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HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 183

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE UNIT PROPERTY ACT.

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

1 Section 1. Amend § 2201, Title 25 of the Delaware Code by adding the following words to the end of the last
2 sentence thereof: “, as provided in § 81-119 of that Chapter.”.

3 Section 2. § 2202(18), Title 25 of the Delaware Code is deleted in its entirety and the following is substituted:

4 “(18) ‘Reserve study’ means an analysis, performed or updated within the last 5 years by one or more independent
5 engineering, architectural or construction contractors, or other qualified persons, of the remaining useful life and the
6 estimated cost to replace each separate system and component of the common elements, the purpose of which analysis is to
7 inform the council and the unit owners of the amount which should be maintained from year to year in a fully funded repair
8 and replacement reserve to minimize the need for special assessments.”.

9 Section 3. A new § 2202(19), Title 25 of the Delaware Code is added as follows:

10 “(19) ‘Fully funded,’ or any variation thereof, with respect to the repair and replacement reserve, means a repair
11 and replacement reserve which (i) when supplemented by a fixed, budgeted annual addition compliant with § 2244 of this
12 title, contains that balance of funds which will meet fully, without supplementation by borrowed funds or special
13 assessments, the cost of each projected repair and replacement noted in the reserve study no later than the date when each
14 such repair or replacement is projected to be required by the reserve study as defined in paragraph (18) of this section, and
15 (ii) with all budgeted contributions and expenditures for repairs and replacements projected out no less than 20 years, will
16 never fall below a positive balance.”.

17 Section 4. A new § 2202(20), Title 25 of the Delaware Code is added as follows:

18 “(20) ‘Nonresidential condominium’ means a condominium in which all units are restricted exclusively to
19 nonresidential purposes.”.

20 Section 5. A new § 2202(21), Title 25 of the Delaware Code is added as follows:

21 “(21) ‘Nonresidential purposes’ means use for a purpose other than use for a dwelling and appurtenant recreational
22 purposes, or both.”.

Section 6. Amend § 2211(1), Title 25 of the Delaware Code by deleting the words “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) of this title;” and substituting therefor the following:

“and the maintenance of a repair and replacement reserve as defined in § 2202 (17) of this title, fully funded as defined in § 2202(19) of this title, subject to the provisions of § 2245 of this title, as applicable;”.

Section 7. § 2211(2), Title 25 of the Delaware Code is deleted in its entirety and the following substituted therefor:

“(2) The assessment and collection of funds from the unit owners for common expenses, the payment of such common expenses, the maintenance of the required repair and replacement reserve, and the payment from said repair and replacement reserve sums for the repair and replacement of the common elements;”.

Section 8. § 2219(5), Title 25 of the Delaware Code is deleted in its entirety and the following is substituted therefor:

“(5) A description of the common elements and the proportionate undivided interest expressed as a percentage assigned to each unit therein, provided the sum of the undivided interests in the common elements allocated at any time to all the units must equal one if stated as a fraction or 100 percent if stated as a percentage, except for minor variations due to rounding. In the event of any discrepancy between an allocated interest and the result derived from application of the pertinent formula, then the allocated interest prevails.”.

Section 9. A new § 2244, Title 25 of the Delaware Code is added as follows:

“§ 2244. Repair and replacement reserve as a percentage of budget.

The minimum percentage of the annual budget of a condominium that must be assigned to the repair and replacement reserve will depend on how many of the following components and systems are to be maintained, repaired and replaced by the council: (i) one or more hallways, (ii) one or more stairwells, (iii) one or more management or administrative offices, (iv) one or more roofs, (v) one or more windows, (vi) one or more exterior walls, (vii) one or more elevators, (viii) one or more HVAC systems, (ix) one or more swimming pools, (x) one or more exercise facilities, (xi) one or more clubhouses, (xii) one or more parking garages (but not including surface parking lots), (xiii) one or more masonry bridges used by motor vehicles, (xiv) one or more bulkheads, and (xv) one or more docks. In the event that the council is responsible for the maintenance, repair and replacement of 4 or more of the above-described systems or components, the minimum percentage of the condominium’s annual budget that must be assigned to the repair and replacement reserve is 15%; if the responsibility extends to only 3 of the above-described systems and components, the minimum percentage is 10%; and if the responsibility extends to only 2 or fewer of the above-described systems and components, the minimum

percentage is 5%. In the event that the condominium's accountant certifies that the funds in the repair and replacement reserve are in excess of the sum required to constitute a fully funded repair and replacement reserve as defined in § 2202 (19) of this chapter, the council shall treat the excess as a common profit subject to distribution pursuant to § 2216 of this chapter. In the event that the association does not have a current repair and replacement reserve as required by this chapter, the minimum percentages of the association's budget to be assigned to the repair and replacement reserve shall be the percentages prescribed in this paragraph (a)(2) of this section.”.

