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TITLE 25

Property

Common Interests and Ownership of Real Estate

CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT [EFFECTIVE SEPT. 30, 2009]

Subchapter I. General Provisions [Effective Sept. 30, 2009]

§ 81-101. Short title [Effective Sept. 30, 2009]

This chapter shall be known and may be cited as the "Delaware Uniform Common Interest Ownership Act" or "DUCIOA".

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-102. Applicability [Effective Sept. 30, 2009]

Applicability of this chapter is governed by this subchapter I.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 1; 77 Del. Laws, c. 91, § 82.;

§ 81-103. Definitions [Effective Sept. 30, 2009]

In this chapter and documents prepared to create a common interest community pursuant to this chapter, unless specifically provided otherwise herein or therein, terms shall have the meaning attributed to them in this section:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting

interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the following interests allocated to each unit: (i) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

(3) "Approved common interest community" means a proposed common interest community that has received all legally required zoning and/or subdivision approvals from the applicable governmental authorities to permit the construction of such common interest community for which the declarant has (i) entered into 1 or more written contracts with bona-fide third-party purchasers for the construction of 1 or more units in contemplation of the submission of the unit and the proposed common interest community to the provisions of the Unit Property Act (Chapter 22 of this title) and prior to the effective date has provided such third-party purchasers with draft copies of the declaration, code of regulations and other documents pertaining to such common interest community in contemplation of submission to the Unit Property Act [Chapter 22 of this title], and (ii) not yet recorded the declaration plan, declaration, code of regulations and other related documents pertaining to such proposed common interest community in accordance with the Unit Property Act [Chapter 22 of this title] prior to the effective date.

(4) "Assessment" or "common expense assessment" means the sums attributable to each unit and due to the association as a result of the common expense liability allocated to each unit in the manner described in § 81-315 of this title, including all ground lease rents due in a leasehold condominium.

(5) "Association" or "unit owners' association" means the unit owners' association organized under § 81-301 of this title.

(6) "Bylaws" mean the recorded document (and any recorded amendments thereto) that contains the procedures for conduct of the affairs of the association of a common interest community in accordance with § 81-306 of this title, regardless of the form of the association's legal entity or the name by which the document comprising the bylaws is identified.

(7) "Certificate of notice of approved common interest community" means a recorded document by a declarant whereby the declarant certifies and affirms under oath that an approved common interest community shall be developed and units shall be sold under the provisions of the Unit Property Act [Chapter 22 of this title] as a preexisting common interest community, subject to the provisions of § 81-119 of this title regarding applicability to preexisting common interest communities.

(8) "Common elements" means: (i) in the case of (A) a condominium or cooperative, all portions of the common interest community other than the units; and (B) a planned community, any real estate within a planned community which is owned or leased by the association, other than a unit; and (ii) in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

(9) "Common expenses" means expenditures made by, or financial liabilities of,

the association, together with any allocations to reserves, related to common elements, other units or other real estate described in the declaration.

(10) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to § 81-207 of this title.

(11) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of that person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of or services or other expenses related to common elements, other units or other real estate described in that declaration. Common interest community does not include a campground which is subject to Chapter 28 of Title 6 or those arrangements described in § 81-224 of this title. "Ownership of a unit" does not include holding a leasehold interest in a unit of a stated term of less than 20 years in a unit, including renewal options.

(12) "Condominium" means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

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

(14) "Cooperative" means a common interest community in which the real estate is owned by an association, each of whose members is entitled by virtue of the member's ownership interest in the association to exclusive possession of a unit.

(15) "Dealer" means a person in the business of selling units for that person's own account.

(16) "Declarant" means any person or group of persons acting in concert who: (i) as part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of or (ii) reserves or succeeds to any special declarant right.

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

(18) "Declaration plan" means a survey of a condominium or cooperative which contains the verified statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and accurately shows (i) the location of the condominium or cooperative and the location and layout of the common elements and units, and (ii) sets forth the name by which the condominium or cooperative will be known and the unit designation for each unit therein. In addition, the declaration plan may show such other details or information as the declarant may elect or as may be required under § 81-106 of this title. References in this chapter to plats or plans as required by § 81-209 of this title shall mean the declaration plan.

(19) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (i) add real estate to a common interest community; (ii) create units, common elements, or limited common elements within a common interest community including, without limitation, by the conversion of units into common elements

or limited common elements and vice versa; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate from a common interest community; (v) do other things expressly reserved, and identified as such, by declarant in the declaration.

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

(21) "Effective date" means September 30, 2009.

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

(23) "Fully funded," or any variation thereof with respect to a repair and replacement reserve, means a repair and replacement reserve which contains that balance of funds which (i) when supplemented by a fixed, budgeted annual addition, will meet fully, without supplementation by borrowed funds or special assessments, the cost of each projected repair and replacement noted in the reserve study no later than the date when each such repair or replacement is projected to be required by the reserve study, and (ii), with all budgeted contributions and expenditures for repairs and replacements projected out no less than 20 years, will never fall below a positive balance.

(24) "Identifying number" means a symbol or address that identifies only 1 unit in a common interest community.

(25) "Lease" means a lease or other agreement, written or oral, that establishes the terms and conditions for the use and occupancy of a unit by a tenant.

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

(27) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of § 81-202(b) or (d) of this title for the exclusive use of 1 or more but fewer than all of the units.

