

SPONSOR: Sen. Amick & Sen. Sokola & Rep. Valihura & Rep. D. Short & Rep. Marshall
Sen. Peterson

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 273

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO PROPERTY; AND PROVIDING FOR A DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT.

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

1. Amend Part II, Title 25 of the Delaware Code by amending Chapter 22 as follows:

Amend § 2201 by adding the following sentence at the end of the existing section:

"This chapter shall be subject to the provisions of Part V, Title 25, Chapter 81 of the Delaware Code, which supersedes various provisions hereof."

Amend § 2202 by adding the following subsections:

" (17) 'Repair and replacement reserve' means a reserve fund maintained by the council solely for the repair and replacement of common elements, and for no other purpose (including operating budget shortfalls or other expenditures appropriate to a contingency reserve).

(18) 'Reserve study' means a reasonably current engineering analysis 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 is to inform the council and the unit owners of the amount which should be maintained from year to year in a fully funded repair and replacement reserve to minimize the need for a special assessment."

Amend § 2211 by at the end of existing § 2211(1), replacing the semicolon with a comma, and adding the following clause: "and the maintenance of a repair and replacement reserve as defined in § 2202(17), funded as recommended by a reserve study as defined in § 2202(18);"

2. Amend Title 25 of the Delaware Code by adding thereto a new Part V, which new part shall read as follows:

"PART V. COMMON INTERESTS AND OWNERSHIP OF REAL ESTATE

CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT

SUBCHAPTER 1

GENERAL PROVISIONS

PART 1.DEFINITIONS AND OTHER GENERAL PROVISIONS

§81-1-101. SHORT TITLE.

This Chapter shall be known and may be cited as the ”DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT” or “DUCIOA”.

§81-1-102. APPLICABILITY.

Applicability of this Chapter is governed by Part 2 of this Subchapter 1.

§81-1-103. 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 one or more other persons, or through one 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 one or more other persons, or through one 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) " 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 Section 81-3-115.

(4) "Association" or "unit owners' association" means the unit owners' association organized under Section 81-3-101.

(5) "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 Section 81-3-106, regardless of the form of the association's legal entity or the name by which the document comprising the bylaws is identified.

(6) "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.

(7) "Common expenses" means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 81-2-107.

(9) "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 current 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[4] or those arrangements described in Section 81-2-124. "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.

(10) "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.

(11) "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.

(10) "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.

(12) "Dealer" means a person in the business of selling units for that person's own account.

(13) "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 .

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

(15) "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.

(16) "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.

(17) "Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association.

(18) "Identifying number" means a symbol or address that identifies only one unit in a common interest community.

(19) "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.

(20) "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.

(21) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 81-2-102(b) or (d) for the exclusive use of one or more but fewer than all of the units.

(22) "Master association" means an organization described in Section 81-2-120, whether or not it is also an association described in Section 81-3-101.

(23) "Nonresidential common interest community" means a common interest community in which all units are restricted exclusively to nonresidential purposes.

(24) "Noticed rules" means rules delivered to or otherwise made available to a tenant as provided in Section 81-3-120.

(25) "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.

(26) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision 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.

(27) "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.

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

(29) "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.

(30) "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.

(31) “Record” 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.

(32) "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.

(30) "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 appropriated to a contingency reserve.

(31) "Reserve study" means an engineering analysis, performed within the last five 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 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.

(32) "Residential purposes" means use for dwelling and appurtenant recreational purposes, or both.

(33) "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 Section 81-3-120.

(34) "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.

(35) "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.

(36) "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 Section 81-4-103(a)(2); (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 or design review 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.

(37) "Tenant" means a tenant or lessee of a unit, including any subtenant, sublessee, or licensee.

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

(39) "Unit" means a physical portion of or three-dimensional space in the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 81-2-105(a)(5), 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.

(40) "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.

§81-1-104. VARIATION BY AGREEMENT.

Except as expressly provided in this Chapter, its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in Section 81-1-122, a declarant may not act under a power of attorney, or use any other device, for the purpose of evading the limitations or prohibitions of this Chapter or the declaration.

§81-1-105. SEPARATE TITLES AND TAXATION.

(a) In a cooperative, unless the declaration provides that a unit owner's interest in a unit and its allocated interests is real estate for all purposes, that interest is personal property. That interest is subject to the provisions of homestead exemptions, even if it is personal property.

(b) In a condominium or planned community:

(1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.

(2) If there is any unit owner other than a declarant, each unit must be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.

(c) Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.

(d) If there is no unit owner other than a declarant, the real estate comprising the common interest community may be taxed and assessed in any manner provided by law.

§81-1-106. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.

(a) A building code may not impose any requirement upon any structure in a common interest community which it would not impose upon a physically identical development under a different form of ownership.

(b) In condominiums and cooperatives, no zoning, subdivision, or other real estate use law, ordinance, or regulation may prohibit the condominium or cooperative form of ownership or impose any requirement upon a condominium or cooperative which it would not impose upon a physically identical development under a different form of ownership.

(c) Except as provided in subsections (a) and (b), the provisions of this Chapter do not invalidate or modify any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate.

§81-1-107. EMINENT DOMAIN.

(a) If a unit is acquired by eminent domain or part of a unit is acquired by eminent domain leaving the unit owner with a remnant that may not practically or lawfully be used for any purpose permitted by the declaration, the award must include compensation to the unit owner for that unit and its allocated interests, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(b) Except as provided in subsection (a), if part of a unit is acquired by eminent domain, the award must compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration and (ii) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and to the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially-acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(c) If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken must be paid to the association. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(d) The court decree must be recorded in every county in which any portion of the common interest community is located.

§81-1-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.

The principles of law and equity, including the law of corporations and any other form of business organization authorized by law in this State, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this Chapter, except to the extent inconsistent with this Chapter. Without limiting the foregoing, the laws of this State that apply to the association’s form of legal entity apply to the association except to the extent that law is inconsistent with this Chapter, in which case this Chapter governs.

§81-1-109. CONSTRUCTION AGAINST IMPLICIT REPEAL.

This Chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

§81-1-110. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This Chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among States enacting it.

§81-1-111. SEVERABILITY.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this Chapter are severable.

§81-1-112. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

(a) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(b) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, must be afforded a reasonable opportunity to present evidence as to:

(1) the commercial setting of the negotiations;

(2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect that party's interests by reason of physical or mental infirmity, illiteracy, inability to understand the language of the agreement, or similar factors;

(3) the effect and purpose of the contract or clause; and

(4) if a sale, any gross disparity, at the time of contracting, between the amount charged for the property and the value of that property measured by the price at which similar property was readily obtainable in similar transactions. A disparity between the contract price and the value of the property measured by the price at which similar property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable.

§81-1-113. OBLIGATION OF GOOD FAITH.

Every contract or duty governed by this Chapter imposes an obligation of good faith in its performance or enforcement.

§81-1-114. REMEDIES TO BE LIBERALLY ADMINISTERED.

(a) The remedies provided by this Chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this Chapter or by other rule of law.

(b) Any right or obligation declared by this Chapter is enforceable by judicial proceeding.

§81-1-115. ADJUSTMENT OF DOLLAR AMOUNTS.

(a) From time to time the dollar amount specified in Section 81-1-118 must change, as provided in subsections (b) and (c), 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 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, (the "Index"). The Index for December 2007, which was ____ is the Reference Base Index.

(b) The dollar amount specified in Section 81-1-118 and any amount stated in the declaration pursuant to that section, must change on July 1 of each year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 percent or more, but

(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 date of enactment;

(2) the dollar amount must not change if the amount required by this section is that currently in effect pursuant to this Chapter as a result of earlier application of this section; and

(3) in no event may the dollar amount be reduced below the amount appearing in this Chapter on the date of enactment.

(c) If the Index is revised after 1982-84, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

PART 2.APPLICABILITY

§81-1-116. APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES.

