned unit developments must meet both title and lien-related VA regulatory requirements. The lender is responsible for ensuring that these requirements are met for each VA loan. Although there is no specific VA requirement that lenders maintain evidence in the loan file that these requirements are met, they may wish to be guided by the advice of their legal counsel in this regard.

Acceptable Title

The title requirements for every VA loan, whether or not the property is located in a common interest communities, are stated in VA regulations ([38 CFR 36.4350](#)). These requirements indicate

- the estate must not be less than fee simple, except under certain circumstances ([38 CFR 36.4350\(a\)](#))
- title must to be subject to unreasonable restrictions o use and occupancy, except under certain circumstances ([38 CFR 36.4350\(b\)](#)), and
- certain minor title limitations will not be considered by VA, to the extent described, as materially affecting the value of the property
- ([38 CFR 36.4350 \(c\)](#)).

[38 CFR 36.4350](#)

[38 CFR 36.4350 \(a\)](#)

[38 CFR 36.4350 \(b\)](#)

[38 CFR 36.4350 \(c\)](#)

Superior VA Lien

VA regulations require that every VA loan be secured by a first lien on the property, except under certain circumstances. ([38 CFR 36.4351](#) and [38 CFR 36.4352](#))

When a property is located in a condominium or planned unit development, the lender must ensure that any mandatory homeowner association assessment is subordinate to the VA-guaranteed mortgage.

[38 CFR 36.4351](#)

[38 CFR 36.4352](#)

16-A.01 Requirements Applicable to All Properties in Common Interest Communities, Continued

Appraisal Related

Fee appraisers will use

- Freddie Mac Form 70/FannieMae Form 1004, Uniform Residential Appraisal Report, for properties located in a planned unit development, or
- Fannie Mae Form 1073, *Individual Condominium Unit Appraisal Report*, for properties located in a condominium. .

Requirements specific to properties located in a condominium are outlined in [38 CFR 36.4360a](#), Appraisal Requirements.

If there are any commercial **or** other non-residential ownership interests in the condominium, the appraisal report must include them and their impact on the value of the residential units.

In declarant/developer controlled **condominium conversions**, the appraiser must

- ascertain the degree to which the converted structure and unit(s) has been or will be rehabilitated for condominium use. The structure may have been, or is proposed to be, remodeled, renovated, rehabilitated, modernized, or “cosmetically” refurbished, and
- provide a description of the type of work completed or proposed to be completed in the conversion being appraised for declarant/developer sales. This information is not required in spot resales by sellers other than the declarant/developer.

[38 CFR 36.4360a]

Continued on next page

16-A.01 Requirements Applicable to All Properties in Common Interest Communities, Continued

Notice of Value-Related

The notice of value for **all** properties in a PUD or condominium will be conditioned: “This property is located in a development with mandatory membership in a homeowners’ association. The lender is responsible for ensuring that title meets VA requirements for such property and that homeowner association assessments are subordinate to the VA-guaranteed mortgage.”

In addition, the notice of value for a property in a **condominium** which has not been approved by VA or for which VA approval-related requirements remain to be satisfied, will be conditioned “The lender is responsible for ensuring that this condominium is acceptable to VA and that any condominium-related special conditions or requirements have been met. There may be additional information in ‘Other Conditions/Requirements’, below.”

Reference: See

- “Acceptable Title” and “Superior VA Lien,” in this section;
- Section 16-A.02, and
- Chapter 13, Exhibit 1, “LAPP Lender’s Notice of Value”, Items 3 and 4.

Note: There are other regulatory-related requirements for a property in a condominium. For example:

- pre-sale requirement per [38 CFR 36.4360a\(c\)](#)
- warranty requirements for the unit and common elements per
- [38 CFR 36.4360a\(d\)](#), and
- a wood-destroying insect inspection is required in low rise and high rise units only when the fee appraiser observes a potential problem.

[\[38 CFR 36.4350\]](#)

[\[38 CFR 36.4352\]](#)

[\[38 CFR 36.4360a\(c\)\]](#)

[\[38 CFR 36.4360a\(d\)\]](#)

16-A.02 Condominium Approval Procedures

Request for VA Approval

For condominium projects, the lender/sponsor must provide the following to the VA Office of Jurisdiction:

- a written request for VA-approval, and
- a copy of the condominium's organizational documents.

Note: These documents must be reviewed for compliance with VA regulations, and approved by VA before any lots or units in the project are eligible for VA loan guaranty.

Reference: See Section 16-A.03.

VA Processing of Approval Requests

VA will

- review the condominium's organizational documents for compliance with VA regulations, and
- notify the requesting lender/sponsor.

Note: The condominium must be approved by VA before any lots or units in the project are eligible for VA loan guaranty.

Continued on next page

16-A.02 Condominium Approval Procedures, Continued

How to Expedite VA Approval

HUD/USDA Approval

Generally, projects already approved by the Department of Housing and Urban Development (HUD) or the United States Department of Agriculture (USDA) do not need further VA review. Upon receipt of evidence of HUD/USDA approval, such as a copy of the HUD/USDA approved project list or the project approval letter, the VA office of jurisdiction adds the project to the nationwide VA list without issuing a formal VA approval letter.

In rare cases, HUD or USDA may approve a project that VA discovers does not comply with VA regulations. In those cases, VA notifies the lender as soon as practicable that it will not guarantee loans in the project.

Use of Attorney's Opinion

This is a highly recommended options for condominiums that have not been approved by HUD or USDA.

Reference: See Section 16-B.

Use of Previously Approved Documents

When the organizational documents being submitted are essentially the same as a set previously approved by VA, the lender/sponsor should include a certification from the declarant or declarant's attorney which

- states the fact
- specifically identifies the previous set, and
- describes any variation to the previous set.

