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DELAWARE STATE SENATE  
144th GENERAL ASSEMBLY

SENATE BILL NO. 273

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

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

- 1 1. Amend Part II, Title 25 of the Delaware Code by amending Chapter 22 as follows:
- 2 Amend § 2201 by adding the following sentence at the end of the existing section:
- 3 “This chapter shall be subject to the provisions of Part V, Title 25, Chapter 81 of the Delaware Code, which supersedes
- 4 various provisions hereof.”
- 5 Amend § 2202 by adding the following subsections:
- 6 “ (17) ‘Repair and replacement reserve’ means a reserve fund maintained by the council solely for the repair and
- 7 replacement of common elements, and for no other purpose (including operating budget shortfalls or other expenditures
- 8 appropriate to a contingency reserve).
- 9 (18) ‘Reserve study’ means a reasonably current engineering analysis of the remaining useful life and the estimated
- 10 cost to replace each separate system and component of the common elements, the purpose of which analysis is to inform
- 11 the council and the unit owners of the amount which should be maintained from year to year in a fully funded repair and
- 12 replacement reserve to minimize the need for a special assessment.”
- 13 Amend § 2211 by at the end of existing § 2211(1), replacing the semicolon with a comma, and adding the following
- 14 clause: “and the maintenance of a repair and replacement reserve as defined in § 2202(17), funded as recommended by a
- 15 reserve study as defined in § 2202(18);”

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

17 "PART V. COMMON INTERESTS AND OWNERSHIP OF REAL ESTATE

18 CHAPTER 81. DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT

19 SUBCHAPTER 1

20 GENERAL PROVISIONS

21 PART 1. DEFINITIONS AND OTHER GENERAL PROVISIONS

22 §81-1-101. SHORT TITLE.

23 This Chapter shall be known and may be cited as the "DELAWARE UNIFORM COMMON INTEREST  
24 OWNERSHIP ACT" or "DUCIOA".

25 §81-1-102. APPLICABILITY.

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

27 §81-1-103. DEFINITIONS.

28 In this Chapter and documents prepared to create a common interest community pursuant to this Chapter, unless  
29 specifically provided otherwise herein or therein, terms shall have the meaning attributed to them in this section:

30 (1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a  
31 declarant. A person "controls" a declarant if the person (i) is a general partner, officer, director, or employer of the  
32 declarant, (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries,  
33 owns, controls, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interest in the  
34 declarant, (iii) controls in any manner the election of a majority of the directors of the declarant, or (iv) has contributed  
35 more than 20 percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant (i) is a general  
36 partner, officer, director, or employer of the person, (ii) directly or indirectly or acting in concert with one or more other  
37 persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more  
38 than 20 percent of the voting interest in the person, (iii) controls in any manner the election of a majority of the directors of  
39 the person, or (iv) has contributed more than 20 percent of the capital of the person. Control does not exist if the powers  
40 described in this paragraph are held solely as security for an obligation and are not exercised.

41 (2) "Allocated interests" means the following interests allocated to each unit: (i) In a condominium, the  
42 undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative,

43 the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the  
44 common expense liability and votes in the association.

45 (3) "Assessment" or "common expense assessment" means the sums attributable to each unit and due to the  
46 association as a result of the common expense liability allocated to each unit in the manner described in Section 81-3-115.

47 (4) "Association" or "unit owners' association" means the unit owners' association organized under Section 81-  
48 3-101.

49 (5) "Bylaws" mean the recorded document (and any recorded amendments thereto) that contains the procedures  
50 for conduct of the affairs of the association of a common interest community in accordance with Section 81-3-106,  
51 regardless of the form of the association's legal entity or the name by which the document comprising the bylaws is  
52 identified.

53 (6) "Common elements" means (i) in the case of (A) a condominium or cooperative, all portions of the common  
54 interest community other than the units; and (B) a planned community, any real estate within a planned community which is  
55 owned or leased by the association, other than a unit; and (ii) in all common interest communities, any other interests in real  
56 estate for the benefit of unit owners which are subject to the declaration.

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

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

61 (9) "Common interest community" means real estate described in a declaration with respect to which a person,  
62 by virtue of that person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums,  
63 maintenance, or improvement of or services or other expenses related to current elements, other units or other real estate  
64 described in that declaration. Common interest community does not include a campground which is subject to Chapter 28  
65 of Title 6<sup>(4)</sup> or those arrangements described in Section 81-2-124. "Ownership of a unit" does not include holding a  
66 leasehold interest in a unit of a stated term of less than 20 years in a unit, including renewal options.

67 (10) "Condominium" means a common interest community in which portions of the real estate are designated for  
68 separate ownership and the remainder of the real estate is designated for common ownership solely by the owners of those  
69 portions. A common interest community is not a condominium unless the undivided interests in the common elements are  
70 vested in the unit owners.

71 (11) "Conversion building" means a building that at any time before creation of the common interest community  
72 was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

73 (10) "Cooperative" means a common interest community in which the real estate is owned by an association, each  
74 of whose members is entitled by virtue of the member's ownership interest in the association to exclusive possession of a  
75 unit.

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

77 (13) "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional  
78 plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of or (ii) reserves or  
79 succeeds to any special declarant right .

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

82 (15) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to  
83 (i) add real estate to a common interest community; (ii) create units, common elements, or limited common elements within  
84 a common interest community including, without limitation, by the conversion of units into common elements or limited  
85 common elements and vice versa; (iii) subdivide units or convert units into common elements; or (iv) withdraw real estate  
86 from a common interest community; (v) do other things expressly reserved, and identified as such, by declarant in the  
87 declaration.

88 (16) "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a  
89 unit, but the term does not include the transfer or release of a security interest.

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

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

94 (19) "Lease" means a lease or other agreement, written or oral, that establishes the terms and conditions for the  
95 use and occupancy of a unit by a tenant.

96 (20) "Leasehold common interest community" means a common interest community in which all or a portion of  
97 the real estate is subject to a lease the expiration or termination of which will terminate the common interest community or  
98 reduce its size.

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

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

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

105 (24) "Noticed rules" means rules delivered to or otherwise made available to a tenant as provided in Section 81-3-  
106 120.

107 (25) "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire  
108 any interest in a unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of  
109 general circulation, or in any broadcast medium to the general public, of a common interest community not located in this  
110 State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the  
111 jurisdiction in which the common interest community is located.

112 (26) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture,  
113 government, governmental subdivision or agency, limited liability company, or other legal or commercial entity. In the case  
114 of a land trust established pursuant to any statute providing for the creation of a land trust, however, "person" means the  
115 beneficiary of the trust rather than the trust or the trustee.

116 (27) "Planned community" means a common interest community that is not a condominium or a cooperative. A  
117 condominium or cooperative may be part of a planned community.

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

120 (29) "Purchaser" means a person, other than a declarant or a dealer, who by means of a voluntary transfer acquires  
121 a legal or equitable interest in a unit other than (i) a leasehold interest (including renewal options) of less than 20 years, or  
122 (ii) as security for an obligation.

123 (30) "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures,  
124 fixtures, and other improvements and interests that by custom, usage, or law pass with a conveyance of land though not  
125 described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower  
126 boundaries, and spaces that may be filled with air or water.

127 (31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other  
128 medium and is retrievable in perceivable format.

129 (32) "Recorded" means, with respect to the declaration or bylaws of a common interest community and any  
130 amendments thereto, to be placed of record at the Office for the Recorder of Deeds in and for each county in which any  
131 portion of the common interest community is located.

132 (30) "Repair and replacement reserve" means a reserve fund maintained by the executive board of a condominium  
133 or cooperative solely for the repair and replacement of common elements, and for no other purpose, including operating  
134 budget shortfalls or other expenditures appropriated to a contingency reserve.

135 (31) "Reserve study" means an engineering analysis, performed within the last five years, of the remaining useful  
136 life and the estimated cost to replace each separate system and component of the common elements, the purpose of which  
137 analysis is to inform the executive board and the association of a condominium or cooperative of the amount which should  
138 be maintained from year to year in a fully funded repair and replacement reserve to minimize the need for special  
139 assessments.

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

141 (33) "Rule" or "rules" means any rule, procedure or regulation of the association, however denominated, that does  
142 not appear in the declaration or bylaws and that governs either the management of the association or the common interest  
143 community or the conduct of persons or property within the common interest community and adopted as provided in  
144 Section 81-3-120.

145 (34) "Security interest" means an interest in real estate or personal property, created by contract or conveyance,  
146 which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust  
147 deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended  
148 as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract  
149 intended as security for an obligation.

150 (35) "Special assessment" means an assessment duly adopted from time to time for an unexpected, nonrecurring  
151 or other common expense not included in the annual budget.

152 (36) "Special declarant rights" means rights reserved for the benefit of a declarant to (i) complete improvements  
153 indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the  
154 public offering statement pursuant to Section 81-4-103(a)(2); (ii) exercise any development right maintain sales offices,

155 management offices, signs advertising the common interest community, and models; (iv) use easements through the  
156 common elements for the purpose of making improvements within the common interest community or within real estate  
157 which may be added to the common interest community; (v) make the common interest community subject to a master  
158 association; (vi) merge or consolidate a common interest community with another common interest community of the same  
159 form of ownership; (vii) appoint or remove any officer of the association or any master association or any executive board  
160 member during any period of declarant control; (viii) control any construction or design review committee or process; (ix)  
161 attend meetings of the unit owners and, except during an executive session, the executive board; (x) have access to the  
162 records of the association to the same extent as a unit owner; or (xi) other special declarant rights so identified in the  
163 declaration.

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

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

168 (39) "Unit" means a physical portion of or three-dimensional space in the common interest community designated  
169 for separate ownership or occupancy, the boundaries of which are described pursuant to Section 81-2-105(a)(5), and shall  
170 include all improvements contained within the space except those excluded in the declaration. A unit may include 2 or  
171 more noncontiguous spaces. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or  
172 involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed,  
173 encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the  
174 allocated interests of that unit, and the association's interest in that unit is not thereby affected.

175 (40) "Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common  
176 interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove  
177 the unit from the common interest community, but does not include a person having an interest in a unit solely as security  
178 for an obligation. In a condominium or planned community, the declarant is the unit owner of any unit created by the  
179 declaration. In a cooperative, the declarant is treated as the unit owner of any unit to which allocated interests have been  
180 allocated until that unit has been conveyed to another person.

181 §81-1-104. VARIATION BY AGREEMENT.

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

185 §81-1-105. SEPARATE TITLES AND TAXATION.

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

189 (b) In a condominium or planned community:

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

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

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

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

199 §81-1-106. APPLICABILITY OF LOCAL ORDINANCES, REGULATIONS, AND BUILDING CODES.

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

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

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



209 §81-1-107. EMINENT DOMAIN.

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

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

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

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

230 §81-1-108. SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.

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

237 §81-1-109. CONSTRUCTION AGAINST IMPLICIT REPEAL.

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

240 §81-1-110. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

243 §81-1-111. SEVERABILITY.

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

247 §81-1-112. UNCONSCIONABLE AGREEMENT OR TERM OF CONTRACT.

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

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

254 (1) the commercial setting of the negotiations;

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

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

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

263 §81-1-113. OBLIGATION OF GOOD FAITH.

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

266 §81-1-114. REMEDIES TO BE LIBERALLY ADMINISTERED.

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

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

271 §81-1-115. ADJUSTMENT OF DOLLAR AMOUNTS.

272 (a) From time to time the dollar amount specified in Section 81-1-118 must change, as provided in subsections  
273 (b) and (c), according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical  
274 Workers: U.S. City Average, All Items 1982-84 = 100, compiled by the Bureau of Labor Statistics, United States  
275 Department of Labor, (the "Index"). The Index for December 2007, which was \_\_\_\_ is the Reference Base Index.

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

279 (1) the portion of the percentage change in the Index in excess of a multiple of 10 percent must be  
280 disregarded and the dollar amount shall change only in multiples of 10 percent of the amount appearing in this Chapter on  
281 the date of enactment;

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

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

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

291 PART 2. APPLICABILITY

292 §81-1-116. APPLICABILITY TO NEW COMMON INTEREST COMMUNITIES.

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

298 §81-1-117. EXCEPTION FOR SMALL COOPERATIVES.

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

302 §81-1-118. EXCEPTION FOR SMALL AND LIMITED EXPENSE LIABILITY PLANNED COMMUNITIES.

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

304 (1) contains no more than 12 units; or

305 (2) provides, in its declaration, that the annual average common expense liability of all units restricted to  
306 residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed  
307 \$300 as adjusted pursuant to Section 81-1-115 (Adjustment of Dollar Amounts), it is subject only to Sections 81-1-105  
308 (Separate Titles and Taxation), 81-1-106 (Applicability of Local Ordinances, Regulations, and Building Codes), and 81-  
309 1-107 (Eminent Domain) unless the declaration provides that this entire Chapter is applicable.

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

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

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

315 §81-1-119. APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES.

