

association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by unit owners other than the declarant.

(e) Except as otherwise provided in §§ 81-220(e) and 81-303(f) of this title, not later than the termination of any period of declarant control, the unit owners must elect an executive board of at least 3 members, at least a majority of whom must be unit owners. Unless the declaration provides for the election of officers by the unit owners, the executive board shall appoint the officers. The executive board members and officers shall take office upon election or appointment.

(f) The declaration may provide for the appointment of members of the executive board before or after the period of declarant control and the method of filling vacancies in appointed memberships, rather than election of those members by the unit owners. After the period of declarant control, such appointed members:

- (i) Shall not be appointed by the declarant or an affiliate of the declarant;
- (ii) Shall not comprise more than 33 percent of the entire board; and
- (iii) Have no greater authority than any other member of the executive board.

(g) Not later than the termination of any period of declarant control, the declarant shall provide at its sole expense an audit of all expenditures made with funds collected from unit owners not affiliated with the declarant together with a list of all items paid for out of association funds that specifically benefited only the units owned by declarant and not the units generally. The audit shall be conducted by a certified public accountant that is not an affiliate of declarant.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 41-43, 82.;

§ 81-304. Transfer of special declarant rights [Effective Sept. 30, 2009]

(a) A special declarant right created or reserved under this chapter may be transferred only by an instrument evidencing the transfer recorded in every county in which any portion of the common interest community is located. The instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities

of the successor relating to the common interest community.

(3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code [11 U.S.C. § 101 et seq.] or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon such person's request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to § 81-215 of this title and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code [11 U.S.C. § 101 et seq.] or receivership proceedings, of all interests in a common interest community owned by a declarant:

(1) The declarant ceases to have any special declarant rights, and

(2) The period of declarant control (§ 81-303(d) of this title) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration.

(2) A successor to any special declarant right, other than a successor described in paragraph (e)(3) or (e)(4) of this section or a successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

(ii) On the successor's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant, or made before the common interest community was created;

(C) Breach of any fiduciary obligation by any previous declarant or that declarant's appointees to the executive board; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, may not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof.

(4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c) of this section, may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by that successor's transferor to control the executive board in accordance with § 81-303(d) of this title for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for that successor declarant's acts and omissions under § 81-303(d) of this title.

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration.

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

§ 81-305. Termination of contracts and leases of declarant [Effective Sept. 30, 2009]

Except as provided in § 81-122 of this title, if entered into before the executive board elected by the unit owners pursuant to § 81-303(f) of this title takes office: (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to § 81-303(f) of this title takes office upon not less than 90 days' notice to the other party. This section does not apply to: (i) any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

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

§ 81-306. Bylaws [Effective Sept. 30, 2009]

(a) The bylaws of the association must provide for:

(1) The number of members of the executive board and the titles of the officers of the association;

(2) Election by the executive board, or if the declaration so requires by the unit owners, of a president, treasurer, secretary, and any other officers of the association specified in the bylaws;

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and offices and filling vacancies;

(4) Which of its powers the executive board or officers may delegate to other persons or to a managing agent;

(5) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) For an association for a condominium or cooperative with more than 50 unit owners, an independent audit by a licensed certified public accounting firm of the financial records of the association to be performed no less frequently than once every 3 years and for each intervening year a review (instead of a full audit) by an independent accountant which need not be conducted by a certified public accounting firm, provided that where an association of fewer than 100 unit owners so decides by duly adopted resolution, the audit requirement may be satisfied by a review (instead of a full audit) by an independent accountant which need not be conducted by a certified public accounting firm;

(7) A method for amending the bylaws by the unit owners;

(8) Any provisions that may be necessary to satisfy requirements in this chapter or the declaration concerning meetings, voting, quorums and other matters concerning the activities of the association; and

(9) Any other matters required by the laws of this State to appear in the bylaws of legal entities organized in the same manner as the association.

(b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate unless the declaration or this chapter requires that those provisions appear in the declaration.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 44, 82.;

§ 81-307. Upkeep of common interest community [Effective Sept. 30, 2009]

(a) Except to the extent provided by the declaration, subsection (b) of this section, or § 81-313(h) of this title, the association, through its executive board, is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the unit owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, as designated by the executive board, access through the unit owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof. Each unit owner is likewise responsible for the costs, as determined by the association, associated with the maintenance, repair and replacement of limited common elements appurtenant to the unit owner's unit or for the prorated expense if the limited common element is

associated with more than one unit. The executive board shall determine when and to what extent such maintenance, repair and replacement shall be required.

(b) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

(c) In a planned community, if all development rights have expired with respect to any real estate, the declarant remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate becomes common elements or units.

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

§ 81-308. Unit owner meetings [Effective Sept. 30, 2009]

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Except in cases of emergency meetings, which may be held without prior notice, not fewer than 10 nor more than 60 days in advance of any regular or special meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice of that meeting to be delivered to each unit owner by any means described in § 81-127 of this title or sent prepaid by United States mail to any mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, or must state the website address where the agenda is located as provided in this section including: (i) a statement of the general nature of any proposed amendment to the declaration or bylaws; (ii) a statement that in the absence of objection from any unit owner present at the meeting, the president may add items to the agenda; (iii) any budget changes; and (iv) any proposal to remove an officer or member of the executive board. The agenda may be posted on the website of the association, in lieu of being included in the notice, provided that the association shall, by any means described in § 81-127 of this title, furnish to any unit owner who so requests a copy of the agenda prior to the meeting. Regardless of the agenda, unit owners shall be given a reasonable opportunity at any meeting to offer comments to the executive board regarding any matter affecting the common interest community. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners requested the secretary to do so, the requesting members may directly notify all the unit owners of that meeting. Only matters described in the meeting notice required by this section may be considered at a special meeting.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 45, 82.;

§ 81-308A. Executive board meeting [Effective Sept. 30, 2009]

(a) A meeting of the executive board must be held at least quarterly. Special meetings of the executive board may be called by the president or a majority of the executive board. For purposes of this section, "meetings of the executive board" do not include incidental or other informal gatherings of 2 or more directors for social or other purposes or any meetings where no decisions are made or discussed regarding association business. The

executive board and individual directors shall not use incidental or social gatherings of directors or other devices to evade the open meeting requirements of this section.

(b) Except when a schedule of meetings has been distributed to unit owners that identifies the meeting in question or in cases of emergency meetings that may be held without prior notice, the secretary or other officer specified in the bylaws shall cause notice of any regular or special executive board meeting to be delivered to each unit owner by any means described in § 81-127 of this title not fewer than 10 nor more than 60 days in advance of the meeting (but not later than the time notice of the meeting is sent to members of the executive board). The notice must state the time and place of the meeting and the items on the agenda, including an opportunity for unit owners to offer comments to the executive board regarding any matter affecting the common interest community.