Except as provided in Part 2 of this Subchapter, this Chapter applies to all common interest communities created within this State after _____[DATE], which is the effective date of this Chapter. The provisions of the Unit Property Act do not apply to common interest communities created after the effective date of this Chapter. Amendments to this Chapter apply to all common interest communities created after the effective date of this Chapter or subjected to this Chapter, regardless of when the amendment is adopted.

§81-1-117. EXCEPTION FOR SMALL COOPERATIVES.

If a cooperative contains no more than 12 units and is not subject to any development rights, it is subject only to Sections 81-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes) and 81-1-107 (Eminent Domain) of this Chapter unless the declaration provides that the entire Chapter is applicable.

§81-1-118. EXCEPTION FOR SMALL AND LIMITED EXPENSE LIABILITY PLANNED COMMUNITIES.

(a) If a planned community that is not subject to any development right:

(1) contains no more than 12 units; or

(2) provides, in its declaration, that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300 as adjusted pursuant to Section 81-1-115 (Adjustment of Dollar Amounts), it is subject only to Sections 81-1-105 (Separate Titles and Taxation), 81-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), and 81-1-107 (Eminent Domain) unless the declaration provides that this entire Chapter is applicable.

(b) The exemption provided in subsection (a)(2) applies only if:

(1) the declarant reasonably believes in good faith that the maximum stated assessment will be sufficient to pay the expenses of the planned community; and

(2) the declaration provides that the assessment may not be increased during the period of declarant control without the consent of all unit owners.

§81-1-119. APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES.

Except as provided in Section 81-1-120 (Exception for Small Pre-Existing Cooperatives and Planned Communities) and Section 81-1-124 and except as limited by Section 81-1-122 hereof, Sections 81-1-105, 1-106, 1-107, 2-103, 2-104, 2-121, 3-101, 3-102(a)(1) through (6) and (11) through (17), 3-102(f), 3-102 (g), 3-103, 3-107(a), 3-109(a), 3-111, 3-115, 3-116, 3-118, 3-121, 3-122, 3-123, 3-124, 4-109, and 4-117, and Section 81-1-103 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 created in this State before the effective date of this Chapter; but those sections apply only with respect to events and circumstances occurring after the effective date of this Chapter and do not invalidate existing provisions of the declaration, bylaws, code of regulations or plats or plans of those common interest communities. This Chapter shall apply to all right, powers and privileges permitted by this Chapter, and all obligations, liabilities and restrictions in this Chapter, that are expressly addressed in the declaration, bylaws or plats establishing a common interest community prior to the effective date of this Chapter but are not expressly addressed in the Unit Property Act; however, as to any such common interest community created prior to the effective date of this Chapter: (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 existing contractual obligations; (iii) this Chapter shall not invalidate the declaration, bylaws or plats of such common interest community; (iv) the Unit Property Act, and not this Chapter, shall govern all obligations of a declarant created under the Unit Property Act; (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 pre-existing declaration, code of regulations, bylaws or plats or plans of the pre-existing common interest community be amended to comply with the requirements of this Chapter; and (vii) except for Sections 81-4-109 and 81-4-117, Subchapter 4 of this Chapter is not applicable to any such common interest community.

§81-1-120. EXCEPTION FOR SMALL PRE-EXISTING COOPERATIVES AND PLANNED COMMUNITIES.

If a cooperative or planned community created within this State before the effective date of this Chapter contains no more than 12 units and is not subject to any development rights, it is subject only to Sections 81-1-105 (Separate Titles and Taxation), 81-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), and 81-1-107 (Eminent Domain) unless the declaration is amended in conformity with applicable law and with the procedures and requirements of

the declaration to take advantage of the provisions of Section 81-1-121, in which case all the sections enumerated in Section 81-1-119 apply to that cooperative or planned community.

§81-1-121. AMENDMENTS TO GOVERNING INSTRUMENTS.

(a) The declaration, bylaws, or plats and plans of any common interest community created before the effective date of this Chapter may be amended to achieve any result permitted by this Chapter, regardless of what applicable law provided before this Chapter was adopted.

(b) An amendment to the declaration, bylaws, or plats and plans authorized by this section must be adopted and recorded in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this Chapter. If an amendment grants to any person any rights, powers, or privileges permitted by this Chapter, all correlative obligations, liabilities, and restrictions in this Chapter also apply to that person.

§81-1-122. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE COMMON INTEREST COMMUNITIES.

(a) Except as provided in subsection (e), this section applies only to nonresidential common interest communities.

(b) A nonresidential common interest community is not subject to this Chapter unless the declaration otherwise provides.

(c) The declaration of a nonresidential common interest community may provide that the entire Chapter applies to the community or that only certain identified Sections apply.

(d) If the entire Chapter applies to a nonresidential common interest community, the declaration may also require, subject to Section 81-1-112 (Unconscionable Agreement or Term of Contract), that:

(1) notwithstanding Section 81-3-105 (Termination of Contracts and Leases of Declarant), any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) notwithstanding Section 81-1-104 (Variation by Agreement), purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

(e) A common interest community that contains units restricted exclusively to nonresidential purposes and other units that may be used for residential purposes is not subject to this Chapter unless the units that may be used for residential purposes would comprise a common interest community in the absence of the nonresidential units or the declaration provides that this Chapter applies as provided in subsection (c) or (d). Nothing herein shall prevent the establishment of a common interest community for residential purposes and a nonresidential common interest community for the same real estate.

§81-1-123. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES.

This Chapter does not apply to common interest communities or units located outside this State, but the public offering statement provisions in Subchapter 4 of this Chapter apply to all contracts for the disposition thereof signed in this State by any party unless exempt under Section 81-4-101.

§81-1-124. APPLICABILITY TO CONTINUING CARE COMMON INTEREST COMMUNITIES.

Anything to the contrary in this Chapter notwithstanding, this Chapter does not apply to any condominium, cooperative or other common interest community created in this State before the effective date of this Chapter that is a continuing care facility governed by the Delaware Life-Care Registration Act (18 Del. C. §4601, et. seq.) as of the effective date of this Chapter. Such condominium, cooperative or other common interest community shall continue to be governed solely by the Unit Property Act or other statutes in effect prior to the effective date of this Chapter and applicable to such common interest community.

SUBCHAPTER 2

CREATION, ALTERATION, AND TERMINATION OF COMMON INTEREST COMMUNITIES

§81-2-101. CREATION OF COMMON INTEREST COMMUNITIES.

(a) A common interest community may be created pursuant to this Chapter only by recording a declaration executed in the same manner as a deed and, in a cooperative, by conveying the real estate subject to that declaration to the association. The declaration and bylaws must be recorded in every county in which any portion of the common interest community is located and must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of each person executing the declaration.

(b) In a condominium, a declaration, or an amendment to a declaration, adding units that are contained in or comprised by buildings may not be recorded unless the structural components and mechanical systems of any buildings

containing or comprising any units thereby created, if any, are completed in accordance with the plans, as evidenced by a record certification of completion executed by an independent registered engineer or architect, which may be incorporated in the recorded declaration or amendment or the recorded plat or otherwise.

§81-2-102. UNIT BOUNDARIES.

Except as provided by the declaration:

(a) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(c) Subject to subsection (b), all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(d) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.

§81-2-103. 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, rules, or regulations adopted pursuant to Section 81-3-102(a)(1).

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this Chapter.

(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.

§81-2-104. 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.

§81-2-105. CONTENTS OF DECLARATION.

