

CHAPTER 4
FORMERLY
HOUSE BILL NO. 45

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 Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in existing § 81-102 and substituting in place thereof the following:

“Applicability of this chapter is governed by this subchapter I.”.

Section 2. Amend Chapter 81, Title 25 of the Delaware Code at § 81-103(9) by striking the word “common” existing therein and substituting the word “current” in place thereof.

Section 3. Amend Chapter 81, Title 25 of the Delaware Code by inserting the following new definitions into § 81-103 at the subsection numbers noted below such that the section remains alphabetized accordingly, and re-numbering the existing numbers in such section to allow insertion of such new defined terms noted as follows:

(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 one or more written contracts with bona-fide third-party purchasers for the construction of one 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, 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 prior to the effective date.

(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 as a preexisting common interest community, subject to the provisions of Section 81-119 regarding applicability to pre-existing common interest communities.

(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.

(20) “Effective date” means July 1, 2009.

(22) “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 that increases only as required to reflect the annual rate of inflation (utilizing the Index provided under § 81-115 of this Title), 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.”.

Section 4. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in current § 81-106(c) and substituting in place thereof the following:

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

Section 5. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in current § 81-115(a) and substituting in place thereof the following:

“(a) From time to time the dollar amount specified in § 81-118 of this title must change, as provided in subsections (b) and (c) of this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1982-84 Labor, (the “Index”). The Index for December 2008, which was 204.813 is the Reference Base Index.”.

Section 6. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in current § 81-115(b)(1) and substituting in place thereof the following:

“(1) The portion of the percentage change in the Index in excess of a multiple of 10 percent must be disregarded and the dollar amount shall change only in multiples of 10 percent of the amount appearing in this chapter on the effective date;”.

Section 7. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in current § 81-115(b)(3) and substituting in place thereof the following:

“(3) In no event may the dollar amount be reduced below the amount appearing in this chapter on the effective date.”.

Section 8. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-116 and substituting in place thereof the following:

“§ 81-116. Applicability to new common interest communities. Effective Date.

(a) Except as provided in this subchapter, this chapter applies to all common interest communities created within this State after the effective date. The provisions of the Unit Property Act [Chapter 22 of this title] do not apply to common interest communities created after the effective date. Amendments to this chapter apply to all common interest communities created after the effective date, or subjected to this chapter, regardless of when the amendment is adopted.

(b) The effective date of this chapter shall be July 1, 2009. All references in this Chapter 81 to the date of October 31, 2008 are deleted and replaced with the aforementioned effective date, except as provided in this amendment.

(c) Actions taken in reliance upon DUCIOA as effective on October 31, 2008 shall not be invalidated by the amendment of the effective date to July 1, 2009.

(d) Anything to the contrary in this chapter notwithstanding, compliance with DUCIOA was not intended to be required, and shall not be required, until July 1, 2009, subject to the provisions of subsection (c) above.”.

Section 9. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-119 and substituting in place thereof the following:

“§ 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) § 81-124 and 81-125 of this title and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107, 81-203, 81-204, 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-307(a), 81-309(a), 81-311, 81-315, 81-316, 81-318, 81-321, 81-322, 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. 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, 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 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 unduly burden an existing association with the requirements of this chapter except to the extent that this chapter is adopted by the common interest community; (ii) 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; (iii) this chapter shall not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common interest community; (iv) 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]; (v) 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; (vi) 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 (vii) 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.”.

Section 10. Amend Chapter 81, Title 25 of the Delaware Code by adding the following new section:

“§ 81-125. Additional exceptions for preexisting common interest communities or approved Common Interest Communities.

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

Section 11. Amend Chapter 81, Title 25 of the Delaware Code by adding the following new section:

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

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

Section 12. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in the introductory paragraph of current § 81-206(a) and substituting in place thereof the following:

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

Section 13. Amend Chapter 81, Title 25 of the Delaware Code by adding a new subsection (9) to current § 81-401(b) as follows:

“(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.”.

Section 14. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-402(b) and substituting in place thereof the following:

“(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 with respect to any contract for a unit executed by the declarant with a purchaser of such unit prior to the effective date.”.

Section 15. Amend Chapter 81, Title 25 of the Delaware Code by adding a new subsection (d) to current § 81-408 as follows:

“(d) 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 § 81-408 and no such purchaser shall be entitled to exercise any of the rights and remedies against such declarant, dealer or unit owner under this § 81-408.”.

Approved February 04, 2009