(c) After the period of declarant control ends, all meetings of the executive board shall be open to the unit owners except for executive sessions held for purposes of: (i) consulting with the association's lawyer regarding, or board discussion of, litigation, mediation, arbitration or administrative proceedings or any contract matters; (ii) labor or personnel matters; (iii) discuss matters relating to contract negotiations, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or (iv) discussion of any complaint from or alleged violation by a unit owner, when the executive board determines that public knowledge would violate the privacy of the unit owner.

(d) If any materials are distributed to the executive board before the meeting, the association shall at the same time make copies of those materials reasonably available to unit owners, except that the association need not distribute copies of unapproved minutes or materials that are to be considered in executive session.

(e) Unless the declaration or bylaws otherwise provide, the executive board may meet in a telephonic or video conference call or interactive electronic communication process provided that:

(1) The meeting notice must indicate that the meeting is to be a telephonic, video or other conference and, if not a meeting in executive session, provide information as to how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) The process must provide all unit owners the opportunity to hear the discussion and offer comments as provided in subsection (b) of this section. After termination of the period of declarant control, unit owners may amend the bylaws to vary the procedures for conference calls described in this subsection.

(f) After termination of the period of declarant control, in lieu of a meeting, the executive board may act by unanimous consent as documented in a record signed by all its members, but the executive board may not act by unanimous consent to: (i) adopt a rule, budget or special assessment, (ii) impose a fine or take action to enforce the declaration, bylaws or rules, (iii) buy or sell real property, (iv) borrow money, or (v) contract for any sum greater than 1 percent of the association's annual budget. The secretary shall promptly notify all unit owners of any action taken by unanimous consent.

(g) Notwithstanding compliance with this section, an action by the executive board is valid unless set aside by a court in an action brought pursuant to § 81-417 of this title. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than 60 days after the minutes of the executive board of

the meeting at which the action was taken are approved or after the record of that action is distributed to unit owners. Actions taken at an executive board meeting in violation of this section are voidable by the court but a contract entered into with a third party who had no knowledge of that failure is not invalid solely because of the board's failure to give notice of the meeting at which the contract was approved.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 46, 47, 82.;

§ 81-309. Quorums [Effective Sept. 30, 2009]

(a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if:

(1) Persons entitled to cast at least 20 percent of the votes in the association are present in person, by proxy or by ballot at the beginning of the meeting, provided that at least 25 percent of the unit owners not related to the declarant are present; or

(2) Ballots solicited in accordance with § 81-310(f) of this title are delivered to the secretary in a timely manner by persons who, together with those persons present in person or by proxy or ballot at the beginning of the meeting, would comprise a quorum for that meeting.

(b) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the executive board if persons entitled to cast a majority of the votes on that board are present throughout the meeting.

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

§ 81-310. Voting; proxies [Effective Sept. 30, 2009]

(a) If only 1 of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than 1 of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any 1 of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than 1 person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 1 year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in § 81-308 of this title, of all meetings at which lessees are entitled to vote.

(d) Votes allocated to a unit owned by the association may not be cast and shall not be calculated either in a quorum or in any percentage of unit votes needed for any action by the unit owners.

(e) Except in cases where a greater percentage of unit votes in the association is required by this chapter or the declaration, a majority of the votes cast in person, by proxy or by ballot at a meeting of unit owners where a quorum is present shall determine the outcome of any action of the association where a vote is taken so long as the number of votes cast in favor comprise at least a majority of the number of votes required for a quorum for that meeting.

(f) Action may be taken by ballot without a meeting as follows:

(1) Unless prohibited or limited by the declaration or bylaws, any action that the association may take at any meeting of members may be taken without a meeting if the association delivers a written or electronic ballot to every member entitled to vote on the matter. A ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

(2) All solicitations for votes by ballot must: (A) indicate the number of responses needed to meet the quorum requirements; (B) state the percentage of approvals necessary to approve each matter other than election of directors; (C) specify the time by which a ballot must be delivered to the association in order to be counted, which time shall not be less than 3 days after the date that the association delivers the ballot; and (D) describe procedures (including time and size and manner) by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(3) Approval by the ballot pursuant to this section is valid only if: (A) the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and (B) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes by ballot.

(4) Except as otherwise provided in the declaration or bylaws, a ballot shall not be revoked after delivery to the association by death, disability or revocation by the person who cast that vote.

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

§ 81-311. Tort and contract liability; tolling of limitation period [Effective Sept. 30, 2009]

(a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the common interest community which that declarant has the responsibility to maintain.

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for: (i) all tort losses not covered by

insurance suffered by the association or that unit owner, and (ii) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

(c) Except as provided in § 81-416(d) of this title with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this chapter is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because that person is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by § 81-317 of this title.

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

§ 81-312. Conveyance or encumbrance of common elements [Effective Sept. 30, 2009]

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association 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 a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association 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 a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to § 81-218 of this title, is void.

(c) An agreement to convey common elements in a condominium or planned community, or to subject them to a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest, must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The 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.

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (a) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (a), (b),

and (c) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(e) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements or of any other part of a cooperative is void.

(f) A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not deprive any unit of its rights of access and support.

(g) Unless the declaration otherwise provides, if the holders of first security interests on 80 percent of the units that are subject to security interests on the day the unit owners' agreement under subsection (c) of this section is recorded consent in writing:

(1) A conveyance of common elements pursuant to this section terminates both the undivided interests in those common elements allocated to the units and the security interests in those undivided interests held by all persons holding security interests in the units; and

(2) An encumbrance of common elements pursuant to this section has priority over all preexisting encumbrances on the undivided interests in those common elements held by all persons holding security interests in the units.

(h) The consents by holders of first security interests on units described in subsection (g) of this section, or a certificate of the secretary affirming that those consents have been received by the association, may be recorded at any time before the date on which the agreement under subsection (c) of this section becomes void. Consents or certificates so recorded are valid from the date they are recorded for purposes of calculating the percentage of consenting first security interest holders, regardless of later sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created by the association after the declaration was recorded.

(i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without complying with this section.

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

§ 81-313. Insurance [Effective Sept. 30, 2009]

(a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(1) Property insurance on the common elements and, in a planned community, also on property that must become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies;

(2) Liability insurance, including medical payments insurance, in an amount

determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units; and

(3) Fidelity insurance.

(b) In the case of a building that contains more than 1 unit having horizontal boundaries or vertical boundaries that comprise common walls or other boundaries between units, the insurance maintained under paragraph (a)(1) of this section, to the extent reasonably available, must include the units, but need not include improvements and betterments installed by unit owners.