(a) The declaration must contain:

(1) the names of the common interest community and the association and a statement that the common interest community is either a condominium, cooperative, or planned community;

(2) the name of every county in which any part of the common interest community is situated;

(3) a legally sufficient description of the real estate included in the common interest community;

(4) a statement of the maximum number of units that the declarant reserves the right to create;

(5) in a condominium or planned community, a description of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;

(6) a description of any limited common elements, other than those specified in Section 81-2-102(b) and (d), as provided in Section 81-2-109(b)(10) and, in a planned community, any real estate that is or must become common elements;

(7) a description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in Section 81-2-102(b) and (d), together with a statement that they may be so allocated;

(8) a description of any development rights (Section 81-1-103(14)) and other special declarant rights (Section 81-1-103(29)) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) if any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no

assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) any other conditions or limitations under which the rights described in paragraph (8) may be exercised or will lapse;

(11) an allocation to each unit of the allocated interests in the manner described in Section 81-2-107;

(12) any restrictions (i) on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to Section 81-3-102(c)(2), and (ii) on the amount for which a unit may be sold or on the amount that may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(13) the recording data for recorded easements and licenses appurtenant to or included in the common interest community or to which any portion of the common interest community is or may become subject by virtue of a reservation in the declaration;

(14) in the case of a condominium or cooperative, provisions that mandate that the association create and maintain, in addition to any reserve for contingencies, a fully funded repair and replacement reserve based upon a current reserve study;

(15) any authorization pursuant to which the association may regulate the display of American flags or political signs within the common interest community;

(16) any authorization pursuant to which the association may adopt rules to establish and enforce construction and design criteria in the manner provided in Section 81-3-120; and

(17) all matters required by Sections 81-2-106, 81-2-107, 81-2-108, 81-2-109, 281--115,81- 2-116, and 81-3-103.

(b) The declaration may contain any other matters the declarant considers appropriate, including any restrictions on the uses of a unit or the number or other qualifications of persons who may occupy units.

§81-2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.

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

(1) the recording data for the lease;

(2) the date on which the lease is scheduled to expire;

(3) a legally sufficient description of the real estate subject to the lease;

(4) any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(5) any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(6) any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(b) After the declaration for a leasehold condominium or leasehold planned community is recorded, neither the lessor nor the lessor's successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of a unit owner's share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest in a condominium or planned community is not affected by failure of any other person to pay rent or fulfill any other covenant.

(c) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.

(d) If the expiration or termination of a lease decreases the number of units in a common interest community, the allocated interests must be reallocated in accordance with Section 81-1-107(a) as if those units had been taken by eminent domain. Reallocations must be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.

§81-2-107. ALLOCATION OF ALLOCATED INTERESTS.

(a) The declaration must allocate to each unit:

(1) in a condominium, a fraction or percentage of undivided interests in the common elements and a fraction or percentage of undivided interests in the common expenses of the association, and a portion of the votes in the association;

(2) in a cooperative, an ownership interest in the association, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association; and

(3) in a planned community, a fraction or percentage of the common expenses of the association, and a portion of the votes in the association.

(b) The declaration must state the formulas used to establish allocations of interests and the portions of the votes. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(c) If units may be added to or withdrawn from the common interest community, the declaration must state the formulas to be used to reallocate the allocated interests among all units included in the common interest community after the addition or withdrawal.

(d) The declaration may provide: (i) that different allocations of votes shall be made to the units on particular matters specified in the declaration; (ii) for cumulative voting only for the purpose of electing members of the executive board; and (iii) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this Chapter nor may units constitute a class because they are owned by a declarant.

(e) Except for minor variations due to rounding, the sum of the common expense liabilities and, in a condominium, the sum of the undivided interests in the common elements allocated at any time to all the units must each equal one if stated as a fraction or 100 percent if stated as a percentage. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(f) In a condominium, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void.

(g) In a cooperative, any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an ownership interest in the association made without the possessory interest in the unit to which that interest is related is void.

§81-2-108. LIMITED COMMON ELEMENTS.

(a) Except for the limited common elements described in Section 81-2-102(b) and (d), the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

(b) Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it. The amendment must be recorded in the names of the parties and the common interest community.

(c) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with Section 81-2-105(a)(7). The allocations must be made by amendments to the declaration.

§81-2-109. PLATS AND PLANS.

(a) Plats and plans are a part of the declaration, and are required for all common interest communities except cooperatives. Separate plats and plans are not required by this Chapter if all the information required by this section is contained in either the plat or plan incorporated in the Declaration. This Chapter does not require separate plats and plans if all the information required by this section is contained in either a plat or plan. Each plat and plan must be clear and legible and contain a certification as required by subsection (g) and by declarant that the plat or plan contains all information required by this section.

(b) Each plat must show or project:

(1) the name and a survey or general schematic map of the entire common interest community;

(2) the location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;

(3) a legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;

(4) the extent of any encroachments by or upon any portion of the common interest community;

(5) to the extent feasible, a legally sufficient description of all easements serving or burdening any portion of the common interest community;

(6) except as provided in subsection (h), the approximate location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(7) except as provided in subsection (h), the approximate location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (d) and that unit's identifying number;

(8) a legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate;"

(9) the distance between non-contiguous parcels of real estate comprising the common interest community;

(10) the approximate location and dimensions of any porches, decks, balconies, garages, or patios allocated as limited common elements, and show or contain a narrative description of any other limited common elements; and

(11) in the case of real estate not subject to development rights, all other matters customarily shown on land surveys for comparable properties.

(c) A plat shall show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the common interest community. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(d) Except as provided in subsection (h), to the extent not shown or projected on the plats, plans of the units must show or project:

(1) the approximate location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(2) the approximate location of any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(3) the approximate location of any units in which the declarant has reserved the right to create additional units or common elements (Section 81-2-110(c)), identified appropriately.

(e) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside a building have the same elevation as the horizontal boundaries of the inside part and need not be depicted on the plats and plans.

(f) Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (a), (b), and (d), or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of those subsections.

(g) Any certification of a plat or plan required by this section or Section 81-2-101(b) must be made by an independent architect, independent licensed professional land surveyor or independent engineer.

(h) Plats and plans need not show the location and dimensions of the units' boundaries or their limited common elements if:

(1) the plat shows the location and dimensions of all buildings containing or comprising the units; and

(2) the declaration includes other information that shows or contains a narrative description of the general layout of the units in those buildings and the limited common elements allocated to those units.

§81-2-110. EXERCISE OF DEVELOPMENT RIGHTS.

(a) To exercise any development right reserved under Section 81-2-105(a)(8), the declarant shall prepare, execute, and record, without joinder of any other person required except as expressly provided in the declaration, an amendment to the declaration and in a condominium or planned community comply with Section 81-2-109. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b), reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 81-2-108.

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by Section 81-2-105 or 2-106, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by Section 81-2-109. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 81-2-105(a)(8).

(c) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(1) if the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; and

(2) if the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.

(d) If the declaration provides, pursuant to Section 81-2-105(a)(8), that all or a portion of the real estate is subject to a right of withdrawal:

(1) if all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser; and

(2) if any portion is subject to withdrawal, it may not be withdrawn after a unit in that portion has been conveyed to a purchaser.

(e) If the declaration for a pre-existing condominium provides for conversion of limited common elements to part of the unit to which such limited common elements are allocated, the same shall be a development right exercisable by the declarant by amendment to the declaration prepared, executed and recorded by the declarant, without the joinder of any other person required, and complying with Section 81-2-109.

§81-2-111. ALTERATIONS OF UNITS.

Subject to the provisions of the declaration and other provisions of law, a unit owner:

(a) may, upon written notice to the association specifying the improvements or alterations planned, make any improvements or alterations to that unit owner's unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community;

(b) may not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the common interest community, without permission of the association;

(c) after acquiring an adjoining unit or an adjoining part of an adjoining unit, may, upon written notice to the association specifying the improvements or alteration planned, but without requiring permission of the association, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the common interest community. Removal of partitions or creation of apertures under this paragraph is not an alteration of boundaries.

§81-2-112. RELOCATION OF UNIT BOUNDARIES.

(a) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units.

If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the executive board determines, within 30 days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved and states the reallocations. The amendment must be executed by those unit owners, contain words of conveyance between them, and, on recordation, be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the association. All costs associated with the relocation or any attempted relocation which fails or is denied, including reasonable attorney's and engineer's fees, shall be paid by the owners seeking the change.