State Agency Certification of a Condominium

If a state agency certifies that the condominium has been created in compliance with the laws of the state in which it is located, include the certification.

Continued on next page

16-A.02 Condominium Approval Procedures, Continued

VA Decision

After completing its review of the material submitted with the request for project approval, the VA office of jurisdiction sends a written notice of its decision to the lender/sponsor.

When ...	Then the notice will ...
the project is approved	<p>indicate any special conditions/requirements which must be met prior to VA guaranty of an individual loan in the project, such as</p> <ul style="list-style-type: none"> • recording of documents • pre-sale requirement, or • completing of common areas. <p><i>Note:</i> There is no formal VA approval letter for projects accepted by VA based on their approval by HUD or USDA.</p>
<p>there were</p> <ul style="list-style-type: none"> • missing/incomplete documents • inaccurate/inconsistent information, or • correctable deviations from VA requirements 	<p>explain what further documentation is needed.</p> <p><i>Note:</i> VA will then suspend processing pending receipt of the needed information or material.</p>
the project is unacceptable	<p>state the reason.</p> <p><i>Note:</i> When there are objectionable provisions related to unreasonably retained controls or rights of the declarant/developer, and it is difficult to amend the documents, VA may consider a separate recorded agreement from the declarant/developer relinquishing the objectionable provisions.</p>

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16-A.02 Condominium Approval Procedures, Continued

Document Amendments After Project Approval

VA recommends that declarants have amendment procedures for the declaration or equivalent document, amendable by an instrument approved by not less than 67 percent of unit owners. The association must request VA approval of proposed amendments prior to recordation.

VA approval of **any** amendments to the declaration, bylaws, or other enabling documentation is required while the declarant is in control of the homeowner's association. A written statement signed by an officer of the Association's Board of Directors and submitted with VA Form 26-1844, is required as evidence of approval.

Changes made by the declarant prior to the first sale in a condominium project may require amendment of the organizational documents.

Note: VA approval is not required for amendments which annex additional phases to the condominium in accordance with a development plan previously accepted by VA.

Mortgagee Rights

The condominium documents may specify the following rights for the holders of first mortgages, provided the lender makes a written request to the Association for the right, and includes

- prior approval by first lienholders before the Association can
 - abandon condominium status or partition or subdivide a unit or the common elements
 - change the percentage interest of unit owners, or
 - materially amend the legal documents
- timely written notice to first lienholders of
 - any condemnation or eminent domain proceeding, and
 - substantial damage or destruction to the common elements
- the right to
 - examine the association books
 - receive annual audited financial statements and record, and
 - be given notice of association meetings and be entitled to a representative at such meetings.

16-A.03 Table of Required Documents

Table of Required Documents

The table below identifies the documents that the VA office of jurisdiction must review in order to approve a particular condominium project.

Reference: See Section 16-A.02, Condominium Approval Procedures

Using the Table As indicated in the table, some documents are required only

- if applicable
- if the declarant is in control of the project, or
- for condominium conversion projects.

The last column indicates whether or not it is acceptable to submit a draft of the document. Recorded or existing final documents must be provided if loans have closed in the project.

	Required Document	New Project	Existing Resales	Draft
1	Declaration of Covenants, Conditions and Restrictions	Yes	Yes	Yes
2	Bylaws for HOA	Yes	Yes	Yes
3	Articles of Incorporation for HOA	If Applicable	If Applicable	Yes
4	“Umbrella” projects, Declaration, Bylaws and Articles of Incorporation, as above	If Applicable	If Applicable	Yes
5	Plat, map and/or air lot survey of project	Yes	Yes	Yes
6	Plat, map and/or air lot survey of unit(s)	If Applicable	If Applicable	Yes
7	Development plan and schedule	Yes	If Declarant Controls	Yes
8	Information or Public Offering Statement	Yes	If Declarant Controls	Yes
9	Grant/deed/leasehold agreement form	Yes	If Declarant Controls	Yes

16-A.03 Table of Required Documents, Continued

Using the Table (continued)

	Required Document	New Project	Existing Resales	Draft
10	State reviewing agency's report	If Applicable	If Applicable	Yes
11	Annexation documents	If Applicable	If Applicable	Yes
12	Cross-easement(s)	If Applicable	If Applicable	Yes
13	Facility Leases	If Applicable	If Applicable	Yes
14	Management agreement	If Applicable	If Applicable	Yes
15	Service contract(s) (either form of or actual)	If Applicable	If Applicable	Yes
16	HOA budget (existing or proposed)	Yes	Yes	No
17	Current financial statements and reserves of project	If Applicable	If Applicable	No
18	Special assessments/litigation statement	Yes	Yes	No
19	Minutes of last two HOA meetings	Yes	Yes	No
20	Registered architect/engineer statement on project condition (conversions only)	If Declarant Controls	If Declarant Controls	No

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16-A.03 Table of Required Documents, Continued**Submit as
Available**

Although the following documents are also required, as applicable, they may not be available for submission with the initial package. They must be submitted as soon as available and before any lots or units in the project can be considered eligible for VA loan guaranty.

	Document	New Project	Existing Resales	Draft
21	Recorded documents	Yes	Yes	No
22	Recorded annexation document for subject phase (expandable projects only)	Yes	Yes	No
23	Evidence recreational facilities completed and common area conveyed to HOA	Yes	Yes	No
24	Statement on adequacy of utilities serving site (conversions only)	If Declarant Controls	If Declarant Controls	
25	Evidence common area title free of financial encumbrances	Yes	If Applicable	No
26	Evidence of final local authority approval and final VA inspection (Low/High Rises and Conversions only)	Yes	No	No
27	Lender's certification that pre-sale requirement met	Yes	Yes	No

Section B

Use of Attorney's Opinion

Overview

Attorney's Opinion Encouraged

Lenders/sponsors seeking VA approval of a condominium are encouraged to include an attorney's opinion that the project meets VA requirements, along with the organizational documents.