(c) If the insurance described in subsections (a) and (b) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it considers appropriate to protect the association or the unit owners.

(d) Insurance policies carried pursuant to subsections (a) and (b) of this section must provide that:

(1) Each unit owner is an insured person under the policy with respect to liability arising out of such unit owner's interest in the common elements or membership in the association;

(2) The insurer waives its right to subrogation under the policy against any unit owner or member of the unit owner's household;

(3) No act or omission by any unit owner, unless acting within the scope of the unit owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(e) Any loss covered by the property policy under paragraph (a)(1) and subsection (b) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to the provisions of subsection (h) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest community is terminated.

(f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the unit owner's own benefit.

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any

unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced as soon as practicable by the association unless: (i) the common interest community is terminated, in which case § 81-218 of this title applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) 80 percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced: (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) in a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under § 81-107(a) of this title, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

(i) The provisions of this section may be varied or waived in the case of a common interest community all of whose units are restricted to nonresidential use.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 48, 49, 82.;

§ 81-314. Surplus funds [Effective Sept. 30, 2009]

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves must be paid annually to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

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

§ 81-315. Assessments for common expenses [Effective Sept. 30, 2009]

(a)(1) Until the association is validly established pursuant to this chapter and makes a common expense assessment, the declarant shall pay all common expenses together, in the case of a condominium or cooperative, with all sums necessary to fully fund the repair and replacement reserve until the association makes its first assessment.

(2) After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association. In the case of a condominium or cooperative, the budget shall include as a line item a payment into the repair and replacement reserve sufficient to achieve the level of funding

noted in the reserve study, or maintain said reserve at such level. The minimum percentage of the annual budget of a condominium or cooperative that must be assigned to the repair and replacement reserve will depend upon how many of the following components and systems are to be maintained, repaired and replaced by the executive board: (i) 1 or more hallways, (ii) 1 or more stairwells, (iii) 1 or more management or administrative offices, (iv) 1 or more roofs, (v) 1 or more windows, (vi) 1 or more exterior walls, (vii) 1 or more elevators, (viii) 1 or more HVAC systems, (ix) 1 or more swimming pools, (x) 1 or more exercise facilities, (xi) 1 or more clubhouses, (xii) 1 or more parking garages (but not including surface parking lots), (xiii) 1 or more masonry bridges used by motor vehicles, (xiv) 1 or more bulkheads, and (xv) 1 or more docks. In the event that the executive board is responsible for the maintenance, repair and replacement of 4 or more of the above-described systems or components, the minimum percentage of the annual budget that must be assigned to the repair and replacement reserve is 15%; if the responsibility extends to only 3 of the above-described systems and components, the minimum percentage is 10%; and if the responsibility extends to only 2 or fewer of the above-described systems and components, the minimum percentage is 5%. In the event that the association's accountant certifies that the funds in the repair and replacement reserve are in excess of the sum required to constitute a fully funded repair and replacement reserve, the executive board shall refund or credit the surplus of the excess sum to the unit owners. In the event that the association does not have a current reserve study as required by this chapter, the minimum percentages of the association's budget to be assigned to the repair and replacement reserve shall be the percentages prescribed in this paragraph (a)(2) of this section.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 81-207(a) and (b) of this title. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding the lawful rate of interest.

(c) To the extent required by the declaration:

(1) Any common expense associated with the maintenance, repair, or replacement of a limited common element must be assessed against the units to which that limited common element is assigned, equally, or in any other proportion the declaration provides;

(2) Any common expense or portion thereof included as part of the common expense budget, but benefiting fewer than all of the units, including fees for services provided by the association to occupants of individual units, must be assessed exclusively against the units benefited based on their use and consumption of services; and

(3) The costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed in proportion to usage.

(d) Assessments to pay a judgment against the association may be made only against the units in the common interest community at the time the judgment was entered, in proportion to their common expense liabilities.

(e) If any common expense is caused by the misconduct of any unit owner or a unit owner's guests or invitees, the association may assess that expense exclusively against the unit of that unit owner.

(f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due must be recalculated in accordance with the reallocated

common expense liabilities.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 50, 82.;

§ 81-316. Lien for assessments [Effective Sept. 30, 2009]

(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 81-302(a)(10), (11), and (12) of this title, and any other sums due the association under the declaration, this chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorneys' fees incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. Unless the declaration provides for a different rate of interest, interest on unpaid assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law.

(b) Except as otherwise provided in the declaration, a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien shall have priority over the security interests described in paragraph (ii) above for an amount not to exceed the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget adopted by the association pursuant to § 81-315(a) of this title; provided that for the lien to have priority over the security interests described in paragraph (ii) above, an association with assessments shall have recorded in the county or counties in which the common interest community is located a document which contains the name of the association, the address, a contact telephone number, a contact email address and a web-site address, if any. In addition, the association shall have recorded at any time, but not less than 30 days prior to the Sheriff's sale of a unit in its common interest community for which common expense assessments are due, a statement of lien which shall include a description of such unit, the name of the record owner, the amount due and the date due, the amount paid for recording the statement of lien and the amount required to be paid for filing a termination thereof upon payment, and the signature and notarized statement of an officer of the association that the amount described in the statement of lien is correct and due and owing. Upon payment of the amount due in paragraph (ii) above, the payer shall be entitled to a recordable termination of lien for the amount paid. The liens recorded pursuant to this subparagraph shall expire on the first day of the sixtieth month after recording. This subsection does not affect the priority of mechanics' or materialmen's liens, nor the priority of liens for other assessments made by the association. The lien under this subsection is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

(d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section is required.

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code [11 U.S.C. § 101 et seq.], the period of time for instituting proceedings to enforce the association's lien shall be tolled until 30 days after the automatic stay of proceedings under § 362 of the Bankruptcy Code [11 U.S.C. § 362] is lifted.

(f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) of this section creates a lien or prohibit an association from taking a deed in lieu of foreclosure.

(g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's fees for the prevailing party.

(h) The association upon written request shall furnish to a unit owner a statement setting forth the amount of unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form. The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the executive board, and every unit owner.

(i) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as provided by this section.

(j) The association's lien may be foreclosed or executed upon as provided in this subsection and subsection (m) of this section:

(1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate by equitable foreclosure or executed upon by other lawful procedures provided for in the declaration;

(2) In a cooperative whose unit owners' interests in the units are real estate, the association's lien must be foreclosed in like manner as a mortgage on real estate; or

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under Article 9 of the Uniform Commercial Code [§ 9-101 et seq. of Title 6].

(4) In the case of foreclosure, the association shall give reasonable notice of its action to all lien holders of the unit whose interest would be affected and to all other persons as would be required under applicable law for the foreclosure of a mortgage on real estate.