(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation. The fees and charges shall be assets of the association. The amendment must be executed by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate. All costs associated with the relocation or any attempted relocation which fails or is denied, including reasonable attorney's and engineer's fees, shall be paid by the owners seeking the change.

(c) The association (i) in a condominium or planned community shall prepare and record plats or plans necessary to show the altered boundaries of affected units, and their dimensions and identifying numbers, and (ii) in a cooperative shall prepare and record amendments to the declaration, including any plans, necessary to show or describe the altered boundaries of affected units, and their dimensions and identifying numbers.

§81-2-113. SUBDIVISION OF UNITS.

(a) If the declaration expressly so permits and approval as noted herein is obtained in writing, a unit may be subdivided into two or more units. Subject to the provisions of the declaration, payment of all expenses by the unit owner and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including in a condominium or planned community the plats and plans, subdividing that unit.

(b) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.

§81-2-114. VARIATIONS IN BOUNDARIES.

The existing physical boundaries of a unit or a common element or the physical boundaries of a unit or a common element reconstructed in substantial accordance with the description contained in the original declaration are its legal boundaries, rather than the boundaries derived from the description contained in the original declaration, regardless of vertical or lateral movement of the building or minor variance between those boundaries and the boundaries derived from the description contained in the original declaration. This section does not relieve a unit owner of liability in case of the unit owner's willful misconduct or relieve a declarant or any other person of liability for failure to adhere to any plats and plans or, in a cooperative, to any representation in the public offering statement.

§81-2-115. USE FOR SALES PURPOSES.

A declarant may maintain sales offices, management offices, and models in units or on common elements in the common interest community only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. In a cooperative or condominium, any sales office, management office, or model not designated a unit by the declaration is a common element. If a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the common interest community in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the common interest community. This section is subject to the provisions of other state law and to local ordinances.

§81-2-116. EASEMENT RIGHTS.

(a) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging the declarant's obligations or exercising special declarant rights, whether arising under this Chapter or reserved in the declaration.

(b) In a planned community, subject to Sections 3-102(a)(6) and 3-112, the unit owners have an easement (i) in the common elements for purposes of access to their units and (ii) to use the common elements and all real estate that must become common elements for all other purposes.

§81-2-117. AMENDMENT OF DECLARATION.

(a) Except in cases of amendments that may be executed by a declarant under Section 81-2-109(f) or 2-110, or by the association under Section 81-1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or by certain unit owners under Section 81-2-108(b), 2-112(a), 2-113(b), or 2-118(b), or by secured lenders pursuant to Section 81-2-119, and except as limited by subsection (d) or as otherwise provided in this Section 81-2-117, the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the units affected by the amendment are restricted exclusively to nonresidential use or as permitted under Section 81-2-119.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to Section 81-2-112(a), must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

(d) Except to the extent expressly permitted or required by other provisions of this Chapter, or in a non-residential common interest community, except as provided in the declaration, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit or the allocated interests of a unit, in the absence of unanimous consent of the unit owners.

(e) Amendments to the declaration required by the Chapter to be recorded by the association must be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(f) By vote or agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage specified in the declaration, an amendment to the declaration may prohibit or materially restrict the permitted uses of or behavior in a unit or the number or other qualifications of persons who may occupy units. The amendment must provide reasonable protection for a use or occupancy permitted at the time the amendment was adopted.

(g) The time limits specified in the declaration pursuant to Section 81-2-105(a)(8) within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons

entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

(h) Provisions in the declaration creating special declarant rights which have not expired may not be amended without the consent of the declarant.

(i) 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.

(j) Unless the declaration or bylaws provide otherwise and subject to subsections (ii) and (iii) of this Section:

(i) the executive board may execute and record an amendment to the declaration bylaws, or plat, to correct:

(1) A typographical error or other error in the percentage interests or number of votes appurtenant to any unit;

(2) A typographical error or other incorrect reference to another prior recorded document; or

(3) A typographical error or other incorrect unit designation or assignment of limited common elements if the affected unit owners and their mortgagees consent in writing to the amendment, and the consent documents are recorded with the amendment.

(ii) If the executive board executes and records an amendment under subsection (i) of this section, the executive board shall also record with the amendment:

(1) During the time that the declarant has an interest:

(A) The consent of the declarant; or

(B) An affidavit by the executive board that any declarant who has an interest in the condominium has been provided a copy of the amendment and a notice that the declarant may object in writing to the

amendment within 30 days of receipt of the amendment and notice, that 30 days have passed since delivery of the amendment and notice, and that the declarant has made no written objection; and

(2) An affidavit by the executive board that at least 30 days before recordation of the amendment a copy of the amendment was sent with a notice of the amendment sent to each unit owner as required for notices pursuant to this Chapter.

(iii)An amendment under this section is entitled to be recorded and is effective upon recordation if accompanied by the supporting documents required by this section.

§81-2-118. TERMINATION OF COMMON INTEREST COMMUNITY.

(a) Except in the case of a taking of all the units by eminent domain or in the case of foreclosure against an entire cooperative of a security interest that has priority over the declaration, a common interest community may be terminated only by agreement of unit owners of units to which at least 80 percent of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses.

(b) An agreement to terminate must be evidenced by the execution of a termination agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the common interest community is situated and is effective only upon recordation.

(c) In the case of a condominium or planned community containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all of the common elements and units of the common interest community must be sold following termination. If, pursuant to the agreement, any real estate in the common interest community is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(d) In the case of a condominium or planned community containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but it may not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or all the unit owners consent to the sale.

(e) The association, on behalf of the unit owners, may contract for the sale of real estate in a common interest community, but the contract is not binding on the unit owners until approved pursuant to subsections (a) and (b). If any real estate is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in accordance with subsections (h), (i), and (j). Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit. During the period of that occupancy, each unit owner and the unit owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this Chapter or the declaration.

(f) In a condominium or planned community, if the real estate constituting the common interest community is not to be sold following termination, title to the common elements and, in a common interest community containing only units having horizontal boundaries described in the declaration, title to all the real estate in the common interest community, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (j), and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the unit owner's successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted the unit.

(g) Following termination of the common interest community, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear.

(h) Following termination of a condominium or planned community, creditors of the association holding liens on the units, which were recorded or judgments docketed before termination, may enforce those liens in the same manner as any lien holder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded or judgments docketed before termination may enforce their liens in

the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

(1) the lien of each creditor of the association which was perfected against the association before termination becomes, upon termination, a lien against each unit owner's interest in the unit as of the date the lien was perfected;

(2) any other creditor of the association is to be treated upon termination as if the creditor had perfected a lien against each unit owner's interest immediately before termination;

(3) the amount of the lien of an association's creditor described in paragraphs (1) and (2) against each of the unit owners' interest must be proportionate to the ratio which each unit's common expense liability bears to the common expense liability of all of the units;

(4) the lien of each creditor of each unit owner which was perfected before termination continues as a lien against that unit owner's unit as of the date the lien was perfected; and

(5) the assets of the association must be distributed to all unit owners and all lien holders as their interests may appear in the order described above. Creditors of the association are not entitled to payment from any unit owner in excess of the amount of the creditor's lien against that unit owner's interest.

(j) The respective interests of unit owners referred to in subsections (e), (f), (g), (h), and (i) are as follows:

(1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of their units, allocated interests, and any limited common elements immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market values of all the units and their allocated interests.

(2) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are: (i) in a condominium, their respective common element interests immediately before the termination, (ii) in a cooperative, their respective ownership interests

immediately before the termination, and (iii) in a planned community, their respective common expense liabilities immediately before the termination.

(k) In a condominium or planned community, except as provided in subsection (l), foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under Section 81-3-112, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

(l) In a condominium or planned community, if a lien or encumbrance against a portion of the real estate comprising the common interest community has priority over the declaration and the lien or encumbrance has not been partially released, the parties foreclosing the lien or encumbrance, upon foreclosure, may record an instrument excluding the real estate subject to that lien or encumbrance from the common interest community.

