

REQUIREMENTS FOR ATTORNEY'S OPINION
PLANNED UNIT DEVELOPEMENTS

A. Plats and Development Plans. Accompanying an attorney opinion should be the plats that are in final form ready for recording, or recorded, for the phases submitted for approval at that time. If not in final form at the time of submission, recorded plats will be required prior to the first VA guaranty. Additionally, the attorney must later certify that no substantive changes in the plats have been made or must specifically address the changes. The lots and common area locations, as well as utility easements, should be shown by metes and bounds on the plats. The common areas (in the phases being submitted for approval) should be dedicated to homeowners so as to preclude implication of public use. Public streets should be so designated. There must also be an overall development plan, or development plans, that contain: (i) a general indication of the size and location of additional phases to be added and proposed land uses for each; (ii) the approximate size and location of common areas proposed for each phase, if known; (iii) the general nature of the proposed common area and (iv) the location of additional lands.

B. Attorney Opinion. An attorney's opinion should be prepared in letter format, on the letterhead of the firm with which the attorney is affiliated, signed, dated, and giving the name and title of the individual rendering the opinion. The opinion should contain the basic parts discussed below.

1. **Project Identification**

This part must include:

- a. name of the project (both legal and marketing, if applicable);
- b. location of project, including address if available, city or county, state and zip code;
- c. whether or not the lots in the project are created and subjected to the Declaration in phases, including the approximate number of phases, if known, to be developed and their specific identities, if known, at the time of submission;
- d. identification of units (e.g., lots 1 through 35, section 1), and common areas (e.g., parcels A and B, section 1), to be subjected to the Declaration in the first phase being submitted for acceptance. (if 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), and
- e. information on the status of the master or umbrella association, if any, including whether or not the documents are recorded, a general description of number of other subassociations that may be planned and of the overall project.

2. **Documents Reviewed**

The attorney should list each of the legal and other documents for the project reviewed in the development of the attorney's opinion. These documents must include, at a minimum, the following:

- a. Declaration, including all exhibits incorporated by reference (e.g., descriptions of subjected lots and land/lots to be subjected, additional lands, plats and development plans, etc.);
- b. Bylaws for the Owner's Association (or similar document, governing the internal operation of the association);
- c. Articles of Incorporation for the owner's association (or similar document, if not an incorporated entity);
- d. Public Offering Statement or Information Brochure for the project;
- e. If applicable, the same documents for any umbrella or master association in which owners in the subject association will be or are members, or in which the subassociations will be or are members.

3. **Attorney's Qualifications**

A statement similar to the following must be included:

"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 the jurisdiction. Consequently, I am qualified to issue this opinion."

4. **Attorney's Opinion**

The opinion must address compliance of the documents with the material requirements of applicable state and local laws, ordinances, regulations and other legal requirements governing the creation of homeowners associations as of the date of the opinion and must identify such applicable laws, ordinances, regulations and legal requirements by name and citation.

The opinion must also address compliance of the documents with each of the areas noted in this release. If there are any variations, including failure to comply with a specific requirement, the variation must be fully explained. Strict compliance with the following requirements is not mandatory. Variances will be reviewed and, if acceptable, allowed on a case-by-case basis. If a provision is contained in a document other than noted below, reference must be made to that fact. If there is a master or umbrella association, the opinion must also separately address the compliance of the documents with the requirements applicable to that form of association. The attorney may provide a separate opinion regarding such master or umbrella association.

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 seven years from the date of recordation of the declaration or, if a phased project, five 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.

(6) contains provisions for amendment. Material amendments or extraordinary actions must be approved by members entitled to cast at least 67% of the votes of members present, in person or by proxy, and voting at any meeting of the association held in accordance with 4a(6)(b) 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% 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, FannieMae, Freddie Mac or VA.

(NOTE 1: A material amendment includes any adding, deleting or modifying any provision regarding the following:

- (i) assessment basis or assessment liens;
- (ii) any method of imposing or determining any charges to be levied against individual unit owners;
- (iii) reserves for maintenance, repair or replacement of common area improvements;
- (iv) maintenance obligations;
- (v) allocation of rights to use common area;
- (vi) any scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on units;
- (vii) reduction of insurance requirements;
- (viii) restoration or repair of common area improvements;
- (ix) the addition, annexation or withdrawal of land to or from the project;
- (x) voting rights;
- (xi) restrictions affecting leasing or sale of a unit; or
- (xii) any provision that is for the express benefit of mortgagees.)

