



Legislative Drafter's Obligation (1 Del. Code § 109(g))

In the enactment of new laws, the plan, scheme, style, format and arrangement of this Code shall be followed as closely as possible to the end that the Code and all amendments thereto will comprise a harmonious entity containing all the laws of this State, then in effect, of a public and general nature.

Basic Units of the Delaware Code (*Manual, Drafting Rule 30, p. 118*)

- The basic units of the Delaware Code are: title, part, chapter, subchapter, subpart, and section.
- Each section can be divided into "subsections," designated by lowercase letters in parentheses, and descending levels of "paragraphs," designated by numbers in parentheses or lowercase letters, numbers, capital letters, or capital Roman numerals followed by a period.

Paragraph Hierarchy and Indention (*Manual, Formatting Rule 5, p. 80*)

- The internal hierarchy of legislation must be consistent with the internal hierarchy of the Delaware Code. Legislation must be indented using the Paragraph function in Microsoft Word as follows:

§ 101.	[Indentation, Left, 0"]
(a)	[Indentation, Left, 0"]
(1)	[Indentation, Left, 0.25"]
a.	[Indentation, Left, 0.50"]
1.	[Indentation, Left, 0.75"]
A.	[Indentation, Left, 1"]
I.	[Indentation, Left, 1.25"]

Active v. Passive Voice (*Manual, Drafting Rule 6, p. 84 and 85*)

- Use the active voice instead of the passive voice, unless the actor cannot be identified or the statement is intended to be universal.
- In the active voice, the subject of the sentence does the action. A sentence in the active voice can be identified by the typical doer of the action, action, receiver of the action structure of the sentence.
 - **Active Voice:** The committee reached a decision.
- In the passive voice, the subject receives the action. A sentence in the passive voice reverses the structure of the sentence so that the receiver of the action is first, then the action itself, then the doer of the action usually preceded by the words "by" or "by the."
 - **Passive Voice:** A decision was reached by the committee.
- Using the active voice identifies who is to do what. Avoiding vagueness as to the required actor is especially important when the sentence grants a power or a privilege or imposes a duty.

Punctuation (*Manual, Drafting Rule 23, p. 103*)

- Use the serial, or Oxford, comma to separate words in a series.
- Use a comma followed by "or" to separate the last of a disjunctive series of three or more words, phrases, or clauses in a sentence.
- Use a comma followed by "and" to separate the last of a conjunctive series of three or more words, phrases, or clauses in a sentence.

“And” or “Or” (*Manual, Drafting Rule 10, p. 90 to 92*)

- Use “and” to mean “in addition to” and connote togetherness.
- Use “or” to mean “as an alternative” and to tell the reader to choose only one of the listed alternatives.
- **Never use “and/or” in legislative drafting.** Instead, use “and” or “or,” or draft the statement by using the phrasing “‘A’ or ‘B’, or both.” If more than two choices are presented, use the phrase “one or more of the following.”

“Means” or “Includes” (*Manual, Drafting Rule 26, p. 108 to 110*)

- Use “means” in a definition when the definition is intended to be exhaustive. One term “means” another when the two are identical or synonymous.
- Use “includes” in a definition the definition is intended to encompass only some of a specific matter. One term “includes” another when the second is a part of the first.
- **Never use “including but not limited to”** or any variation. It is redundant, as “includes” is not a term of limitation, it weakens the meaning of “includes,” and it invites misinterpretation by the courts.
- **Never use “means and includes.”** It is a nullity; “means” is complete and “includes” is partial.

“Shall,” “Must,” and “May” (*Manual, Drafting Rule 11, p. 92 to 94*)

- “Shall” is used to express a duty.
 - **Example:** The court *shall* enforce the collection of a tax judgment.
- “Must” is used when a person or thing is required to meet a condition for a consequence to apply. “Must” does not mean that a person has a duty.
 - **Example:** The applicant *must* be an adult.
- “May” is used to confer a power, privilege, or right.
 - **Example:** The applicant *may* appeal the decision.

“May Not” or “Must Not” (*Manual, Drafting Rule 12, p. 95*)

- Use “may not” or “must not” to express a prohibition.
- Use “may not” if the verb it qualifies is in the active voice.
 - **Example:** The applicant *may not submit* more than one application.
- Use “must not” if the verb it qualifies is an inactive verb or an active verb in the passive voice.
 - **Inactive Verb:** The applicant *must not be* a convicted felon.
 - **Active Verb in the Passive Voice:** The application *must not be filed* before the end of the reporting period
- **Never use “shall not” in legislative drafting.**

“Which” or “That” (*Manual, Drafting Rule 13, p. 95 to 96*)

- Use “which” to introduce a nonrestrictive relative clause.
 - **Example:** The applicant must sign the application, *which* need not be verified.
- Use “that” to introduce a restrictive relative clause intended to modify the nearer of two possible antecedents.
 - **Example:** An application to renew a *license that* has been revoked
- Use “which” to introduce a restrictive relative clause intended to modify the remote antecedent, rather than the nearer of two possible antecedents.

The Division of Legislative Services produces this guide, based on topics included in the *Delaware Legislative Drafting Manual*. Questions, comments, or concerns with this guide or the manual can be addressed to Mark Cutrona or Holly Vaughn Wagner.