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# TITLE 25

## Property

### Common Interests and Ownership of Real Estate

#### CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT

##### Subchapter III. Management of the Common Interest Community

###### **§ 81-301 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 § 81-218 of this title 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.

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

###### **§ 81-302 Powers of unit owners' association.**

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

- (1) Must adopt and may amend recorded bylaws consistent with § 81-306 of this title and may adopt rules consistent with § 81-320 of this title;
- (2) Must adopt and may amend budgets pursuant to § 81-324 of this title 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, arbitration, mediation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the common interest community subject to, in the case of litigation involving the declarant, the provisions of § 81-321 of this title;
- (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 § 81-312 of this title 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 § 81-312 of this title;
- (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 § 81-202(b) and (d) of this title, 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 § 81-409 of this title, 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, arbitration, mediation or administrative proceedings against any person, but: (A) the association must comply with § 81-321 of this title, 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 paragraph (a)(11) of this section;

(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 referred to in paragraph (c)(3) of this section 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.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 38-40, 82.](#)

### **§ 81-303 Executive board members and officers.**

(a) The declaration must create an executive board. Except as provided in the declaration, the bylaws, subsection (b) of this section, or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized under Delaware law. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and loyalty required of an officer or director of a nonprofit corporation organized under Delaware law. The standards of care and loyalty described in this section apply regardless of the form of legal entity in which the association is organized.

(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) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers

and members of the executive board. Regardless of the period provided in the declaration, and except as provided in § 81-223(g) of this title, a period of declarant control terminates no later than the earlier of: (i) except as to a nonresidential common interest community, 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (ii) as to units for residential purposes, 2 years after all declarants have ceased to offer units for residential purposes for sale in the ordinary course of business; (iii) as to units for residential purposes, 2 years after any right to add new units for residential purposes was last exercised; (iv) as to a common interest community other than a condominium or cooperative, at such time as may be required by other applicable laws; or (v) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after all declarants have ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after any right to add new nonresidential units was last exercised; or (vii) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. 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 §§ 81-220(e) and 81-303(f) of this title, not later than the termination of any period of declarant control, the unit owners must elect an executive board of at least 3 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. After the period of declarant control, such appointed members:

- (i) Shall not be appointed by the declarant or an affiliate of the declarant;
- (ii) Shall not comprise more than 33 percent 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.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 41-43, 82](#);

#### **§ 81-304 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 [11 U.S.C. § 101 et seq.] 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 § 81-215 of this title 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 [11 U.S.C. § 101 et seq.] 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 (§ 81-303(d) of this title) 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 (e)(3) or (e)(4) of this section 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) of this section, 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 § 81-303(d) of this title 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 § 81-303(d) of this title.

(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.

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

#### **§ 81-305 Termination of contracts and leases of declarant.**

Except as provided in § 81-122 of this title, if entered into before the executive board elected by the unit owners pursuant to § 81-303(f) of this title 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 § 81-303(f) of this title 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.

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

#### **§ 81-306 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 officers 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 independent audit by a licensed certified public accounting firm of the financial records of the association to be performed no less frequently than once every 3 years and for each intervening year a review (instead of a full audit) by an independent accountant which need not be conducted by a certified public accounting firm, 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) by an independent accountant 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)(1) 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.

(2) The bylaws of any condominium or cooperative common interest community may expressly require that all unit owners designate the unit owners' association for such community as a third party to receive notification of a termination of utility service under any third-party notification program maintained by a gas or electricity utility pursuant to § 117(b) of Title 26.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 44, 82](#); [80 Del. Laws, c. 185, § 1](#);

#### **§ 81-307 Upkeep of common interest community.**

(a) Except to the extent provided by the declaration, subsection (b) of this section, or § 81-313(h) of this title, 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.

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

#### **§ 81-308 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 § 81-127 of this title 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, or must state the website address where the agenda is located as provided in this section 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. The agenda may be posted on the website of the association, in lieu of being included in the notice, provided that the association shall, by any means described in § 81-127 of this title, furnish to any unit owner who so requests a copy of the agenda prior to the meeting. 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. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners requested the secretary to do so, the requesting members may directly notify all the unit owners of that meeting. Only matters described in the meeting notice required by this section may be considered at a special meeting.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 45, 82.;](#)

## § 81-308A 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 2 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 § 81-127 of this title 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) of this section. 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 1 percent of the association 's annual budget. The secretary shall promptly notify all unit owners of any action taken by unanimous consent.

(g) Notwithstanding compliance with this section, an action by the executive board is valid unless set aside by a court in an action brought pursuant to § 81-417 of this title. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than 60 days after the minutes of the executive board of the meeting at which the action was taken are approved or after the record of that action is distributed to unit owners. Actions taken at an executive board meeting in violation of this section are voidable by the court 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.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 46, 47, 82.;](#)

#### **§ 81-309 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 § 81-310(f) of this title 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.

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

#### **§ 81-310 Voting; proxies.**

(a) If only 1 of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than 1 of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any 1 of the owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(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 1 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 1 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) of this section 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 § 81-308 of this title, 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 which 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.

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

#### **§ 81-311 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 § 81-416(d) of this title 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 § 81-317 of this title.

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

#### **§ 81-312 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 nonresidential 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 § 81-218 of this title, 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) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (a), (b), and (c) of this section. 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) of this section 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) of this section, 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) of this section 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.

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

### **§ 81-313 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;

(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; and

(3) Fidelity insurance.

