

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE  
DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 81-119, Title 25, Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 81-119 Applicability to preexisting common interest communities and approved common interest communities.

Except as provided in § 81-120 (Exception for small preexisting cooperatives and planned communities), and § 81-124 and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107, 81-127, 81-203, 81-204, 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-307(a), 81-309(a), 81-311, 81-315, 81-316, 81-318, 81-321, 81-322 [repealed], 81-323, 81-324, 81-409, and 81-417 of this title, and § 81-103 of this title to the extent any definitions are necessary in construing any of the foregoing sections to the extent the definitions do not conflict with the declaration, apply to all common interest communities and approved common interest communities created in this State before the effective date; but those sections apply only with respect to events and circumstances occurring after the effective date, and do not invalidate existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans of those preexisting common interest communities and approved common interest communities that do not conflict with this chapter. With respect to condominiums and cooperatives, such existing provisions of those declarations, bylaws, codes of regulations, declaration plans, plats or plans, and subsequent amendments thereto adopted subsequent to the effective date of this chapter in strict accordance with those existing provisions, and not in conflict with the Unit Property Act [Chapter 22 of this title], shall be controlling in the event of any express conflict between those existing provisions (as duly amended) and the provisions of this chapter. In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or approved common interest communities nor the Unit Property Act [Chapter 22 of this title] expressly addresses the matter or issue, the provisions of this chapter shall control. As to any such preexisting common

interest community or approved common interest community prior to the effective date: (i) this chapter shall not operate to terminate or allow the termination of existing contractual obligations created prior to the effective date, including, but not limited to contracts for units for preexisting common interest communities or approved common interest community projects; (ii) this chapter shall not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common interest community that do not conflict with this chapter; (iii) the Unit Property Act (Chapter 22 of this title), and not this chapter shall govern all obligations of a declarant created under the Unit Property Act (Chapter 22 of this title); (iv) unless the declarant or other person with the right to do so elects to conform the requirements of this chapter in exercising any development right or special declarant rights, this chapter is not applicable to the procedures for the exercise of any such development rights or special declarant rights; (v) this chapter does not require that the preexisting declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise of any preexisting common interest community or approved common interest community be amended to, or otherwise to comply with, the requirements of this chapter; and (vi) except for §§ 81-409 and 81-417 of this title, subchapter IV of this chapter is not applicable to any such preexisting common interest community or approved common interest community. Without limiting the generality of any other provision of this chapter, and notwithstanding any other provision of this chapter, any condominium created under the Unit Property Act for which future expansions are provided under its declaration made pursuant to the Unit Property Act shall remain governed by the Unit Property Act and not this chapter with respect to all of such future sections, phases or other expansion rights.

Any preexisting common interest community or approved common interest community has the right to amend its declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise to comply with any or all of the requirements of this chapter, or a preexisting common interest community or approved common interest community may select particular additional sections of this Chapter to apply to that community without adopting the entire chapter.

Section 2. This Act may be cited as the Benjamin Kuntz Act.

Adopted by the 148<sup>th</sup> General assemble 2015.

Per the Kuntz Amendment. The Unit Property Act (Title 25, Chpt 22) and the following paragraphs extracted from DUCIOA (Title 25, Chpt 81) apply to The Devon

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§ 81-101 Short title.

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

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, § 82.](#);

§ 81-102 Applicability.

Applicability of this chapter is governed by this subchapter I.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 4, § 1](#); [77 Del. Laws, c. 91, § 82.](#);

§ 81-103 Definitions.

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

(1) “Affiliate of a declarant” means any person who controls, is controlled by, or is under common control with a declarant. A person “controls” a declarant if the person: (i) is a general partner, officer, director, or employer of the declarant, (ii) directly or indirectly or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed more than 20 percent of the capital of the declarant. A person “is controlled by” a declarant if the declarant: (i) is a general partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with 1 or more other persons, or through 1 or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

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

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

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

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

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

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

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

(9) “Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves, related to common elements, other units or other real estate described in the declaration.