(k) In a cooperative, if the unit owner's interest in a unit is real estate:

(1) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, or the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but

only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

(2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

(3) The proceeds of a foreclosure sale must be applied in the following order:

(i) The reasonable expenses of sale;

(ii) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by agreement between the association and the unit owner, reasonable attorneys' fees and other legal expenses incurred by the association;

(iii) Satisfaction of the association's lien;

(iv) Satisfaction in the order of priority of any subordinate claim of record;
and

(v) Remittance of any excess to the unit owner.

(4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien under which the foreclosure sale occurred and any subordinate interest, even though the association or other person conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person signing the conveyance as grantor and a recital of the facts of nonpayment of the assessment and of the giving of the notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of authority is not required even though the association is named as grantee in the conveyance.

(5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit owner's default and prevent sale or other disposition by tendering the performance due under the security agreement, including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to foreclosure incurred to the time of tender, including reasonable attorneys' fees of the creditor.

(I) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to § 81-315

of this title.

(m) The following restrictions apply to any action by the association to foreclose its lien under this section:

(1) No foreclosure action may be commenced unless: (A) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last adopted by the association pursuant to § 81-315(a) of this title; and (B) the executive board expressly votes to commence a foreclosure action against that specific unit.

(2) The association shall apply any sums paid by unit owners who are delinquent in paying assessments as follows: (i) first, to unpaid assessments; (ii) then to late charges; (iii) then to attorneys fees and other reasonable collection charges and costs; and (iv) finally, to all other unpaid fees, charges, penalties, interest and late charges.

(3) If the only sums due with respect to a unit consist of fines and related sums levied against that unit, a foreclosure action may not be commenced against that unit unless the association has first secured a judgment against the unit owner with respect to those fines and has perfected a judgment lien against the unit under state law.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 51, 52, 82.;

§ 81-317. Other liens [Effective Sept. 30, 2009]

(a) In a condominium or planned community:

(1) Except as provided in paragraph (a)(2) of this section, a judgment for money against the association if recorded or docketed, is not a lien on the common elements, but is a lien in favor of the judgment lien holder only against all units owned by the association and other real property owned by the association. No property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to § 81-312 of this title, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community), becomes effective against 2 or more units, the unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to the unit owner's unit, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association must be indexed in the name of the common interest community and the association and, when so indexed, is notice of the lien against the units.

(b) In a cooperative:

(1) If the association receives notice of an impending foreclosure on all or any portion of the association's real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

(2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, no other property of a unit owner is subject to those claims.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 53, 82.;

§ 81-318. Association records [Effective Sept. 30, 2009]

(a) The association shall maintain the following records in written form or in another form capable of conversion into written form within a reasonable time:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records, including those for the repair and replacement reserve. All financial records shall be kept in accordance with generally accepted accounting practices.

(2) Minutes of all meetings of its members and executive board, a record of all actions taken by the members or executive board without a meeting, and a record of all actions taken by a committee of the executive board in place of the board or directors on behalf of the association.

(3) A record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast and the members' class of membership, if any; and

(4) In addition, the association shall keep a copy of the following records at its principal office: (1) its original or restated certificate of incorporation and bylaws and all amendments to them currently in effect; (2) the minutes of all members' meetings and records of all action taken by members without a meeting for the past 3 years; (3) any financial statements and tax returns of the association prepared for the past 3 years, together with the report of the auditors of the financial records; (4) a list of the names and business addresses of its current directors and officers; (5) its most recent annual report delivered to the Secretary of the State; (6) in the case of a condominium or cooperative, the association's most recent reserve study; and (7) financial and other records sufficiently detailed to enable the association to comply with § 81-409 of this title.

(b) Subject to the provisions of subsection (c) of this section, all records kept by the association, including the association's membership list and address, and aggregate salary information of employees of the association, shall be available for examination and copying by a unit owner or the unit owner's authorized agent so long as the request is made in good faith and for a proper purpose related to the owner's membership in the association. This right of examination may be exercised: (i) only during reasonable business hours or at a mutually convenient time and location, and (ii) upon 5-days' written notice reasonably identifying the purpose for the request and the specific records of the association requested.

(c) Records kept by an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel matters relating to specific persons or a person's medical records;
- (2) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;
- (3) Pending or threatened litigation, arbitration, mediation or other administrative proceedings;
- (4) Matters involving federal, state or local administrative or other formal proceedings before a government tribunal for enforcement of the declaration, bylaws or rules;
- (5) Communications with legal counsel which are otherwise protected by the attorney-client privilege or the attorney work product doctrine;
- (6) Disclosure of information in violation of law;
- (7) Meeting minutes or other confidential records of an executive session of the executive board; or
- (8) Individual unit owner files other than those of the requesting owner.

(d) An attorney's files and records relating to the association are not records of the association and are not subject to inspection by owners or production in a legal proceeding for examination by owners.

(e) The association may charge a fee for providing copies of any records under this section but that fee may not exceed the actual cost of the materials and labor incurred by the association.

(f) The right to copy records under this section includes the right to receive copies by xerographic or other means, including copies through an electronic transmission if available and so requested by the unit owner.

(g) An association is not obligated to compile or synthesize information.

(h) Information provided pursuant to this section may not be used for commercial purposes.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 54-56.;

§ 81-319. Association as trustee [Effective Sept. 30, 2009]

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the

proper application of trust assets paid or delivered to the association in its capacity as trustee.

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

§ 81-320. Rules [Effective Sept. 30, 2009]

(a) Before adopting or substantially amending any rule, the executive board must notify all unit owners of: (i) its intention to adopt the proposed rule and (ii) a date on which the executive board will convene a meeting to receive comments on them from the unit owners.

(b) If the right is reserved in the declaration pursuant to § 81-302(a)(16) of this title, the association may adopt rules to establish and enforce construction and design criteria and aesthetic standards. If it does so, the association must also adopt procedures for enforcement of those standards and for approval of applications, including a reasonable time within which the association must act after an application is submitted. The association's power under this section is subject to any reserved special declarant right to control any construction or design review process during the period of declarant control.

(c) A rule regulating display of the flag of the United States must be consistent with federal law, but the rule may not prohibit the right of a unit owner to display the flag of the United States, measuring up to 3 feet by 5 feet, on a pole attached to the exterior wall of that unit owner's unit or the limited common elements appurtenant to that unit. Unless the declaration otherwise provides, no rule may prohibit the display on a unit or on a limited common element adjoining a unit of a flag of this State, or signs regarding candidates for public office or ballot questions, but the association may adopt rules governing the time, place, size, number or manner of those displays. Unless the declaration provides otherwise during the first 2 years of the period of declarant control, no rule may prohibit the right of a unit owner to display a "For Sale" sign, measuring up to 12 inches by 18 inches (12' x 18'), on the exterior wall of the unit owner's unit or the limited common elements appurtenant to that unit. Unless the declaration provides otherwise, the "For Sale" sign shall be entitled "For Sale" and may contain such information as accurately describes the unit and any applicable names, addresses and phone numbers of the person or persons who are offering the unit for sale.