§81-2-119. RIGHTS OF SECURED LENDERS.

(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to Section 81-3-113.

(b) A lender who has extended credit to an association secured by an assignment of income or an encumbrance on the common elements may enforce its security agreement in accordance with its terms, subject to the requirements of this Chapter and other law. Requirements that the association must deposit its periodic common charges before default with the lender to which the association's income has been assigned, or increase its common charges at the lender's direction by amounts reasonably necessary to amortize the loan in accordance with its terms, do not violate the prohibitions on lender approval contained in subsection (a).

§81-2-120. MASTER ASSOCIATIONS.

(a) If the declaration provides that any of the powers described in Section 81-3-102 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of one or more common interest communities, all provisions of this Chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(b) Unless it is acting in the capacity of an association described in Section 81-3-101, a master association may exercise the powers set forth in Section 81-3-102(a)(2) only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

(c) If the declaration of any common interest community provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 81-3-103, 81-3-108, 81-3-109, 81-3-110, and 81-3-112 apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this Chapter.

(e) Even if a master association is also an association described in Section 81-3-101, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

(1) All unit owners of all common interest communities subject to the master association may elect all members of the master association's executive board.

(2) All members of the executive boards of all common interest communities subject to the master association may elect all members of the master association's executive board.

(3) All unit owners of each common interest community subject to the master association may elect specified members of the master association's executive board.

(4) All members of the executive board of each common interest community subject to the master association may elect specified members of the master association's executive board.

§81-2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.

(a) Any two or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b), may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all pre-existing associations.

(b) An agreement of two or more common interest communities to merge or consolidate pursuant to subsection (a) must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the pre-existing common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

(c) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant common interest community either (i) by stating the reallocations or the formulas upon which they are based or (ii) by stating the percentage of overall allocated interests of the new common interest community which are allocated to all of the units comprising each of the pre-existing common interest communities, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing common interest community must be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing common interest community.

§81-2-122. ADDITION OF UNSPECIFIED REAL ESTATE.

In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but, the amount of real estate added to the planned community pursuant to this section may not exceed 10

percent of the real estate described in Section 81-2-105(a)(3) and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to Section 81-2-105(a)(5).

§81-2-123. MASTER PLANNED COMMUNITIES.

(a) The declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least 400 units that may be used for residential purposes, and at the time of the reservation that declarant owns or controls more than 400 acres on which the units may be built.

(b) If the requirements of subsection (a) are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by Section 81-2-105(a)(3) through (14) until the declaration is amended under subsection (c).

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain (i) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and (ii) all the information required by Section 81-2-105(a)(3) through (14) with respect to that real estate.

(d) The only real estate in a master planned community which is subject to this Chapter is units that have been declared or which are being offered for sale and any other real estate described pursuant to subsection (c). Other real estate that is or may become part of the master planned community is only subject to other law and to any other restrictions and limitations that appear of record.

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in Subchapter 4 apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection (c).

(f) Limitations in this Chapter on the addition of unspecified real estate do not apply to a master planned community.

(g) The period of declarant control of the association for a master planned community terminates in accordance with any conditions specified in the declaration or otherwise at the time the declarant, in a recorded instrument and after giving written notice to all the unit owners, voluntarily surrenders all rights to control the activities of the association.

§81-2-124. OTHER EXEMPT REAL ESTATE ARRANGEMENTS.

(a) An agreement between two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in their agreement or declarations does not create a separate common interest community unless the cost sharing agreement was intended to evade the limitations of this Chapter. If the declarants of those common interest communities are affiliates, the agreement may not unreasonably allocate the costs among those common interest communities.

(b) An agreement between an association for a common interest community and the owner of real estate that is not part of that common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in their agreement does not create a separate common interest community so long as the assessments against the units in the common interest community are included in the periodic budget for the common interest community and are subject to unit owner approval under Section 81-3-124.

(c) An arrangement between two separately owned parcels of real estate for sharing costs associated with a common law party wall, shared driveway or shared well does not create a common interest community.

SUBCHAPTER 3

MANAGEMENT OF THE

COMMON INTEREST COMMUNITY

§81-3-101. 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 Section 81-2-118 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.

§81-3-102. POWERS OF UNIT OWNERS' ASSOCIATION.

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

(1) must adopt and may amend recorded bylaws consistent with Section 81-3-106 and may adopt rules consistent with Section 81-3-120;

(2) must adopt and may amend budgets pursuant to Section 81-3-124 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 or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community subject to, in the case of litigation involving the declarant, the provisions of Section 81-3-121;

(5) may make contracts and incur liabilities;

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

(7) may cause additional improvements to be made as a part of the common elements;

(8) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to Section 81-3-112 and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to Section 81-3-112;

(9) may grant easements, leases, licenses, and concessions through or over the common elements;

(10) may impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in Section 81-2-102(b) and (d), and for services provided to unit owners;

(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 Section 81-4-109, 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

(18) by rule, may require that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution in the manner described in the rule as a prerequisite to commencement of a judicial proceeding.

(b) The declaration may not impose limitations on the power of the association to:

(1) deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons; or

(2) commence litigation against any person, but (A) the association must comply with Section 81-3-121, if applicable, before commencing any proceeding against any person in connection with construction defects; and (B) the executive board shall promptly provide notice to the unit owners of any litigation filed by or against the association other than a proceeding involving enforcement of rules and claims for assessments.

(c) If a tenant of a unit owner violates the declaration, bylaws or rules of the association, in addition to exercising any of its powers against the unit owner, the association may:

(1) exercise directly against the tenant the powers described in subsection (a)(11);

(2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable fines against the tenant for the violation; and

(3) require, as a means of collecting a fine or past due association fee due from the tenant (and not the unit owner), that the tenant make payments directly to the association in the amount of the rent up to the limit of the amount owed the association.

(4) enforce any other rights against the tenant for the violation which the unit owner as landlord could lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit owner, or both.

(d) The rights granted under subsection (c)(3) may only be exercised if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation.

(e) Unless a lease otherwise provides, this section does not:

(1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or

(2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the declaration, bylaws or rules.

(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.

§81-3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.

(a) The declaration must create an executive board. Except as provided in the declaration, the bylaws, subsection (b), 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 non-profit 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), 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 Section 81-2-123(g), 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, 7 years after all declarants have ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units, 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 33-1/3 percent of the members of the executive board must be elected by unit owners other than the declarant.

(e) Except as otherwise provided in Sections 81-2-120(e) and 3-103(f), not later than the termination of any period of declarant control, the unit owners must elect an executive board of at least three 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. Such appointed members:

(i) shall not be appointed by the declarant or an affiliate of the declarant;

(ii) shall not comprise more than 33 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.

§81-3-104. TRANSFER OF SPECIAL DECLARANT RIGHTS.

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

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

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

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

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

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

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon such person's request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to Section 81-2-115 and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all interests in a common interest community owned by a declarant:

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

(2) the period of declarant control (Section 81-3-103(d)) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

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

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

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

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

(ii) on the successor’s transferor, other than:

(A) misrepresentations by any previous declarant;

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

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

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

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

(4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by that successor's transferor to control the executive board in accordance with Section 81-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for that successor declarant's acts and omissions under Section 81-3-103(d).

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

§81-3-105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.

Except as provided in Section 81-1-122, if entered into before the executive board elected by the unit owners pursuant to Section 81-3-103(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board elected by the unit owners pursuant to Section 81-3-103(f) takes office upon not less than 90 days' notice to the other party.

This section does not apply to: (i) any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

§81-3-106. BYLAWS.

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

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

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

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

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

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

(6) for an association for a condominium or cooperative with more than 50 unit owners, an annual independent audit by a licensed certified public accounting firm of the financial records of the association, provided that where an association of fewer than 100 unit owners so decides by duly adopted resolution, the audit requirement may be satisfied by a review (instead of a full audit) which need not be conducted by a certified public accounting firm;

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

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

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

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

§81-3-107. UPKEEP OF COMMON INTEREST COMMUNITY.