316 Except as provided in Section 81-1-120 (Exception for Small Pre-Existing Cooperatives and Planned  
317 Communities) and Section 81-1-124 and except as limited by Section 81-1-122 hereof, Sections 81-1-105, 1-106, 1-107,  
318 2-103, 2-104, 2-121, 3-101, 3-102(a)(1) through (6) and (11) through (17), 3-102(f), 3-102 (g), 3-103, 3-107(a), 3-109(a),  
319 3-111, 3-115, 3-116, 3-118, 3-121, 3-122, 3-123, 3-124, 4-109, and 4-117, and Section 81-1-103 to the extent any  
320 definitions are necessary in construing any of the foregoing sections to the extent the definitions do not conflict with the  
321 declaration, apply to all common interest communities created in this State before the effective date of this Chapter; but  
322 those sections apply only with respect to events and circumstances occurring after the effective date of this Chapter and do  
323 not invalidate existing provisions of the declaration, bylaws, code of regulations or plats or plans of those common interest  
324 communities. This Chapter shall apply to all right, powers and privileges permitted by this Chapter, and all obligations,  
325 liabilities and restrictions in this Chapter, that are expressly addressed in the declaration, bylaws or plats establishing a common  
326 interest community prior to the effective date of this Chapter but are not expressly addressed in the Unit Property Act; however,  
327 as to any such common interest community created prior to the effective date of this Chapter: (i) this Chapter shall not operate to  
328 unduly burden an existing association with the requirements of this Chapter except to the extent that this Chapter is adopted by  
329 the common interest community; (ii) this Chapter shall not operate to terminate existing contractual obligations; (iii) this  
330 Chapter shall not invalidate the declaration, bylaws or plats of such common interest community; (iv) the Unit Property Act, and  
331 not this Chapter, shall govern all obligations of a declarant created under the Unit Property Act; (v) unless the declarant or other  
332 person with the right to do so elects to conform the requirements of this Chapter in exercising any development right or special  
333 declarant rights, this Chapter is not applicable to the procedures for the exercise of any such development rights or special  
334 declarant rights; (vi) this Chapter does not require that the pre-existing declaration, code of regulations, bylaws or plats or plans  
335 of the pre-existing common interest community be amended to comply with the requirements of this Chapter; and (vii) except  
336 for Sections 81-4-109 and 81-4-117, Subchapter 4 of this Chapter is not applicable to any such common interest community.

337 §81-1-120. EXCEPTION FOR SMALL PRE-EXISTING COOPERATIVES AND PLANNED COMMUNITIES.

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

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

344 §81-1-121. AMENDMENTS TO GOVERNING INSTRUMENTS.

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

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

353 §81-1-122. APPLICABILITY TO NONRESIDENTIAL AND MIXED-USE COMMON INTEREST COMMUNITIES.

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

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

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

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

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

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

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

375 §81-1-123. APPLICABILITY TO OUT-OF-STATE COMMON INTEREST COMMUNITIES.

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

379 §81-1-124. APPLICABILITY TO CONTINUING CARE COMMON INTEREST COMMUNITIES.

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

386 SUBCHAPTER 2

387 CREATION, ALTERATION, AND

388 TERMINATION OF COMMON INTEREST COMMUNITIES

389 §81-2-101. CREATION OF COMMON INTEREST COMMUNITIES.

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

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

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

400 §81-2-102. UNIT BOUNDARIES.

401 Except as provided by the declaration:

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

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

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

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

415 §81-2-103. CONSTRUCTION AND VALIDITY OF DECLARATION AND BYLAWS.

416 (a) All provisions of the declaration and bylaws are severable.

417 (b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws, rules, or  
418 regulations adopted pursuant to Section 81-3-102(a)(1).

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

421 (d) Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an  
422 insubstantial failure of the declaration to comply with this Chapter. Whether a substantial failure impairs marketability is  
423 not affected by this Chapter.



424 §81-2-104. DESCRIPTION OF UNITS.

425 A description of a unit which sets forth the name of the common interest community, the recording data for the  
426 declaration, the county in which the common interest community is located, and the identifying number of the unit, is a  
427 legally sufficient description of that unit and all rights, obligations, and interests appurtenant to that unit which were created  
428 by the declaration or bylaws.

429 §81-2-105. CONTENTS OF DECLARATION.

430 (a) The declaration must contain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

472 (17) all matters required by Sections 81-2-106, 81-2-107, 81-2-108, 81-2-109, 281--115, 81- 2-116, and 81-  
473 3-103.

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

476 §81-2-106. LEASEHOLD COMMON INTEREST COMMUNITIES.

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

480 (1) the recording data for the lease;

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

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

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

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

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

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

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

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

501 §81-2-107. ALLOCATION OF ALLOCATED INTERESTS.

502 (a) The declaration must allocate to each unit:

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

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

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

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

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

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

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

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

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

530 §81-2-108. LIMITED COMMON ELEMENTS.

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

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

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

541 §81-2-109. PLATS AND PLANS.

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

548 (b) Each plat must show or project:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

593 §81-2-110. EXERCISE OF DEVELOPMENT RIGHTS.

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

602 (b) Development rights may be reserved within any real estate added to the common interest community if the  
603 amendment adding that real estate includes all matters required by Section 81-2-105 or 2-106, as the case may be, and, in a  
604 condominium or planned community, the plats and plans include all matters required by Section 81-2-109. This provision  
605 does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to Section 81-  
606 2-105(a)(8).

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

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

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

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

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

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

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

624 §81-2-111. ALTERATIONS OF UNITS.

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

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

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

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

636 §81-2-112. RELOCATION OF UNIT BOUNDARIES.

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



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

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

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

661 §81-2-113. SUBDIVISION OF UNITS.

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

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

670 §81-2-114. VARIATIONS IN BOUNDARIES.

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

678 §81-2-115. USE FOR SALES PURPOSES.

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

687 §81-2-116. EASEMENT RIGHTS.

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

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

694 §81-2-117. AMENDMENT OF DECLARATION.

695 (a) Except in cases of amendments that may be executed by a declarant under Section 81-2-109(f) or 2-110, or  
696 by the association under Section 81-1-107, 2-106(d), 2-108(c), 2-112(a), or 2-113, or by certain unit owners under Section  
697 81-2-108(b), 2-112(a), 2-113(b), or 2-118(b), or by secured lenders pursuant to Section 81-2-119, and except as limited by  
698 subsection (d) or as otherwise provided in this Section 81-2-117, the declaration, including any plats and plans, may be  
699 amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are  
700 allocated, or any larger majority the declaration specifies. The declaration may specify a smaller number only if all of the  
701 units affected by the amendment are restricted exclusively to nonresidential use or as permitted under Section 81-2-119.

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

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

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

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

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

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

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

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

729 (i) If any provision of this Chapter or of the declaration of any common interest community subject to this  
730 Chapter requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of any  
731 amendment to the declaration, that consent shall be deemed granted if no written refusal to consent is received by the  
732 association within 45 days after the association delivers notice of the proposed amendment to the holder of the interest or  
733 mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last  
734 recorded security interest of record in delivering or mailing notice to the holder of that interest.

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

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

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

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

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

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

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

747 (A) The consent of the declarant; or

748 (B) An affidavit by the executive board that any declarant who has an interest in the

749 condominium has been provided a copy of the amendment and a notice that the declarant may object in writing to the

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

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

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

757 §81-2-118. TERMINATION OF COMMON INTEREST COMMUNITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

822 (1) Except as provided in paragraph (2), the respective interests of unit owners are the fair market values of  
823 their units, allocated interests, and any limited common elements immediately before the termination, as determined by one  
824 or more independent appraisers selected by the association. The decision of the independent appraisers must be distributed  
825 to the unit owners and becomes final unless disapproved within 30 days after distribution by unit owners of units to which  
826 25 percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners  
827 is determined by dividing the fair market value of that unit owner's unit and its allocated interests by the total fair market  
828 values of all the units and their allocated interests.

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

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

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

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

846 §81-2-119. RIGHTS OF SECURED LENDERS.

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

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



860 §81-2-120. MASTER ASSOCIATIONS.

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

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

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

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

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

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

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

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

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

889 §81-2-121. MERGER OR CONSOLIDATION OF COMMON INTEREST COMMUNITIES.

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

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

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

909 §81-2-122. ADDITION OF UNSPECIFIED REAL ESTATE.

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

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

916 §81-2-123. MASTER PLANNED COMMUNITIES.

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

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

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

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

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

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

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

940 §81-2-124. OTHER EXEMPT REAL ESTATE ARRANGEMENTS.

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

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

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

953 SUBCHAPTER 3

954 MANAGEMENT OF THE

955 COMMON INTEREST COMMUNITY

956 §81-3-101. ORGANIZATION OF UNIT OWNERS' ASSOCIATION.

957 A unit owners' association must be organized no later than the date the first unit in the common interest community is  
958 conveyed. The association must have an executive board and the membership of the association at all times consists  
959 exclusively of all unit owners or, following termination of the common interest community, of all former unit owners  
960 entitled to distributions of proceeds under Section 81-2-118 or their heirs, successors, or assigns. The association may be  
961 organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful  
962 form of legal entity authorized by the laws of this State.

963 §81-3-102. POWERS OF UNIT OWNERS' ASSOCIATION.

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

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

- 967                   (2) must adopt and may amend budgets pursuant to Section 81-3-124 and collect assessments for common  
968 expenses, including funds for the repair and replacement reserve, from unit owners and may invest any funds of the  
969 association;
- 970                   (3) may hire and discharge managing agents and other employees, agents, and independent contractors;
- 971                   (4) may institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf  
972 of itself or two or more unit owners on matters affecting the common interest community subject to, in the case of litigation  
973 involving the declarant, the provisions of Section 81-3-121;
- 974                   (5) may make contracts and incur liabilities;
- 975                   (6) may regulate the use, maintenance, repair, replacement, and modification of common elements;
- 976                   (7) may cause additional improvements to be made as a part of the common elements;
- 977                   (8) may acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or  
978 personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a  
979 security interest only pursuant to Section 81-3-112 and (ii) part of a cooperative may be conveyed, or all or part of a  
980 cooperative may be subjected to a security interest, only pursuant to Section 81-3-112;
- 981                   (9) may grant easements, leases, licenses, and concessions through or over the common elements;
- 982                   (10) may impose and receive any payments, fees, or charges for the use, rental, or operation of the common  
983 elements, other than limited common elements described in Section 81-2-102(b) and (d), and for services provided to unit  
984 owners;
- 985                   (11) may suspend any privileges of unit owners, other than the right of a unit owner to vote on any matter  
986 submitted to a vote of unit owners, or services provided to unit owners by the association (other than those necessary for the  
987 habitability of the owner's unit) for non-payment of assessments; may impose charges for late payment of assessments; and,  
988 after notice and an opportunity to be heard, may levy reasonable fines for violations of the declaration, bylaws and rules of  
989 the association;
- 990                   (12) may impose reasonable charges for the preparation and recordation of amendments to the declaration,  
991 resale certificates required by Section 81-4-109, or statements of unpaid assessments;
- 992                   (13) may provide for the indemnification of its officers and executive board and maintain directors' and  
993 officers' liability insurance;

994 (14) may assign its right to future income, including the right to receive common expense assessments,  
995 except to the extent limited by the declaration;

996 (15) may exercise any other powers conferred by the declaration or bylaws;

997 (16) may exercise all other powers that may be exercised in this State by legal entities of the same type as  
998 the association;

999 (17) may exercise any other powers necessary and proper for the governance and operation of the  
1000 association; and

1001 (18) by rule, may require that disputes between the executive board and unit owners or between two or  
1002 more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution in  
1003 the manner described in the rule as a prerequisite to commencement of a judicial proceeding.

1004 (b) The declaration may not impose limitations on the power of the association to:

1005 (1) deal with the declarant which are more restrictive than the limitations imposed on the power of the  
1006 association to deal with other persons; or

1007 (2) commence litigation against any person, but (A) the association must comply with Section 81-3-121, if  
1008 applicable, before commencing any proceeding against any person in connection with construction defects; and (B) the  
1009 executive board shall promptly provide notice to the unit owners of any litigation filed by or against the association other  
1010 than a proceeding involving enforcement of rules and claims for assessments.

1011 (c) If a tenant of a unit owner violates the declaration, bylaws or rules of the association, in addition to  
1012 exercising any of its powers against the unit owner, the association may:

1013 (1) exercise directly against the tenant the powers described in subsection (a)(11);

1014 (2) after giving notice to the tenant and the unit owner and an opportunity to be heard, levy reasonable  
1015 fines against the tenant for the violation; and

1016 (3) require, as a means of collecting a fine or past due association fee due from the tenant (and not the unit  
1017 owner), that the tenant make payments directly to the association in the amount of the rent up to the limit of the amount  
1018 owed the association.

1019 (4) enforce any other rights against the tenant for the violation which the unit owner as landlord could  
1020 lawfully have exercised under the lease or which the association could lawfully have exercised directly against the unit  
1021 owner, or both.

1022 (d) The rights granted under subsection (c)(3) may only be exercised if the tenant or unit owner fails to cure the  
1023 violation within 10 days after the association notifies the tenant and unit owner of that violation.

1024 (e) Unless a lease otherwise provides, this section does not:

1025 (1) affect rights that the unit owner has to enforce the lease or that the association has under other law; or

1026 (2) permit the association to enforce a lease to which it is not a party in the absence of a violation of the  
1027 declaration, bylaws or rules.