Section 10. A new § 2245, Title 25 of the Delaware Code is added as follows:

“§ 2245. Compliance Phase-In.

Anything in this title to the contrary notwithstanding, if the amount held by a condominium in its repair and replacement reserve as of July 1, 2009, (i) constitutes less than 25% of the level of funding required for a fully funded reserve as defined in § 2202(19) of this chapter, then the council shall have three years to make the repair and replacement reserve fully funded (as defined in § 2202(19) of this chapter); (ii) constitutes 25% or more, but less than 50%, of the level defined as fully funded, then the council shall have two years to make the repair and replacement reserve fully funded (as defined in § 2202(19) of this chapter); or (iii) constitutes 50% or more, but less than 70%, of the level defined as fully funded, then the council shall have one year to make the repair and replacement reserve fully funded (as defined in § 2202 (19) of this chapter).”.

Section 11. A new § 2246, Title 25 of the Delaware Code is added as follows:

“§ 2246. Exceptions for Nonresidential Condominiums.

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

Section 12. This Act shall become effective on July 1, 2009.

SYNOPSIS

Section 1 amends § 2201 to provide a reference to the appropriate section of the Delaware Uniform Common Interest Ownership Act, 25 Del. C. §§ 88-101, *et seq.*, (“DUCIOA”) that serves as a roadmap for those provisions of DUCIOA that apply to existing condominiums that were formed under the Unit Property Act.

Section 2 amends § 2202(18) to substitute as the definition of a “reserve study” under the Unit Property Act the current definition from DUCIOA for a reserve study, so that the two acts are consistent.

Section 3 adds a new § 2202(19) that defines “fully funded” under the Unit Property Act in order to provide

guidance to an association for satisfying its reserve requirements. The amendment uses the current definition from DUCIOA for a fully funded reserve so that the two acts are consistent.

Section 4 adds a new § 2202(20) that defines a “nonresidential condominium”, which is a concept introduced in the amendments in Section 11 of this bill.

Section 5 adds a new § 2202 (21) that defines “nonresidential purposes”, which is also used in the new definition of nonresidential condominium in Section 4 of this bill.

Section 6 amends § 2211(1) to incorporate into the assessment requirements of the association for the condominium, assessments for the repair and replacement reserve that is fully funded as required by the amendments to the Unit Property Act.

Section 7 amends § 2211(2) to add specific reference to the fully funded repair and replacement reserve as part of the assessments.

Section 8 amends § 2219(5) to give guidance in those situations where because of the number of condominium units in a particular condominium it is impossible to make all of the percentage interests for each unit be equal and still add up to 100%. This amendment, which is taken from the corollary provision of DUCIOA, allows for minor variations due to rounding so that percentages can be equal, which is important for voting, without artificial manipulation, such as making one unit have either a higher or a lower percentage merely to add to 100%.

Section 9 adds a new § 2244 that is taken from the comparable provisions of DUCIOA in order to give a formula for setting a minimum percentage of the annual budget to serve as the repair and replacement reserve.

Section 10 adds a new § 2245 to the Unit Property Act to provide a formula for an existing condominium project, which will now be required to have a repair and replacement reserve, to come into compliance with the required reserve over time. The amendment provides a formula for how an association can achieve compliance over a certain number of years by requiring that certain levels of reserve be obtained that, once all budgeted annual payments toward the reserve are added over time, the amount of reserves indicated by the applicable reserve study will be achieved. If on July 1, 2009, the amount held by the condominium in its reserve is less than 25% of the level that is required for a fully funded reserve, the council of the condominium has 3 years to get to a point where, with future regular budgeted payments projected to be added to the reserve, the reserve will be sufficient for its purpose. If the amount held as of July 1, 2009 is more than 25% but less than 50% of the required amount, then the council has 2 years to achieve a fully funded reserve. If the amount held as of July 1, 2009 is 50% or more but less than 70%, then the council has 1 year to achieve a fully funded reserve. The intention is to give time to the council to get the necessary funds without overburdening the unit owners with special assessments for immediately funding to 100%.

Section 11 adds a new § 2246 to the Unit Property Act to clarify that, consistent with DUCIOA, a nonresidential condominium is not required to have a repair and replacement reserve, and may elect to exempt itself from the requirement by electing to do so in its declaration or by the vote of a majority of the unit owners.

Section 12 provides for an effective date of July 1, 2009, consistent with the effective date of DUCIOA.