(28) "Master association" means an organization described in § 81-220 of this title, whether or not it is also an association described in § 81-301 of this title.

(29) "Nonresidential common interest community" means a common interest community in which all units are restricted exclusively to nonresidential purposes.

(30) "Noticed rules" means rules delivered to or otherwise made available to a tenant as provided in § 81-320 of this title.

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

(32) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, instrumentality or agency, limited liability company, or other legal or commercial entity. In the case of a land trust established pursuant to any statute providing for the creation of a land trust, however, "person" means the beneficiary of the trust rather than the trust or the trustee.

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

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

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

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

(37) "Record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable format.

(38) "Recorded" means, with respect to the declaration or bylaws of a common interest community and any amendments thereto, to be placed of record at the office for the recorder of deeds in and for each county in which any portion of the common interest community is located.

(39) "Repair and replacement reserve" means a reserve fund maintained by the executive board of a condominium or cooperative solely for the repair and replacement of common elements, and for no other purpose, including operating budget shortfalls or other expenditures appropriately addressed by a contingency reserve.

(40) "Reserve study" means an analysis, by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, performed or updated within the last 5 years, of the remaining useful life and the estimated cost to replace each separate system and component of the common elements, the purpose of which analysis by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, is to inform the executive board and the association of a condominium or cooperative of the amount which should be maintained from year to year in a fully funded repair and replacement reserve to minimize the need for special assessments.

(41) "Residential purposes" means use for dwelling and appurtenant recreational purposes, or both.

(42) "Rule" or "rules" means any rule, procedure or regulation of the association, however denominated, that does not appear in the declaration or bylaws and that governs either the management of the association or the common interest community or the

conduct of persons or property within the common interest community and adopted as provided in § 81-320 of this title.

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

(44) "Special assessment" means an assessment duly adopted from time to time for an unexpected, nonrecurring or other common expense not included in the annual budget.

(45) "Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement pursuant to § 81-403(a)(2) of this title; (ii) exercise any development right maintain sales offices, management offices, signs advertising the common interest community, and models; (iv) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; (v) make the common interest community subject to a master association; (vi) merge or consolidate a common interest community with another common interest community of the same form of ownership; (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control; (viii) control any construction, design review or aesthetic standards committee or process; (ix) attend meetings of the unit owners and, except during an executive session, the executive board; (x) have access to the records of the association to the same extent as a unit owner; or (xi) other special declarant rights so identified in the declaration.

(46) "Tenant" means a tenant or lessee of a unit, including any subtenant, sublessee, or licensee.

(47) "Time share" means a right to occupy a unit or any of several units during 5 or more separated time periods over a period of at least 5 years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof.

(48) "Unit" means a physical portion of or 3-dimensional space in the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 81-205(a)(5) of this title, and shall include all improvements contained within the space except those excluded in the declaration. A unit may include 2 or more noncontiguous spaces. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

(49) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit

solely as security for an obligation. In a condominium or planned community, the declarant is the unit owner of any unit created by the declaration. In a cooperative, the declarant is treated as the unit owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

(50) "Nonresidential purposes" means use for a purpose other than a residential purpose.

(51) "Customary condominium assessment" shall mean an assessment for periodic payments, payable no less frequently than quarterly, due the association for regular and usual operating and common area expenses pursuant to the association's annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, §§ 2, 3; 77 Del. Laws, c. 91, §§ 1-10, 79, 82.;

§ 81-104. Variation by agreement [Effective Sept. 30, 2009]

Except as expressly provided in this chapter, the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in § 81-122 of this title, a declarant may not act under a power of attorney, or use any other device, for the purpose of evading the limitations or prohibitions of this chapter or the declaration.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 11, 82.;

§ 81-105. Separate titles and taxation [Effective Sept. 30, 2009]

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. That interest is subject to the provisions of homestead exemptions, even if it is personal property.

(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

(d) The court decree or order must be recorded in every county in which any portion of the common interest community is located.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 12, 82.;

§ 81-108. Supplemental general principles of law applicable [Effective Sept. 30, 2009]

The principles of law and equity, including the law of corporations and any other form of business organization authorized by law in this State, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. Without limiting the foregoing, the laws of this State that apply to the association's form of legal entity apply to the association except to the extent that law is inconsistent with this chapter, in which case this chapter governs.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-109. Construction against implicit repeal [Effective Sept. 30, 2009]

This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-110. Uniformity of application and construction [Effective Sept. 30, 2009]

This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-111. Severability [Effective Sept. 30, 2009]

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-112. Unconscionable agreement or term of contract [Effective Sept. 30, 2009]

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the

determination, must be afforded a reasonable opportunity to present evidence as to:

(1) The commercial setting of the negotiations;

(2) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect that party's interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;

(3) The effect and purpose of the contract or clause; and

(4) If a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-113. Obligation of good faith [Effective Sept. 30, 2009]

Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-114. Remedies to be liberally administered [Effective Sept. 30, 2009]

(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(b) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-115. Relation to Electronic Signatures in Global and National Commerce Act [Effective Sept. 30, 2009]

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, §§ 5-7; 77 Del. Laws, c. 91, §§ 13, 82.;

§ 81-116. Applicability to new common interest communities; effective date [Effective Sept. 30, 2009]

(a) Except as provided in this subchapter, this chapter applies to all common interest communities created within this State after the effective date that are not excepted from this chapter by the provisions of this chapter. The provisions of the Unit Property Act

(Chapter 22 of this title) do not apply to common interest communities created after the effective date. Amendments to this chapter apply to all common interest communities created after the effective date, or subjected to this chapter, regardless of when the amendment is adopted.