(d) Unless otherwise permitted by the declaration or this chapter, an association may only adopt rules that affect the use of or behavior in units that may be used for residential purposes to:

(1) Prevent any use of a unit which violates the declaration;

(2) Regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or

(3) Restrict the leasing of residential units to the extent those rules are reasonably designed to meet underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in common interest communities or regularly purchase those mortgages.

(e) All rules adopted by the association must be reasonable.

(f) The executive board must maintain on a current basis for reference by unit owners'

tenants a complete statement of all rules.

(g) The unit owner shall obtain from the executive board and deliver to or otherwise make available to each tenant of the unit owner's unit, at the time the lease is executed or, in the absence of a written lease when the tenancy begins, a current copy of the rules for the common interest community as furnished by the executive board and shall deliver to or otherwise make available to the tenant a copy of any additions or revisions to the rules as such additions or revisions are adopted and noticed to the unit owners by the executive board.

(h) A tenant shall be bound to comply with the noticed rules, and the unit owner leasing to the tenant shall take all lawful action against a tenant who materially violates the noticed rules.

(i) By entering into a lease for a unit, the unit owner of that unit irrevocably appoints the executive board as attorney-in-fact coupled with an interest to enforce the noticed rules against the tenant of that lease in the event that the unit owner shall fail, within a reasonable time after written demand by the executive board, to take what the executive board reasonably regards as adequate enforcement action against the tenant in material violation of noticed rules. In the event of enforcement action (including any summary action for possession at law or a petition for injunctive relief in equity) under this subsection, the tenant shall have no resort to any defense based upon lack of contractual privity with the executive board.

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

§ 81-321. Litigation involving declarant [Effective Sept. 30, 2009]

(a) An association's authority under § 81-302(a)(4) of this title to commence and pursue litigation involving the common interest community is subject to the following rules:

(1) Before the association commences litigation, arbitration or any administrative proceedings against a declarant or any person employed by or under contract with a declarant involving any alleged construction defect with respect to the common interest community, the association shall provide written notice of its claims to the declarant and those persons whom the association seeks to hold responsible for the claimed defects (the "allegedly responsible persons"). The text of the notice may be in any form reasonably calculated to put the allegedly responsible persons on notice of the general nature of the association's claims including, without limitation, a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person provided that the method of service and the person who is actually served either: (i) provides actual notice to the allegedly responsible persons named in the claim; or (ii) the method of service used would be sufficient under local law to confer personal jurisdiction over the person in connection with commencement of a lawsuit by the association against that person.

(2) The association may not commence litigation, arbitration or any administrative proceedings against a responsible person for a period of 90 days after the association sends notice of its claim to that responsible person.

(3) During the 90-day period, the declarant and any other responsible person may present to the association a plan to repair or otherwise remedy the construction defects described in the notice. If the association does not receive a timely remediation plan from each responsible person to whom it directed notice, the association shall be entitled to

commence any proceedings against that responsible person as the board determines to be appropriate.

(4) If the association does receive 1 or more timely plans to repair or otherwise remedy the construction defects described in the notice, then the executive board shall promptly consider those plans and then notify the responsible persons of whether or not each such plan is acceptable as presented, acceptable with stated conditions, or not accepted.

(5) If the association accepts a repair plan from a responsible person, or if a responsible person agrees to stated conditions to an otherwise acceptable plan, then the parties shall agree on a timeframe for implementation of that plan, and the association shall not commence litigation, arbitration or any administrative proceedings against that allegedly responsible person during the time that the plan is being diligently implemented.

(6) If an allegedly responsible person submits notice submits a timely repair plan but the association and the allegedly responsible party have not agreed in writing to the terms of the plan or its implementation, then the association is entitled to commence litigation, arbitration or any administrative proceedings against that person.

(7) Except as provided in § 81-416(d) of this title with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant or other allegedly responsible person under this chapter is tolled during the 90-day period described in paragraph (a)(2) of this section above and during any extension of that time because the allegedly responsible person has commenced and is diligently pursuing the remediation plan.

(8) After the time described in paragraph (a)(3) of this section expires, whether or not the association agrees to any repair plan, nothing in this section bars to the commencement of litigation by:

(i) The association against an allegedly responsible person who fails to submit a timely repair plan or whose plan is not acceptable or who fails to diligently pursue implementation of that plan; or

(ii) A unit owner with respect to that owner's unit and any limited common elements assigned to that unit, regardless of any actions of the association.

(9) Nothing in this section precludes the association from making emergency repairs to correct any defect that poses a significant and immediate health or safety risk.

(10) Subject to the other provisions of this section and the declaration, the determination of whether and when the association may commence any proceedings may be made by the executive board and nothing in this section requires a vote by any number or percentage of unit owners a precondition to litigation.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 57, 82.;

§ 81-322. [Reserved.] [Effective Sept. 30, 2009]

§ 81-323. Removal of members of executive board [Effective Sept. 30, 2009]

Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present, in person, by proxy or by ballot, and

entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, except that: (i) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control, and (ii) a person appointed under § 81-303(h) of this title [sic] may only be removed by the person that appointed that member:

(a) The unit owners may consider the question of whether to remove a member of the executive board either: (1) at any duly called meeting of the unit owners at which a quorum is present if that subject was listed in the notice of the meeting, or (2) at a special meeting called for the purpose of removing a member of the executive board, whether or not a quorum is present, so long as the voting at the special meeting is conducted in the manner described in subsection (c) of this section.

(b) At any meeting at which a vote to remove a member of the executive board is to be taken, the executive board shall provide a reasonable opportunity to speak before the vote to all persons favoring and opposing removal of that member, including without limitation the member being considered for removal.

(c) If a special meeting is called for the purpose of removing a member of the executive board, then the following rules apply, whether or not a quorum is present at that meeting in person or by proxy:

(1) After all persons present at the meeting have been given a reasonable opportunity to speak, the meeting shall be recessed for a period calculated in the manner described in paragraph (c)(2) of this section below.

(2) Promptly following the recess, the association shall notify all unit owners of the recessed meeting and inform the unit owners of their opportunity to cast votes either in favor or against removal during the 30-day period following the day that the notice is sent.

(3) The notice sent to unit owners shall specifically inform them of their right to cast votes either in a secret written ballot, on a form provided to the unit owners or by electronic means according to instructions contained in that notice.