1028 (f) The executive board shall use its reasonable judgment to determine whether to exercise the association's  
1029 powers to impose sanctions and pursue legal action for violations of the declaration, bylaws and rules including, without  
1030 limitation, whether to compromise any claim made by or against it, including claims for unpaid assessments. The  
1031 association shall have no duty to take enforcement action if the executive board, acting in good faith and without a conflict  
1032 of interest, determines that, under the facts and circumstances presented, (i) the association's legal position does not justify  
1033 taking any or further enforcement action; (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed  
1034 as, inconsistent with current law; (iii) although a technical violation may exist or may have occurred, it is not of such a  
1035 material nature as to be objectionable to a reasonable person or to justify expending the association's resources; or (iv) it is  
1036 not in the association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue an enforcement  
1037 action. The executive board's decision not to pursue enforcement under one set of circumstances does not prevent the  
1038 association from later taking enforcement action under another set of circumstances, except the executive board may not be  
1039 arbitrary or capricious in taking enforcement action. Whether the association's course of performance with respect to  
1040 enforcement of any provision of the declaration, bylaws and rules constitutes a waiver or modification of that provision is  
1041 not affected by this Chapter.

1042 (g) The association may compromise any claim made by or against it, including claims for unpaid assessments.

1043 §81-3-103. EXECUTIVE BOARD MEMBERS AND OFFICERS.

1044 (a) The declaration must create an executive board. Except as provided in the declaration, the bylaws,  
1045 subsection (b), or other provisions of this Chapter, the executive board may act in all instances on behalf of the association.  
1046 In the performance of their duties, officers and members of the executive board appointed by the declarant shall exercise  
1047 the degree of care and loyalty to the association required of an officer or director of a corporation organized under Delaware  
1048 law. Officers and members of the executive board not appointed by the declarant shall exercise the degree of care and

1049 loyalty required of an officer or director of a non-profit corporation organized under Delaware law. The standards of care  
1050 and loyalty described in this section apply regardless of the form of legal entity in which the association is organized.

1051 (b) The executive board may not act on behalf of the association to amend the declaration or the bylaws, to  
1052 terminate the common interest community, or to elect members of the executive board or determine the qualifications,  
1053 powers and duties, or terms of office of executive board members, but the executive board may fill vacancies in its  
1054 membership for the unexpired portion of any term.

1055 (c) Subject to subsection (d), the declaration may provide for a period of declarant control of the association,  
1056 during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the  
1057 executive board. Regardless of the period provided in the declaration, and except as provided in Section 81-2-123(g), a  
1058 period of declarant control terminates no later than the earlier of: (i) except as to a nonresidential common interest  
1059 community, 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant;  
1060 (ii) as to units for residential purposes, 2 years after all declarants have ceased to offer units for residential purposes for sale  
1061 in the ordinary course of business; (iii) as to units for residential purposes, 2 years after any right to add new units for  
1062 residential purposes was last exercised; (iv) as to a common interest community other than a condominium or cooperative,  
1063 at such time as may be required by other applicable laws; or (v) as to nonresidential units, 7 years after all declarants have  
1064 ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units, 7 years after  
1065 any right to add new nonresidential units was last exercised; or (vii) the day the declarant, after giving written notice to unit  
1066 owners, records an instrument voluntarily surrendering all rights to control activities of the association. A declarant may  
1067 voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of  
1068 that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified  
1069 actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved  
1070 by the declarant before they become effective.

1071 (d) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other  
1072 than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by  
1073 unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created  
1074 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  
1075 unit owners other than the declarant.



1076 (e) Except as otherwise provided in Sections 81-2-120(e) and 3-103(f), not later than the termination of any  
1077 period of declarant control, the unit owners must elect an executive board of at least three members, at least a majority of  
1078 whom must be unit owners. Unless the declaration provides for the election of officers by the unit owners, the executive  
1079 board shall appoint the officers. The executive board members and officers shall take office upon election or appointment.

1080 (f) The declaration may provide for the appointment of members of the executive board before or after the  
1081 period of declarant control and the method of filling vacancies in appointed memberships, rather than election of those  
1082 members by the unit owners. Such appointed members:

- 1083 (i) shall not be appointed by the declarant or an affiliate of the declarant;
- 1084 (ii) shall not comprise more than 33 of the entire board; and
- 1085 (iii) have no greater authority than any other member of the executive board.

1086 (g) Not later than the termination of any period of declarant control, the declarant shall provide at its sole  
1087 expense an audit of all expenditures made with funds collected from unit owners not affiliated with the declarant together  
1088 with a list of all items paid for out of association funds that specifically benefited only the units owned by declarant and not  
1089 the units generally. The audit shall be conducted by a certified public accountant that is not an affiliate of declarant.

1090 §81-3-104. TRANSFER OF SPECIAL DECLARANT RIGHTS.

1091 (a) A special declarant right created or reserved under this Chapter may be transferred only by an instrument  
1092 evidencing the transfer recorded in every county in which any portion of the common interest community is located. The  
1093 instrument is not effective unless executed by the transferee.

1094 (b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

1095 (1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable  
1096 for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any unit owner of  
1097 standing to maintain an action to enforce any obligation of the transferor.

1098 (2) If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and  
1099 severally liable with the successor for any obligations or liabilities of the successor relating to the common interest  
1100 community.

1101 (3) If a transferor retains any special declarant rights, but transfers other special declarant rights to a  
1102 successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a  
1103 declarant by this Chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

1104 (4) A transferor has no liability for any act or omission or any breach of a contractual or warranty  
1105 obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the  
1106 transferor.

1107 (c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security  
1108 interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax  
1109 sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real  
1110 estate in a common interest community subject to development rights, a person acquiring title to all the property being  
1111 foreclosed or sold, but only upon such person's request, succeeds to all special declarant rights related to that property held  
1112 by that declarant, or only to any rights reserved in the declaration pursuant to Section 81-2-115 and held by that declarant to  
1113 maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the  
1114 special declarant rights requested.

1115 (d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax  
1116 sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all interests in a common interest  
1117 community owned by a declarant:

1118 (1) the declarant ceases to have any special declarant rights, and

1119 (2) the period of declarant control (Section 81-3-103(d)) terminates unless the judgment or instrument  
1120 conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

1121 (e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

1122 (1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations  
1123 and liabilities imposed on the transferor by this Chapter or by the declaration.

1124 (2) A successor to any special declarant right, other than a successor described in paragraph (3) or (4) or a  
1125 successor who is an affiliate of a declarant, is subject to the obligations and liabilities imposed by this Chapter or the  
1126 declaration:

1127 (i) on a declarant which relate to the successor's exercise or nonexercise of special declarant rights;

1128 or

1129 (ii) on the successor's transferor, other than:

1130 (A) misrepresentations by any previous declarant;

1131 (B) warranty obligations on improvements made by any previous declarant, or made before the  
1132 common interest community was created;

1133 (C) breach of any fiduciary obligation by any previous declarant or that declarant's appointees  
1134 to the executive board; or

1135 (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or  
1136 omissions after the transfer.

1137 (3) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, may  
1138 not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant, except the  
1139 obligation to provide a public offering statement and any liability arising as a result thereof.

1140 (4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to  
1141 a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under  
1142 subsection (c), may declare in a recorded instrument the intention to hold those rights solely for transfer to another person.  
1143 Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to  
1144 development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that  
1145 successor may not exercise any of those rights other than any right held by that successor's transferor to control the  
1146 executive board in accordance with Section 81-3-103(d) for the duration of any period of declarant control, and any  
1147 attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under  
1148 this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for that  
1149 successor declarant's acts and omissions under Section 81-3-103(d).

1150 (f) Nothing in this section subjects any successor to a special declarant right to any claims against or other  
1151 obligations of a transferor declarant, other than claims and obligations arising under this Chapter or the declaration.

1152 §81-3-105. TERMINATION OF CONTRACTS AND LEASES OF DECLARANT.

1153 Except as provided in Section 81-1-122, if entered into before the executive board elected by the unit owners pursuant  
1154 to Section 81-3-103(f) takes office, (i) any management contract, employment contract, or lease of recreational or parking  
1155 areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or  
1156 (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the  
1157 circumstances then prevailing, may be terminated without penalty by the association at any time after the executive board  
1158 elected by the unit owners pursuant to Section 81-3-103(f) takes office upon not less than 90 days' notice to the other party.

1159 This section does not apply to: (i) any lease the termination of which would terminate the common interest community or  
1160 reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of  
1161 avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

1162 §81-3-106. BYLAWS.

1163 (a) The bylaws of the association must provide for:

1164 (1) the number of members of the executive board and the titles of the officers of the association;

1165 (2) election by the executive board, or if the declaration so requires by the unit owners, of a president,  
1166 treasurer, secretary, and any other officers of the association specified in the bylaws;

1167 (3) the qualifications, powers and duties, terms of office, and manner of electing and removing executive  
1168 board members and offices and filling vacancies;

1169 (4) which of its powers the executive board or officers may delegate to other persons or to a managing  
1170 agent;

1171 (5) which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf  
1172 of the association;

1173 (6) for an association for a condominium or cooperative with more than 50 unit owners, an annual  
1174 independent audit by a licensed certified public accounting firm of the financial records of the association, provided that  
1175 where an association of fewer than 100 unit owners so decides by duly adopted resolution, the audit requirement may be  
1176 satisfied by a review (instead of a full audit) which need not be conducted by a certified public accounting firm;

1177 (7) a method for amending the bylaws by the unit owners;

1178 (8) any provisions that may be necessary to satisfy requirements in this Chapter or the declaration  
1179 concerning meetings, voting, quorums and other matters concerning the activities of the association; and

1180 (9) any other matters required by the laws of this State to appear in the bylaws of legal entities organized in  
1181 the same manner as the association.

1182 (b) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association  
1183 deems necessary and appropriate unless the declaration or this Chapter requires that those provisions appear in the  
1184 declaration.

1185 §81-3-107. UPKEEP OF COMMON INTEREST COMMUNITY.

1186 (a) Except to the extent provided by the declaration, subsection (b), or Section 81-3-113(h), the association,  
1187 through its executive board, is responsible for maintenance, repair, and replacement of the common elements, and each unit  
1188 owner is responsible for maintenance, repair, and replacement of the unit owner's unit. Each unit owner shall afford to the  
1189 association and the other unit owners, and to their agents or employees, as designated by the executive board, access  
1190 through the unit owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or  
1191 on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible,  
1192 is liable for the prompt repair thereof. Each unit owner is likewise responsible for the costs, as determined by the  
1193 association, associated with the maintenance, repair and replacement of limited common elements appurtenant to the unit  
1194 owner's unit or for the prorated expense if the limited common element is associated with more than one unit. The  
1195 executive board shall determine when and to what extent such maintenance, repair and replacement shall be required.

1196 (b) In addition to the liability that a declarant as a unit owner has under this Chapter, the declarant alone is  
1197 liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other  
1198 portion of the common interest community is subject to a claim for payment of those expenses. Unless the declaration  
1199 provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.

1200 (c) In a planned community, if all development rights have expired with respect to any real estate, the declarant  
1201 remains liable for all expenses of that real estate unless, upon expiration, the declaration provides that the real estate  
1202 becomes common elements or units.

1203 §81-3-108. UNIT OWNER MEETINGS.

1204 A meeting of the association must be held at least once each year. Special meetings of the association may be  
1205 called by the president, a majority of the executive board, or by unit owners having at least 20 percent, or any lower  
1206 percentage specified in the bylaws, of the votes in the association. Except in cases of emergency meetings, which may be  
1207 held without prior notice, not fewer than 10 nor more than 60 days in advance of any regular or special meeting of the unit  
1208 owners, the secretary or other officer specified in the bylaws shall cause notice of that meeting to be delivered to each unit  
1209 owner by any means described in Section 81-3-122 or sent prepaid by United States mail to any mailing address designated  
1210 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  
1211 agenda, including: (i) a statement of the general nature of any proposed amendment to the declaration or bylaws; (ii) a  
1212 statement that in the absence of objection from any unit owner present at the meeting, the president may add items to the

1213 agenda; (iii) any budget changes; and (iv) any proposal to remove an officer or member of the executive board. Regardless  
1214 of the agenda, unit owners shall be given a reasonable opportunity at any meeting to offer comments to the executive board  
1215 regarding any matter affecting the common interest community.

1216 §81-3-108A. EXECUTIVE BOARD MEETING.

1217 (a) A meeting of the executive board must be held at least quarterly. Special meetings of the executive board  
1218 may be called by the president or a majority of the executive board. For purposes of this section, "meetings of the  
1219 executive board" do not include incidental or other informal gatherings of two or more directors for social or other purposes  
1220 or any meetings where no decisions are made or discussed regarding association business. The executive board and  
1221 individual directors shall not use incidental or social gatherings of directors or other devices to evade the open meeting  
1222 requirements of this section.

1223 (b) Except when a schedule of meetings has been distributed to unit owners that identifies the meeting in  
1224 question or in cases of emergency meetings that may be held without prior notice, the secretary or other officer specified in  
1225 the bylaws shall cause notice of any regular or special executive board meeting to be delivered to each unit owner by any  
1226 means described in Section 81-3-122 not fewer than 10 nor more than 60 days in advance of the meeting (but not later than  
1227 the time notice of the meeting is sent to members of the executive board). The notice must state the time and place of the  
1228 meeting and the items on the agenda, including an opportunity for unit owners to offer comments to the executive board  
1229 regarding any matter affecting the common interest community.