(b) The effective date of this chapter shall be September 30, 2009. All references in this Chapter 81 to the date of October 31, 2008 were deleted and replaced with the aforementioned effective date, except as provided in this section.

(c) Actions taken in reliance upon DUCIOA as effective on October 31, 2008, shall not be invalidated by the amendment of the effective date to September 30, 2009.

(d) Anything to the contrary in this chapter notwithstanding, compliance with DUCIOA was not intended to be required, and shall not be required, until September 30, 2009, subject to the provisions of subsection (c) of this section above.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 8; 77 Del. Laws, c. 91, §§ 14, 82.;

§ 81-117. Exception for small condominiums and cooperatives [Effective Sept. 30, 2009]

If a condominium or cooperative contains no more than 20 units and is not subject to any development rights, it is subject only to §§ 81-106 (Applicability of local ordinances, regulations, and building codes) and 81-107 of this title (Eminent domain) unless the declaration provides that the entire chapter is applicable. The bylaws of any such condominium or cooperative, and any amendments thereto, shall be recorded.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 15, 82.;

§ 81-118. Exception for small and limited expense liability planned communities [Effective Sept. 30, 2009]

(a) If a planned community:

(1) Contains no more than 12 units and is not subject to any developmental rights; or

(2) Provides, in its declaration, that during the period of declarant control the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed \$500, as adjusted pursuant to subsection (b)(2) of this section; except that commencing with the July 1 next following the effective date of this chapter and each July 1 thereafter during the period of declarant control, the assessment specified in the declaration may be increased by an amount not in excess of 3 percent over the amount so calculated for the previous year, it is subject only to §§ 81-105 (Separate titles and taxation), 81-106 (Applicability of local ordinances, regulations, and building codes), and 81-107 of this title (Eminent domain), but to no other sections of this chapter unless the declaration provides that this entire chapter is applicable. The bylaws of any such planned community, and any amendments thereto, shall be recorded.

(b) The exemption provided in paragraph (a)(2) of this section applies only if:

(1) The declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community; and

**§ 81-106. Applicability of local ordinances, regulations, and building codes
[Effective Sept. 30, 2009]**

(a) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b) of this section, the provisions of this chapter do not invalidate any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate. Without limiting the generality of the foregoing, any preexisting common interest community or approved common interest community located in any political subdivision of this State shall continue to be governed by the building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation, including appendices of such political subdivision, which are applicable to a preexisting common interest community or approved common interest community, notwithstanding any contrary provision of this chapter.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 4; 77 Del. Laws, c. 91, § 82.;

§ 81-107. Eminent domain [Effective Sept. 30, 2009]

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a) of this section, if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(2) The declaration provides that the assessment may not be increased during the period of declarant control without the consent of all unit owners.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 16, 17, 81, 82.;

§ 81-119. Applicability to preexisting common interest communities and approved common interest communities [Effective Sept. 30, 2009]

Except as provided in § 81-120 (Exception for small preexisting cooperatives and planned communities), and § 81-124 and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107, 81-203, 81-204, 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-307(a), 81-309(a), 81-311, 81-315, 81-316, 81-318, 81-321, 81-322 [repealed], 81-323, 81-324, 81-409, and 81-417 of this title, and § 81-103 of this title to the extent any definitions are necessary in construing any of the foregoing sections to the extent the definitions do not conflict with the declaration, apply to all common interest communities and approved common interest communities created in this State before the effective date; but those sections apply only with respect to events and circumstances occurring after the effective date, and do not invalidate existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans of those preexisting common interest communities and approved common interest communities that do not conflict with this chapter. With respect to condominiums and cooperatives, such existing provisions of those declarations, bylaws, codes of regulations, declaration plans, plats or plans, and subsequent amendments thereto adopted subsequent to the effective date of this chapter in strict accordance with those existing provisions, and not in conflict with the Unit Property Act [Chapter 22 of this title], shall be controlling in the event of any express conflict between those existing provisions (as duly amended) and the provisions of this chapter. In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or approved common interest communities nor the Unit Property Act [Chapter 22 of this title] expressly addresses the matter or issue, the provisions of this chapter shall control. As to any such preexisting common interest community or approved common interest community prior to the effective date: (i) this chapter shall not operate to terminate or allow the termination of existing contractual obligations created prior to the effective date, including, but not limited to contracts for units for preexisting common interest communities or approved common interest community projects; (ii) this chapter shall not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common interest community that do not conflict with this chapter; (iii) the Unit Property Act (Chapter 22 of this title), and not this chapter shall govern all obligations of a declarant created under the Unit Property Act (Chapter 22 of this title); (iv) unless the declarant or other person with the right to do so elects to conform the requirements of this chapter in exercising any development right or special declarant rights, this chapter is not applicable to the procedures for the exercise of any such development rights or special declarant rights; (v) this chapter does not require that the preexisting declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise of any preexisting common interest community or approved common interest community be amended to, or otherwise to comply with, the requirements of this chapter; and (vi) except for §§ 81-409 and 81-417 of this title, subchapter IV of this chapter is not applicable to any such preexisting common interest community or approved common interest community. Without limiting the generality of any other provision of this chapter, and notwithstanding any other provision of this chapter, any condominium created under the Unit Property Act for which future expansions are provided under its declaration made pursuant to the Unit Property Act shall remain governed by the Unit Property Act and not this chapter with respect to all of such future sections, phases or other expansion rights.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 9; 77 Del. Laws, c. 91, §§ 18, 82.;