This will expedite VA approval of the project by reducing the extent of VA's review of those documents.

General Requirements

The attorney's opinion must

- be prepared in letter form on the attorney's firm's letterhead
- be signed, dated and show the name and title of the attorney rendering the opinion, and
- address four areas
 - project identification
 - documents reviewed
 - attorney's qualifications, and
 - attorney's opinion.

In This Section

This section contains the following topics

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16-B.01 Contents of Opinion

Identification of Project

Identification of the project must include

- the name of project (both legal and marketing, if applicable)
- the location of project (address if available, city/county, state and zip code)
- a statement regarding whether or not (if known at the time of submission) the
 - lots in the project are created and subjected to the Declaration in phases, and
 - approximate number of phases to be developed and the specific identities of the phases
- specific identification of units, and common areas to be subjected to the Declaration in the first phase being submitted for acceptance.
-
- **Note:** If the phases have been recorded, the description must be of those units and common areas legally subjected as of the date of the opinion, or there must be reference to a provided exhibit and the phase currently being proposed for annexation.
-
- information on the status of the master or umbrella association, if any, including
 - whether or not the documents are recorded
 - a general description of the overall project, and
 - the number of sub associations that may be planned.

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16-B.01 Contents of Opinion, Continued**List of Documents Reviewed**

The list of documents that are reviewed when developing the attorney's opinion must include, at a minimum the

- Declaration, including all exhibits incorporated by reference
 -
 - **Example:** Descriptions of subjected lots and land/lots to be subjected, additional lands, plats and development plans.
 -
 - Bylaws for the Association, or similar document governing the internal operation of the association
 - Articles of Incorporation for the Association, or similar document, if not an incorporated entity,
 - Public Offering Statement or Information Brochure for the project, and
 - if applicable, the same documents for any umbrella or master association in which
 - owners in the subject association will be or are members, or
 - the sub associations will be or are members.
-

Statement of Qualifications

A statement regarding the attorney's qualifications must be similar to the following:

“The undersigned is experienced in the practice of real estate law in **(name of jurisdiction and locality in which the project is located)** and is familiar with the laws, ordinances, regulations, and other legal requirements that, as of the date of this opinion, were applicable with respect to the establishment and administration of property owners associations within that jurisdiction. Consequently, I am qualified to issue this opinion.”

Actual Opinion

See Section 16-B.02.

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16-B-3

16-B.02 What Opinion Must Address

Compliance With VA Regulations

The attorney's opinion must address compliance of the organizational documents with VA regulations [38 CFR 36.4356](#) through [36.4360a\(g\)](#) for condominiums.

Reference: [[38 CFR 36.4356](#) through [38 CFR 36.4360a\(g\)](#)]

Compliance with Other VA Requirements

The attorney's opinion must address compliance of the organizational documents with the technical areas discussed in Exhibit A.

Compliance with Local/State Requirements

The actual attorney's opinion must

- address compliance of the organizational documents with the material requirements of applicable state and local laws, ordinances, regulations and other legal requirements governing the creation of property owners associations as of the date of the opinion, and
 - identify the above applicable laws, ordinances, regulations and legal requirements by name and citation.
-

Variations

The attorney's opinion must identify any variation from any requirement, including failure to comply with a specific requirement. A recorded amendment correcting a document defect or deficiency with regard to a VA regulation is necessary in most cases, since VA offices do not have the flexibility to approve such defects or deficiencies.

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16-B.02 What Opinion Must Address, Continued

Master or Umbrella Association

If there is a master or umbrella association, the attorney may provide a separate opinion which addresses the compliance with requirements applicable to that form of association.

Special Conditions

The attorney's opinion must state whether or not any of the following conditions are present, and provide a detailed explanation for any that are to ensure compliance with VA guidelines and requirements:

- a conversion of a building from a former existing use such as former rental housing
 - HOA owns a community water and/or sewage disposal facility
 - alienation restrictions exist in connection with a state or local program designed to assist low or moderate income purchasers, or
 - restrictions exist which are associated with housing designed for older persons.
-

Mixed—Use

If the development is, or will be mixed-use, such as multi-family, commercial or other non-residential use, the opinion must include

- a detailed explanation of the arrangements
 - the percentage of multi-family or non residential units/uses, and
 - an explanation of the voting rights of those units.
-

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16-B-5

16-B.02 What Opinion Must Address, Continued

Opinion is Conditional

When the attorney's opinion is conditional, that is based on unrecorded documents, including plats, the recorded documents **must** be submitted to VA prior to the guaranty of the first VA loan, along with a certification from the attorney giving the original opinion. The certification (on the letterhead of the attorney's firm, signed and dated, giving the attorney's name and title) must either

- state that the recorded documents are the same as those on which the original opinion was based, or
 - specifically address any change in the recorded documents and the effect of the change(s) on the previous opinion.
-

16-B.03 Assumptions That Opinion May Include

Documents are Complete and Accurate

In each instance, at or prior to the execution of each document, all blanks appearing therein were properly completed with the appropriate information, all signatures and seals were duly made and affixed, and all exhibits were properly completed and attached.

The legal descriptions attached as exhibits to, or incorporated in, the Declaration accurately and completely describe the property subjected, or to be subjected, to the Declaration.

