

Title 25

Property

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it is subject only to §§ 81-105 (Separate titles and taxation), 81-106 (Applicability of local ordinances, regulations, and building codes), and 81-107 of this title (Eminent domain), but to no other sections of this chapter unless the declaration provides that this entire chapter is applicable. The bylaws of any such planned community, and any amendments thereto, shall be recorded.

(b) The exemption provided in paragraph (a)(2) of this section 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; except that commencing with the July 1 next following the effective date of this chapter and each July 1 thereafter during the period of declarant control, the assessment specified in the declaration may be increased by an amount not in excess of 3 percent over the amount so calculated for the previous year.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 16, 17, 81, 82; 77 Del. Laws, c. 364, § 4.)

§ 81-119. Applicability to preexisting common interest communities and approved common interest communities.

Except as provided in § 81-120 (Exception for small preexisting cooperatives and planned communities), and § 81-124 and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107, 81-127, 81-203, 81-204, 81-217(i), 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-306, 81-307(a), 81-308A, 81-309(a), 81-310, 81-311, 81-314, 81-315, 81-316, 81-318, 81-321, 81-322 [repealed], 81-323, 81-324, 81-409, and 81-417 of this title, and § 81-103 of this title to the extent any definitions are necessary in construing any of the foregoing sections to the extent the definitions do not conflict with the declaration, apply to all common interest communities and approved common interest communities created in this State before the effective date; but those sections apply only with respect to events and circumstances occurring after the effective date, and do not invalidate existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans of those preexisting common interest communities and approved common interest communities that do not conflict with this chapter. With respect to all common interest communities, such existing provisions of those declarations, bylaws, codes of regulations, declaration plans, plats or plans, and subsequent amendments thereto adopted subsequent to the effective date of this chapter in strict accordance with those existing provisions, and not in conflict with the Unit Property Act (Chapter 22 of this title), shall be controlling in the event of any express conflict between those existing provisions (as duly amended) and the provisions of this chapter.

In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or approved common interest communities nor the Unit Property Act (Chapter 22 of this title) expressly addresses the matter or issue, the provisions of this chapter shall control. As to any such preexisting common interest community or approved common interest community prior to the effective date: (i) this chapter shall not operate to terminate or allow the termination of existing contractual obligations created prior to the effective date, including, but not limited to contracts for units for preexisting common interest communities or approved common interest community projects; (ii) this chapter shall not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common interest community that do not conflict with this chapter; (iii) the Unit Property Act (Chapter 22 of this title), and not this chapter shall govern all obligations of a declarant created under the Unit Property Act (Chapter 22 of this title); (iv) 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; (v) this chapter does not require that the preexisting declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise of any preexisting common interest community or approved common interest community be amended to, or otherwise to comply with, the requirements of this chapter; and (vi) except for §§ 81-409 and 81-417 of this title, subchapter IV of this chapter is not applicable to any such preexisting common interest community or approved common interest community. Without limiting the generality of any other provision of this chapter, and notwithstanding any other provision of this chapter, any condominium created under the Unit Property Act for which future expansions are provided under its declaration made pursuant to the Unit Property Act shall remain governed by the Unit Property Act and not this chapter with respect to all of such future sections, phases or other expansion rights.

Any preexisting common interest community or approved common interest community has the right to amend its declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise to comply with any or all of the requirements of this chapter, or a preexisting common interest community or approved common interest community may select particular additional sections of this chapter to apply to that community without adopting the entire chapter.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 9; 77 Del. Laws, c. 91, §§ 18, 82; 77 Del. Laws, c. 364, § 5; 80 Del. Laws, c. 160, § 1; 83 Del. Laws, c. 173, § 3.)

§ 81-120. Exception for small preexisting 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 20 units and is not subject to any development rights expanding it to include more than 20 units, or the annual average common expense liability

of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, does not exceed \$500, as adjusted pursuant to this section, it is subject only to §§ 81-105 (Separate titles and taxation), 81-106 (Applicability of local ordinances, regulations, and building codes), and 81-107 of this title (Eminent domain), but to no other sections of this chapter 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 §§ 81-121 of this title, in which case all the sections enumerated in § 81-119 of this title apply to that cooperative or planned community. Commencing with the July 1 next following the effective date of this chapter and each July 1 thereafter, the \$500 maximum assessment specified in this section may be increased by an amount not in excess of 3 percent over the amount so calculated for the previous year. The bylaws of any such cooperative or planned community, and any amendments thereto, shall be recorded.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 19, 82; 77 Del. Laws, c. 364, § 6.)