§ 81-120. Exception for small preexisting cooperatives and planned communities [Effective Sept. 30, 2009]

If a cooperative or planned community created within this State before the effective date of this chapter, contains no more than 20 units and is not subject to any development rights, or the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, does not exceed \$500, as adjusted pursuant to this section, it is subject only to §§ 81-105 (Separate titles and taxation), 81-106 (Applicability of local ordinances, regulations, and building codes), and 81-107 of this title (Eminent domain), but to no other sections of this chapter unless the declaration is amended in conformity with applicable law and with the procedures and requirements of the declaration to take advantage of the provisions of §§ 81-121 of this title, in which case all the sections enumerated in § 81-119 of this title apply to that cooperative or planned community. Commencing with the July 1 next following the effective date of this chapter and each July 1 thereafter, the \$500 maximum assessment specified in this section may be increased by an amount not in excess of 3 percent over the amount so calculated for the previous year. The bylaws of any such cooperative or planned community, and any amendments thereto, shall be recorded.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 19, 82.;

§ 81-121. Amendments to governing instruments [Effective Sept. 30, 2009]

(a) The declaration, bylaws, or plats and plans of any common interest community created before the effective date of this chapter, may be amended to achieve any result permitted by this chapter, regardless of what applicable law provided before this chapter was adopted.

(b) An amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted and recorded in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 20, 82.;

§ 81-122. Applicability to nonresidential and mixed-use common interest communities [Effective Sept. 30, 2009]

(a) Except as provided in subsection (e) of this section, this section applies only to nonresidential common interest communities.

(b) A nonresidential common interest community is not subject to this chapter unless the declaration otherwise provides.

(c) The declaration of a nonresidential common interest community may provide that the entire chapter applies to the community or that only certain identified sections apply.

(d) If the entire chapter applies to a nonresidential common interest community, the declaration may also require, subject to § 81-112 of this title (Unconscionable agreement or term of contract), that:

(1) Notwithstanding § 81-305 of this title (Termination of contracts and leases of declarant), any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) Notwithstanding § 81-104 of this title (Variation by agreement), purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(e) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this chapter unless the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units or the declaration provides that this chapter applies as provided in subsection (c) or (d) of this section. Nothing herein shall prevent the establishment of a common interest community for residential purposes and a nonresidential common interest community for the same real estate.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-123. Applicability to out-of-state common interest communities [Effective Sept. 30, 2009]

This chapter does not apply to common interest communities or units located outside this State, but the public offering statement provisions in subchapter IV of this chapter apply to all contracts for the disposition thereof signed in this State by any party unless exempt under § 81-401 of this title.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-124. Applicability to continuing care common interest communities [Effective Sept. 30, 2009]

Anything to the contrary in this chapter notwithstanding, this chapter does not apply to any condominium, cooperative or other common interest community created in this State before October 31, 2008, that is a continuing care facility governed by the Delaware Life-Care Registration Act (§ 4601 et seq. of Title 18) as of October 31, 2008. Such condominium, cooperative or other common interest community shall continue to be governed solely by the Unit Property Act [Chapter 22 of this title] or other statutes in effect prior to October 31, 2008, and applicable to such common interest community.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-125. Additional exceptions for preexisting common interest communities or approved common interest communities [Effective Sept. 30, 2009]

Anything to the contrary in this chapter notwithstanding, an approved common interest community shall be treated under this chapter in the same manner as a preexisting common interest community.

77 Del. Laws, c. 4, § 10; 77 Del. Laws, c. 91, § 82.;

§ 81-126. Transition period for existing contracts prior to effective date [Effective

Sept. 30, 2009]

Anything to the contrary in this chapter notwithstanding, any declarant, dealer, or unit owner may, but shall not be obligated to, comply with the provisions of subchapter IV of this chapter regarding public offering statements and resale certificates with respect to any contract of sale executed prior to the effective date.

77 Del. Laws, c. 4, § 11; 77 Del. Laws, c. 91, § 82.;

§ 81-127. Notice [Effective Sept. 30, 2009]

(a) Unless otherwise required or permitted by the declaration or bylaws, the following methods of giving notice suffice when notice is required: (i) hand delivered to the unit owner or other intended recipient; (ii) sent prepaid by United States mail to the mailing address of each unit or other intended recipient, unless that person has designated in writing a different mailing address in which case it shall be sent to the designated address; or (iii) sent by electronic means in the manner described in subsection (b) of this section.

(b) An association provides effective notice by electronic means if the unit owner gives the association prior written authorization to provide that notice, together with an electronic address.

(c) The ineffectiveness of a good faith effort to deliver notice by any authorized means does not invalidate action taken at a meeting or in lieu of a meeting.