Documents are Authorized

Each party to the documents had, at all material times, full and unconditional power, authority, capacity and legal right to execute and deliver the documents, and to consummate the transaction contemplated thereby, without notice to, or the consent of, any person or entity not a party to the documents.

The documents were duly and validly authorized, executed, acknowledged and delivered by the respective parties. The individuals and entities who executed each of the documents on behalf of an entity or on behalf of any other person were, at all material times, duly authorized to do so and, in each instance, were legally competent.

No Violations

No provision of any document or any transaction contemplated thereby violates any contract, corporate charter, corporate bylaw, corporate resolution, partnership agreement, trust agreement, document, instrument or any other agreement which is or was binding upon any party to the documents or any beneficiary thereof. No provision of any document or any transaction contemplated thereby violates any judicial or administrative order or decision binding upon a party to any document or rendered in a matter in which such party was a party to the proceedings.

Qualified Parties

Each entity (including the declarant) which is a party to any of the documents or which executed any of the documents on behalf of a party was, and at all material times will be, duly organized, effectively registered, validly existing, in good standing under the laws of the jurisdiction in which such entity was formed, and qualified to do business in the jurisdiction in which the project is located.

16-B.03 Assumptions That Opinion May Include, Continued

No Waivers or Limitations

There is no oral or written modification of or amendment to the documents reviewed, and there has been no waiver of any of the provisions of the documents, by actions, by conduct of the parties or otherwise. None of the parties to any of the documents have entered into or will enter into any other agreement, or take any other action, which is inconsistent with, or serves to limit or amend, any provision of any of the documents.

Documents Not Subject to Rescission or Reformation

None of the documents are subject to rescission or reformation for fraud, duress, lack of consideration, mistake, or any other factor affecting its execution.

Recording of Documents

The Declaration (or other recorded covenants) has been, and at all material times shall be duly filed, indexed, and recorded among the Land Records of the jurisdiction in which the project is located.

The Articles of Incorporation (or other governing documents) have been, and at all material times shall be duly filed, indexed, and recorded with all applicable state and local governmental agencies.

In each instance, all applicable recording fees, charges and taxes have been paid.

Authenticity

All documents submitted to the attorney as originals are authentic; all documents submitted to the attorney as certified or photostatic copies conform to the original documents; all signatures on all documents submitted to the attorney for examination are genuine; and all public records reviewed are accurate and complete.

Accuracy

Each statement and representation contained in the documents is accurate and contains all statements of material fact necessary to prevent them, and the documents generally, from being misleading.

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16-B.03 Assumptions That Opinion May Include, Continued

Correct and Complete Copies

The Articles of *Incorporation* and *Bylaws* (or other governing documents) of the association, as submitted to the attorney, are true, correct, and complete copies thereof, and have not been amended, modified or canceled and are in full force and effect as of the date of the opinion. Other than the Articles of *Incorporation*, *Declaration* and *Bylaws* (or other governing documents) of the association, there are no other agreements or documents governing the organization or operation of the association.

Other Assumptions

The attorney must identify any other assumptions included in the opinion. They will be reviewed by VA and may be allowed on a case-by-case basis.

16-B.04 Qualifications or Limitations that Opinion May Include

Subjective Factual Standards

No opinion is given regarding compliance with any subjective factual standards contained in these requirements.

Example: The attorney is not required to judge whether specific document provisions are “reasonable” or “equitable”.

Zoning Requirements

No opinion is given as to whether the project complies with zoning laws and ordinances, height restrictions, setback requirements, environmental requirements, or other similar requirements applicable to the project, or as to the effect of any such requirement on the operation of the project.

Subdivision Requirements

No opinion is given as to whether the project complies with the applicable subdivision laws or requirements.

Building Requirements

No opinion is given as to whether the project complies with

- applicable building code
- other similar building laws or requirements
- applicable health, or
- safety laws or requirements.

No opinion is given as to whether the declarant obtained any building permits, or approvals or occupancy certificates, approvals, licenses or permits with respect to all or any portion the project, or any expansion or the development thereof, necessary or required as of the date of creation of the project.

Operation

No opinion is given as to whether the project is being operated or administered in accordance with the provisions of the governing documents and/or applicable law.

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16-B.04 Qualifications or Limitations that Opinion May Include, Continued

Applicability of Laws No opinion is given as to the applicability or effect of any laws other than those of the jurisdiction in which the project is located. No opinion is given with respect to the tax or securities laws of the jurisdiction in which the project is located (or of the United States of America).

Title No opinion is given with respect to title to the lots, common area or other property subjected, or to be subjected, to the Declaration, including without limitation

- the ownership of, or legal equitable interests in, such lots, common area or property
- the priority of the interests of the respective owners, vis-à-vis any other rights, titles, interests or estates in or to such lots, common area or property, or
- any encumbrances, liens, covenants, rights-of-way, restrictions, declarations, or other instruments which would affect such lots, common area, or property, or the use thereof.

The conclusions stated by the attorney are subject in each instance to the operation and effect of any such matters.

The attorney may assume that the declarant has, and had at all material times, all requisite legal and equitable title to the property subjected and to be subjected to the Declaration of record and in fact.

Inference No inference is to be drawn beyond the strict scope of the opinion as expressed by the attorney.

Dated Opinion The opinion is based upon the status of the documents, and matters pertaining thereto, as of the date the opinion is given. The attorney assumes no obligation to supplement the opinion if any applicable laws change, or if the attorney becomes aware of any facts that might change the opinion after the date the opinion is given.

