SPONSOR: Rep. K. Johnson & Sen. Townsend
Rep. Schwartzkopf; Sens. Ennis, Hansen

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 112
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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

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

Section 1. Amend § 2246, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2246. Exceptions for nonresidential condominiums.

A nonresidential condominium may elect to be exempt from the requirement for creating and maintaining a repair and replacement reserve pursuant to § 2211 of this title if the declaration so provides or otherwise by the vote of a majority of the unit owners. A condominium that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this section (and therefore is <u>not</u> required to maintain a repair and replacement reserve) unless the units that may be used for residential purposes would comprise a condominium in the absence of the nonresidential units or the declaration provides that this section applies. Nothing herein shall prevent the establishment of a condominium for residential purposes and a nonresidential condominium for the same real estate.

Section 2. Amend § 81-116(a), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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 that are not excepted from this chapter by the provisions of this chapter. The provisions of the Unit Property Act (Chapter 22 of this title) do not apply to common interest communities created after the effective date except for those governed by §§ 81-117 and 81-118 of this title and those others that are otherwise excepted from this chapter by the provisions of this chapter <u>including nonresidential common interest communities</u>. 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.

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Section 3. Amend § 81-119 Title 25 of the 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, 81-217(i), 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-306, 81-307(a), 81-308A 81-309(a), 81-310, 81-311, 81-314, 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 all common interest communities, ~~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.

Section 4. Amend § 81-217, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 81-217. Amendment of declaration.

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

that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

Section 5. Amend § 81-217, Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 81-217. Amendment of declaration.

(m) During the time that the declarant has an interest, the declaration, bylaws, or plat may be amended by declarant to correct any clerical or typographical errors or other errors, ambiguities, title questions, or defects or conflicts with or to comply with applicable laws.

Section 6. Amend § 81-303(a), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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.

Section 7. Amend § 81-303(c), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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.~~ association; or (viii) as to a condominium or cooperative created before the effective date of this chapter, as provided in the declaration. 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.

Section 8. Amend § 81-310(a), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) If only 1 of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than 1 of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any 1 of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit. The vote may be expressed by (i) an in-person vote at a meeting, (ii) a proxy vote if the governing documents or law allow for proxy voting, (iii) voting electronically from a source known to the community such as an email address registered with the association, (iv) voting by electronic voting software, (v) signing a petition calling for the amendment, or (vi) signing an amendment to the governing document. A signature may be in ink or electronic. For purposes of this paragraph (a) of this section, an entity or trust owning a Unit may designate a person to vote for the entity or trust.

Section 9. Amend § 81-316(h), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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. The association may impose a charge as a condition to providing that statement. The charge for such statement shall not exceed $25.00, except in cases where an account has been referred to the association’s legal counsel. Except if the result of fraud or gross negligence, any liability of the association for an error or omission in the statement is limited to the amount of any fees paid the association for that statement. The foregoing limitation shall not apply to the liability of a managing agent acting on behalf of the association.

Section 10. Amend § 81-316(j)(1), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(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~~ estate, by equitable foreclosure or executed upon by other lawful procedures provided for in the declaration;

Section 11. Amend § 81-318(e), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) The association may charge a fee, in advance, to the unit owner for converting records into written form, for permitting inspection, and 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.

Section 12. Amend § 81-324(a), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 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, voting in person or by proxy, 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.

Section 13. Amend § 81-408(a), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 81-408. Purchaser's right to cancel.

(a) A person required to deliver a public offering statement pursuant to § 81-402(c) ~~of this title for a condominium or cooperative~~ shall provide a purchaser with a copy of the public offering statement and all amendments thereto before

conveyance of the unit, and not later than the date of any contract of sale. Unless such a purchaser is given the public offering statement more than 5 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within ~~15~~ 5 days after first receiving the public offering statement.

Section 14. Amend § 81-409(b), Title 25 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 81-409. Resales of units.

(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 calendar days after first receiving the resale certificate. Unless the result of fraud, gross negligence, recklessness or willful misconduct, any liability of the association for an error or omission in the certificate provided by the association is limited to any fees paid the association for that certificate. The foregoing limitation shall not apply to the liability of a managing agent acting on behalf of the association.

Section 15. This Act takes effect 30 days after its enactment into law.