1230 (c) After the period of declarant control ends, all meetings of the executive board shall be open to the unit  
1231 owners except for executive sessions held for purposes of (i) consulting with the association's lawyer regarding, or board  
1232 discussion of, litigation, mediation, arbitration or administrative proceedings or any contract matters; (ii) labor or personnel  
1233 matters; (iii) discuss matters relating to contract negotiations, including the review of bids or proposals, if premature  
1234 general knowledge of those matters would place the association at a disadvantage; or (iv) discussion of any complaint from  
1235 or alleged violation by a unit owner, when the executive board determines that public knowledge would violate the privacy  
1236 of the unit owner.

1237 (d) If any materials are distributed to the executive board before the meeting, the association shall at the same  
1238 time make copies of those materials reasonably available to unit owners, except that the association need not distribute  
1239 copies of unapproved minutes or materials that are to be considered in executive session.

1240 (e) Unless the declaration or bylaws otherwise provide, the executive board may meet in a telephonic or video  
1241 conference call or interactive electronic communication process provided that:

1242 (1) the meeting notice must indicate that the meeting is to be a telephonic, video or other conference and, if  
1243 not a meeting in executive session, provide information as to how unit owners may participate in the conference directly or  
1244 by meeting at a central location or conference connection; and

1245 (2) the process must provide all unit owners the opportunity to hear the discussion and offer comments as  
1246 provided in subsection (b). After termination of the period of declarant control, unit owners may amend the bylaws to vary  
1247 the procedures for conference calls described in this subsection.

1248 (f) After termination of the period of declarant control, in lieu of a meeting, the executive board may act by  
1249 unanimous consent as documented in a record signed by all its members, but the executive board may not act by unanimous  
1250 consent to: (i) adopt a rule, budget or special assessment, (ii) impose a fine or take action to enforce the declaration, bylaws  
1251 or rules, (iii) buy or sell real property, (iv) borrow money, or (v) contract for any sum greater than one percent 1% of the  
1252 association's annual budget. The secretary shall promptly notify all unit owners of any action taken by unanimous  
1253 consent.

1254 (g) A unit owner may maintain a civil action for injunctive or other appropriate relief if the executive board  
1255 fails to comply with this section. Actions taken at an executive board meeting in violation of this section are voidable but a  
1256 contract entered into with a third party who had no knowledge of that failure is not invalid solely because of the board's  
1257 failure to give notice of the meeting at which the contract was approved.

1258 §81-3-109. QUORUMS.

1259 (a) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the association if:

1260 (1) persons entitled to cast at least 20 percent of the votes in the association are present in person, by proxy  
1261 or by ballot at the beginning of the meeting, provided that at least 25 percent of the unit owners not related to the declarant  
1262 are present; or

1263 (2) ballots solicited in accordance with Section 81-3-110(f) are delivered to the secretary in a timely  
1264 manner by persons who, together with those persons present in person or by proxy or ballot at the beginning of the meeting,  
1265 would comprise a quorum for that meeting.

1266 (b) Unless the bylaws provide otherwise, a quorum is present throughout any meeting of the executive board if  
1267 persons entitled to cast a majority of the votes on that board are present throughout the meeting.

1268 §81-3-110. VOTING; PROXIES.

1269 (a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to  
1270 cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be  
1271 cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides  
1272 otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being  
1273 made promptly to the person presiding over the meeting by any of the other owners of the unit.

1274 (b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned  
1275 by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of  
1276 the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual  
1277 notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports  
1278 to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

1279 (c) If the declaration requires that votes on specified matters affecting the common interest community be cast  
1280 by lessees rather than unit owners of leased units: (i) the provisions of subsections (a) and (b) apply to lessees as if they  
1281 were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified  
1282 matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if  
1283 they were unit owners. Unit owners must also be given notice, in the manner provided in Section 81-3-108, of all meetings  
1284 at which lessees are entitled to vote.

1285 (d) Votes allocated to a unit owned by the association may not be cast and shall not be calculated either in a  
1286 quorum or in any percentage of unit votes needed for any action by the unit owners.

1287 (e) Except in cases where a greater percentage of unit votes in the association is required by this Chapter or the  
1288 declaration, a majority of the votes cast in person, by proxy or by ballot at a meeting of unit owners where a quorum is  
1289 present shall determine the outcome of any action of the association where a vote is taken so long as the number of votes  
1290 cast in favor comprise at least a majority of the number of votes required for a quorum for that meeting.

1291 (f) Action may be taken by ballot without a meeting as follows:

1292 (1) Unless prohibited or limited by the declaration or bylaws, any action that the association may take at  
1293 any meeting of members may be taken without a meeting if the association delivers a written or electronic ballot to every  
1294 member entitled to vote on the matter. A ballot shall set forth each proposed action and provide an opportunity to vote for  
1295 or against each proposed action.



1296 (2) All solicitations for votes by ballot must: (A) indicate the number of responses needed to meet the  
1297 quorum requirements; (B) state the percentage of approvals necessary to approve each matter other than election of  
1298 directors; (C) specify the time by which a ballot must be delivered to the association in order to be counted, which time  
1299 shall not be less than 3 days after the date that the association delivers the ballot; and (D) describe procedures (including  
1300 time and size and manner) by when unit owners wishing to deliver information to all unit owners regarding the subject of  
1301 the vote may do so.

1302 (3) Approval by the ballot pursuant to this section is valid only if: (A) the number of votes cast by ballot  
1303 equals or exceeds the quorum required to be present at a meeting authorizing the action; and (B) the number of approvals  
1304 equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number  
1305 of votes cast was the same as the number of votes by ballot.

1306 (4) Except as otherwise provided in the declaration or bylaws, a ballot shall not be revoked after delivery  
1307 to the association by death, disability or revocation by the person who cast that vote.

1308 §81-3-111. TORT AND CONTRACT LIABILITY; TOLLING OF LIMITATION PERIOD.

1309 (a) A unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising out of the  
1310 condition or use of the common elements. Neither the association nor any unit owner except the declarant is liable for that  
1311 declarant's torts in connection with any part of the common interest community which that declarant has the responsibility  
1312 to maintain.

1313 (b) An action alleging a wrong done by the association, including an action arising out of the condition or use  
1314 of the common elements, may be maintained only against the association and not against any unit owner. If the wrong  
1315 occurred during any period of declarant control and the association gives the declarant reasonable notice of and an  
1316 opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to  
1317 any unit owner for (i) all tort losses not covered by insurance suffered by the association or that unit owner, and (ii) all costs  
1318 that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the  
1319 declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including  
1320 reasonable attorney's fees, incurred by the association.

1321 (c) Except as provided in Section 81-4-116(d) with respect to warranty claims, any statute of limitation  
1322 affecting the association's right of action against a declarant under this Chapter is tolled until the period of declarant control  
1323 terminates. A unit owner is not precluded from maintaining an action contemplated by this section because that person is a

1324 unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed  
1325 by Section 81-3-117.

1326 §81-3-112. CONVEYANCE OR ENCUMBRANCE OF COMMON ELEMENTS.

1327 (a) In a condominium or planned community, portions of the common elements may be conveyed or subjected  
1328 to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including  
1329 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree  
1330 to that action; but all owners of units to which any limited common element is allocated must agree in order to convey that  
1331 limited common element or subject it to a security interest. The declaration may specify a smaller percentage only if all of  
1332 the units are restricted exclusively to non-residential uses. Proceeds of the sale are an asset of the association, but the  
1333 proceeds of the sale of limited common elements must be distributed equitably among the owners of units to which the  
1334 limited common elements were allocated.

1335 (b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security  
1336 interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent  
1337 of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that  
1338 action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest,  
1339 then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order  
1340 to convey those units or limited common elements or subject them to a security interest. The declaration may specify a  
1341 smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset  
1342 of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to  
1343 Section 81-2-118, is void.

1344 (c) An agreement to convey common elements in a condominium or planned community, or to subject them to  
1345 a security interest, or in a cooperative, an agreement to convey any part of a cooperative or subject it to a security interest,  
1346 must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite  
1347 number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before  
1348 that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the common  
1349 interest community is situated, and is effective only upon recordation.

1350 (d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest  
1351 community pursuant to subsection (a), but the contract is not enforceable against the association until approved pursuant to

1352 subsections (a), (b), and (c). Thereafter, the association has all powers necessary and appropriate to effect the conveyance  
1353 or encumbrance, including the power to execute deeds or other instruments.

1354 (e) Unless made pursuant to this section, any purported conveyance, encumbrance, judicial sale, or other  
1355 voluntary transfer of common elements or of any other part of a cooperative is void.

1356 (f) A conveyance or encumbrance of common elements or of a cooperative pursuant to this section does not  
1357 deprive any unit of its rights of access and support.

1358 (g) Unless the declaration otherwise provides, if the holders of first security interests on 80 percent of the units  
1359 that are subject to security interests on the day the unit owners' agreement under subsection (c) is recorded consent in  
1360 writing:

1361 (1) a conveyance of common elements pursuant to this section terminates both the undivided interests in  
1362 those common elements allocated to the units and the security interests in those undivided interests held by all persons  
1363 holding security interests in the units; and

1364 (2) an encumbrance of common elements pursuant to this section has priority over all preexisting  
1365 encumbrances on the undivided interests in those common elements held by all persons holding security interests in the  
1366 units.

1367 (h) The consents by holders of first security interests on units described in subsection (g), or a certificate of the  
1368 secretary affirming that those consents have been received by the association, may be recorded at any time before the date  
1369 on which the agreement under subsection (c) becomes void. Consents or certificates so recorded are valid from the date  
1370 they are recorded for purposes of calculating the percentage of consenting first security interest holders, regardless of later  
1371 sales or encumbrances on those units. Even if the required percentage of first security interest holders so consent, a  
1372 conveyance or encumbrance of common elements does not affect interests having priority over the declaration, or created  
1373 by the association after the declaration was recorded.

1374 (i) In a cooperative, the association may acquire, hold, encumber, or convey a proprietary lease without  
1375 complying with this section.

1376 §81-3-113. INSURANCE.

1377 (a) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the  
1378 association shall maintain, to the extent reasonably available:

1379 (1) property insurance on the common elements and, in a planned community, also on property that must  
1380 become common elements, insuring against all risks of direct physical loss commonly insured against or, in the case of a  
1381 conversion building, against fire and extended coverage perils. The total amount of insurance after application of any  
1382 deductibles must be not less than 80 percent of the actual cash value of the insured property at the time the insurance is  
1383 purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from  
1384 property policies; and

1385 (2) liability insurance, including medical payments insurance, in an amount determined by the executive  
1386 board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for  
1387 death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the  
1388 common elements and, in cooperatives, also of all units.

1389 (b) In the case of a building that contains more than one unit having horizontal boundaries or vertical  
1390 boundaries that comprise common walls or other boundaries between units, the insurance maintained under subsection  
1391 (a)(1), to the extent reasonably available, must include the units, but need not include improvements and betterments  
1392 installed by unit owners.

1393 (c) If the insurance described in subsections (a) and (b) is not reasonably available, the association promptly  
1394 shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration  
1395 may require the association to carry any other insurance, and the association in any event may carry any other insurance it  
1396 considers appropriate to protect the association or the unit owners.

1397 (d) Insurance policies carried pursuant to subsections (a) and (b) must provide that:

1398 (1) each unit owner is an insured person under the policy with respect to liability arising out of such unit  
1399 owner's interest in the common elements or membership in the association;

1400 (2) the insurer waives its right to subrogation under the policy against any unit owner or member of the  
1401 unit owner's household;

1402 (3) no act or omission by any unit owner, unless acting within the scope of the unit owner's authority on  
1403 behalf of the association, will void the policy or be a condition to recovery under the policy; and

1404 (4) if, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering  
1405 the same risk covered by the policy, the association's policy provides primary insurance.

1406 (e) Any loss covered by the property policy under subsections (a)(1) and (b) must be adjusted with the  
1407 association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or  
1408 otherwise to the association, and not to any holder of a security interest. The insurance trustee or the association shall hold  
1409 any insurance proceeds in trust for the association, unit owners, and lien holders as their interests may appear. Subject to  
1410 the provisions of subsection (h), the proceeds must be disbursed first for the repair or restoration of the damaged property,  
1411 and the association, unit owners, and lien holders are not entitled to receive payment of any portion of the proceeds unless  
1412 there is a surplus of proceeds after the property has been completely repaired or restored, or the common interest  
1413 community is terminated.

1414 (f) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the  
1415 unit owner's own benefit.

1416 (g) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of  
1417 insurance to the association and, upon written request, to any unit owner or holder of a security interest. The insurer issuing  
1418 the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or non-renewal has  
1419 been mailed to the association, each unit owner and each holder of a security interest to whom a certificate or memorandum  
1420 of insurance has been issued at their respective last known addresses.

1421 (h) Any portion of the common interest community for which insurance is required under this section which is  
1422 damaged or destroyed must be repaired or replaced promptly by the association unless (i) the common interest community  
1423 is terminated, in which case Section 81-2-118 applies (ii) repair or replacement would be illegal under any state or local  
1424 statute or ordinance governing health or safety, or (iii) 80 percent of the unit owners, including every owner of a unit or  
1425 assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess  
1426 of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or  
1427 replaced, (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area  
1428 to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other  
1429 persons will be distributees, (A) the insurance proceeds attributable to units and limited common elements that are not  
1430 rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements  
1431 were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to  
1432 all the unit owners or lien holders, as their interests may appear, as follows: (1) in a condominium, in proportion to the  
1433 common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common

1434 expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are  
1435 automatically reallocated upon the vote as if the unit had been condemned under Section 81-1-107(a), and the association  
1436 promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

1437 (i) The provisions of this section may be varied or waived in the case of a common interest community all of  
1438 whose units are restricted to non-residential use.