Exhibit A: Other VA Requirements

(A) **Declaration**

1. Contains, within its body or incorporated by reference, a legal description of the real estate which is currently subject to the Declaration.
2. Contains within its body, or an exhibit incorporated by reference, or a supplementary declaration, a description of the common area(s) to be legally subjected with the first phase or phases being submitted for acceptance.
3. Contains provisions requiring each unit owner, or in certain instances, the subassociation representing such owners (the attorney must provide an explanation describing the membership structure and rationale for subassociation representation), to be a member of the association.
4. Contains provisions establishing and describing the voting rights of each member consistent with the articles of incorporation and as follows:
 - (a) If there are different types of development (i.e., single family attached or detached, other residential or commercial uses), the voting class structure and basis for voting rights allocating voting power among the members must be fully described, including provisions allowing for representation or protection of minority interests.
 - (b) The declarant's voting rights are not weighted beyond 3 to 1 in the declarant's favor (based on the total number of units planned). The declarant control period does not extend beyond 120 days after the date 75 percent of the total number of units planned are conveyed to unit owners other than the declarant. (There is also an outside time limit on the declarant control period of no later than 7 years from the date of recordation of the declaration or, if a phased project, 5 years after recordation of the most recently recorded annexation document.)
5. Contains provisions for the election (or appointment by declarant during the declarant control period), removal and replacement of members of the board of directors of the association. These provisions may also be placed in the articles of incorporation.

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

6. Contains provisions for amendment. Material amendments or extraordinary actions must be approved by members entitled to cast at least 67 percent of the votes of members present, in person or by proxy, and voting at any meeting of the association held in accordance with subparagraph d. below, such vote including at least a majority of the votes of all members present, in person or by proxy, and voting at any meeting of the association other than the declarant, or 67 percent of the total authorized votes of all members of the association, such vote including the vote of a majority of all of the members other than the declarant. Notwithstanding the foregoing, the declarant may reserve the right to make changes or revisions to comply with the requirements of HUD, Fannie Mae, Freddie Mac or VA.

a. **Note 1:** A material amendment includes adding, deleting or modifying any provision regarding the following:

- (1) Assessment basis or assessment liens;
- (2) Any method of imposing or determining any charges to be levied against individual unit owners;
- (3) Reserves for maintenance, repair or replacement of common area improvements;
- (4) Maintenance obligations;
- (5) Allocation of rights to use common areas;
- (6) Any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on units;
- (7) Reduction of insurance requirements;
- (8) Restoration or repair of common area improvements;
- (9) The addition, annexation or withdrawal of land to or from the project;

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

a. **Note 1** (continued)

- (10) Voting rights;
- (11) Restrictions affecting leasing or sale of a unit; or
- (12) Any provision which is for the express benefit of mortgagees.

b. **Note 2:** An extraordinary action includes:

- (1) Merging or consolidating the association (other than with another non-profit entity formed for purposes similar to the subject association);
- (2) Determining not to require professional management if that management has been required by the association documents, a majority of eligible mortgagees or a majority vote of the members;
- (3) Expanding the association to include land not previously described as additional land which increases the overall land area of the project or number of units by more than 10 percent;
- (4) Abandoning, partitioning, encumbering, mortgaging, conveying selling or otherwise transferring or relocating the boundaries of common areas (except for (i) granting easements which are not inconsistent with or which do not interfere with the intended common area use; (ii) dedicating common area as required by a public authority; (iii) limited boundary-line adjustments made in accordance with the provisions of the declaration or (iv) transferring common area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the subject association);
- (5) Using insurance proceeds for purposes other than construction or repair of the insured improvements; or
- (6) Making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20 percent of the annual operating budget.)

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Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

6. **Contains provisions for amendment** (continued)

c. Contains the following provisions for meetings of the membership to approve a material amendment or extraordinary action: (i) at least 25 days advance notice to all members is required (at least 7 days notice is required in the case of a meeting for other purposes); (ii) the notice states the purpose of the meeting and contains a summary of any material amendments or extraordinary actions proposed; (iii) the notice contains a copy of the proxy that can be cast in lieu of attendance at the meeting; and (iv) if the association has, or is planned to have, 250 members or less - the quorum is at least 20 percent of the total number of votes; (v) if the association has, or is planned to have, more than 250 members but less than 1,000 members - the quorum is at least 10 percent; and (vi) if the association has, or is planned to have, more than 1,000 members,- the quorum is at least five percent.

d. Provides that any material amendment which changes the rights of any specific class of members must also be approved by members entitled to cast at least 51 percent of the votes of all members of such class present, in person or by proxy, and voting at any meeting of the association held in accordance with subparagraph c. above, or at least 51 percent of the total authorized votes of all members of such class.

e. Provides that the following material amendments and extraordinary actions must be approved by members entitled to cast at least 67 percent of the total authorized votes of all members of the association, including at least a majority of the total authorized votes entitled to be cast by members other than the declarant:

- (1) Termination of the declaration or other termination of the planned unit development;
- (2) Dissolution of the association except pursuant to a consolidation or merger; and
- (3) Conveyance of all common areas.

f. Provides that during the declarant control period all material amendments and extraordinary actions must have the approval of VA, if VA has guaranteed any loans secured by units in the project.

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

6. **Contains provisions for amendment**, (continued)

g. Provides that all other amendments (other than material amendments or extraordinary actions) must be approved by at least a majority of the votes entitled to be cast by all members present, in person or by proxy, and voting at any meeting of the association at which a quorum is present (see subparagraph (4)(b)2 below (Bylaws)), or in writing by members entitled to cast at least a majority of the total authorized votes of all members of the association.