(a) Except to the extent provided by the declaration, subsection (b), or Section 81-3-113(h), the association, through its executive board, is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the unit owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, as designated by the executive board, access through the unit owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof. Each unit owner is likewise responsible for the costs, as determined by the association, associated with the maintenance, repair and replacement of limited common elements appurtenant to the unit owner's unit or for the prorated expense if the limited common element is associated with more than one unit. The executive board shall determine when and to what extent such maintenance, repair and replacement shall be required.

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

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

§81-3-108. UNIT OWNER MEETINGS.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Except in cases of emergency meetings, which may be held without prior notice, not fewer than 10 nor more than 60 days in advance of any regular or special meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice of that meeting to be delivered to each unit owner by any means described in Section 81-3-122 or sent prepaid by United States mail to any mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, including: (i) a statement of the general nature of any proposed amendment to the declaration or bylaws; (ii) a statement that in the absence of objection from any unit owner present at the meeting, the president may add items to the

agenda; (iii) any budget changes; and (iv) any proposal to remove an officer or member of the executive board. Regardless of the agenda, unit owners shall be given a reasonable opportunity at any meeting to offer comments to the executive board regarding any matter affecting the common interest community.

§81-3-108A. EXECUTIVE BOARD MEETING.

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

(b) Except when a schedule of meetings has been distributed to unit owners that identifies the meeting in question or in cases of emergency meetings that may be held without prior notice, the secretary or other officer specified in the bylaws shall cause notice of any regular or special executive board meeting to be delivered to each unit owner by any means described in Section 81-3-122 not fewer than 10 nor more than 60 days in advance of the meeting (but not later than the time notice of the meeting is sent to members of the executive board). The notice must state the time and place of the meeting and the items on the agenda, including an opportunity for unit owners to offer comments to the executive board regarding any matter affecting the common interest community.

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

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

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

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

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

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

(g) A unit owner may maintain a civil action for injunctive or other appropriate relief if the executive board fails to comply with this section. Actions taken at an executive board meeting in violation of this section are voidable but a contract entered into with a third party who had no knowledge of that failure is not invalid solely because of the board's failure to give notice of the meeting at which the contract was approved.

§81-3-109. 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 Section 81-3-110(f) are delivered to the secretary in a timely manner by persons who, together with those persons present in person or by proxy or ballot at the beginning of the meeting, would comprise a quorum for that meeting.

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

§81-3-110. VOTING; PROXIES.

(a) If only one 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 one of the owners are 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 one of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

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

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (i) the provisions of subsections (a) and (b) apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in Section 81-3-108, of all meetings at which lessees are entitled to vote.

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

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

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

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

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

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

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

§81-3-111. 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 Section 81-4-116(d) 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 Section 81-3-117.

§81-3-112. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

(a) In a condominium or planned community, portions of the common elements may be conveyed or subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the association, but the proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the limited common elements were allocated.

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to Section 81-2-118, is void.

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

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

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

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

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

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

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

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

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

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

§81-3-113. INSURANCE.

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

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

(2) liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements and, in cooperatives, also of all units.

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

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

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

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

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

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

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

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

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

(g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a security interest. The insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced promptly by the association unless (i) the common interest community is terminated, in which case Section 81-2-118 applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) 80 percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) in a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common

expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under Section 81-1-107(a), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

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

§81-3-114. SURPLUS FUNDS.

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

§81-3-115. ASSESSMENTS FOR COMMON EXPENSES.

(a) Until the association is validly established pursuant to the Act 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. 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 maintain said reserve at the level of funding required by the declaration, but in no event shall the budget line item funding the repair and replacement reserve be less than 15% of the total budget.

(b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to Section 81-2-107(a) and (b). 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.

§81-3-116. 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 Section 81-3-102(a)(10), (11), and (12), 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 attorney's 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 is also prior to all security interests described in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the association pursuant to Section 81-3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of

mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this section is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if two 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, 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 Section 362 of the Bankruptcy Code is lifted.

(f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) 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):

(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[23];

(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.

(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 non-payment 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 seven weeks before the date specified in the notice as the date of any public sale or seven 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 five 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 attorney's 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 non-payment 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 attorney's 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 Section 81-3-115.

(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 Section 8-3-115(a); and (B) the executive board expressly votes to commence a foreclosure action against that specific unit.

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

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

§81-3-117. OTHER LIENS.

(a) In a condominium or planned community:

(1) Except as provided in paragraph (2), a judgment for money against the association if recorded or docketed, is not a lien on the common elements, but is a lien in favor of the judgment lien holder against (i) all of the real property of the association and (ii) all of the units in the common interest community at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to Section 81-3-112, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

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

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

(b) In a cooperative:

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

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

§81-3-118. 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 three years; (3) any financial statements and tax returns of the association prepared for the past three 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 Section 81-4-109.

(b) Subject to the provisions of subsection (c), 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;

(4) Matters involving 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.

§81-3-119. ASSOCIATION AS TRUSTEE.

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

§ 81-3-120 RULES.

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

(b) If the right is reserved in the declaration pursuant to Section 81-3-102(a)(16), the association may adopt rules to establish and enforce construction and design criteria and aesthetic standards. If it does so, the association must also adopt procedures for enforcement of those standards and for approval of applications, including a reasonable time within which the association must act after an application is submitted. The association's power under this section is subject to any reserved special declarant right to control any construction or design review process during the period of declarant control.

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

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

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

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

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

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

(f) The executive board must maintain on a current basis for reference by unit owners' tenants a complete statement of all rules.

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

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

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

§ 81-3-121. LITIGATION INVOLVING DECLARANT.

(a) An association’s authority under Section 81-3-102 (a)(3) 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 one or more timely plans to repair or otherwise remedy the construction defects described in the notice, then the Association 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 Section 81-4-116(d) 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 subsection (a)(2) 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 subsection (a)(3) 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 pre-condition to litigation.

§ 81-3-122 NOTICE.

(a) Unless otherwise required or permitted by the declaration or bylaws, the following methods of giving notice suffice when notice is required: (i) hand-delivered to each unit owner; (ii) sent prepaid by United States mail to the mailing address of each unit, unless the owner has designated in writing a different mailing address in which case it shall be sent to the designated address; or (iii) sent by electronic means in the manner described in subsection (b).

(b) An association provides effective notice by electronic means if the unit owner gives the association prior written authorization to provide that notice, together with an electronic address.

(c) The ineffectiveness of a good faith effort to deliver notice by any authorized means does not invalidate action taken at a meeting or in lieu of a meeting.

§ 81-3-123 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 Section 81-3-(103)(h) 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 sub-section (c).

(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 sub-section 2 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) is taken before or after a recess, and whether or not taken by electronic means, a member of the executive board may be removed only if the number of votes cast in favor of removal (i) exceeds the number of votes cast in opposition to removal and (ii) is greater than one-third of the total votes of the association.

§ 81-3-124 ADOPTION OF BUDGET.

(a) The executive board shall, at least annually, prepare a proposed budget for the common interest community for consideration by the unit owners. 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, 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), the special assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) 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.

§81-3-125 SERVICE ON ASSOCIATIONS AND EXECUTIVE BOARD.

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

SUBCHAPTER 4

PROTECTION OF PURCHASERS

§81-4-101. APPLICABILITY; WAIVER.

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

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

(1) a gratuitous disposition of a unit;

(2) a disposition pursuant to court order;

(3) a disposition by a government or governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) a disposition to a dealer;

(6) a disposition that may be canceled at any time and for any reason by the purchase without penalty;

(7) a disposition by operation of law upon the death of the unit owner; or

(8) a disposition of a unit restricted to nonresidential purposes.

§81-4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.

(a) Except as provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of Sections 81-4-103, 81-4-104, 81-4-105, and 81-4-106.

(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).