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

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

(12) “Condominium” means a common interest community in which portions of the real estate are designated for separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those portions. A common interest community is not

a condominium unless the undivided interests in the common elements are vested in the unit owners.

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

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

(15) “Dealer” means a person in the business of selling units for that person’s own account.

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

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

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

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

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

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

(21) “Effective date” means September 30, 2009.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(42) “Rule” or “rules” means any rule, procedure or regulation of the association, however denominated, that does not appear in the declaration or bylaws and that governs either the management of the association or the common interest community or the conduct of persons or property within the common interest community and adopted as provided in § 81-320 of this title.

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

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

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

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

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

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

(49) “Unit owner” means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common interest community, but does not include a person having an interest in a unit solely as security for an obligation. In a condominium or planned community, the declarant is the unit owner of any unit created by the declaration. In a cooperative, the declarant is treated as the unit owner of any unit to which allocated interests have been allocated until that unit has been conveyed to another person.

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

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

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 4, §§ 2, 3](#); [77 Del. Laws, c. 91, §§ 1-10, 79, 82.](#);

§ 81-203 Construction and validity of declaration and bylaws.

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

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

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

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

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 23, 24, 82.](#);

§ 81-204 Description of units.

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

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, § 82.](#);

§ 81-301 Organization of unit owners' association.

A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The association must have an executive board and the membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under § 81-218 of this title or their heirs, successors, or assigns. The association

may be organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful form of legal entity authorized by the laws of this State.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, § 82.](#);

§ 81-302 Powers of unit owners' association.

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

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

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

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

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

(5) May make contracts and incur liabilities;

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

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

opportunity to be heard, may levy reasonable fines for violations of the declaration, bylaws and rules of the association;

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

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

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

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

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

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

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

pursue enforcement under one set of circumstances does not prevent the association from later taking enforcement action under another set of circumstances, except the executive board may not be arbitrary or capricious in taking enforcement action. Whether the association's course of performance with respect to enforcement of any provision of the declaration, bylaws and rules constitutes a waiver or modification of that provision is not affected by this chapter.

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

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 38-40, 82](#);

§ 81-303 Executive board members and officers.

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

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

(c) Subject to subsection (d) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, and except as provided in § 81-223(g) of this title, a period of



declarant control terminates no later than the earlier of: (i) except as to a nonresidential common interest community, 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (ii) as to units for residential purposes, 2 years after all declarants have ceased to offer units for residential purposes for sale in the ordinary course of business; (iii) as to units for residential purposes, 2 years after any right to add new units for residential purposes was last exercised; (iv) as to a common interest community other than a condominium or cooperative, at such time as may be required by other applicable laws; or (v) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after all declarants have ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after any right to add new nonresidential units was last exercised; or (vii) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the 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  $33\frac{1}{3}$  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.;](#)

§ 81-307 Upkeep of common interest community.

(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.

§ 81-309 Quorums.

(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.

§ 81-311 Tort and contract liability; tolling of limitation period.

(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.](#);

§ 81-315 Assessments for common expenses.

(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.

(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 e-mail 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.

(l) 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 attorney's 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](#);

§ 81-318 Association records.

(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, 82](#);

§ 81-321 Litigation involving declarant.

(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.]

§ 81-323 Removal of members of executive board.

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(f) of this title 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 1/3 of the total votes of the association.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, § 82](#); [81 Del. Laws, c. 79, § 41](#);

§ 81-324 Adoption of budget.

(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.](#);

§ 81-409 Resales of units.

(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 120 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;

(18) A statement of any fees payable by the purchaser of the unit to the association at settlement; and

(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. Unless the purchaser is given the resale certificate before execution of

a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 5 days after first receiving the resale 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](#); [77 Del. Laws, c. 364, §§ 8-10.](#);

§ 81-417 Effect of violations on rights of action; attorneys' fees.

(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.](#);