7. Grants each owner a non-exclusive easement of use and enjoyment in the common areas which is appurtenant to and passes with title to each unit. Each owner also has a non-exclusive easement for egress and ingress over the common areas, to the extent necessary to provide access to the unit and for utilities serving that unit. The right of access for necessary ingress and egress to the unit and utility services cannot be suspended by the board of directors for violations of the covenants or nonpayment of assessments. The owner's easement rights may be subject to certain limitations (other limitations must be separately described by the attorney) as follows:

a. Right of the association, acting through the board of directors, to mortgage the common areas subject to such member, mortgagee and agency approvals as may be provided in the declaration. (A lender's rights, in the event of default upon any mortgage or deed of trust on the common areas, are limited to, after taking possession of such common areas, charging reasonable admission and other fees as a condition of continued enjoyment by members, and, if necessary, to a wider range of users. Upon satisfaction of the mortgage or deed of trust, such common areas are returned to the association with full restoration of members' rights);

b. Right of the association, acting through the board of directors to convey or transfer all or any part of the common areas, subject to such member, mortgagee and agency approvals as may be provided in the declaration;

c. Right of the association, acting through the board of directors, without member, mortgagee and agency approvals unless provided otherwise in the declaration, to grant easements across the common areas for any purpose not inconsistent with the use of those areas by members;

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

7. **Non-exclusive easement**, (continued)

d. Right of the association, acting through the board of directors, without member, mortgagee and agency approvals unless provided otherwise in the declaration, to adopt regulations governing the use of common areas and the personal conduct of owners, occupants and guests thereon;

e. Right of the association, acting through the board of directors, without member, mortgagee and agency approvals unless otherwise provided in the declaration, to charge reasonable admission or other fees for special or extraordinary uses of the common areas;

f. Right of the association, acting through the board of directors, without member, mortgagee or agency approvals unless otherwise provided in the declaration, and consistent with existing local jurisdiction's zoning and subdivision ordinances, to transfer part of the common areas for the purpose of adjusting lot lines in accordance with reasonably stated provisions (i.e., does not reduce total open space area below zoning requirements, does not materially affect development plan on file with an agency, and all units previously adjacent to common areas - remain so located, unless the owners of the units approve the boundary line adjustment);

g. Right of the board of directors without member, mortgagee or agency approvals unless otherwise provided in the declaration, to suspend the right of any member, and the rights of such member's household, tenants, guests and invitees to use recreational facilities or other common areas (to the extent that access and utility service are not impaired) for a period not to exceed 60 days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid; or

h. Special declarant rights reserved by the declarant, (i) such as: right to use portions of the common areas for sales and marketing purposes; (ii) reservation of easements across the common areas for development purposes; (iii) right to grant, terminate or vacate easements across common areas for limited purposes such as installation and maintenance of utilities, storm water management or provision of services to units.

8. Contains provisions for maintaining the common areas. If the association maintains areas it does not own (such as within a public right-of way for landscaping or signage or storm water management), the attorney must provide an explanation which describes the arrangement and discusses the rationale.

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Exhibit A: Other VA Requirements, Continued

(A) Declaration (continued)

9. Contains provisions for the adoption of an annual operating budget and imposition and collection of assessments to meet the expenses of the association. The board of directors has the power on behalf of the association to levy both annual and additional assessments.
- a.** Units of a similar nature, receiving similar services, are assessed on a uniform basis except for the reduced assessment permitted for unoccupied units owned by the declarant or a builder. If a different basis is used which allocates assessment liability among unit based on different services provided to the units or the different nature of the units, the rationale for that basis must be fully explained.
- b.** If the declarant furnishes a multi-year feasibility budget, the declarant and/or a builder may pay a reduced annual assessment on unoccupied lots only provided that such reduced assessment is not less than 25% of the full annual assessment. Alternatively, the declarant or builder may pay a one-time assessment equal to 25 percent of the applicable annual assessment per lot based upon the first year budget at maximum build-out (or 5 years out for projects involving 250 or more lots/units). The lots for which the one-time assessment has been paid may be exempt from further assessment until the earlier of: (i) initial occupancy or (ii) two fiscal years after submission to the declaration. If unoccupied units are receiving the benefit of the reduced or one-time assessment, the documents provide that the declarant, or builder(s) as appropriate, must provide for or pay for all maintenance to such units and shall fund all operating budget deficits incurred during the declarant control period, including reserves based upon expected lives of items for which reserved, but not including shortfalls caused by nonpayment of assessments by other members or extraordinary expenditures (e.g., expenses caused by natural catastrophes or environmental hazards). A unit initially occupied or conveyed to a unit owner other than the declarant or a builder is fully assessed. The obligation to fund budget deficits is a lien against all the land owned by the declarant (or the declarant and builders) in the planned unit development.

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Exhibit A: Other VA Requirements, Continued

(A) Declaration (continued)

10. If a maximum annual assessment is stated, the maximum may increase automatically by the greater of ten percent or based upon a Consumer Price Index, such as the U.S. Department of Urban Price Index - All Urban Consumers (1982-84=100) or other comparable index reflecting the association's cost increase experience each year. The maximum may also be increased by a majority vote of the members obligated to pay such assessment or with the written approval of members entitled to cast a majority of the total number of authorized votes of members obligated to pay such assessment (in both cases excluding the declarant during the declarant control period). Increases in certain fixed costs for insurance, taxes, recycling or waste disposal may be passed through to the members, by permitting an automatic increase in the maximum assessment which reflects those increases. If no maximum assessment is set forth, a vote of the members must be required to approve capital expenditures, other than for repair and replacement, during a fiscal year of more than 20 percent of the budget for common expenses for that fiscal year.
11. Contains provisions for a lien-supported assessment. The assessment lien of any assessment levied by the association is subordinate to the lien of a first mortgage (Title 38, USC, section 3703(d)(3)). Subordination to other security interests or liens is acceptable if permitted by applicable law. The sale or transfer of any unit pursuant to mortgage foreclosure of a first mortgage or any proceeding in lieu thereof extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such unit from liability for any assessments thereafter becoming due or from the lien thereof. (NOTE: VA will not recognize any limited priority that common expense assessments may have over the first mortgage lien. Mortgage holders should be aware that no VA claim payment will be made to holders for any payments they may have made to clear prior liens for delinquent and unpaid association assessments).