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in Section 81-4-108(a). The person who prepared all or a part of the public offering statement is liable under Sections 81-4-108 and 81-4-117 for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which the person prepared. If a declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of Sections 81-4-103, 81-4-104, 81-4-105, and 81-4-106 as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements.

§81-4-103. PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS.

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

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

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

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

(4) copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by

purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under Section 81-3-105;

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

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

(ii) a statement of any other reserves;

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

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

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

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

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

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

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

(11) a statement that:

(i) within 15 days after receipt of a public offering statement a purchaser, before conveyance, may cancel any contract for purchase of a unit from a declarant,

(ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit, that purchaser may recover from the declarant 10 percent of the sales price of the unit plus 10 percent of the share,

proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community, and

(iii) if a purchaser receives the public offering statement more than 15 days before signing a contract, the purchaser may not cancel the contract;

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

(13) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 81-4-108, together with the name and address of the escrow agent;

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

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

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

(17) the extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to Section 81-4-119; and

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

(b) If a common interest community composed of not more than 12 units is not subject to any development rights and no power is reserved to a declarant to make the common interest community part of a larger common interest community, group of common interest communities, or other real estate, a public offering statement may but need not include the information otherwise required by paragraphs (9), (10), (15), (16) and (17) of subsection (a) and the narrative descriptions of documents required by subsection (a)(4).

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

§81-4-104. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS.

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by Section 81-4-103:

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

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

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

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

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

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

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

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

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

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

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

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

§81-4-105. TIME SHARES.

If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by Section 81-4-103:

(a) the number and identity of units in which time shares may be created;

(b) the total number of time shares that may be created;

(c) the minimum duration of any time shares that may be created; and

(d) the extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in Section 81-3-116.

§81-4-106. COMMON INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS.

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by Section 81-4-103:

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

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

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

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

§81-4-107. COMMON INTEREST COMMUNITY SECURITIES.

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

§81-4-108. PURCHASER'S RIGHT TO CANCEL.

(a) A person required to deliver a public offering statement pursuant to Section 81-4-102(c) 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 a purchaser is given the public offering statement more than 15 days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the offeror’s agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) If a person required to deliver a public offering statement pursuant to Section 81-4-102(c) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an amount equal to 10 percent of the sale price of the unit, plus 10 percent of the share, proportionate to the purchaser’s common expense liability, of any indebtedness of the association secured by security interests encumbering the common interest community.

§81-4-109. 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 Section 81-4-101(b), 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:

(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 Section 81-3-106(a)(6)) 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) in a condominium or cooperative, a statement of the number of units that are not owner-occupied; and

(19) copies of the minutes for the executive board meeting for the preceding six months.

(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. A unit owner providing a certificate pursuant to subsection (a) 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.

(c) A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but a purchaser of a unit in a condominium or cooperative shall have a period of 10 days from receipt of the declaration, bylaws, rules and the certificate described in this Section to cancel the contract to purchase without penalty and receive the full refund of all deposit payments made on account of the contract to purchase.

(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.

§81-4-110. ESCROW OF DEPOSITS.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to Section 81-4-102(c) must be placed in escrow and held either in this State or in an account designated solely for that purpose by an attorney or a licensed real estate broker or an institution whose accounts

are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. An escrow agent acting in good faith and in accordance with the terms of the escrow shall have no liability for the disposition of the fund.

§81-4-111. RELEASE OF LIENS.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section 81-4-102(c), a seller

(1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

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

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

(2) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens on real estate.

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

§81-4-112. CONVERSION BUILDINGS.

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the

tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession. A conversion does not relieve either the landlord or tenant of their obligations pursuant to the Delaware Residential Landlord-Tenant Code, if applicable.

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

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

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

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

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

§81-4-113. EXPRESS WARRANTIES OF QUALITY.

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

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

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

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

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

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

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

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

§81-4-114. IMPLIED WARRANTIES OF QUALITY.

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

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

(1) free from defective materials; and

(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(c) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(d) Warranties imposed by this section may be excluded or modified as specified in Section 81-4-115.

(e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

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

§81-4-115. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY.

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

(1) may be excluded or modified by agreement of the parties; and

(2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the purchaser's attention to the exclusion of warranties.

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

(c) The warranty provided in Section 81-4-114(b) on a unit for residential use commences with the earlier of the time of the conveyance or the delivery of possession and extends for a period of 1 year.

§81-4-116. STATUTE OF LIMITATIONS FOR WARRANTIES.

(a) Unless a period of limitation is tolled under Section 81-3-111 or affected by subsection (d), a judicial proceeding for breach of any obligation arising under Section 81-4-113 or 81-4-114 must be commenced within the applicable periods of any applicable statute of limitations or statute of repose but in all events within six years after the cause of action accrues.

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

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

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

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

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget annually adopted by the association under Section 81-3-115. If the committee is so created, the period of limitation for claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

§81-4-117. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEY'S 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 attorney's 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 Section 81-4-116(d); and

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

§81-4-118. LABELING OF PROMOTIONAL MATERIAL.

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

§81-4-119. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.

(a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 81-2-109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by Sections 81-2-110, 81-2-111, 2-112, 81-2-113, 81-2-115, or 81-2-116.

§81-4-120. SUBSTANTIAL COMPLETION OF UNITS.

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

§81-4-121. AMENDMENT TO PUBLIC OFFERING STATEMENT.

Following execution of a contract of sale by a purchaser, the declarant may not amend any required public offering statement without the approval of such purchaser if the amendment would materially affect the rights of such purchaser. Approval by such purchaser is not required if the amendment is required by any governmental authority or public utility, or

if the amendment is made as a result of actions beyond the control of the declarant or in the ordinary course of affairs of the executive board.

Ssynopsis

The proposed bill is a revised version of the bill that was introduced in the last session and has been modified based on comments received at a workshop, public hearings and drafts circulated to the Counties and other parties. The bill establishes a DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT (DUCIOA) which is closely patterned after the UNIFORM COMMON INTEREST OWNERSHIP ACT (UCIOA) developed by the National Conference Of Commissioners On Uniform State Laws, including revisions to UCIOA currently under consideration.

The impetus behind revising the current law governing condominiums, time shares, cooperatives and planned communities derives from issues not addressed by current Delaware Law. These types of property ownership fit into a category referred to as a "common interest community." Existing law makes it relatively easy for a property owner or developer with little or no oversight to establish a common interest community, but fails to provide a framework with the flexibility for finding equitable solutions to the issues which arise when the uninitiated are thrust together in an unfamiliar social setting created by a common real estate investment.

The bill incorporates, where feasible, the ongoing operations of existing common interest communities, but excludes any requirement that they change existing documents or impact fundamental rights under those documents. An existing community may elect, subject to the requirements of its existing documents, to amend those documents to comply with any requirements of this bill. However, in addition to complying with the requirements imposed by existing documents, any amendments to the existing documents must comply with the new requirements as to threshold issues such as notice and recording. And many of the procedures for better governance of communities apply to all pre-existing communities.

Examples of items not addressed in the existing body of law, which are addressed in the DUCIOA, include: (i) the situation which often occurs when the developer of a planned community encounters unexpected financial conditions and seeks to change the nature of the community to the detriment of existing unit owners; (ii) the need for the developer to fully reveal all aspects of the planned community, including rights “hidden” in the documents which permit the developer, his assigns or an entity foreclosing on the property to change the community by adding or subtracting additional units or changing the character of the community; (iii) protection for the community when a developer or unit owner fails to pay their proper share of the community common expenses; (iv) a procedure by which the community may address changing circumstances which require it to acquire additional property, dispose of property or negotiate with a developer who is unable to meet its obligations; (v) a solution to the problem of how purchasers in a common interest community may protect themselves when a developer fails to meet its obligations and has incurred financial reverses unrelated to the community which take preference to the obligation to the community; (vi) the requirement that formal promises made by a developer regarding the common elements or amenities of the community rise to the same legal status as formal commitments made in conjunction with the purchase of real property; (vii) the impact of sweetheart agreements put in place by the developer which extend beyond the developer’s control of the community; and (viii) the problem when the community has not made any provision for reserves for the repair and replacement of systems or buildings.