(d) Whether a vote under subsection (c) of this section is taken before or after a recess, and whether or not taken by electronic means, a member of the executive board may be removed only if the number of votes cast in favor of removal: (i) exceeds the number of votes cast in opposition to removal and (ii) is greater than one-third of the total votes of the association.

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

§ 81-324. Adoption of budget [Effective Sept. 30, 2009]

(a) The executive board shall, at least annually, prepare a proposed budget for the common interest community. In a condominium or cooperative, the proposed budget shall include a line item for any required funding of a repair and replacement reserve. Within 30 days after adoption of any proposed budget after the period of declarant control, the executive board shall provide to all unit owners a summary of the budget, including any reserves and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the executive board shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 60 days after providing the summary. Unless at that meeting a majority of all unit owners or any larger vote

specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed periodic budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(b) In addition to adoption of its regular periodic budget, the executive board may at any time propose a budget which would require a special assessment against all the units. Except as provided in subsection (c) of this section, the special assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) of this section and the unit owners do not reject that proposed special assessment.

(c) If the executive board determines by unanimous vote that the special assessment is necessary in order to respond to an emergency, then: (i) the special assessment shall become effective immediately in accordance with the terms of the vote; (ii) notice of the emergency assessment shall be promptly provided to all unit owners; and (iii) the executive board shall spend the funds paid on account of the emergency assessment solely for the purposes described in the vote.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 59, 60, 82.;

§ 81-325. Service on associations and executive board [Effective Sept. 30, 2009]

A person may bring suit against the association or the executive board as a whole in any cause by service in accordance with the otherwise applicable rules authorizing service on the form of legal entity of the association.

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

§ 81-326. Delaware corporations [Effective Sept. 30, 2009]

Any association that is a Delaware corporation shall also be subject to the Title 8, which shall govern and control to the extent not inconsistent with this chapter.

77 Del. Laws, c. 91, § 61.;

NOTICE: The Delaware Code appearing on this site was prepared by the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, under the supervision of the Delaware Code Revisors and the editorial staff of LexisNexis, includes all acts effective as of July 9, 2009, up to and including 77 Del. Laws, c. 150.

DISCLAIMER: Please Note: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. This information is provided for informational purposes only. Please seek legal counsel for help on interpretation of individual statutes.



[HOME](#) > [TITLE 25](#) > [CHAPTER 81](#)

[§ 81-401](#) [§ 81-402](#) [§ 81-403](#) [§ 81-404](#) [§ 81-405](#) [§ 81-406](#) [§ 81-407](#) [§ 81-408](#) [§ 81-409](#) [§ 81-410](#) [§ 81-411](#) [§ 81-412](#) [§ 81-413](#) [§ 81-414](#) [§ 81-415](#) [§ 81-416](#) [§ 81-417](#) [§ 81-418](#) [§ 81-419](#) [§ 81-420](#) [§ 81-421](#)

TITLE 25

Property

Common Interests and Ownership of Real Estate

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

Subchapter IV. Protection of Purchasers [Effective Sept. 30, 2009]

§ 81-401. Applicability; waiver [Effective Sept. 30, 2009]

(a) This subchapter applies to all units subject to this chapter, except as provided in subsection (b) of this section or as modified or waived by agreement of purchasers of units in a nonresidential common interest community or as to units that are restricted to nonresidential use.

(b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (1) A gratuitous disposition of a unit;
- (2) A disposition pursuant to court order;
- (3) A disposition by a government or governmental agency;
- (4) A disposition by foreclosure or deed in lieu of foreclosure;
- (5) A disposition to a dealer;
- (6) A disposition that may be canceled at any time and for any reason by the purchase without penalty;
- (7) A disposition by operation of law upon the death of the unit owner;
- (8) A disposition of a unit restricted to nonresidential purposes; or
- (9) A disposition of a unit to a purchaser for which a declarant, dealer or existing unit owner has entered into a written contract with such purchaser for the purchase and

sale of such unit at any time prior to the effective date.

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

§ 81-402. Liability for public offering statement requirements [Effective Sept. 30, 2009]

(a) Except as provided in subsection (b) of this section, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of §§ 81-403, 81-404, 81-405, and 81-406 of this title.

(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant or to a dealer who intends to offer units in the common interest community. In the event of any such transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the requirements of subsection (a) of this section. In addition and anything to the contrary in this chapter notwithstanding, a declarant shall not be required to prepare or provide a public offering statement under this subchapter IV of this chapter with respect to any contract for a unit executed by the declarant with a purchaser of such unit prior to the effective date.

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in § 81-408(a) of this title. The person who prepared all or a part of the public offering statement is liable under §§ 81-408 and 81-417 of this title for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which the person prepared. If a declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of §§ 81-403, 81-404, 81-405, and 81-406 of this title as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements.

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

§ 81-403. Public offering statement; general provisions [Effective Sept. 30, 2009]

(a) Except as provided in subsection (b) of this section, a public offering statement must contain or fully and accurately disclose:

(1) The name and principal address of the declarant and of the common interest community, and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) A general description of the common interest community, including to the extent possible, the types, number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the declarant anticipates

including in the common interest community;

(3) The number of units in the common interest community;

(4) Copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 81-305 of this title;

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget for the repair and replacement reserve;

(ii) A statement of any other reserves;

(iii) The projected common expense by category of expenditures for the association; and

(iv) The projected common expense assessment for each type of unit;

(6) Any services not reflected in the budget that the declarant provides, or expenses that the declarant pays and which the declarant expects may become at any subsequent time a common expense of the association and the projected common expense assessment attributable to each of those services or expenses for the association and for each type of unit;

(7) Any initial or special fee due from the seller or the purchaser at the time of sale, together with a description of the purpose and method of calculating the fee;

(8) A description of any liens, defects, or encumbrances on or affecting the title to the common interest community and a statement as to which liens, defects or encumbrances will remain after transfer of the unit;

(9) A description of any financing offered or arranged by the declarant;

(10) The terms and significant limitations of any warranties provided by the declarant, including statutory warranties and limitations on the enforcement thereof or on damages;

(11) [Repealed.]

(12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common interest community of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit

will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 81-408 of this title, together with the name and address of the escrow agent;

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

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to § 81-419 of this title; and

(18) [Reserved.]

(19) In a cooperative, a statement whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative, and a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) If a common interest community composed of not more than 20 units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (a)(9), (10), (15), (16) and (17) of this section and the narrative descriptions of documents required by paragraph (a)(4) of this section.