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

12. Contains provisions for collection of assessments. The interest rate permitted to be charged by the association is uniform, reasonable and non-usurious. The method of determining the interest rate is set forth. A rate not to exceed that charged by the Internal Revenue Service on delinquent taxes is considered reasonable. The association has the power both to foreclose the association's lien and to bring a legal action against the member personally obligated to pay the assessment. The documents may provide that a successor in title is entitled to obtain an association disclosure statement or estoppel certificate with respect to common expense assessments, in which case an owner's personal obligation to pay assessments is assumed by successors in title unless the successor in title acquired title through foreclosure, or any proceeding in lieu thereof, of a first mortgage. (NOTE: Units which will be subject to a VA-guaranteed loan will not be subject to delinquent assessments in excess of 6 months in any case in which the association has not brought enforcement action against the current unit owner.)
13. Contains provisions for enforcement of the association documents. If owners are held liable for costs and expenses incurred by the association as a result of acts or omissions of such owner or such owner's tenants, agents, employees, invitees, guests and household members in failing to comply with the association documents or rules or regulations of the association, regardless of negligence or culpability, then the Public Offering Statement and or Information Brochure must describe this matter.
14. Contains provisions requiring appropriate types of insurance. The board of directors, on behalf of the association, has the authority to and is required to obtain coverages in the areas of property damage, liability, and personnel. Owners may be required to maintain certain types of insurance coverages and, if the owner fails to purchase that insurance, the board may obtain those coverages at the owner's expense. All hazard and flood insurance policies which include any units, must also have the standard mortgagee clause and provide for notice to the mortgagee at least ten days before lapse, material modification or cancellation of the policy.
15. Contains provisions for reconstruction of the common areas after condemnation or casualty loss.

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Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

16. Contains provisions governing parking, if parking is not included within each unit. If vehicular parking is on the common areas: (i) the association documents must: (a) permanently assign a parking space on the common area to each unit; (b) assign a specific parking area to a specific group of units or (c) make other provisions assuring parking in compliance with local ordinances; or (ii) the declarant must provide other evidence of parking in compliance with local ordinances.
17. Contains provisions guaranteeing mortgagees (may be limited to eligible mortgagees, as defined below) and agencies notice of amendments. During the declarant control period: (i) the declarant must provide a copy of all amendments to VA; and (ii) the association may not make any material amendments or take any extraordinary actions as described in subparagraph 6 above without the approval of VA. The declaration may provide that certain rights and protections (including notice and approval rights) are granted to only those mortgagees who have provided notice to the board of directors of their interest and requested all rights under the association documents "eligible mortgagees." Rights granted to eligible mortgagees should include the following:
- a. Right to inspect association documents and records on the same terms as the members;
 - b. Notice of all material amendments to the association documents;
 - c. Notice of any extraordinary actions of the association;
 - d. Notice of any property loss, condemnation or eminent domain proceeding affecting the common areas resulting in losses greater than 10 percent of the annual budget or any unit insured by the association in which the mortgagee has an interest;
 - e. Notice of any termination, lapse or material modification of an insurance policy held by the association;
 - f. Notice of any default by an owner of a unit subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the association which remains uncured for sixty consecutive days;

Exhibit A: Other VA Requirements, Continued

(A) **Declaration** (continued)

17. **Provisions guaranteeing mortgagees** (continued)

g. Notice of any proposal to terminate the declaration or dissolve the association at least 30 days before any action is taken;

h. Right of a majority of the eligible mortgagees to demand professional management; and

i. Right of a majority of the eligible mortgagees to demand an audit of the association's financial records.

18. Contains provisions for party walls, if a townhouse planned community. The association documents or law of the jurisdiction must provide for the maintenance, repair and reconstruction of party walls and allocate the costs among the owners served by a party wall.

19. Contains provisions for expansion or annexation in a phased development. The declaration must, in addition to submitting at least 1 phase to the covenants and restrictions: (i) describe the additional land proposed to be submitted in the future in a sufficient manner to locate the property; (ii) grant the declarant the right to submit the described additional land; (iii) describe the method of submitting additional land; d describe the basis of voting rights and assessment obligations of units added in relation to the voting rights and assessment obligations of units already subject to the declaration or provide that such rights for future phases will be the same as for phases already submitted; and establish a reasonable time limit for submitting additional land. A reasonable time limit will depend on the size of the development, but generally annexation made within the later of 7 years after recordation of the Declaration or 5 years after the most recent recordation of an annexation document is considered reasonable. The additional land must be contiguous, adjacent or across a public right-of-way. If the additional land is not so located, there must be a clear statement of that fact and a discussion of the rationale for its potential inclusion. The declaration may reserve the right to the declarant to submit a limited amount of undescribed adjacent additional land, increasing the total size of the planned community by up to 10 percent both in land size and number of additional units, or such undescribed additional land may be added by the association with a majority vote of the members at a duly held meeting at which a quorum is present or the written consent of members entitled to cast a majority of the total number of votes, in both cases excluding the votes of the declarant during the declarant control period.

