



SPONSOR: Rep. M. Marshall

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 45

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE RELATING TO THE DELAWARE UNIFORM
COMMON INTEREST OWNERSHIP ACT.

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

1 Section 1. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in
2 existing § 81-102 and substituting in place thereof the following:

3 “Applicability of this chapter is governed by this subchapter I.”.

4 Section 2. Amend Chapter 81, Title 25 of the Delaware Code at § 81-103(9) by striking the word “common”
5 existing therein and substituting the word “current” in place thereof.

6 Section 3. Amend Chapter 81, Title 25 of the Delaware Code by inserting the following new definitions into § 81-
7 103 at the subsection numbers noted below such that the section remains alphabetized accordingly, and re-numbering the
8 existing numbers in such section to allow insertion of such new defined terms noted as follows:

9 “(3) “Approved common interest community” means a proposed common interest community that
10 has received all legally required zoning and/or subdivision approvals from the applicable governmental authorities
11 to permit the construction of such common interest community for which the declarant has (i)entered into one or
12 more written contracts with bona-fide third-party purchasers for the construction of one or more units in
13 contemplation of the submission of the unit and the proposed common interest community to the provisions of the
14 Unit Property Act (Chapter 22 of this Title) and prior to the effective date has provided such third-party purchasers
15 with draft copies of the declaration, code of regulations and other documents pertaining to such common interest
16 community in contemplation of submission to the Unit Property Act, and (ii)not yet recorded the declaration plan,
17 declaration, code of regulations and other related documents pertaining to such proposed common interest
18 community in accordance with the Unit Property Act prior to the effective date.

19 (7) “Certificate of notice of approved common interest community” means a recorded document by
20 a declarant whereby the declarant certifies and affirms under oath that an approved common interest community
21 shall be developed and units shall be sold under the provisions of the Unit Property Act as a preexisting common

22 interest community, subject to the provisions of Section 81-119 regarding applicability to pre-existing common
23 interest communities.

24 (18) "Declaration plan" means a survey of a condominium or cooperative which contains the verified
25 statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and
26 accurately shows (i) the location of the condominium or cooperative and the location and layout of the common
27 elements and units, and (ii) sets forth the name by which the condominium or cooperative will be known and the
28 unit designation for each unit therein. In addition, the declaration plan may show such other details or information
29 as the declarant may elect or as may be required under § 81-106.

30 (20) "Effective date" means July 1, 2009.

31 (22) "Fully funded," or any variation thereof with respect to a repair and replacement reserve, means
32 a repair and replacement reserve which contains that balance of funds which (i) when supplemented by a fixed,
33 budgeted annual addition that increases only as required to reflect the annual rate of inflation (utilizing the Index
34 provided under § 81-115 of this Title), will meet fully, without supplementation by borrowed funds or special
35 assessments, the cost of each projected repair and replacement noted in the reserve study no later than the date
36 when each such repair or replacement is projected to be required by the reserve study, and (ii), with all budgeted
37 contributions and expenditures for repairs and replacements projected out no less than 20 years, will never fall
38 below a positive balance."

39 Section 4. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in
40 current § 81-106(c) and substituting in place thereof the following:

41 "(c) Except as provided in subsections (a) and (b) of this section, the provisions of this chapter do not
42 invalidate any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or
43 regulation governing the use of real estate. Without limiting the generality of the foregoing, any preexisting
44 common interest community or approved common interest community located in any political subdivision of this
45 State shall continue to be governed by the building code, zoning, subdivision, or other real estate use law,
46 ordinance, rule, or regulation, including appendices of such political subdivision, which are applicable to a
47 preexisting common interest community or approved common interest community, notwithstanding any contrary
48 provision of this Chapter."

49 Section 5. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in
50 current § 81-115(a) and substituting in place thereof the following:

51 “(a) From time to time the dollar amount specified in § 81-118 of this title must change, as provided in
52 subsections (b) and (c) of this section, according to and to the extent of changes in the Consumer Price Index for
53 Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1982-84 Labor, (the “Index”). The
54 Index for December 2008, which was 204.813 is the Reference Base Index.”.

55 Section 6. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in
56 current § 81-115(b)(1) and substituting in place thereof the following:

57 “(1) The portion of the percentage change in the Index in excess of a multiple of 10 percent must be
58 disregarded and the dollar amount shall change only in multiples of 10 percent of the amount appearing in this
59 chapter on the effective date;”.

60 Section 7. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in
61 current § 81-115(b)(3) and substituting in place thereof the following:

62 “(3) In no event may the dollar amount be reduced below the amount appearing in this chapter on the
63 effective date.”.

64 Section 8. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-116 and substituting in
65 place thereof the following:

66 “§ 81-116. Applicability to new common interest communities. Effective Date.

67 (a) Except as provided in this subchapter, this chapter applies to all common interest communities
68 created within this State after the effective date. The provisions of the Unit Property Act [Chapter 22 of this title]
69 do not apply to common interest communities created after the effective date. Amendments to this chapter apply
70 to all common interest communities created after the effective date, or subjected to this chapter, regardless of when
71 the amendment is adopted.

72 (b) The effective date of this chapter shall be July 1, 2009. All references in this Chapter 81 to the date
73 of October 31, 2008 are deleted and replaced with the aforementioned effective date, except as provided in this
74 amendment.

75 (c) Actions taken in reliance upon DUCIOA as effective on October 31, 2008 shall not be invalidated by
76 the amendment of the effective date to July 1, 2009.