1439 §81-3-114. SURPLUS FUNDS.

1440 Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or  
1441 provision for common expenses and any prepayment of reserves must be paid annually to the unit owners in proportion to  
1442 their common expense liabilities or credited to them to reduce their future common expense assessments.

1443 §81-3-115. ASSESSMENTS FOR COMMON EXPENSES.

1444 (a) Until the association is validly established pursuant to the Act and makes a common expense assessment,  
1445 the declarant shall pay all common expenses together, in the case of a condominium or cooperative, with all sums necessary  
1446 to fully fund the repair and replacement reserve until the association makes its first assessment. After an assessment has  
1447 been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by  
1448 the association. In the case of a condominium or cooperative, the budget shall include as a line item a payment into the  
1449 repair and replacement reserve sufficient to maintain said reserve at the level of funding required by the declaration, but in  
1450 no event shall the budget line item funding the repair and replacement reserve be less than 15% of the total budget.

1451 (b) Except for assessments under subsections (c), (d), and (e), all common expenses must be assessed against  
1452 all the units in accordance with the allocations set forth in the declaration pursuant to Section 81-2-107(a) and (b). Any past  
1453 due common expense assessment or installment thereof bears interest at the rate established by the association not  
1454 exceeding the lawful rate of interest.

1455 (c) To the extent required by the declaration:

1456 (1) any common expense associated with the maintenance, repair, or replacement of a limited common  
1457 element must be assessed against the units to which that limited common element is assigned, equally, or in any other  
1458 proportion the declaration provides;

1459 (2) any common expense or portion thereof included as part of the common expense budget, but benefiting  
1460 fewer than all of the units, including fees for services provided by the association to occupants of individual units, must be  
1461 assessed exclusively against the units benefited based on their use and consumption of services; and

1462 (3) the costs of insurance must be assessed in proportion to risk and the costs of utilities must be assessed  
1463 in proportion to usage.

1464 (d) Assessments to pay a judgment against the association may be made only against the units in the common  
1465 interest community at the time the judgment was entered, in proportion to their common expense liabilities.

1466 (e) If any common expense is caused by the misconduct of any unit owner or a unit owner's guests or invitees,  
1467 the association may assess that expense exclusively against the unit of that unit owner.

1468 (f) If common expense liabilities are reallocated, common expense assessments and any installment thereof not  
1469 yet due must be recalculated in accordance with the reallocated common expense liabilities.

1470 §81-3-116. LIEN FOR ASSESSMENTS.

1471 (a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed  
1472 against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged  
1473 pursuant to Section 81-3-102(a)(10), (11), and (12), and any other sums due the association under the declaration, this  
1474 Chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorney's fees  
1475 incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section.  
1476 If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first  
1477 installment thereof becomes due. Unless the declaration provides for a different rate of interest, interest on unpaid  
1478 assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law.

1479 (b) Except as otherwise provided in the declaration, a lien under this section is prior to all other liens and  
1480 encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a  
1481 cooperative, liens and encumbrances which the association creates, assumes, or takes subject to, (ii) a first or second  
1482 security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or,  
1483 in a cooperative, the first or second security interest encumbering only the unit owner's interest and perfected before the  
1484 date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other  
1485 governmental assessments or charges against the unit or cooperative. The lien is also prior to all security interests described  
1486 in clause (ii) above to the extent of the common expense assessments based on the periodic budget adopted by the  
1487 association pursuant to Section 81-3-115(a) which would have become due in the absence of acceleration during the six  
1488 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of

1489 mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. The lien under this  
1490 section is not subject to the provisions of homestead or other exemptions.

1491 (c) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at  
1492 any time on the same property, those liens have equal priority.

1493 (d) Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of  
1494 any claim of lien for assessment under this section is required.

1495 (e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3  
1496 years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this  
1497 section files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to  
1498 enforce the association's lien shall be tolled until 30 days after the automatic stay of proceedings under Section 362 of the  
1499 Bankruptcy Code is lifted.

1500 (f) This section does not prohibit actions against unit owners to recover sums for which subsection (a) creates a  
1501 lien or prohibit an association from taking a deed in lieu of foreclosure.

1502 (g) A judgment or decree in any action brought under this section must include costs and reasonable attorney's  
1503 fees for the prevailing party.

1504 (h) The association upon written request shall furnish to a unit owner a statement setting forth the amount of  
1505 unpaid assessments against the unit. If the unit owner's interest is real estate, the statement must be in recordable form.  
1506 The statement must be furnished within 10 business days after receipt of the request and is binding on the association, the  
1507 executive board, and every unit owner.

1508 (i) In a cooperative, upon nonpayment of an assessment on a unit, the unit owner may be evicted in the same  
1509 manner as provided by law in the case of an unlawful holdover by a commercial tenant, and the lien may be foreclosed as  
1510 provided by this section.

1511 (j) The association's lien may be foreclosed or executed upon as provided in this subsection and subsection  
1512 (m):

1513 (1) In a condominium or planned community, the association's lien must be foreclosed in like manner as a  
1514 mortgage on real estate by equitable foreclosure or executed upon by other lawful procedures provided for in the  
1515 declaration[23];



1516 (2) In a cooperative whose unit owners' interests in the units are real estate, the association's lien must be  
1517 foreclosed in like manner as a mortgage on real estate; or

1518 (3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien  
1519 must be foreclosed in like manner as a security interest under Article 9 of the Uniform Commercial Code.

1520 (4) In the case of foreclosure, the association shall give reasonable notice of its action to all lien holders of  
1521 the unit whose interest would be affected and to all other persons as would be required under applicable law for the  
1522 foreclosure of a mortgage on real estate.

1523 (k) In a cooperative, if the unit owner's interest in a unit is real estate:

1524 (1) The association, upon non-payment of assessments and compliance with this subsection, may sell that  
1525 unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method,  
1526 advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the  
1527 unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, or the intention  
1528 of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also  
1529 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  
1530 recorded interest was on record seven weeks before the date specified in the notice as the date of any public sale or seven  
1531 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by  
1532 this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until five weeks after the  
1533 sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other  
1534 person not related to the association, at a private sale.

1535 (2) Unless otherwise agreed, the unit owner is liable for any deficiency in a foreclosure sale.

1536 (3) The proceeds of a foreclosure sale must be applied in the following order:

1537 (i) the reasonable expenses of sale;

1538 (ii) the reasonable expenses of securing possession before sale; holding, maintaining, and preparing  
1539 the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance,  
1540 and, to the extent provided for by agreement between the association and the unit owner, reasonable attorney's fees and  
1541 other legal expenses incurred by the association;

1542 (iii) satisfaction of the association's lien;

1543 (iv) satisfaction in the order of priority of any subordinate claim of record; and

1544 (v) remittance of any excess to the unit owner.

1545 (4) A good faith purchaser for value acquires the unit free of the association's debt that gave rise to the lien  
1546 under which the foreclosure sale occurred and any subordinate interest, even though the association or other person  
1547 conducting the sale failed to comply with this section. The person conducting the sale shall execute a conveyance to the  
1548 purchaser sufficient to convey the unit and stating that it is executed by the person after a foreclosure of the association's  
1549 lien by power of sale and that the person was empowered to make the sale. Signature and title or authority of the person  
1550 signing the conveyance as grantor and a recital of the facts of non-payment of the assessment and of the giving of the  
1551 notices required by this subsection are sufficient proof of the facts recited and of the authority to sign. Further proof of  
1552 authority is not required even though the association is named as grantee in the conveyance.

1553 (5) At any time before the association has disposed of a unit in a cooperative or entered into a contract for  
1554 its disposition under the power of sale, the unit owners or the holder of any subordinate security interest may cure the unit  
1555 owner's default and prevent sale or other disposition by tendering the performance due under the security agreement,  
1556 including any amounts due because of exercise of a right to accelerate, plus the reasonable expenses of proceeding to  
1557 foreclosure incurred to the time of tender, including reasonable attorney's fees of the creditor.

1558 (l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the  
1559 court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or  
1560 during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association  
1561 during pendency of the action to the extent of the association's common expense assessments based on a periodic budget  
1562 adopted by the association pursuant to Section 81-3-115.

1563 (m) The following restrictions apply to any action by the association to foreclose its lien under this section:

1564 (1) no foreclosure action may be commenced unless (A) the unit owner, at the time the action is  
1565 commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last  
1566 adopted by the association pursuant to Section 8-3-115(a); and (B) the executive board expressly votes to commence a  
1567 foreclosure action against that specific unit.

1568 (2) The association shall apply any sums paid by unit owners who are delinquent in paying assessments as  
1569 follows: (i) first, to unpaid assessments; (ii) then to late charges; (iii) then to attorneys fees and other reasonable collection  
1570 charges and costs; and (iv) finally, to all other unpaid fees, charges, penalties, interest and late charges.

1571 (3) If the only sums due with respect to a unit consist of fines and related sums levied against that unit, a  
1572 foreclosure action may not be commenced against that unit unless the association has first secured a judgment against the  
1573 unit owner with respect to those fines and has perfected a judgment lien against the unit under State law.

1574 §81-3-117. OTHER LIENS.

1575 (a) In a condominium or planned community:

1576 (1) Except as provided in paragraph (2), a judgment for money against the association if recorded or  
1577 docketed, is not a lien on the common elements, but is a lien in favor of the judgment lien holder against (i) all of the real  
1578 property of the association and (ii) all of the units in the common interest community at the time the judgment was entered.  
1579 No other property of a unit owner is subject to the claims of creditors of the association.

1580 (2) If the association has granted a security interest in the common elements to a creditor of the association  
1581 pursuant to Section 81-3-112, the holder of that security interest shall exercise its right against the common elements before  
1582 its judgment lien on any unit may be enforced.

1583 (3) Whether perfected before or after the creation of the common interest community, if a lien, other than a  
1584 deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before  
1585 creation of the common interest community), becomes effective against two or more units, the unit owner of an affected  
1586 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  
1587 of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be  
1588 proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all  
1589 unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that  
1590 unit owner's unit for any portion of the common expenses incurred in connection with that lien.

1591 (4) A judgment against the association must be indexed in the name of the common interest community  
1592 and the association and, when so indexed, is notice of the lien against the units.

1593 (b) In a cooperative:

1594 (1) If the association receives notice of an impending foreclosure on all or any portion of the association's  
1595 real estate, the association shall promptly transmit a copy of that notice to each unit owner of a unit located within the real  
1596 estate to be foreclosed. Failure of the association to transmit the notice does not affect the validity of the foreclosure.

1597 (2) Whether or not a unit owner's unit is subject to the claims of the association's creditors, no other  
1598 property of a unit owner is subject to those claims.

1599 §81-3-118. ASSOCIATION RECORDS.

1600 (a) The association shall maintain the following records in written form or in another form capable of  
1601 conversion into written form within a reasonable time:

1602 (1) Detailed records of receipts and expenditures affecting the operation and administration of the  
1603 association and other appropriate accounting records, including those for the repair and replacement reserve. All financial  
1604 records shall be kept in accordance with generally accepted accounting practices.

1605 (2) Minutes of all meetings of its members and executive board, a record of all actions taken by the  
1606 members or executive board without a meeting, and a record of all actions taken by a committee of the executive board in  
1607 place of the board or directors on behalf of the association.

1608 (3) A record of its members in a form that permits preparation of a list of the names and addresses of all  
1609 members, in alphabetical order by class, showing the number of votes each member is entitled to cast and the members'  
1610 class of membership, if any; and

1611 (4) In addition, the association shall keep a copy of the following records at its principal office: (1) Its  
1612 original or restated certificate of incorporation and bylaws and all amendments to them currently in effect; (2) the minutes  
1613 of all members' meetings and records of all action taken by members without a meeting for the past three years; (3) any  
1614 financial statements and tax returns of the association prepared for the past three years, together with the report of the  
1615 auditors of the financial records; (4) a list of the names and business addresses of its current directors and officers; (5) its  
1616 most recent annual report delivered to the Secretary of the State; (6) in the case of a condominium or cooperative, the  
1617 association's most recent reserve study; and (7) financial and other records sufficiently detailed to enable the association to  
1618 comply with Section 81-4-109.

1619 (b) Subject to the provisions of subsection (c), all records kept by the association, including the association's  
1620 membership list and address, and aggregate salary information of employees of the association, shall be available for  
1621 examination and copying by a unit owner or the unit owner's authorized agent so long as the request is made in good faith  
1622 and for a proper purpose related to the owner's membership in the association. This right of examination may be exercised  
1623 (i) only during reasonable business hours or at a mutually convenient time and location, and (ii) upon 5 days' written notice  
1624 reasonably identifying the purpose for the request and the specific records of the association requested.