(b) In the case of a building that contains more than 1 unit having horizontal boundaries or vertical boundaries that comprise common walls or other boundaries between units, the insurance maintained under paragraph (a)(1) of this section, 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) of this section 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) of this section 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 paragraph (a)(1) and subsection (b) of this section 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) of this section, 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 nonrenewal 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 as soon as practicable by the association unless: (i) the common interest community is terminated, in which case § 81-218 of this title 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 § 81-107(a) of this title, 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 nonresidential use.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 48, 49, 82.;](#)

#### **§ 81-314 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.

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

#### **§ 81-315 Assessments for common expenses.**

(a)(1) Until the association is validly established pursuant to this chapter 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.

(2) 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 achieve the level of funding noted in the reserve study, or maintain said reserve at such level. The minimum percentage of the annual budget of a condominium or cooperative that must be assigned to the repair and replacement reserve will depend upon how many of the following components and systems are to be maintained, repaired and replaced

by the executive board: (i) 1 or more hallways, (ii) 1 or more stairwells, (iii) 1 or more management or administrative offices, (iv) 1 or more roofs, (v) 1 or more windows, (vi) 1 or more exterior walls, (vii) 1 or more elevators, (viii) 1 or more HVAC systems, (ix) 1 or more swimming pools, (x) 1 or more exercise facilities, (xi) 1 or more clubhouses, (xii) 1 or more parking garages (but not including surface parking lots), (xiii) 1 or more masonry bridges used by motor vehicles, (xiv) 1 or more bulkheads, and (xv) 1 or more docks. In the event that the executive board is responsible for the maintenance, repair and replacement of 4 or more of the above-described systems or components, the minimum percentage of the 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 association'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, the executive board shall refund or credit the surplus of the excess sum to the unit owners. In the event that the association does not have a current reserve study 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.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 81-207(a) and (b) of this title. 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.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 50, 82](#);

#### **§ 81-316 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 § 81-302(a)(10), (11), and (12) of this title, 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 attorneys' 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 shall have priority over the security interests described in paragraph (ii) above for an amount not to exceed the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget adopted by the association pursuant to § 81-315(a) of this title; provided that for the lien to have priority over the security interests described in paragraph (ii) above, an association with assessments shall have recorded in the county or counties in which the common interest community is located a document which contains the name of the association, the address, a contact telephone number, a contact e-mail address and a web-site address, if any. In addition, the association shall have recorded at any time, but not less than 30 days prior to the sheriff's sale of a unit in its common interest community for which common expense assessments are due, a statement of lien which shall include a description of such unit, the name of the record owner, the amount due and the date due, the amount paid for recording the statement of lien and the amount required to be paid for filing a termination thereof upon payment, and the signature and notarized statement of an officer of the association that the amount described in the statement of lien is correct and due and owing. Upon payment of the amount due in paragraph (ii) above, the payer shall be entitled to a recordable termination of lien for the amount paid. The liens recorded pursuant to this subparagraph shall expire on the first day of the sixtieth month after recording. This subsection does not affect the

priority of mechanics' or materialmen's liens, nor the priority of liens for other assessments made by the association. The lien under this subsection is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if 2 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 [11 U.S.C. § 101 et seq.], 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 § 362 of the Bankruptcy Code [11 U.S.C. § 362] is lifted.

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

(1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a mortgage on real estate by equitable foreclosure or executed upon by other lawful procedures provided for in the declaration;

(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 [§ 9-101 et seq. of Title 6].

(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 nonpayment 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 7 weeks before the date specified in the notice as the date of any public sale or 7 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 5 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 attorneys' 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 nonpayment 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 attorneys' 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 § 81-315 of this title.

(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 § 81-315(a) of this title; 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 attorney's 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.

## **§ 81-317 Other liens.**

(a) In a condominium or planned community:

(1) Except as provided in paragraph (a)(2) of this section, 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 only against all units owned by the association and other real property owned by the association. No 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 § 81-312 of this title, 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 2 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.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 53, 82.](#)

## **§ 81-318 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 3 years; (3) any financial statements and tax returns of the association prepared for the past 3 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 § 81-409 of this title.

(b) Subject to the provisions of subsection (c) of this section, 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, arbitration, mediation or other administrative proceedings;

- (4) Matters involving federal, 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.

(g) An association is not obligated to compile or synthesize information.

(h) Information provided pursuant to this section may not be used for commercial purposes.

[76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 54-56, 82.;](#)

#### **§ 81-319 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.

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

#### **§ 81-320 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 § 81-302(a)(16) of this title, 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 and § 316 of this title, 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 located within the property's boundaries or 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;

(3) Permit installation of a flagpole located within the property's boundaries which does not exceed 25 feet in height and conforms to all setback requirements, for purposes of displaying the flag of the United States of America, provided such flag's measurement does not exceed 3 feet by 5 feet; or

(4) 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.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, § 82](#); [79 Del. Laws, c. 93, § 3](#);

#### **§ 81-321 Litigation involving declarant.**

(a) An association's authority under § 81-302(a)(4) of this title 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 1 or more timely plans to repair or otherwise remedy the construction defects described in the notice, then the executive 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 § 81-416(d) of this title 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 paragraph (a)(2) of this section 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 paragraph (a)(3) of this section 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 precondition to litigation.

[76 Del. Laws, c. 422, § 2](#); [77 Del. Laws, c. 91, §§ 57, 82](#);

#### **§ 81-322 [Reserved.]**

#### **§ 81-323 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 § 81-303(h) of this title [sic] 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 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 one-third of the total votes of the association.

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

#### **§ 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 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](#);

#### **§ 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](#);