(NOTE 2: An extraordinary action includes:

- (i) merging or consolidating the association (other than with another non-profit entity formed for purposes similar to the subject association);
- (ii) 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;
- (iii) expanding the association to include land not previously described as additional land that increases the overall land area of the project or number of units by more than 10%;
- (iv) abandoning, partitioning, encumbering, mortgaging, conveying, selling or otherwise transferring or relocating the boundaries of common areas (except for (a) granting easements that are not inconsistent with or which do not interfere with the intended common area use; (b) dedicating common area as required by a public authority; (c) limited boundary-line adjustments made in accordance with the provisions of the declaration or (d) transferring common area pursuant to a merger or consolidation with a non-profit entity formed for purposes similar to the subject association);
- (v) using insurance proceeds for purposes other than construction or repair of the insured improvements; or
- (vi) making capital expenditures (other than for repair or replacement of existing improvements) during any period of 12 consecutive months costing more than 20% of the annual operating budget.)

(b) 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 seven days notice is required in the case of a meeting for other purposes); (ii) the notice states the purposes 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% 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% and (vi) if the association has, or is planned to have, more than 1,000 members the quorum is at least 5%.

(c) provides that any material amendment that changes the rights of any specific class of members must also be approved by members entitled to cast at least 51% 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 4a(6)(b) above, or at least 51% of the total authorized votes of all members of such class.

(d) provides that the following material amendments and extraordinary actions must be approved by members entitled to cast at least 67% 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:

(i) termination of the declaration or other termination of the planned unit development;

(ii) dissolution of the association except pursuant to a consolidation or merger; and

(iii) conveyance of all common areas.

(e) 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.

(f) 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 paragraph 4b(2) below), 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 that 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 owners' 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;
 - (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 sixty 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 that describes the arrangement and discusses the rationale.
- (9) contains provisions for the adoption of an annual operating budget and imposition and collection of assessments to meet the expense 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 lots owned by the declarant or a builder. If a different basis is used that 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 full 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% 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: (a) initial occupancy or conveyance to an owner other than the declarant or a builder (b) 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 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 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.
- (10) If a maximum annual assessment is stated, the maximum may increase automatically by the greater of 10% 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 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 that 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% 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 mortgage or any proceeding in lieu thereof extinguishes the lien of such assessment into payments that 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).

- (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 an action at law 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 that 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 that will subject to a VA-guaranteed loan will not be subject to delinquent assessments in excess of six 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 coverage's in the areas of property damage, liability, and personnel. Owners may be required to maintain certain types of insurance coverage's and, if the owner fails to purchase that insurance, the board may obtain those coverage's at the owner's expense. All hazard and flood insurance policies that 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.
- (16) contains provisions governing parking, if parking is not included within each unit. If vehicular parking is on the common areas: (a) the association documents must: (i) permanently assign a parking space on the common area to each unit; (ii) assign a specific parking area to a specific group of units or, (iii) make other provisions assuring parking in compliance with local ordinances; or (b) the declarant must provide other evidence of parking in compliance's with local ordinances.

(17) contains provisions guarantying mortgagees (may be limited to eligible mortgagees, as defined below) and agencies notice of amendments. During the declarant control period: (a) the declarant must provide a copy of all amendments to VA; and (b) the association may not make any material amendments or take any extraordinary actions as described in paragraph 4a(6) 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% 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 that remains uncured for sixty consecutive days;
 - (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 be covenants and restrictions: (a) describe the additional land proposed to be submitted in the future in a sufficient manner to locate the property; (b) grant the declarant the right to submit the described additional land; (c) describe the method of submitting additional land; (d) describe the basis of voting rights & assessment obligations of units added in relation to the voting rights & assessment rights & 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 seven years after recordation of the Declaration or five 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% 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.

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%. If the association has or is planned to have more than 250 members but not 1,000 members, the quorum is at least 10%. If the association has, or is planned to have more than 1,000 members, the quorum is 5%. 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 7 days unless for a special meeting to approve an extraordinary action or material amendment in which case at least 25 days notice is required).