1625 (c) Records kept by an association may be withheld from inspection and copying to the extent that they  
1626 concern:

- 1627 (1) Personnel matters relating to specific persons or a person's medical records;  
1628 (2) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently  
1629 in or under negotiation;  
1630 (3) Pending or threatened litigation;  
1631 (4) Matters involving state or local administrative or other formal proceedings before a government  
1632 tribunal for enforcement of the declaration, bylaws or rules;  
1633 (5) Communications with legal counsel which are otherwise protected by the attorney-client privilege or  
1634 the attorney work product doctrine;  
1635 (6) Disclosure of information in violation of law;  
1636 (7) Meeting minutes or other confidential records of an executive session of the executive board; or  
1637 (8) Individual unit owner files other than those of the requesting owner.

1638 (d) An attorney's files and records relating to the association are not records of the association and are not  
1639 subject to inspection by owners or production in a legal proceeding for examination by owners.

1640 (e) The association may charge a fee for providing copies of any records under this section but that fee may not  
1641 exceed the actual cost of the materials and labor incurred by the association.

1642 (f) The right to copy records under this section includes the right to receive copies by xerographic or other  
1643 means, including copies through an electronic transmission if available and so requested by the unit owner.

1644 §81-3-119. ASSOCIATION AS TRUSTEE.

1645 With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of  
1646 trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to  
1647 inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without  
1648 actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the  
1649 association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to  
1650 assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

1651 § 81-3-120 RULES.

1652 (a) Before adopting or substantially amending any rule, the executive board must notify all unit owners of (i) its  
1653 intention to adopt the proposed rule and (ii) a date on which the executive board will convene a meeting to receive  
1654 comments on them from the unit owners.

1655 (b) If the right is reserved in the declaration pursuant to Section 81-3-102(a)(16), the association may adopt  
1656 rules to establish and enforce construction and design criteria and aesthetic standards. If it does so, the association must  
1657 also adopt procedures for enforcement of those standards and for approval of applications, including a reasonable time  
1658 within which the association must act after an application is submitted. The association's power under this section is  
1659 subject to any reserved special declarant right to control any construction or design review process during the period of  
1660 declarant control.

1661 (c) A rule regulating display of the flag of the United States must be consistent with federal law, but the rule  
1662 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  
1663 attached to the exterior wall of that unit owner's unit or the limited common elements appurtenant to that unit. Unless the  
1664 declaration otherwise provides, no rule may prohibit the display on a unit or on a limited common element adjoining a unit  
1665 of a flag of this state, or signs regarding candidates for public office or ballot questions, but the association may adopt rules  
1666 governing the time, place, size, number or manner of those displays. Unless the declaration provides otherwise during the  
1667 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,  
1668 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  
1669 elements appurtenant to that unit. Unless the declaration provides otherwise, the "For Sale" sign shall be entitled "For Sale"  
1670 and may contain such information as accurately describes the unit and any applicable names, addresses and phone numbers  
1671 of the person or persons who are offering the unit for sale.

1672 (d) Unless otherwise permitted by the declaration or this Chapter, an association may only adopt rules that  
1673 affect the use of or behavior in units that may be used for residential purposes to:

1674 (1) prevent any use of a unit which violates the declaration;

1675 (2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the  
1676 use and enjoyment of other units or the common elements by other unit owners; or

1677 (3) restrict the leasing of residential units to the extent those rules are reasonably designed to meet  
1678 underwriting requirements of institutional lenders who regularly lend money secured by first mortgages on units in  
1679 common interest communities or regularly purchase those mortgages.

1680 (e) All rules adopted by the association must be reasonable.

1681 (f) The executive board must maintain on a current basis for reference by unit owners' tenants a complete  
1682 statement of all rules.

1683 (g) The unit owner shall obtain from the executive board and deliver to or otherwise make available to each  
1684 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  
1685 begins, a current copy of the rules for the common interest community as furnished by the executive board and shall deliver  
1686 to or otherwise make available to the tenant a copy of any additions or revisions to the rules as such additions or revisions  
1687 are adopted and noticed to the unit owners by the executive board.

1688 (h) A tenant shall be bound to comply with the noticed rules, and the unit owner leasing to the tenant shall take  
1689 all lawful action against a tenant who materially violates the noticed rules.

1690 (i) By entering into a lease for a unit, the unit owner of that unit irrevocably appoints the executive board as  
1691 attorney-in-fact coupled with an interest to enforce the noticed rules against the tenant of that lease in the event that the unit  
1692 owner shall fail, within a reasonable time after written demand by the executive board, to take what the executive board  
1693 reasonably regards as adequate enforcement action against the tenant in material violation of noticed rules. In the event of  
1694 enforcement action (including any summary action for possession at law or a petition for injunctive relief in equity) under  
1695 this subsection, the tenant shall have no resort to any defense based upon lack of contractual privity with the executive  
1696 board.

1697 § 81-3-121. LITIGATION INVOLVING DECLARANT.

1698 (a) An association's authority under Section 81-3-102 (a)(3) to commence and pursue litigation involving the  
1699 common interest community is subject to the following rules:

1700 (1) Before the association commences litigation, arbitration or any administrative proceedings against a  
1701 declarant or any person employed by or under contract with a declarant involving any alleged construction defect with  
1702 respect to the common interest community, the association shall provide written notice of its claims to the declarant and  
1703 those persons whom the association seeks to hold responsible for the claimed defects (the "allegedly responsible persons").  
1704 The text of the notice may be in any form reasonably calculated to put the allegedly responsible persons on notice of the  
1705 general nature of the association's claims including, without limitation, a list of the claimed defects. The notice may be  
1706 delivered by any method of service and may be addressed to any person provided that the method of service and the person  
1707 who is actually served either:(i) provides actual notice to the allegedly responsible persons named in the claim; or (ii) the  
1708 method of service used would be sufficient under local law to confer personal jurisdiction over the person in connection  
1709 with commencement of a lawsuit by the association against that person.

1710 (2) The association may not commence litigation, arbitration or any administrative proceedings against a  
1711 responsible person for a period of 90 days after the association sends notice of its claim to that responsible person.

1712 (3) During the 90 day period, the declarant and any other responsible person may present to the association  
1713 a plan to repair or otherwise remedy the construction defects described in the notice. If the association does not receive a  
1714 timely remediation plan from each responsible person to whom it directed notice, the association shall be entitled to  
1715 commence any proceedings against that responsible person as the board determines to be appropriate.

1716 (4) If the association does receive one or more timely plans to repair or otherwise remedy the construction  
1717 defects described in the notice, then the Association board shall promptly consider those plans and then notify the  
1718 responsible persons of whether or not each such plan is acceptable as presented, acceptable with stated conditions, or not  
1719 accepted.

1720 (5) If the association accepts a repair plan from a responsible person, or if a responsible person agrees to  
1721 stated conditions to an otherwise acceptable plan, then the parties shall agree on a timeframe for implementation of that  
1722 plan, and the association shall not commence litigation, arbitration or any administrative proceedings against that allegedly  
1723 responsible person during the time that the plan is being diligently implemented.

1724 (6) If an allegedly responsible person submits notice submits a timely repair plan but the association and  
1725 the allegedly responsible party have not agreed in writing to the terms of the plan or its implementation, then the  
1726 association is entitled to commence litigation, arbitration or any administrative proceedings against that person.

1727 (7) Except as provided in Section 81-4-116(d) with respect to warranty claims, any statute of limitation  
1728 affecting the association's right of action against a declarant or other allegedly responsible person under this Chapter is  
1729 tolled during the 90 day period described in subsection (a)(2) above and during any extension of that time because the  
1730 allegedly responsible person has commenced and is diligently pursuing the remediation plan.

1731 (8) After the time described in subsection (a)(3) expires, whether or not the association agrees to any repair  
1732 plan, nothing in this section bars to the commencement of litigation by:

1733 (i) the association against an allegedly responsible person who fails to submit a timely repair plan or  
1734 whose plan is not acceptable or who fails to diligently pursue implementation of that plan; or

1735 (ii) a unit owner with respect to that owner's unit and any limited common elements assigned to that  
1736 unit, regardless of any actions of the association.



1737 (9) Nothing in this section precludes the association from making emergency repairs to correct any defect  
1738 that poses a significant and immediate health or safety risk.

1739 (10) Subject to the other provisions of this section and the declaration, the determination of whether and  
1740 when the association may commence any proceedings may be made by the executive board and nothing in this section  
1741 requires a vote by any number or percentage of unit owners a pre-condition to litigation.

1742 § 81-3-122 NOTICE.

1743 (a) Unless otherwise required or permitted by the declaration or bylaws, the following methods of giving notice  
1744 suffice when notice is required: (i) hand-delivered to each unit owner; (ii) sent prepaid by United States mail to the mailing  
1745 address of each unit, unless the owner has designated in writing a different mailing address in which case it shall be sent to  
1746 the designated address; or (iii) sent by electronic means in the manner described in subsection (b).

1747 (b) An association provides effective notice by electronic means if the unit owner gives the association prior  
1748 written authorization to provide that notice, together with an electronic address.

1749 (c) The ineffectiveness of a good faith effort to deliver notice by any authorized means does not invalidate  
1750 action taken at a meeting or in lieu of a meeting.

1751 § 81-3-123 REMOVAL OF MEMBERS OF EXECUTIVE BOARD.

1752 Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote  
1753 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  
1754 quorum is present, may remove any member of the executive board with or without cause, except that: (i) a member  
1755 appointed by the declarant may not be removed by a unit owner vote during the period of declarant control, and (ii) a  
1756 person appointed under Section 81-3-(103)(h) may only be removed by the person that appointed that member;

1757 (a) The unit owners may consider the question of whether to remove a member of the executive board either (1)  
1758 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  
1759 meeting, or (2) at a special meeting called for the purpose of removing a member of the executive board, whether or not a  
1760 quorum is present, so long as the voting at the special meeting is conducted in the manner described in sub-section (c).

1761 (b) At any meeting at which a vote to remove a member of the executive board is to be taken, the executive  
1762 board shall provide a reasonable opportunity to speak before the vote to all persons favoring and opposing removal of that  
1763 member, including without limitation the member being considered for removal.

1764 (c) If a special meeting is called for the purpose of removing a member of the executive board, then the  
1765 following rules apply, whether or not a quorum is present at that meeting in person or by proxy:

1766 (1) After all persons present at the meeting have been given a reasonable opportunity to speak, the meeting  
1767 shall be recessed for a period calculated in the manner described in sub-section 2 below.

1768 (2) Promptly following the recess, the association shall notify all unit owners of the recessed meeting and  
1769 inform the unit owners of their opportunity to cast votes either in favor or against removal during the 30 day period  
1770 following the day that the notice is sent.

1771 (3) The notice sent to unit owners shall specifically inform them of their right to cast votes either in a  
1772 secret written ballot, on a form provided to the unit owners or by electronic means according to instructions contained in  
1773 that notice.

1774 (d) Whether a vote under subsection (c) is taken before or after a recess, and whether or not taken by electronic  
1775 means, a member of the executive board may be removed only if the number of votes cast in favor of removal (i) exceeds  
1776 the number of votes cast in opposition to removal and (ii) is greater than one-third of the total votes of the association.

1777 § 81-3-124 ADOPTION OF BUDGET.

1778 (a) The executive board shall, at least annually, prepare a proposed budget for the common interest community  
1779 for consideration by the unit owners. The proposed budget shall include a line item for any required funding of a repair and  
1780 replacement reserve. Within 30 days after adoption of any proposed budget, the executive board shall provide to all unit  
1781 owners a summary of the budget, including any reserves and a statement of the basis on which any reserves are calculated  
1782 and funded. Simultaneously, the executive board shall set a date for a meeting of the unit owners to consider ratification of  
1783 the budget not less than 14 nor more than 60 days after providing the summary. Unless at that meeting a majority of all unit  
1784 owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is  
1785 present. If a proposed periodic budget is rejected, the periodic budget last ratified by the unit owners must be continued  
1786 until such time as the unit owners ratify a subsequent budget proposed by the executive board.

1787 (b) In addition to adoption of its regular periodic budget, the executive board may at any time propose a budget  
1788 which would require a special assessment against all the units. Except as provided in subsection (c), the special assessment  
1789 is effective only if the executive board follows the procedures for ratification of a budget described in subsection (a) and the  
1790 unit owners do not reject that proposed special assessment.

1791 (c) If the executive board determines by unanimous vote that the special assessment is necessary in order to  
1792 respond to an emergency, then: (i) the special assessment shall become effective immediately in accordance with the terms  
1793 of the vote; (ii) notice of the emergency assessment shall be promptly provided to all unit owners; and (iii) the executive  
1794 board shall spend the funds paid on account of the emergency assessment solely for the purposes described in the vote.  
1795 §81-3-125 SERVICE ON ASSOCIATIONS AND EXECUTIVE BOARD.

1796 A person may bring suit against the association or the executive board as a whole in any cause by service in  
1797 accordance with the otherwise applicable rules authorizing service on the form of legal entity of the association.

#### 1798 SUBCHAPTER 4

#### 1799 PROTECTION OF PURCHASERS

1800 §81-4-101. APPLICABILITY; WAIVER.

1801 (a) This Subchapter applies to all units subject to this Chapter, except as provided in subsection (b) or as  
1802 modified or waived by agreement of purchasers of units in a nonresidential common interest community or as to units that  
1803 are restricted to nonresidential use.