77 Del. Laws, c. 91, § 21.;

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TITLE 25

Property

Common Interests and Ownership of Real Estate

CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT [EFFECTIVE SEPT. 30, 2009]

Subchapter II. Creation, Alteration, and Termination of Common Interest [Effective Sept. 30, 2009]

§ 81-201. Creation of common interest communities [Effective Sept. 30, 2009]

(a) A common interest community may be created pursuant to this chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration and bylaws must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration, or an amendment to a declaration, adding units that are contained in or comprised by buildings may not be recorded unless the structural components and mechanical systems of any buildings containing or comprising any units thereby created, if any, are substantially completed in accordance with the plans, as evidenced by a record certification of completion executed by an independent registered engineer or architect, which may be incorporated in the recorded declaration or amendment or the recorded plat or otherwise, or by the issuance by the appropriate governmental authority of a certificate of occupancy, or its equivalent, for the applicable unit.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 22, 82.;

§ 81-202. Unit boundaries [Effective Sept. 30, 2009]

Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of

the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than 1 unit or any portion of the common elements is a part of the common elements.

(c) Subject to subsection (b) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-203. Construction and validity of declaration and bylaws [Effective Sept. 30, 2009]

(a) All provisions of the declaration and bylaws are severable.

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws or rules.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails.

(d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with this chapter. Whether a substantial failure impairs marketability is not affected by this chapter.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 23, 24, 82.;

§ 81-204. Description of units [Effective Sept. 30, 2009]

A description of a unit which sets forth the name of the common interest community, the recording data for the declaration, the county in which the common interest community is located, and the identifying number of the unit, is a legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-205. Contents of declaration.

(a) The declaration must contain:

(1) The names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) The name of every county in which any part of the common interest community is situated;

(3) A legally sufficient description of the real estate included in the common interest community;

(4) A statement of the maximum number of units that the declarant reserves the right to create;

(5) In a condominium, a description of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than 1 unit;

(6) A description of any limited common elements, other than those specified in § 81-202(b) and (d) of this title, as provided in § 81-209(b)(10) of this title and, in a planned community, any real estate that is or must become common elements;

(7) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in § 81-202(b) and (d) of this title, together with a statement that they may be so allocated;

(8) A description of any development rights (§ 81-103(19) of this title) and other special declarant rights (§ 81-103(45) of this title) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

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

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

(11) An allocation to each unit of the allocated interests in the manner described in § 81-207 of this title;

(12) Any restrictions: (i) on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to § 81-302(c)(2) of this title, and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

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

(14) In the case of a condominium or cooperative, provisions that mandate that the association create and maintain, in addition to any reserve for contingencies, a fully funded repair and replacement reserve based upon a current reserve study;

(15) Any authorization pursuant to which the association may regulate the display of American flags or political signs within the common interest community;

(16) Any authorization pursuant to which the association may adopt rules to establish and enforce construction and design criteria and aesthetic standards in the manner provided in § 81-320 of this title; and

(17) All matters required by §§ 81-206, 81-207, 81-208, 81-209, 81-215, 81-216, and 81-303 of this title.

(b) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 25, 26, 82.;

§ 81-206. Leasehold common interest communities [Effective Sept. 30, 2009]

(a) Any lease the expiration or termination of which may terminate the common interest community or reduce its size must be referenced in the declaration. Every lessor of those leases in a condominium or planned community shall sign the declaration. The declaration must state:

(1) The recording data for the lease;

(2) The date on which the lease is scheduled to expire;

(3) A legally sufficient description of the real estate subject to the lease;

(4) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold

interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with § 81-107(a) of this title as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 12; 77 Del. Laws, c. 91, § 82.;

§ 81-207. Allocation of allocated interests [Effective Sept. 30, 2009]

(a) The declaration must allocate to each unit:

(1) In a condominium, a fraction or percentage of undivided interests in the common elements and a fraction or percentage of undivided interests in the common expenses of the association, and a portion of the votes in the association;

(2) In a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(3) In a planned community, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association.

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

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

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

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

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

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other

voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-208. Limited common elements [Effective Sept. 30, 2009]

(a) Except for the limited common elements described in § 81-202(b) and (d) of this title, the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common interest community.

(c) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with § 81-205 (a)(7) of this title. The allocations must be made by amendments to the declaration.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-209. Plats and plans [Effective Sept. 30, 2009]

(a) Plats and plans are a part of the declaration, and are required for all condominiums and cooperatives. Each plat and plan must be clear and legible and contain a certification as required by subsection (g) of this section and by declarant that the plat or plan contains all information required by this section.

(b) Each plat must show or project:

(1) The name and a survey or general schematic map of the entire common interest community;

(2) The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

(4) The extent of any encroachments by or upon any portion of the common interest community;

(5) To the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(6) Except as provided in subsection (h) of this section, the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded

pursuant to subsection (d) of this section and that unit's identifying number;

(7) Except as provided in subsection (h) of this section, the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) of this section and that unit's identifying number;

(8) A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";

(9) The distance between noncontiguous parcels of real estate comprising the common interest community; and

(10) The approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements.

(11) [Repealed.]

(c) A plat shall show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) Except as provided in subsection (h) of this section, to the extent not shown or projected on the plats, plans of the units must show or project:

(1) The approximate location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) The approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) The approximate location of any units in which the declarant has reserved the right to create additional units or common elements (§ 81-210(c) of this title), identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d) of this section, or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section or § 81-201(b) of this title must be made by an independent architect, independent licensed professional land surveyor or independent engineer.