- (8) contains provisions regarding maintenance and availability of the association documents and the association records. The association is required to keep records of: (a) its governing documents (i.e., association documents, rules and regulations and design standards); (b) its actions (board resolutions, meeting minutes, etc.); and (c) its financial condition (receipts and expenditures affecting the finances, operation and 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 of 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) contain provisions for amendment by the members.
- (6) contains provisions for dissolution by the members.

d. Other Considerations

- (1) **Information Brochure (Public Offering Statement)**. There is an information brochure or public offering statement that provides general information that 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 one 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;
 - (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.
- (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 office 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 that extend beyond the declarant control period, unless those contracts are (i) limited to two 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 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 that amount to unreasonable restrictions on use and occupancy of a unit; or
 - (d) any minimum lease term in excess of one year.
- (4) **Unusual Circumstances.** The presence of any of the following will require a detailed explanation from the attorney and result in more detailed VA review to ensure compliance with VA guidelines and requirements (if none of the following are present, the attorney must certify to that fact):
- (a) a conversion of a building from a former existing use (e.g., former rental housing).
 - (b) association ownership of a community water and/or sewage disposal facility.
 - (c) program designed to assist low to moderate income purchasers in connection with a state or local jurisdiction program and where there are alienation restrictions in connection with that program; or
 - (d) restrictions designed to provide housing for older persons.
- (5) **Multi-Use Development.** If development is, or will become, mixed-use (e.g., multi-family/multi-unit dwellings, commercial or other non-residential uses), the attorney must provide a detailed explanation of the arrangements. The percentage of multi-family or non-residential units/uses must be provided. The voting rights of those units must be explained and appropriately contained in the documents.

C. **Scope of Opinion.** The attorney may include certain basic assumptions as a part of the opinion. These may include the assumptions listed below. Additional assumptions will be reviewed, and, if applicable, allowed on a case by case basis.

- (1) 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 thereto, and all exhibits thereto 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.
- (2) 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 thereto. 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.

- (3) 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 that 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.
- (4) Each entity (including the declarant that is a party to any of the documents or which executed any of the documents on behalf of a party thereto was, and at all material times will be, duly organized, effectively registered, validly existing, in good standing under the laws of the state in which such entity was formed, and qualified to do business in the jurisdiction in which the project is located.
- (5) There is no oral or written modification of or amendment to the documents reviewed, & 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 of any of the documents have entered into or will enter into any other agreement, or take any other action, that is inconsistent with, or serves to limit or amend, any provision of any of the documents.
- (6) None of the documents are subject to rescission or reformation for fraud, duress, lack of consideration, mistake, or any other factor affecting the execution thereof.
- (7) The Declaration (or other recorded covenants) has been, and at all material times, shall be duly filed, indexed and recorded among 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.
- (8) 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.

- (9) 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.
- (10) The Articles of Incorporation and Bylaws (or other governing documents) of the association, as submitted to the attorney are true, correct and completed 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.

D. Limitations The attorney may also qualify or limit the opinion as appropriate to ensure that the attorney will not be deemed to have opined with respect to matters that are beyond the scope of these requirements. These may include the qualifications and limitations listed below. Additional qualifications and limitations will be reviewed, and, if applicable, allowed on a case by case basis.

- (1) No opinion is given regarding compliance with any subjective factual standards contained in these requirements. For example, the attorney is not required to opine as to whether specific document provisions are “reasonable” or “equitable”.
- (2) 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.
- (3) No opinion is given as to whether the project complies with the applicable subdivision laws or requirements.
- (4) No opinion is given as to whether the project complies with applicable building code or similar building laws or requirements. No opinion is given as to whether the project complies with applicable health or safety laws or requirements. No opinion is given as to whether the declarant obtained any building permits or approvals, use of occupancy certificates, approvals, licenses or permits with respect to the project or any portion thereof, or the development thereof, necessary or required as of the date of creation of the project or any expansion thereof.
- (5) No opinion is given as to whether the project is being operated or administrated in accordance with the provisions of the Declaration, Articles of Incorporation, Bylaws (or other governing documents) and/or applicable law.
- (6) 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).

- (7) 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, (i) the ownership of, or legal equitable interests in, such lots, common area or property, (ii) 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 (iii) any encumbrances, liens, covenants, rights-of way, restrictions, declarations, or other instruments that would affect such lots, common area, or property, or the use thereof, and 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.
- (8) No inference is to be drawn beyond the strict scope of the opinion as expressed by the attorney.
- (9) The opinion is based upon the status of the documents, and matters pertaining thereto, as of the date thereof. The attorney assumes no obligation to supplement the opinion if any applicable laws change after the date thereof, or if the attorney becomes aware of any facts that might change the opinion expressed by the attorney after the date thereof.