1804 (b) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- 1805 (1) a gratuitous disposition of a unit;
- 1806 (2) a disposition pursuant to court order;
- 1807 (3) a disposition by a government or governmental agency;
- 1808 (4) a disposition by foreclosure or deed in lieu of foreclosure;
- 1809 (5) a disposition to a dealer;
- 1810 (6) a disposition that may be canceled at any time and for any reason by the purchase without penalty;
- 1811 (7) a disposition by operation of law upon the death of the unit owner; or
- 1812 (8) a disposition of a unit restricted to nonresidential purposes.

1813 §81-4-102. LIABILITY FOR PUBLIC OFFERING STATEMENT REQUIREMENTS.

1814 (a) Except as provided in subsection (b), a declarant, before offering any interest in a unit to the public, shall  
1815 prepare a public offering statement conforming to the requirements of Sections 81-4-103, 81-4-104, 81-4-105, and 81-  
1816 4-106.

1817 (b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a  
1818 successor declarant or to a dealer who intends to offer units in the common interest community. In the event of any such

1819 transfer, the transferor shall provide the transferee with any information necessary to enable the transferee to fulfill the  
1820 requirements of subsection (a).

1821 (c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the  
1822 manner prescribed in Section 81-4-108(a). The person who prepared all or a part of the public offering statement is liable  
1823 under Sections 81-4-108 and 81-4-117 for any false or misleading statement set forth therein or for any omission of a  
1824 material fact therefrom with respect to that portion of the public offering statement which the person prepared. If a  
1825 declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for  
1826 any false or misleading statement set forth therein or for any omission of a material fact therefrom unless the declarant had  
1827 actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or  
1828 omission.

1829 (d) If a unit is part of a common interest community and is part of any other real estate regime in connection  
1830 with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public  
1831 offering statement conforming to the requirements of Sections 81-4-103, 81-4-104, 81-4-105, and 81-4-106 as those  
1832 requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of  
1833 this State, may be prepared and delivered in lieu of providing two or more public offering statements.

1834 §81-4-103. PUBLIC OFFERING STATEMENT; GENERAL PROVISIONS.

1835 (a) Except as provided in subsection (b), a public offering statement must contain or fully and accurately  
1836 disclose:

1837 (1) the name and principal address of the declarant and of the common interest community, and a statement  
1838 that the common interest community is either a condominium, cooperative, or planned community;

1839 (2) a general description of the common interest community, including to the extent possible, the types,  
1840 number, and declarant's schedule of commencement and completion of construction of buildings, and amenities that the  
1841 declarant anticipates including in the common interest community;

1842 (3) the number of units in the common interest community;

1843 (4) copies and a brief narrative description of the significant features of the declaration, other than any  
1844 plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest  
1845 community; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by

1846 purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation  
1847 by the association under Section 81-3-105;

1848 (5) any current balance sheet and a projected budget for the association, either within or as an exhibit to the  
1849 public offering statement, for one year after the date of the first conveyance to a purchaser, and thereafter the current budget  
1850 of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning  
1851 occupancy and inflation factors. The budget must include, without limitation:

1852 (i) a statement of the amount, or a statement that there is no amount, included in the budget as a  
1853 reserve for repairs and replacement;

1854 (ii) a statement of any other reserves;

1855 (iii) the projected common expense assessment by category of expenditures for the association; and

1856 (iv) the projected monthly common expense assessment for each type of unit;

1857 (6) any services not reflected in the budget that the declarant provides, or expenses that the declarant pays  
1858 and which the declarant expects may become at any subsequent time a common expense of the association and the  
1859 projected common expense assessment attributable to each of those services or expenses for the association and for each  
1860 type of unit;

1861 (7) any initial or special fee due from the seller or the purchaser at the time of sale, together with a  
1862 description of the purpose and method of calculating the fee;

1863 (8) a description of any liens, defects, or encumbrances on or affecting the title to the common interest  
1864 community and a statement as to which liens, defects or encumbrances will remain after transfer of the unit;

1865 (9) a description of any financing offered or arranged by the declarant;

1866 (10) the terms and significant limitations of any warranties provided by the declarant, including statutory  
1867 warranties and limitations on the enforcement thereof or on damages;

1868 (11) a statement that:

1869 (i) within 15 days after receipt of a public offering statement a purchaser, before conveyance, may  
1870 cancel any contract for purchase of a unit from a declarant,

1871 (ii) if a declarant fails to provide a public offering statement to a purchaser before conveying a unit,  
1872 that purchaser may recover from the declarant 10 percent of the sales price of the unit plus 10 percent of the share,

1873 proportionate to the purchaser's common expense liability, of any indebtedness of the association secured by security  
1874 interests encumbering the common interest community, and  
1875 (iii) if a purchaser receives the public offering statement more than 15 days before signing a contract,  
1876 the purchaser may not cancel the contract;  
1877 (12) a statement of any unsatisfied judgments or pending suits against the association, and the status of any  
1878 pending suits material to the common interest community of which a declarant has actual knowledge;  
1879 (13) a statement that any deposit made in connection with the purchase of a unit will be held in an escrow  
1880 account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to Section 81-  
1881 4-108, together with the name and address of the escrow agent;  
1882 (14) any restraints on alienation of any portion of the common interest community and any restrictions: (i)  
1883 on use, occupancy, and alienation of the units, and (ii) on the amount for which a unit may be sold or on the amount that  
1884 may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community,  
1885 or on termination of the common interest community;  
1886 (15) a description of the insurance coverage provided for the benefit of unit owners;  
1887 (16) any current or expected fees or charges to be paid by unit owners for the use of the common elements  
1888 and other facilities related to the common interest community;  
1889 (17) the extent to which financial arrangements have been provided for completion of all improvements that  
1890 the declarant is obligated to build pursuant to Section 81-4-119; and  
1891 (19) in a cooperative, a statement whether the unit owners will be entitled, for federal, state, and local  
1892 income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest  
1893 paid the holder of a security interest encumbering the cooperative, and a statement as to the effect on every unit owner if the  
1894 association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.  
1895 (b) If a common interest community composed of not more than 12 units is not subject to any development  
1896 rights and no power is reserved to a declarant to make the common interest community part of a larger common interest  
1897 community, group of common interest communities, or other real estate, a public offering statement may but need not  
1898 include the information otherwise required by paragraphs (9), (10), (15), (16) and (17) of subsection (a) and the narrative  
1899 descriptions of documents required by subsection (a)(4).

1900 (c) A declarant promptly shall amend the public offering statement to report any material change in the  
1901 information required by this section.

1902 §81-4-104. COMMON INTEREST COMMUNITIES SUBJECT TO DEVELOPMENT RIGHTS.

1903 If the declaration provides that a common interest community is subject to any development rights, the public  
1904 offering statement must disclose, in addition to the information required by Section 81-4-103:

1905 (a) the maximum number of units, and the maximum number of units per acre, that may be created;

1906 (b) a statement of how many or what percentage of the units that may be created will be restricted exclusively  
1907 to residential use, or a statement that no representations are made regarding use restrictions;

1908 (c) if any of the units that may be built within real estate subject to development rights are not to be restricted  
1909 exclusively to residential use, a statement, with respect to each portion of that real estate, of the maximum percentage of the  
1910 real estate areas, and the maximum percentage of the floor areas of all units that may be created therein, that are not  
1911 restricted exclusively to residential use;

1912 (d) a brief narrative description of any development rights reserved by a declarant and of any conditions  
1913 relating to or limitations upon the exercise of development rights;

1914 (e) a statement of the maximum extent to which each unit's allocated interests may be changed by the exercise  
1915 of any development right described in subsection (c);

1916 (f) a statement of the extent to which any buildings or other improvements that may be erected pursuant to any  
1917 development right in any part of the common interest community will be compatible with existing buildings and  
1918 improvements in the common interest community in terms of architectural style, quality of construction, and size, or a  
1919 statement that no assurances are made in those regards;

1920 (g) general descriptions of all other improvements that may be made and limited common elements that may be  
1921 created within any part of the common interest community pursuant to any development right reserved by the declarant, or  
1922 a statement that no assurances are made in that regard;

1923 (h) a statement of any limitations as to the locations of any building or other improvement that may be made  
1924 within any part of the common interest community pursuant to any development right reserved by the declarant, or a  
1925 statement that no assurances are made in that regard;

1926 (i) a statement that any limited common elements created pursuant to any development right reserved by the  
1927 declarant will be of the same general types and sizes as the limited common elements within other parts of the common  
1928 interest community, or a statement of the types and sizes planned, or a statement that no assurances are made in that regard;

1929 (j) a statement that the proportion of limited common elements to units created pursuant to any development  
1930 right reserved by the declarant will be approximately equal to the proportion existing within other parts of the common  
1931 interest community, or a statement of any other assurances in that regard, or a statement that no assurances are made in that  
1932 regard;

1933 (k) a statement that all restrictions in the declaration affecting use, occupancy, and alienation of units will apply  
1934 to any units created pursuant to any development right reserved by the declarant, or a statement of any differentiations that  
1935 may be made as to those units, or a statement that no assurances are made in that regard; and

1936 (l) a statement of the extent to which any assurances made pursuant to this section apply or do not apply in the  
1937 event that any development right is not exercised by the declarant.

1938 §81-4-105. TIME SHARES.

1939 If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public  
1940 offering statement shall disclose, in addition to the information required by Section 81-4-103:

1941 (a) the number and identity of units in which time shares may be created;

1942 (b) the total number of time shares that may be created;

1943 (c) the minimum duration of any time shares that may be created; and

1944 (d) the extent to which the creation of time shares will or may affect the enforceability of the association's lien  
1945 for assessments provided in Section 81-3-116.

1946 §81-4-106. COMMON INTEREST COMMUNITIES CONTAINING CONVERSION BUILDINGS.

1947 (a) The public offering statement of a common interest community containing any conversion building must  
1948 contain, in addition to the information required by Section 81-4-103:

1949 (1) a statement by the declarant, based on a report prepared by an independent registered architect or  
1950 engineer, describing the present condition of all structural components and mechanical and electrical installations material  
1951 to the use and enjoyment of the building;

1952 (2) a statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a  
1953 statement that no representations are made in that regard; and



1954 (3) a list of any outstanding notices of uncured violations of building code or other municipal regulations,  
1955 together with the estimated cost of curing those violations.

1956 (b) This section applies only to buildings containing units that may be occupied for residential use.

1957 §81-4-107. COMMON INTEREST COMMUNITY SECURITIES.

1958 If an interest in a common interest community is currently registered with the Securities and Exchange  
1959 Commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering  
1960 statement of this Chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the  
1961 Securities and Exchange Commission. An interest in a common interest community is not a security under Delaware law.

1962 §81-4-108. PURCHASER'S RIGHT TO CANCEL.

1963 (a) A person required to deliver a public offering statement pursuant to Section 81-4-102(c) shall provide a  
1964 purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not  
1965 later than the date of any contract of sale. Unless a purchaser is given the public offering statement more than 15 days  
1966 before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within  
1967 15 days after first receiving the public offering statement.

1968 (b) If a purchaser elects to cancel a contract pursuant to subsection (a), the purchaser may do so by hand  
1969 delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to the  
1970 offeror's agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before  
1971 cancellation must be refunded promptly.

1972 (c) If a person required to deliver a public offering statement pursuant to Section 81-4-102(c) fails to provide a  
1973 purchaser to whom a unit is conveyed with that public offering statement and all amendments thereto as required by  
1974 subsection (a), the purchaser, in addition to any rights to damages or other relief, is entitled to receive from that person an  
1975 amount equal to 10 percent of the sale price of the unit, plus 10 percent of the share, proportionate to the purchaser's  
1976 common expense liability, of any indebtedness of the association secured by security interests encumbering the common  
1977 interest community.

1978 §81-4-109. RESALES OF UNITS.

1979 (a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt  
1980 under Section 81-4-101(b), a unit owner shall furnish to a purchaser not later than the time of the signing of the contract to

1981 purchase, a copy of the declaration (other than any plats and plans), all amendments to the declaration, the bylaws, and the  
1982 rules of the association (including all amendments to the rules), and a certificate containing or attaching:  
1983 (1) a statement disclosing the effect on the proposed disposition of any right of first refusal or other  
1984 restraint on the free alienability of the unit held by the association;  
1985 (2) a statement setting forth the amount of the periodic common expense assessment and any unpaid  
1986 common expense or special assessment currently due and payable from the selling unit owner;  
1987 (3) a statement of any other fees payable by the owner of the unit being sold;  
1988 (4) in a condominium or cooperative, a statement of the current number of unit owners delinquent in the  
1989 payment of common expense assessments and the aggregate amount of such delinquency;  
1990 (5) in a condominium or cooperative, a statement of the current balance in the repair and replacement  
1991 reserve;  
1992 (6) a statement of any capital expenditures approved by the association for the current and succeeding  
1993 fiscal years, including a statement of the amount of such capital expenditures to be taken from the repair and replacement  
1994 reserve;  
1995 (7) in a condominium or cooperative, a copy of the most recent reserve study;  
1996 (8) the most recent regularly prepared balance sheet and income and expense statement, if any, of the  
1997 association;  
1998 (9) the most recent report of auditors (if required by Section 81-3-106(a)(6)) on the association balance  
1999 sheet and income and expense statement or any accountant's report on any unaudited association balance sheet and income  
2000 and expense statement;  
2001 (10) the current operating budget of the association;  
2002 (11) a statement of any unsatisfied judgments against the association and the status of any pending suits in  
2003 which the association is a defendant;  
2004 (12) a statement describing any insurance coverage provided for the benefit of unit owners;  
2005 (13) in a condominium or cooperative, a statement as to whether the executive board has given or received  
2006 written notice that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common  
2007 elements assigned thereto violate any provision of the declaration;

2008 (14) in a condominium or cooperative, a statement as to whether the executive board has received written  
2009 notice from a governmental agency of any violation of environmental, health, or building codes with respect to the unit, the  
2010 limited common elements assigned thereto, or any other portion of the common interest community which has not been  
2011 cured;

2012 (15) in a condominium or cooperative, a statement of the remaining term of any leasehold estate affecting  
2013 the common interest community and the provisions governing any extension or renewal thereof;

2014 (16) in a cooperative, an accountant's statement, if any was prepared, as to the deductibility for federal  
2015 income tax purposes by the unit owner of real estate taxes and interest paid by the association;

2016 (17) a statement describing any pending sale or encumbrance of common elements;

2017 (18) in a condominium or cooperative, a statement of the number of units that are not owner-occupied; and

2018 (19) copies of the minutes for the executive board meeting for the preceding six months.