§ 81-121. 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 20, 82.)

§ 81-122. Applicability to nonresidential and mixed-use common interest communities.

(a) Except as provided in subsection (e) of this section, 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 § 81-112 of this title (Unconscionable agreement or term of contract), that:

(1) Notwithstanding § 81-305 of this title (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 § 81-104 of this title (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) of this section. 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-123. 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 IV of this chapter apply to all contracts for the disposition thereof signed in this State by any party unless exempt under § 81-401 of this title.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-124. 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 October 31, 2008, that is a continuing care facility governed by the Delaware Life-Care Registration Act (§ 4601 et seq. of Title 18) as of October 31, 2008. Such condominium, cooperative or other common interest community shall continue to be governed solely by the Unit Property Act [Chapter 22 of this title] or other statutes in effect prior to October 31, 2008, and applicable to such common interest community.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-125. Additional exceptions for preexisting common interest communities or approved common interest communities.

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

(77 Del. Laws, c. 4, § 10; 77 Del. Laws, c. 91, § 82.)

(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 subsection (c) of this section.

(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 paragraph (c)(2) of this section 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) of this section 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 1/3 of the total votes of the association.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82; 81 Del. Laws, c. 79, § 41.)

§ 81-324. Adoption of budget.

(a) The executive board shall, at least annually, prepare a proposed budget for the common interest community. In a condominium or cooperative, the proposed budget shall include a line item for any required funding of a repair and replacement reserve. Within 30 days after adoption of any proposed budget after the period of declarant control, the executive board shall provide to all unit owners a summary of the budget, including any reserves and a statement of the basis on which any reserves are calculated and funded. Simultaneously, the executive board shall set a date for a meeting of the unit owners to consider ratification of the budget not less than 14 nor more than 60 days after providing the summary. Unless at that meeting a majority of all unit owners or any larger vote specified in the declaration, voting in person or by proxy, reject the budget, the budget is ratified, whether or not a quorum is present. If a proposed periodic budget is rejected, the periodic budget last ratified by the unit owners must be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

(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) of this section, the special assessment is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) of this section 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 59, 60, 82; 83 Del. Laws, c. 173, § 12.)

§ 81-325. 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-326. Delaware corporations.

Any association that is a Delaware corporation shall also be subject to the Title 8, which shall govern and control to the extent not inconsistent with this chapter.

(77 Del. Laws, c. 91, § 61.)

Subchapter IV

Protection of Purchasers

§ 81-401. Applicability; waiver.

(a) This subchapter applies to all units subject to this chapter, except as provided in subsection (b) of this section 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.

Part VII
Common Interests and Ownership of Real Estate
Chapter 81
Delaware Uniform Common Interest Ownership Act
Subchapter I
General Provisions
Part 1
Definitions and Other General Provisions

§ 81-101. Short title.

This chapter shall be known and may be cited as the “Delaware Uniform Common Interest Ownership Act” or “DUCIOA”.
(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-102. Applicability.

Applicability of this chapter is governed by this subchapter I.
(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 1; 77 Del. Laws, c. 91, § 82.)

§ 81-103. 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 1 or more other persons, or through 1 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 1 or more other persons, or through 1 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) “Approved common interest community” means a proposed common interest community that has received all legally required zoning and/or subdivision approvals from the applicable governmental authorities to permit the construction of such common interest community for which the declarant has (i) entered into 1 or more written contracts with bona-fide third-party purchasers for the construction of 1 or more units in contemplation of the submission of the unit and the proposed common interest community to the provisions of the Unit Property Act (Chapter 22 of this title) and prior to the effective date has provided such third-party purchasers with draft copies of the declaration, code of regulations and other documents pertaining to such common interest community in contemplation of submission to the Unit Property Act [Chapter 22 of this title], and (ii) not yet recorded the declaration plan, declaration, code of regulations and other related documents pertaining to such proposed common interest community in accordance with the Unit Property Act [Chapter 22 of this title] prior to the effective date.

(4) “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 § 81-315 of this title, including all ground lease rents due in a leasehold condominium.

(5) “Association” or “unit owners’ association” means the unit owners’ association organized under § 81-301 of this title.

(6) “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 § 81-306 of this title, regardless of the form of the association’s legal entity or the name by which the document comprising the bylaws is identified.

(7) “Certificate of notice of approved common interest community” means a recorded document by a declarant whereby the declarant certifies and affirms under oath that an approved common interest community shall be developed and units shall be sold under the provisions of the Unit Property Act [Chapter 22 of this title] as a preexisting common interest community, subject to the provisions of § 81-119 of this title regarding applicability to preexisting common interest communities.