It is not intended that the DUCIOA will supplant the requirements of any County as to its planning and development function. However, it does extend to all State residents uniform protection to all participants in the planned community process. As a function of the drafting process of the earlier version of this bill by the Bar association, copies of various drafts were sent to all County attorneys and members of their legal departments dealing with land use. As indicated above, the UCIOA on which the DUCIOA is based was adopted at the 1982 Annual Meeting of the National Conference of Commissioners on Uniform State Laws. It combines, in a single comprehensive law, prior uniform laws in this area: the Uniform Condominium Act (1980), the Uniform Planned Community Act (1980), and the Model Real Estate Cooperative Act (1981). The UCIOA, one of its components or substantially similar laws exist in some 20 states. In addition, the UCIOA has influenced the laws and courts regarding common interest communities in all states.

The bill does not track optional Section 5 of the UCIOA regarding registration and its concomitant bureaucracy. However, the bill does require any entity seeking to sell units in a common interest community to prepare a public offering statement which will bind the author. Early on, there was some minor concern regarding this requirement, but it was included for three reasons. First, the tenor of the times dictates more parity based on information between the buyer and seller of real property and the requirement is comparable in concept to the requirements of the Buyer Property Protection Act (6 Del. C. § 2572 et. seq.). Second, most of the required information would be provided by any responsible realtor or developer in the normal course of business. Third, there is a significant advantage to the implementation and interpretation of the statute if it is as "uniform" as feasible based on the circumstances in Delaware.

Author: Senator Amick

TABLE OF CONTENTS

§81-1-101 SHORT TITLE....2

§81-1-102 APPLICABILITY. 2

§81-1-103 DEFINITIONS 2

§81-1-104 VARIATION BY AGREEMENT....8

§81-1-105 SEPARATE TITLES AND TAXATION 8

§81-1-106 APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES .8

§81-1-107 EMINENT DOMAIN....9

§81-1-108 SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE 9

§81-1-109 CONSTRUCTION AGAINST IMPLICIT REPEAL 10

§81-1-110 UNIFORMITY OF APPLICATION AND CONSTRUCTION 10

§81-1-111 SEVERABILITY 10

§81-1-112 UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT 10

§81-1-113 OBLIGATION OF GOOD FAITH....11

§81-1-114 REMEDIES TO BE LIBERALLY ADMINISTERED 11

§81-1-115 ADJUSTMENT OF DOLLAR AMOUNTS....11

§81-1-116 APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES 12

§81-1-117 EXCEPTION FOR SMALL COOPERATIVES 12

§81-1-118 EXCEPTION FOR SMALL AND LIMITED EXPENSE LIABILITY PLANNED COMMUNITIES....12

§81-1-119 APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES 13

§81-1-120 EXCEPTION FOR SMALL PRE-EXISTING COOPERATIVES AND PLANNED COMMUNITIES....13

§81-1-121 AMENDMENTS TO GOVERNING INSTRUMENTS....14

§81-1-122 APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE COMMON INTEREST COMMUNITIES....14

§81-1-123 APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES....15

§81-1-124 APPLICABILITY TO CONTINUING CARE COMMON INTEREST COMMUNITIES....15

§81-2-101 CREATION OF COMMON INTEREST COMMUNITIES 15

§81-2-102 UNIT BOUNDARIES....16
§81-2-103 CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS....16
§81-2-104 DESCRIPTION OF UNITS....17
§81-2-105 CONTENTS OF DECLARATION....17
§81-2-106 LEASEHOLD COMMON INTEREST COMMUNITIES....19
§81-2-107 ALLOCATION OF ALLOCATED INTERESTS....20
§81-2-108 LIMITED COMMON ELEMENTS....21
§81-2-109 PLATS AND PLANS....21
§81-2-110 EXERCISE OF DEVELOPMENT RIGHTS....23
§81-2-111 ALTERATIONS OF UNITS....24
§81-2-112 RELOCATION OF UNIT BOUNDARIES....24
§81-2-113 SUBDIVISION OF UNITS....25
§81-2-114 VARIATIONS IN BOUNDARIES....26
§81-2-115 USE FOR SALES PURPOSES....26
§81-2-116 EASEMENT RIGHTS....26
§81-2-117 AMENDMENT OF DECLARATION....27
§81-2-118 TERMINATION OF COMMON INTEREST COMMUNITY....28
§81-2-119 RIGHTS OF SECURED LENDERS....32
§81-2-120 MASTER ASSOCIATIONS....33
§81-2-121 MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES....34
§81-2-122 ADDITION OF UNSPECIFIED REAL ESTATE.....34
§81-2-123 MASTER PLANNED COMMUNITIES....35
§81-2-124 OTHER EXEMPT REAL ESTATE ARRANGEMENTS....36
§81-3-101 ORGANIZATION OF UNIT OWNERS' ASSOCIATION....36
§81-3-102 POWERS OF UNIT OWNERS' ASSOCIATION....36
§81-3-103 EXECUTIVE BOARD MEMBERS AND OFFICERS....39
§81-3-104 TRANSFER OF SPECIAL DECLARANT RIGHTS....41
§81-3-105 TERMINATION OF CONTRACTS AND LEASES OF DECLARANT....43

§81-3-106 BYLAWS 44
§81-3-107 UPKEEP OF COMMON INTEREST COMMUNITY 45
§81-3-108 UNIT OWNER MEETINGS 45
§81-3-108A EXECUTIVE BOARD MEETING 46
§81-3-109 QUORUMS 47
§81-3-110 VOTING; PROXIES 48
§81-3-111 TORT AND CONTRACT LIABILITY; TOLLING OF LIMITATION PERIOD 49
§81-3-112 CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS 50
§81-3-113 INSURANCE 51
§81-3-114 SURPLUS FUNDS 54
§81-3-115 ASSESSMENTS FOR COMMON EXPENSES 54
§81-3-116 LIEN FOR ASSESSMENTS 55
§81-3-117 OTHER LIENS 59
§81-3-118 ASSOCIATION RECORDS 60
§81-3-119 ASSOCIATION AS TRUSTEE 61
§ 81-3-120 RULES 61
§ 81-3-121 LITIGATION INVOLVING DECLARANT 63
§ 81-3-122 NOTICE 65
§ 81-3-123 REMOVAL OF MEMBERS OF EXECUTIVE BOARD 65
§ 81-3-124 ADOPTION OF BUDGET 66
§ 81-3-125 SERVICE ON ASSOCIATIONS AND EXECUTIVE BOARD 67
§81-4-101 APPLICABILITY; WAIVER 67
§81-4-102 LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS 67
§81-4-103 PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS 68
§81-4-104 COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS 71
§81-4-105 TIME SHARES 72
§81-4-106 COMMON INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS 72
§81-4-107 COMMON INTEREST COMMUNITY SECURITIES 73

§81-4-108 PURCHASER'S RIGHT TO CANCEL 73
§81-4-109 RESALES OF UNITS 73
§81-4-110 ESCROW OF DEPOSITS 75
§81-4-111 RELEASE OF LIENS 76
§81-4-112 CONVERSION BUILDINGS 76
§81-4-113 EXPRESS WARRANTIES OF QUALITY 77
§81-4-114 IMPLIED WARRANTIES OF QUALITY 78
§81-4-115 EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY 79
§81-4-116 STATUTE OF LIMITATIONS FOR WARRANTIES 79
§81-4-117 EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEY'S FEES 80
§81-4-118 LABELING OF PROMOTIONAL MATERIAL 81
§81-4-119 DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE 81
§81-4-120 SUBSTANTIAL COMPLETION OF UNITS 81
§81-4-121 AMENDMENT TO PUBLIC OFFERING STATEMENT 81