(c) A declarant promptly shall amend the public offering statement to report any material change in the information required by this section.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 62-66, 82.;

§ 81-404. Common interest communities subject to development right [Effective Sept. 30, 2009]

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by § 81-403 of this title:

(a) The maximum number of units, and the maximum number of units per acre, that may be created;

(b) A statement of how many or what percentage of the units that may be created will be restricted exclusively to residential use, or a statement that no representations are

made regarding use restrictions;

(c) If any of the units that may be built within real estate subject to development rights are not to be restricted exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not restricted exclusively to residential use;

(d) A brief narrative description of any development rights reserved by a declarant and of any conditions relating to or limitations upon the exercise of development rights;

(e) A statement of the maximum extent to which each unit's allocated interests may be changed by the exercise of any development right described in subsection (c) of this section;

(f) A statement of the extent to which any buildings or other improvements that may be erected pursuant to any development right in any part of the common interest community will be compatible with existing buildings and improvements in the common interest community in terms of architectural style, quality of construction, and size, or a statement that no assurances are made in those regards;

(g) General descriptions of all other improvements that may be made and limited common elements that may be created within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(h) A statement of any limitations as to the locations of any building or other improvement that may be made within any part of the common interest community pursuant to any development right reserved by the declarant, or a statement that no assurances are made in that regard;

(i) A statement that any limited common elements created pursuant to any development right reserved by the declarant will be of the same general types and sizes as the limited common elements within other parts of the common interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

(j) A statement that the proportion of limited common elements to units created pursuant to any development right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that regard;

(k) A statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that may be made as to those units, or a statement that no assurances are made in that regard; and

(l) A statement of the extent to which any assurances made pursuant to this section apply or do not apply in the event that any development right is not exercised by the declarant.

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

§ 81-405. Time shares [Effective Sept. 30, 2009]

(a) If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by § 81-403 of this title:

(1) The number and identity of units in which time shares may be created;

(2) The total number of time shares that may be created;

(3) The minimum duration of any time shares that may be created; and

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in § 81-316 of this title.

(b) Any common interest community that is in time shares shall also be governed by Chapter 28 of Title 6, to the extent applicable.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 67, 81.;

§ 81-406. Common interest communities containing conversion buildings [Effective Sept. 30, 2009]

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by § 81-403 of this title:

(1) A statement by the declarant, based on a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(2) A statement by the declarant of the expected useful life of each item reported on in paragraph (a)(1) of this section or a statement that no representations are made in that regard; and

(3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations.

(b) This section applies only to buildings containing units that may be occupied for residential use.

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

§ 81-407. Common interest community securities [Effective Sept. 30, 2009]

If an interest in a common interest community is currently registered with the Securities and Exchange Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the Securities and Exchange Commission. An interest in a common interest community is not a security under Delaware law.

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

§ 81-408. Purchaser's right to cancel [Effective Sept. 30, 2009]

(a) A person required to deliver a public offering statement pursuant to § 81-402(c) of this title for a condominium or cooperative shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless such a purchaser is given the public offering statement before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, the purchaser may do so by notice to the offeror. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) Anything to the contrary in this chapter notwithstanding, any declarant, dealer, or unit owner who entered into a contract with a purchaser for a unit on or before the effective date shall not be subject to any of the provisions of this section and no such purchaser shall be entitled to exercise any of the rights and remedies against such declarant, dealer or unit owner under this section.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 15; 77 Del. Laws, c. 91, §§ 68-70, 82.;

§ 81-409. Resales of units [Effective Sept. 30, 2009]

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under § 81-401(b) of this title, a unit owner shall furnish to a purchaser not later than the time of the signing of the contract to purchase, a copy of the declaration (other than any plats and plans), all amendments to the declaration, the bylaws, and the rules of the association (including all amendments to the rules), and a certificate containing or attaching the following, to be correct to within 90 days prior to the date the certificate of the unit owner is furnished to the purchaser:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;

(2) A statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) A statement of any other fees payable by the owner of the unit being sold;

(4) In a condominium or cooperative, a statement of the current number of unit owners delinquent in the payment of common expense assessments and the aggregate amount of such delinquency;

(5) In a condominium or cooperative, a statement of the current balance in the repair and replacement reserve;

(6) A statement of any capital expenditures approved by the association for the current and succeeding fiscal years, including a statement of the amount of such capital expenditures to be taken from the repair and replacement reserve;

- (7) In a condominium or cooperative, a copy of the most recent reserve study;
- (8) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;
- (9) The most recent report of auditors (if required by § 81-306(a)(6) of this title) on the association balance sheet and income and expense statement or any accountant's report on any unaudited association balance sheet and income and expense statement;
- (10) The current operating budget of the association;
- (11) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
- (12) A statement describing any insurance coverage provided for the benefit of unit owners;
- (13) In a condominium or cooperative, a statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration;
- (14) In a condominium or cooperative, a statement as to whether the executive board has received written notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the common interest community which has not been cured;
- (15) In a condominium or cooperative, a statement of the remaining term of any leasehold estate affecting the common interest community and the provisions governing any extension or renewal thereof;
- (16) In a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal income tax purposes by the unit owner of real estate taxes and interest paid by the association;
- (17) A statement describing any pending sale or encumbrance of common elements; and
- (18) [Repealed];
- (19) Copies of the minutes for the executive board meeting for the preceding 6 months or, if none, for the most recent executive board meeting for which minutes are available.
 - (b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. If the unit owner has requested the information from the association and the association fails to provide any portion of the requested information or if the unit owner, after reasonable investigation, has no information on any particular item to be included in the certificate, or if the requested information does not exist, the unit owner shall include a statement to that effect in the certificate from the unit owner. A unit owner providing a certificate pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate and is not

liable to the purchaser under this section if the owner had, after reasonable investigation, reasonable grounds to believe, and did believe, at the time the information was provided to the purchaser, that the statements were true and there was no omission to state a material fact necessary to make the statements made not misleading, in light of the circumstances under which the statements were made. The association may require that such certificate and information be furnished in an electronic format. Except as provided in this subsection, the association may charge a fee for providing such certificate and related information. Such fee shall not exceed \$200 for each certificate, except that if the association agrees to furnish a certificate and related information in a paper copy format, it may charge an additional cost not to exceed \$50 for each such certificate. If the association fails to provide the requested certificate within the 10-day period, the association may not charge any fee for providing that certificate.

(c) In the event that a unit for which a certificate is required pursuant to subsection (a) of this section is subject to more than one association, the unit owner must include in the certificate the information required by subsection (a) of this section for each association governing that unit, but the unit owner does not have to duplicate the information for any particular association if it is already included with respect to any one of the associations.

(d) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 71-75, 82.;

§ 81-410. Escrow of deposits [Effective Sept. 30, 2009]

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to § 81-402(c) of this title must be placed in escrow and held either in this State or in an account designated solely for that purpose by an attorney or a licensed real estate broker or an institution whose accounts are insured by a governmental agency or instrumentality until: (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. An escrow agent acting in good faith and in accordance with the terms of the escrow shall have no liability for the disposition of the fund.