(8) **“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.**

(9) **“Common expenses” means expenditures made by, or financial liabilities of, the association, together with any allocations to reserves, related to common elements, other units or other real estate** described in the declaration.

(10) “Common expense liability” means the liability for common expenses allocated to each unit pursuant to § 81-207 of this title.

(11) **“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 common 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 or those arrangements described in § 81-224 of this title. “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.

(12) “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.

(13) “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.

(14) **“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.**

(15) “Dealer” means a person in the business of selling units for that person’s own account.

(16) “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.

(17) **“Declaration” means the recorded instruments, however denominated, that create a common interest community, including any amendments to those instruments.**

(18) “Declaration plan” means a survey of a condominium or cooperative which contains the verified statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and accurately shows (i) the location of the condominium or cooperative and the location and layout of the common elements and units, and (ii) sets forth the name by which the condominium or cooperative will be known and the unit designation for each unit therein. In addition, the declaration plan may show such other details or information as the declarant may elect or as may be required under § 81-106 of this title. References in this chapter to plats or plans as required by § 81-209 of this title shall mean the declaration plan.

(19) “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.

(20) “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.

(21) “Effective date” means September 30, 2009.

(22) **“Executive board” means the body, regardless of name, designated in the declaration or bylaws to act on behalf of the association.**

(23) “Fully funded,” or any variation thereof with respect to a repair and replacement reserve, means a repair and replacement reserve which contains that balance of funds which (i) when supplemented by a fixed, budgeted annual addition, will meet fully, without supplementation by borrowed funds or special assessments, the cost of each projected repair and replacement noted in the reserve study no later than the date when each such repair or replacement is projected to be required by the reserve study, and (ii), with all budgeted contributions and expenditures for repairs and replacements projected out no less than 20 years, will never fall below a positive balance.

(24) “Identifying number” means a symbol or address that identifies only 1 unit in a common interest community.

(25) “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.

(26) “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.

(27) “Limited common element” means a portion of the common elements allocated by the declaration or by operation of § 81-202(b) or (d) of this title for the exclusive use of 1 or more but fewer than all of the units.

(28) “Master association” means an organization described in § 81-220 of this title, whether or not it is also an association described in § 81-301 of this title.

(29) “Nonresidential common interest community” means a common interest community in which all units are restricted exclusively to nonresidential purposes.

(30) “Noticed rules” means rules delivered to or otherwise made available to a tenant as provided in § 81-320 of this title.

(31) “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.

(32) “Person” means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, instrumentality 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.

(33) “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.

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

(35) “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.

(36) “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.

(37) “Record”, when used as a noun, 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.

(38) “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.

(39) “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 appropriately addressed by a contingency reserve.

(40) “Reserve study” means an analysis, by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, performed or updated within the last 5 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 by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, 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.

(41) “Residential purposes” means use for dwelling and appurtenant recreational purposes, or both.

(42) “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 § 81-320 of this title.

(43) “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.

(44) “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.

(45) “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 § 81-403(a)(2) of this title; (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, design review or aesthetic standards 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.

(46) “Tenant” means a tenant or lessee of a unit, including any subtenant, sublessee, or licensee.

(47) “Time share” means a right to occupy a unit or any of several units during 5 or more separated time periods over a period of at least 5 years, including renewal options, whether or not coupled with an estate or interest in a common interest community or a specified portion thereof.

(48) “Unit” means a physical portion of or 3-dimensional space in the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 81-205(a)(5) of this title, 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.

(49) “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.

(50) “Nonresidential purposes” means use for a purpose other than a residential purpose.

(51) “Customary condominium assessment” shall mean an assessment for periodic payments, payable no less frequently than quarterly, due the association for regular and usual operating and common area expenses pursuant to the association’s annual budget and shall not include amounts for reserves for contingencies, nor shall it include any late charges, penalties, interest or any fees or costs for the collection or enforcement of the assessment or any lien arising from the assessment.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, §§ 2, 3; 77 Del. Laws, c. 91, §§ 1-10, 79, 82.)

§ 81-104. Variation by agreement.

Except as expressly provided in this chapter, the effect of its provisions may not be varied by agreement, and rights conferred by it may not be waived. Except as provided in § 81-122 of this title, 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 11, 82.)

§ 81-105. 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.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, § 82.)

§ 81-106. 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) of this section, the provisions of this chapter do not invalidate any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate. Without limiting the generality of the foregoing, any preexisting common interest community or approved common interest community located in any political subdivision of this State shall continue to be governed by the building code, zoning, subdivision, or other real estate use law,