20. Contains provisions for termination.

Exhibit A: Other VA Requirements, Continued

(B) Bylaws

1. Contains provisions for holding meetings of the board of directors, including the required quorum.
2. Contains quorum provisions for holding meetings of the members (including voting by proxy). If the association has, or is planned to have, 250 members or less, the quorum is at least 20 percent. If the association has, or is planned to have, more than 250 members but not 1,000 members, the quorum is at least 10 percent. If the association has, or is planned to have, more than 1,000 members, the quorum is at least 5 percent. The quorum is not a quorum of each class except when a vote of a particular class is required on a specific issue.
3. Contains provisions for holding a meeting. Membership meetings are required at least annually after there are members other than the declarant. Special meetings are required upon the written request of a percentage of the owners other than the declarant. Members can vote by proxy and may be allowed to vote by mail if permitted by state law.
4. Contains provisions granting the board of directors the various powers necessary to conduct the affairs of the association.
5. Contains provisions placing on the board of directors the duties necessary to fulfill the purposes of the association.
6. Contains provisions for electing, removing and replacing directors and officers (if not addressed in the articles of incorporation).
7. Contains provisions governing notices to members. Members are given advance notice of meetings of members (of no less than seven days unless for a special meeting to approve an extraordinary action or material amendment in which case at least 25 days notice is required).

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Exhibit A: Other VA Requirements, Continued

(B) Bylaws (continued)

8. Contains provisions regarding maintenance and availability of the association documents and the association records. The association is required to keep records of: (i) its governing documents (i.e., association documents, rules and regulations and design standards); (ii) its actions (board resolutions, meeting minutes, etc.); and (iii) its financial condition (receipts and expenditures affecting the finances, operation and administration of the association, budget, financial statements, etc.) Notwithstanding the foregoing, the association is not required to maintain records in excess of three years; unless otherwise required under applicable law. The association documents and all books and records kept on behalf of the association are available for examination and copying by a member or such member's authorized agent during normal business hours and upon reasonable notice to the association and for a reasonable charge, except for privileged or confidential information.
9. Contains provisions for amendment by the members.

(C) Articles of Incorporation

1. Contains a statement of the purposes of the association.
2. Contains provisions requiring that each owner of a unit in the development or a subassociation representing owners of such units be a member of the association.
3. Contains provisions establishing and describing the voting rights of each member.
4. Contains provisions for election (or appointment by the declarant during the declarant control period), removal and replacement of members of the board of directors unless provided for in the Bylaws.
5. Contains provisions for amendment by the members.
6. Contains provisions for dissolution by the members.

Exhibit A: Other VA Requirements, Continued

(D) Other Considerations

1. Information Brochure (Public Offering Statement). There is an information brochure or public offering statement which provides general information which is to be provided to home buyers informing them about the project, the association and the rights and obligations of lot owners. If part of an umbrella or master association, there is a discussion of that organization, as appropriate, in the areas noted below. The following information is provided at a minimum:

- a. Organizational structure of the association;
- b. Membership and voting rights of members and the declarant, including a description of the declarant control period;
- c. The general development plan for the project including requirements for expansion, phasing, merger and dissolution, an explanation that the total membership of the association may be increased, and a disclosure whether or not there will be any requirements to build a similar product in additional phases;
- d. The initial amount of assessments, the assessment lien, and the method of enforcement;
- e. A projected budget for the community of at least 1 year at full build-out showing projected future assessments and any declarant deficit funding contributions, and a component for reserves and replacements, if appropriate. If the project is phased, in excess of 200 units, or includes significant common area improvements, there is a multi-year feasibility budget with reserve tables;
- f. Method of changing the assessment;
- g. Description of types of user fees, if any;
- h. General description of common areas, including improvements;

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Exhibit A: Other VA Requirements, Continued

(D) Other Considerations (continued)

(1) (continued)

- i. Services provided by the association;
- j. Maintenance requirements;
- k. Architectural controls;
- l. Declarant's retained rights;
- m. Minimum requirements for insurance to be purchased by unit owners;
- n. Insurance maintained by the association;
- o. Availability of parking;
- p. Owners' liability for acts of others for violation of covenants and damage to common areas;
- q. Association's ability to levy individual assessments; and
- r. Affiliation of the managing agent to the declarant, if any.

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Exhibit A: Other VA Requirements, Continued

(D) Other Considerations (continued)

2. Reserved Rights. The declarant, its affiliates, the sponsor of the project, or other party, has not reserved any of the following rights (unless such reserved rights have been reviewed by the field office or VA central office and determined reasonable. In such instances, the previous case or decision must be specifically referenced):
 - a. Lease of the common area to the association or accepting leases from the association, except in connection with development-related offices such as marketing, sales or construction office for the project;
 - b. Accepting franchises or licenses from the association for the provision of central television antenna service, cable television or like services;
 - c. Retaining the right, by virtue of continued association control or otherwise, to veto acts of the association, except to the extent declarant's development rights are affected or to enter into management agreements or other contracts which extend beyond the declarant control period, unless those contracts are (i) limited to 2 years or (ii) permit the owner-controlled board to terminate the contract; or
 - d. Reserving an unlimited right to amend the covenants or to replat lots not owned by the declarant or common areas.
 3. Restrictions on Alienation. The following restrictions are not present (VA Regulation 36.4350 ([38 CFR 36.4350](#)):
 - a. Right of first refusal;
 - b. Right of prior approval of either a prospective purchaser or tenant;
 - c. Leasing restrictions which amount to unreasonable restrictions on use and occupancy of a unit; or
 - d. Any minimum lease term in excess of 1 year.
-

Exhibit B: Condominium Regulations

Location of the Regulations

To access the information about Condominium Regulations, go to <http://www.homeloans.va.gov/regs.htm>.

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