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

§ 81-411. Release of liens [Effective Sept. 30, 2009]

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to § 81-402(c) of this title, a seller

(1) Shall have the subject property released from all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

(i) In a condominium, that unit and its common element interest, and

(ii) In a cooperative or planned community, that unit and any limited common elements assigned thereto, or

(2) Shall provide a surety bond or substitute collateral for or insurance against the

lien as provided for liens on real estate.

(b) Before conveying real estate to the association, the declarant shall have that real estate released from: (1) all liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and (2) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed subject to liens in specified amounts.

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

§ 81-412. Conversion buildings [Effective Sept. 30, 2009]

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be given as required in § 81-127 of this title. No tenant or subtenant may be required to vacate upon less than 120-days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession. A conversion does not relieve either the landlord or tenant of their obligations pursuant to the Delaware Residential Landlord-Tenant Code [Part III of this title], if applicable.

(b) For 60 days after delivery or mailing of the notice described in subsection (a) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that 60 day period, the offeror may not offer to dispose of an interest in that unit during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(c) If a seller, in violation of subsection (b) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes any right a tenant may have under subsection (b) of this section to purchase that unit if the deed states that the seller has complied with subsection (b) of this section, but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of subsection (b) of this section.

(d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of Delaware law, the notice also constitutes a notice to vacate specified by that statute.

(e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(f) Conversion of a residential conversion building must also comply with all other laws applicable to a conversion.

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

§ 81-413. Express warranties of quality [Effective Sept. 30, 2009]

(a) Express warranties made by a declarant to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(1) Any affirmation of fact or promise in writing which relates to the unit, its use, or rights appurtenant thereto, area improvements to the common interest community that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and related rights and uses will substantially conform to the affirmation or promise in all material respects;

(2) Any model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvements, creates an express warranty that the common interest community will substantially conform to the model or description in all material respects unless the model or description discloses that it is only proposed or is subject to change;

(3) Any description of the quantity or extent of the real estate comprising the common interest community, including plats or surveys, creates an express warranty that the common interest community will substantially conform to the description in all material respects, subject to customary tolerances; and

(4) A provision that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful in all material respects.

(b) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty, are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty.

(c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by the declarant.

(d) The warranties set out in this section are intended to supplement, not supercede or replace, any other statutory construction warranty requirements. To the extent that there is a conflict between such other statutory construction warranty requirements and this section, the provision most favorable to the purchaser shall prevail.

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

§ 81-414. Implied warranties of quality [Effective Sept. 30, 2009]

(a) A declarant and any dealer warrants that a unit, other than a unit not yet constructed or under construction at the time of contracting, will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear excepted.

(b) A declarant and any dealer impliedly warrants that a unit and the common elements in the common interest community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or dealer, or made by any person before the creation of the common interest community, will be:

- (1) Free from defective materials; and
 - (2) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.
- (c) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.
- (d) Warranties imposed by this section may be excluded or modified as specified in § 81-415 of this title.
- (e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.
- (f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.
- (g) The warranties set out in this section are intended to supplement, not supercede or replace, any other statutory construction warranty requirements. To the extent that there is a conflict between such other statutory construction warranty requirements and this section, the provision most favorable to the purchaser shall prevail.

76 Del. Laws, c. 422, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 91, § 82.;

§ 81-415. Exclusion or modification of implied warranties of quality [Effective Sept. 30, 2009]

(a) Except as limited by subsection (b) of this section with respect to a purchaser of a unit that may be used for residential use, implied warranties of quality:

- (1) May be excluded or modified by agreement of the parties; and
- (2) Are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

(b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain.

(c) The warranty provided in § 81-414(b) of this title on a unit for residential use commences with the earlier of the time of the conveyance or the delivery of possession and extends for a period of 1 year.

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

§ 81-416. Statute of limitations for warranties [Effective Sept. 30, 2009]

(a) Unless a period of limitation is tolled under § 81-311 of this title or affected by

subsection (d) of this section, a judicial proceeding for breach of any obligation arising under § 81-413 or § 81-414 of this title must be commenced within the applicable periods of any applicable statute of limitations or statute of repose but in all events within 6 years after the cause of action accrues.

(b) Subject to subsection (c) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(1) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(2) As to each common element, at the time the common element is completed or, if later, as to: (i) a common element that is added to the common interest community by exercise of development rights, at the time the first unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser, or (ii) a common element within any other portion of the common interest community, at the time the first unit is conveyed to a bona fide purchaser.

(c) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorneys' fees, are common expenses, and must be added to the budget annually adopted by the association under § 81-315 of this title. If the committee is so created, the period of limitation for claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

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

§ 81-417. Effect of violations on rights of action; attorneys' fees [Effective Sept. 30, 2009]

(a) If a declarant or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award court costs and reasonable attorneys' fees.

(b) Parties to a dispute arising under this chapter, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution, but:

(1) A declarant may agree with the association to do so only after the period of declarant control has expired unless the agreement is made with an independent committee of the executive board elected pursuant to § 81-416(d) of this title; and

(2) An agreement to submit to any form of binding alternative dispute resolution must be in a writing signed by the parties.

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

§ 81-418. Labeling of promotional material [Effective Sept. 30, 2009]

No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

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

§ 81-419. Declarant's obligation to complete and restore [Effective Sept. 30, 2009]

(a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to § 81-209 of this title, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by § 81-210, § 81-211, § 81-212, § 81-213, § 81-215, or § 81-216 of this title.

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

§ 81-420. Substantial completion of units [Effective Sept. 30, 2009]

In the case of a sale of a unit for which delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect or engineer, or by issuance of a certificate of occupancy authorized by law.

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

§ 81-421. Amendment to public offering statement [Effective Sept. 30, 2009]

Following execution of a contract of sale by a purchaser, the declarant may not amend any required public offering statement without the approval of such purchaser if the amendment would materially affect the rights of such purchaser. Approval by such purchaser is not required if the amendment is required by any governmental authority or public utility, or if the amendment is made as a result of actions beyond the control of the declarant or in the ordinary course of affairs of the executive board, or if the amendment is required by, or 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.

76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 78, 82.;

NOTICE: The Delaware Code appearing on this site was prepared by the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, under the supervision of the Delaware Code Revisors and the editorial staff of LexisNexis, includes all acts effective as of July 9, 2009, up to and including 77 Del. Laws, c. 150.

DISCLAIMER: Please Note: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. This information is provided for informational purposes only. Please seek legal counsel for help on Interpretation of individual statutes.