(h) Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:

(1) The plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) The declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 27-29, 82.;

§ 81-210. Exercise of development rights [Effective Sept. 30, 2009]

(a) To exercise any development right reserved under § 81-205(a)(8) of this title, the declarant shall prepare, execute, and record, without joinder of any other person required except as expressly provided in the declaration, an amendment to the declaration and in a condominium or planned community comply with § 81-209 of this title. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by § 81-208 of this title.

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by § 81-205 or § 81-206 of this title, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by § 81-209 of this title. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to § 81-205(a)(8) of this title.

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) If the declarant subdivides the unit into 2 or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, pursuant to § 81-205(a)(8) of this title, that all or a portion of the real estate is subject to a right of withdrawal:

(1) If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) If any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(e) If the declaration for a pre-existing condominium provides for conversion of limited common elements to part of the unit to which such limited common elements are

allocated, the same shall be a development right exercisable by the declarant by amendment to the declaration prepared, executed and recorded by the declarant, without the joinder of any other person required, and complying with § 81-209 of this title.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-211. Alterations of units [Effective Sept. 30, 2009]

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(a) May, upon written notice to the association specifying the improvements or alterations planned, make any improvements or alterations to that unit owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

(b) May not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common interest community, without permission of the association;

(c) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may, upon written notice to the association specifying the improvements or alteration planned, but without requiring permission of the association, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-212. Relocation of unit boundaries [Effective Sept. 30, 2009]

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association. All costs associated with the relocation or any attempted relocation which fails or is denied, including reasonable attorney's and engineer's fees, shall be paid by the owners seeking the change.

(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation. The fees and charges shall be assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the

association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate. All costs associated with the relocation or any attempted relocation which fails or is denied, including reasonable attorney's and engineer's fees, shall be paid by the owners seeking the change.

(c) The association: (i) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record amendments to the declaration, including any plans, necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-213. Subdivision of units [Effective Sept. 30, 2009]

(a) In a condominium or cooperative if the declaration expressly so permits and approval as noted herein is obtained in writing, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration, payment of all expenses by the unit owner and other provisions of law other than this chapter, upon application of a unit owner to subdivide a unit in a condominium or cooperative, the association shall prepare, execute, and record an amendment to the declaration, including in a condominium or planned community the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit or on any other basis the declaration requires.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 30, 31, 82.;

§ 81-214. Variations in boundaries [Effective Sept. 30, 2009]

The existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of the unit owner's wilful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-215. Use for sales purposes [Effective Sept. 30, 2009]

A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto

unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state law and to local ordinances.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-216. Easement rights [Effective Sept. 30, 2009]

(a) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration.

(b) Subject to §§ 81-302(a)(6) and 81-312 of this title, the unit owners have an easement in the common elements for purposes of access to their units.

(c) Subject to the declaration and the rules, the unit owners have an easement to use the common elements and all real estate that must become common elements for the purposes for which they were intended.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 32, 82.;

§ 81-217. Amendment of declaration [Effective Sept. 30, 2009]

(a) Except in cases of amendments that may be executed by a declarant under § 81-209(f) or § 81-210 of this title, or by the association under § 81-107, § 81-206(d), § 81-208(c), § 81-212(a), or § 81-213 of this title, or by certain unit owners under § 81-208(b), § 81-212(a), § 81-213(b), or § 81-218(b) of this title, or by secured lenders pursuant to § 81-219 of this title, and except as limited by subsection (d) of this section or as otherwise provided in this § 81-217 of this title, the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without the approval.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to § 81-212(a) of this title, must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this chapter, or in a nonresidential common interest community, except as provided in the declaration, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by the chapter to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) By vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to § 81-205(a)(8) of this title within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) Provisions in the declaration creating special declarant rights which have not expired may not be amended without the consent of the declarant.

(i) If any provision of this chapter or of the declaration of any common interest community subject to this chapter requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent shall be deemed granted if no written refusal to consent is received by the association within 45 days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last recorded security interest of record in delivering or mailing notice to the holder of that interest. Notwithstanding this section, no amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) Unless the declaration or bylaws provide otherwise and subject to paragraphs (j)(ii) and (j)(iii) of this section:

(i) The executive board may execute and record an amendment to the declaration bylaws, or plat, to conform the declaration or bylaws to be consistent with the provisions of this chapter or to correct:

(1) A typographical error or other error in the percentage interests or number of votes appurtenant to any unit;

(2) A typographical error or other incorrect reference to another prior recorded document; or

(3) A typographical error or other incorrect unit designation or assignment of limited common elements if the affected unit owners and their mortgagees consent in

writing to the amendment, and the consent documents are recorded with the amendment.

(ii) If the executive board executes and records an amendment under paragraph (j)(i) of this section, the executive board shall also record with the amendment:

(1) During the time that the declarant has an interest:

(A) The consent of the declarant; or

(B) An affidavit by the executive board that any declarant who has an interest in the condominium has been provided a copy of the amendment and a notice that the declarant may object in writing to the amendment within 30 days of receipt of the amendment and notice, that 30 days have passed since delivery of the amendment and notice, and that the declarant has made no written objection; and

(2) An affidavit by the executive board that at least 30 days before recordation of the amendment a copy of the amendment was sent with a notice of the amendment sent to each unit owner as required for notices pursuant to this chapter.

(iii) An amendment under this section is entitled to be recorded and is effective upon recordation if accompanied by the supporting documents required by this section.