77 (d) Anything to the contrary in this chapter notwithstanding, compliance with DUCIOA was not intended
78 to be required, and shall not be required, until July 1, 2009, subject to the provisions of subsection (c) above.”.

79 Section 9. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-119 and substituting in
80 place thereof the following:

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

83 Except as provided in § 81-120 (Exception for small preexisting cooperatives and planned communities)
84 § 81-124 and 81-125 of this title and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107,
85 81-203, 81-204, 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303,
86 81-307(a), 81-309(a), 81-311, 81-315, 81-316, 81-318, 81-321, 81-322, 81-323, 81-324, 81-409, and 81-417 of
87 this title, and § 81-103 of this title to the extent any definitions are necessary in construing any of the foregoing
88 sections to the extent the definitions do not conflict with the declaration, apply to all common interest communities
89 and approved common interest communities created in this State before the effective date; but those sections apply
90 only with respect to events and circumstances occurring after the effective date, and do not invalidate existing
91 provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans of those preexisting
92 common interest communities and approved common interest communities. With respect to condominiums and
93 cooperatives, such existing provisions of those declarations, bylaws, codes of regulations, declaration plans, plats
94 or plans, and subsequent amendments thereto adopted subsequent to the effective date of this chapter in strict
95 accordance with those existing provisions, and not in conflict with the Unit Property Act, shall be controlling in
96 the event of any express conflict between those existing provisions (as duly amended) and the provisions of this
97 chapter. In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of
98 regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or
99 approved common interest communities nor the Unit Property Act expressly addresses the matter or issue, the
100 provisions of this chapter shall control. As to any such preexisting common interest community or approved
101 common interest community prior to the effective date: (i) this chapter shall not operate to unduly burden an
102 existing association with the requirements of this chapter except to the extent that this chapter is adopted by the
103 common interest community; (ii) this chapter shall not operate to terminate or allow the termination of existing
104 contractual obligations created prior to the effective date, including, but not limited to contracts for units for
105 preexisting common interest communities or approved common interest community projects; (iii) this chapter shall
106 not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common
107 interest community; (iv) the Unit Property Act [Chapter 22 of this title], and not this chapter shall govern all
108 obligations of a declarant created under the Unit Property Act [Chapter 22 of this title]; (v) unless the declarant or
109 other person with the right to do so elects to conform the requirements of this chapter in exercising any
110 development right or special declarant rights, this chapter is not applicable to the procedures for the exercise of

111 any such development rights or special declarant rights; (vi) this chapter does not require that the preexisting
112 declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents,
113 including, but not limited to certificates or articles of incorporation, formation or otherwise of any preexisting
114 common interest community or approved common interest community be amended to, or otherwise to comply
115 with, the requirements of this chapter; and (vii) except for §§ 81-409 and 81-417 of this title, subchapter IV of this
116 chapter is not applicable to any such preexisting common interest community or approved common interest
117 community.”.

118 Section 10. Amend Chapter 81, Title 25 of the Delaware Code by adding the following new section:

119 “§ 81-125. Additional exceptions for preexisting common interest communities or approved Common
120 Interest Communities.

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

123 Section 11. Amend Chapter 81, Title 25 of the Delaware Code by adding the following new section:

124 “§ 81-126. Transition period for existing contracts prior to effective date.

125 Anything to the contrary in this chapter notwithstanding, any declarant, dealer, or unit owner may, but
126 shall not be obligated to, comply with the provisions of subchapter IV regarding public offering statements and
127 resale certificates with respect to any contract of sale executed prior to the effective date.”.

128 Section 12. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing language contained in the
129 introductory paragraph of current § 81-206(a) and substituting in place thereof the following:

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

133 Section 13. Amend Chapter 81, Title 25 of the Delaware Code by adding a new subsection (9) to current § 81-
134 401(b) as follows:

135 “(9) A disposition of a unit to a purchaser for which a declarant, dealer or existing unit owner has entered
136 into a written contract with such purchaser for the purchase and sale of such unit at any time prior to the effective
137 date.”.

138 Section 14. Amend Chapter 81, Title 25 of the Delaware Code by striking the existing § 81-402(b) and
139 substituting in place thereof the following:

140 “(b) A declarant may transfer responsibility for preparation of all or a part of the public offering statement
141 to a successor declarant or to a dealer who intends to offer units in the common interest community. In the event of
142 any such transfer, the transferor shall provide the transferee with any information necessary to enable the
143 transferee to fulfill the requirements of subsection (a) of this section. In addition and anything to the contrary in
144 this chapter notwithstanding, a declarant shall not be required to prepare or provide a public offering statement
145 under this subchapter IV with respect to any contract for a unit executed by the declarant with a purchaser of such
146 unit prior to the effective date.”.

147 Section 15. Amend Chapter 81, Title 25 of the Delaware Code by adding a new subsection (d) to current
148 § 81-408 as follows:

149 “(d) Anything to the contrary in this chapter notwithstanding, any declarant, dealer, or unit owner who
150 entered into a contract with a purchaser for a unit on or before the effective date shall not be subject to any of the
151 provisions of this § 81-408 and no such purchaser shall be entitled to exercise any of the rights and remedies
152 against such declarant, dealer or unit owner under this § 81-408.”.

SYNOPSIS

This Act makes technical amendments to the DUCOIA statute and stays enforcement of the legislation for a brief period until July 1, 2009, in accordance with the original intent of the legislation.