2019 (b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the  
2020 information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to  
2021 subsection (a) is not liable to the purchaser for any erroneous information provided by the association and included in the  
2022 certificate and is not liable to the purchaser under this Section if the owner had, after reasonable investigation, reasonable  
2023 grounds to believe, and did believe, at the time the information was provided to the purchaser, that the statements were true  
2024 and there was no omission to state a material fact necessary to make the statements made not misleading, in light of the  
2025 circumstances under which the statements were made.

2026 (c) A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate  
2027 in a timely manner, but a purchaser of a unit in a condominium or cooperative shall have a period of 10 days from receipt of  
2028 the declaration, bylaws, rules and the certificate described in this Section to cancel the contract to purchase without penalty  
2029 and receive the full refund of all deposit payments made on account of the contract to purchase.

2030 (d) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate  
2031 prepared by the association.

2032 §81-4-110. ESCROW OF DEPOSITS.

2033 Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a  
2034 public offering statement pursuant to Section 81-4-102(c) must be placed in escrow and held either in this State or in an  
2035 account designated solely for that purpose by an attorney or a licensed real estate broker or an institution whose accounts

2036 are insured by a governmental agency or instrumentality until (i) delivered to the declarant at closing; (ii) delivered to the  
2037 declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. An  
2038 escrow agent acting in good faith and in accordance with the terms of the escrow shall have no liability for the disposition  
2039 of the fund.

2040 §81-4-111. RELEASE OF LIENS.

2041 (a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to Section  
2042 81-4-102(c), a seller

2043 (1) before conveying a unit, shall record or furnish to the purchaser releases of all liens, except liens on  
2044 real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not  
2045 expressly agree to take subject to or assume and that encumber:

2046 (i) in a condominium, that unit and its common element interest, and

2047 (ii) in a cooperative or planned community, that unit and any limited common elements assigned  
2048 thereto, or

2049 (2) shall provide a surety bond or substitute collateral for or insurance against the lien as provided for liens  
2050 on real estate.

2051 (b) Before conveying real estate to the association, the declarant shall have that real estate released from: (1) all  
2052 liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units, and  
2053 (2) all other liens on that real estate unless the public offering statement describes certain real estate that may be conveyed  
2054 subject to liens in specified amounts.

2055 §81-4-112. CONVERSION BUILDINGS.

2056 (a) A declarant of a common interest community containing conversion buildings, and any dealer who intends  
2057 to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant  
2058 in possession of a portion of a conversion building notice of the conversion and provide those persons with the public  
2059 offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The  
2060 notice must set forth generally the rights of tenants and subtenants under this section and must be hand delivered to the unit  
2061 or mailed by prepaid United States mail to the tenant and subtenant at the address of the unit or any other mailing address  
2062 provided by a tenant. No tenant or subtenant may be required to vacate upon less than 120 days' notice, except by reason of  
2063 nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the

2064 tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for  
2065 possession. A conversion does not relieve either the landlord or tenant of their obligations pursuant to the Delaware  
2066 Residential Landlord-Tenant Code, if applicable.

2067 (b) For 60 days after delivery or mailing of the notice described in subsection (a), the person required to give  
2068 the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If  
2069 a tenant fails to purchase the unit during that 60 day period, the offeror may not offer to dispose of an interest in that unit  
2070 during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the  
2071 tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to non-  
2072 residential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit  
2073 before conversion.

2074 (c) If a seller, in violation of subsection (b), conveys a unit to a purchaser for value who has no knowledge of  
2075 the violation, the recordation of the deed conveying the unit or, in a cooperative, the conveyance of the unit, extinguishes  
2076 any right a tenant may have under subsection (b) to purchase that unit if the deed states that the seller has complied with  
2077 subsection (b), but the conveyance does not affect the right of a tenant to recover damages from the seller for a violation of  
2078 subsection (b).

2079 (d) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise  
2080 complies with the provisions of Delaware Law, the notice also constitutes a notice to vacate specified by that statute.

2081 (e) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

2082 (f) Conversion of a residential conversion building must also comply with all other laws applicable to a  
2083 conversion.

2084 §81-4-113. EXPRESS WARRANTIES OF QUALITY.

2085 (a) Express warranties made by a declarant to a purchaser of a unit, if relied upon by the purchaser, are created  
2086 as follows:

2087 (1) any affirmation of fact or promise in writing which relates to the unit, its use, or rights appurtenant  
2088 thereto, area improvements to the common interest community that would directly benefit the unit, or the right to use or  
2089 have the benefit of facilities not located in the common interest community, creates an express warranty that the unit and  
2090 related rights and uses will substantially conform to the affirmation or promise in all material respects;

2091 (2) any model or description of the physical characteristics of the common interest community, including  
2092 plans and specifications of or for improvements, creates an express warranty that the common interest community will  
2093 substantially conform to the model or description in all material respects unless the model or description discloses that it is  
2094 only proposed or is subject to change;

2095 (3) any description of the quantity or extent of the real estate comprising the common interest community,  
2096 including plats or surveys, creates an express warranty that the common interest community will substantially conform to  
2097 the description in all material respects, subject to customary tolerances; and

2098 (4) a provision that a purchaser may put a unit only to a specified use is an express warranty that the  
2099 specified use is lawful in all material respects.

2100 (b) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty, are  
2101 necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of  
2102 the real estate or its value does not create a warranty.

2103 (c) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by the declarant.

2104 (d) The warranties set out in this section are intended to supplement, not supercede or replace, any other  
2105 statutory construction warranty requirements. To the extent that there is a conflict between such other statutory  
2106 construction warranty requirements and this section, the provision most favorable to the purchaser shall prevail

2107 §81-4-114. IMPLIED WARRANTIES OF QUALITY.

2108 (a) A declarant and any dealer warrants that a unit, other than a unit not yet constructed or under construction at  
2109 the time of contracting, will be in at least as good condition at the earlier of the time of the conveyance or delivery of  
2110 possession as it was at the time of contracting, reasonable wear and tear excepted.

2111 (b) A declarant and any dealer impliedly warrants that a unit and the common elements in the common interest  
2112 community are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by  
2113 the declarant or dealer, or made by any person before the creation of the common interest community, will be:

2114 (1) free from defective materials; and

2115 (2) constructed in accordance with applicable law, according to sound engineering and construction  
2116 standards, and in a workmanlike manner.

2117 (c) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an  
2118 existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time  
2119 of conveyance or delivery of possession.

2120 (d) Warranties imposed by this section may be excluded or modified as specified in Section 81-4-115.

2121 (e) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or  
2122 contracted for by the declarant.

2123 (f) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

2124 (g) The warranties set out in this section are intended to supplement, not supercede or replace, any other  
2125 statutory construction warranty requirements. To the extent that there is a conflict between such other statutory  
2126 construction warranty requirements and this section, the provision most favorable to the purchaser shall prevail.

2127 §81-4-115. EXCLUSION OR MODIFICATION OF IMPLIED WARRANTIES OF QUALITY.

2128 (a) Except as limited by subsection (b) with respect to a purchaser of a unit that may be used for residential use,  
2129 implied warranties of quality:

2130 (1) may be excluded or modified by agreement of the parties; and

2131 (2) are excluded by expression of disclaimer, such as "as is," "with all faults," or other language that in  
2132 common understanding calls the purchaser's attention to the exclusion of warranties.

2133 (b) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of  
2134 implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by  
2135 the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into  
2136 and became a part of the basis of the bargain.

2137 (c) The warranty provided in Section 81-4-114(b) on a unit for residential use commences with the earlier of  
2138 the time of the conveyance or the delivery of possession and extends for a period of 1 year.

2139 §81-4-116. STATUTE OF LIMITATIONS FOR WARRANTIES.

2140 (a) Unless a period of limitation is tolled under Section 81-3-111 or affected by subsection (d), a judicial  
2141 proceeding for breach of any obligation arising under Section 81-4-113 or 81-4-114 must be commenced within the  
2142 applicable periods of any applicable statute of limitations or statute of repose but in all events within six years after the  
2143 cause of action accrues.

2144 (b) Subject to subsection (c), a cause of action for breach of warranty of quality, regardless of the purchaser's  
2145 lack of knowledge of the breach, accrues:

2146 (1) as to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a  
2147 possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest  
2148 was conveyed; and

2149 (2) as to each common element, at the time the common element is completed or, if later, as to (i) a  
2150 common element that is added to the common interest community by exercise of development rights, at the time the first  
2151 unit which was added to the condominium by the same exercise of development rights is conveyed to a bona fide purchaser,  
2152 or (ii) a common element within any other portion of the common interest community, at the time the first unit is conveyed  
2153 to a bona fide purchaser.

2154 (c) If a warranty of quality explicitly extends to future performance or duration of any improvement or  
2155 component of the common interest community, the cause of action accrues at the time the breach is discovered or at the end  
2156 of the period for which the warranty explicitly extends, whichever is earlier.

2157 (d) During the period of declarant control, the association may authorize an independent committee of the  
2158 executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to  
2159 compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other  
2160 persons appointed by those independent members may serve on the committee, and the committee's decision must be free  
2161 of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs  
2162 reasonably incurred by the committee, including attorney's fees, are common expenses, and must be added to the budget  
2163 annually adopted by the association under Section 81-3-115. If the committee is so created, the period of limitation for  
2164 claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period  
2165 of declarant control terminates.

2166 §81-4-117. EFFECT OF VIOLATIONS ON RIGHTS OF ACTION; ATTORNEY'S FEES.

2167 (a) If a declarant or any other person subject to this Chapter fails to comply with any of its provisions or any  
2168 provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a  
2169 claim for appropriate relief. The court, in an appropriate case, may award court costs and reasonable attorney's fees.

2170 (b) Parties to a dispute arising under this Chapter, the declaration, or the bylaws may agree to resolve the  
2171 dispute by any form of binding or nonbinding alternative dispute resolution, but:



2172 (1) a declarant may agree with the association to do so only after the period of declarant control has  
2173 expired unless the agreement is made with an independent committee of the executive board elected pursuant to Section 81-  
2174 4-116(d); and

2175 (2) an agreement to submit to any form of binding alternative dispute resolution must be in a writing  
2176 signed by the parties.

2177 §81-4-118. LABELING OF PROMOTIONAL MATERIAL.

2178 No promotional material may be displayed or delivered to prospective purchasers which describes or portrays an  
2179 improvement that is not in existence unless the description or portrayal of the improvement in the promotional material is  
2180 conspicuously labeled or identified either as "MUST BE BUILT" or as "NEED NOT BE BUILT".

2181 §81-4-119. DECLARANT'S OBLIGATION TO COMPLETE AND RESTORE.

2182 (a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements  
2183 depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to Section 81-  
2184 2-109, whether or not that site plan or other graphic representation is contained in the public offering statement or in any  
2185 promotional material distributed by or for the declarant.

2186 (b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the  
2187 remainder of the common interest community, of any portion of the common interest community affected by the exercise of  
2188 rights reserved pursuant to or created by Sections 81-2-110, 81-2-111, 2-112, 81-2-113, 81-2-115, or 81-2-116.

2189 §81-4-120. SUBSTANTIAL COMPLETION OF UNITS.

2190 In the case of a sale of a unit for which delivery of a public offering statement is required, a contract of sale may  
2191 be executed, but no interest in that unit may be conveyed, until the declaration is recorded and the unit is substantially  
2192 completed, as evidenced by a recorded certificate of substantial completion executed by an independent registered architect  
2193 or engineer, or by issuance of a certificate of occupancy authorized by law.

2194 §81-4-121. AMENDMENT TO PUBLIC OFFERING STATEMENT.

2195 Following execution of a contract of sale by a purchaser, the declarant may not amend any required public offering  
2196 statement without the approval of such purchaser if the amendment would materially affect the rights of such purchaser.  
2197 Approval by such purchaser is not required if the amendment is required by any governmental authority or public utility, or

2198 if the amendment is made as a result of actions beyond the control of the declarant or in the ordinary course of affairs of the  
2199 executive board.

#### SYNOPSIS

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

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

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

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

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

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

Author: Senator Amick

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