(k) During the time that the declarant has an interest, the declaration, bylaws or plat may be amended by declarant in order to achieve compliance with the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, Veterans Administration or other governmental agency or their successors.

(l) During the time that the declarant has an interest, the declaration, bylaws or plat may be amended by declarant to conform the same to be consistent with the provisions required or allowed by this chapter.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 33-36, 82.;

§ 81-218. Termination of common interest community [Effective Sept. 30, 2009]

(a) Except in the case of a taking of all the units by eminent domain or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(c) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold

following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b) of this section. If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (h), (i), and (j) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(f) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (j) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(g) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(h) Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were recorded or judgments docketed before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded or judgments docketed before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) Any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) The amount of the lien of an association's creditor described in paragraphs (i) (1) and (i)(2) of this section against each of the unit owners' interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(5) The assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) of this section are as follows:

(1) Except as provided in paragraph (j)(2) of this section, the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are: (i) in a condominium, their respective common element interests immediately before the termination, (ii) in a cooperative, their respective ownership interests immediately before the termination, and (iii) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in subsection (l) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under § 81-312 of this title, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-219. Rights of secured lenders [Effective Sept. 30, 2009]

(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to: (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to § 81-313 of this title.

(b) A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this chapter and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a) of this section.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-220. Master associations [Effective Sept. 30, 2009]

(a) If the declaration provides that any of the powers described in § 81-302 of this title are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of 1 or more common interest communities, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(b) Unless it is acting in the capacity of an association described in § 81-301 of this title, a master association may exercise the powers set forth in § 81-302(a)(2) of this title only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(c) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 81-303, 81-308, 81-309, 81-310, and 81-312 of this title apply in the conduct of the affairs of a master association only to persons who elect the board of

(1) The lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) Any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) The amount of the lien of an association's creditor described in paragraphs (i) (1) and (i)(2) of this section against each of the unit owners' interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) The lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(5) The assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) of this section are as follows:

(1) Except as provided in paragraph (j)(2) of this section, the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are: (i) in a condominium, their respective common element interests immediately before the termination, (ii) in a cooperative, their respective ownership interests immediately before the termination, and (iii) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in subsection (l) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under § 81-312 of this title, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-219. Rights of secured lenders [Effective Sept. 30, 2009]

(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to: (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to § 81-313 of this title.

(b) A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this chapter and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a) of this section.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-220. Master associations [Effective Sept. 30, 2009]

(a) If the declaration provides that any of the powers described in § 81-302 of this title are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of 1 or more common interest communities, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(b) Unless it is acting in the capacity of an association described in § 81-301 of this title, a master association may exercise the powers set forth in § 81-302(a)(2) of this title only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(c) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 81-303, 81-308, 81-309, 81-310, and 81-312 of this title apply in the conduct of the affairs of a master association only to persons who elect the board of

a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) Even if a master association is also an association described in § 81-301 of this title, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(3) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-221. Merger or consolidation of common interest communities [Effective Sept. 30, 2009]

(a) Any 2 or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of 2 or more common interest communities to merge or consolidate pursuant to subsection (a) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either: (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the preexisting common interest communities, and providing that the portion of the

percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting common interest community.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-222. Addition of unspecified real estate [Effective Sept. 30, 2009]

In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but, the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in § 81-205(a)(3) of this title and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to § 81-205(a)(5) of this title.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-223. Master planned communities [Effective Sept. 30, 2009]

(a) The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least 400 units that may be used for residential purposes, and at the time of the reservation that declarant owns or controls more than 400 acres on which the units may be built.

(b) If the requirements of subsection (a) of this section are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by § 81-205(a)(3) through (14) of this title until the declaration is amended under subsection (c) of this section.

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain: (i) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and (ii) all the information required by § 81-205(a)(3) through (14) of this title with respect to that real estate.

(d) The only real estate in a master planned community which is subject to this chapter is units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection (c) of this section. Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in subchapter IV of this chapter apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection (c) of this section.

(f) Limitations in this chapter on the addition of unspecified real estate do not apply to a master planned community.

(g) The period of declarant control of the association for a master planned community

terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving written notice to all the unit owners, voluntarily surrenders all rights to control the activities of the association.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-224. Other exempt real estate arrangements [Effective Sept. 30, 2009]

(a) An agreement between two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in their agreement or declarations does not create a separate common interest community unless the cost sharing agreement was intended to evade the limitations of this chapter. If the declarants of those common interest communities are affiliates, the agreement may not unreasonably allocate the costs among those common interest communities.

(b) An agreement between an association for a common interest community and the owner of real estate that is not part of that common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in their agreement does not create a separate common interest community so long as the assessments against the units in the common interest community are included in the periodic budget for the common interest community and are subject to unit owner approval under § 81-324 of this title.

(c) An arrangement between 2 separately owned parcels of real estate for sharing costs associated with a common law party wall, shared driveway or shared well does not create a common interest community.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-225. Termination following catastrophe [Effective Sept. 30, 2009]

If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice for a meeting of unit owners to consider termination under § 81-218 of this title will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in the Court of Chancery of the State of Delaware seeking to terminate the common interest community. During the pendency of the action, the court may enter whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may enter into any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

77 Del. Laws, c. 91, § 37.;

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TITLE 25

Property

Common Interests and Ownership of Real Estate

CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT [EFFECTIVE SEPT. 30, 2009]

Subchapter III. Management of the Common Interest Community [Effective Sept. 30, 2009]

§ 81-301. Organization of unit owners' association [Effective Sept. 30, 2009]

A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The association must have an executive board and the membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under § 81-218 of this title or their heirs, successors, or assigns. The association may be organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful form of legal entity authorized by the laws of this State.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.;

§ 81-302. Powers of unit owners' association [Effective Sept. 30, 2009]

(a) Except as otherwise provided in subsection (b) of this section and other provisions of this chapter, the association:

(1) Must adopt and may amend recorded bylaws consistent with § 81-306 of this title and may adopt rules consistent with § 81-320 of this title;

(2) Must adopt and may amend budgets pursuant to § 81-324 of this title and collect assessments for common expenses, including funds for the repair and replacement reserve, from unit owners and may invest any funds of the association;

(3) May hire and discharge managing agents and other employees, agents, and independent contractors;

(4) May institute, defend, or intervene in litigation, arbitration, mediation or

administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the common interest community subject to, in the case of litigation involving the declarant, the provisions of § 81-321 of this title;

(5) May make contracts and incur liabilities;

(6) May regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) May cause additional improvements to be made as a part of the common elements;

(8) May acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but: (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to § 81-312 of this title and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to § 81-312 of this title;

(9) May grant easements, leases, licenses, and concessions through or over the common elements;

(10) May impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in § 81-202(b) and (d) of this title, and for services provided to unit owners;

(11) May suspend any privileges of unit owners, other than the right of a unit owner to vote on any matter submitted to a vote of unit owners, or services provided to unit owners by the association (other than those necessary for the habitability of the owner's unit) for non-payment of assessments; may impose charges for late payment of assessments; and, after notice and an opportunity to be heard, may levy reasonable fines for violations of the declaration, bylaws and rules of the association;

(12) May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § 81-409 of this title, or statements of unpaid assessments;

(13) May provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

(14) May assign its right to future income, including the right to receive common expense assessments, except to the extent limited by the declaration;

(15) May exercise any other powers conferred by the declaration or bylaws;

(16) May exercise all other powers that may be exercised in this State by legal entities of the same type as the association;

(17) May exercise any other powers necessary and proper for the governance and operation of the association; and

(18) By rule, may require that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution in the manner described in the rule

as a prerequisite to commencement of a judicial proceeding.

(b) The declaration may not impose limitations on the power of the association to:

(1) Deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons; or

(2) Commence litigation, arbitration, mediation or administrative proceedings against any person, but: (A) the association must comply with § 81-321 of this title, if applicable, before commencing any proceeding against any person in connection with construction defects; and (B) the executive board shall promptly provide notice to the unit owners of any litigation filed by or against the association other than a proceeding involving enforcement of rules and claims for assessments.

(c) If a tenant of a unit owner violates the declaration, bylaws or rules of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) Exercise directly against the tenant the powers described in paragraph (a)(11) of this section;

(2) After giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(3) Require, as a means of collecting a fine or past due association fee due from the tenant (and not the unit owner), that the tenant make payments directly to the association in the amount of the rent up to the limit of the amount owed the association.

(4) Enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(d) The rights referred to in paragraph (c)(3) of this section may only be exercised if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation.

(e) Unless a lease otherwise provides, this section does not:

(1) Affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) Permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws or rules.

(f) The executive board shall use its reasonable judgment to determine whether to exercise the association's powers to impose sanctions and pursue legal action for violations of the declaration, bylaws and rules including, without limitation, whether to compromise any claim made by or against it, including claims for unpaid assessments. The association shall have no duty to take enforcement action if the executive board, acting in good faith and without a conflict of interest, determines that, under the facts and circumstances presented: (i) the association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with current law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a

reasonable person or to justify expending the association's resources; or (iv) it is not in the association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue an enforcement action. The executive board's decision not to pursue enforcement under one set of circumstances does not prevent the association from later taking enforcement action under another set of circumstances, except the executive board may not be arbitrary or capricious in taking enforcement action. Whether the association's course of performance with respect to enforcement of any provision of the declaration, bylaws and rules constitutes a waiver or modification of that provision is not affected by this chapter.

(g) The association may compromise any claim made by or against it, including claims for unpaid assessments.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 38-40, 82.;

§ 81-303. Executive board members and officers [Effective Sept. 30, 2009]

(a) The declaration must create an executive board. Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under Delaware law. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under Delaware law. The standards of care and loyalty described in this section apply regardless of the form of legal entity in which the association is organized.

(b) The executive board may not act on behalf of the association to amend the declaration or the bylaws, to terminate the common interest community, or to elect members of the executive board or determine the qualifications, powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.

(c) Subject to subsection (d) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, and except as provided in § 81-223(g) of this title, a period of declarant control terminates no later than the earlier of: (i) except as to a nonresidential common interest community, 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (ii) as to units for residential purposes, 2 years after all declarants have ceased to offer units for residential purposes for sale in the ordinary course of business; (iii) as to units for residential purposes, 2 years after any right to add new units for residential purposes was last exercised; (iv) as to a common interest community other than a condominium or cooperative, at such time as may be required by other applicable laws; or (v) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after all declarants have ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after any right to add new nonresidential units was last exercised; or (vii) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the