Title 25

Property

NOTICE: The Delaware Code appearing on this site is prepared by the Delaware Code Revisors and the editorial staff of LexisNexis in cooperation with the Division of Research of Legislative Council of the General Assembly with the assistance of the Government Information Center, and is considered an official version of the State of Delaware statutory code. This version includes all acts effective as of February 2, 2017, up to and including 81 Del. Laws, c. 2.

DISCLAIMER: With respect to the Delaware Code documents available from this site or server, neither the State of Delaware nor any of its employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately-owned rights. Please seek legal counsel for help on interpretation of individual statutes.

Part I
General Provisions

Chapter 1
DEEDS

Subchapter I
General Provisions

§ 101 Transfer of title to real estate by deed.

Lands, tenements and hereditaments may be aliened, and possession thereof transferred by deed, without livery of seisin; and the legal estate shall accompany the use and pass with it.

(Code 1852, § 1611; Code 1915, § 3197; Code 1935, § 3658; 25 Del. C. 1953, § 101.)

§ 102 Effect of deeds by married women.

The deed of a married woman executed by her during her coverture, concerning lands or tenements, shall be valid and effectual as if she were sole, if she acknowledges that she executed the deed. Such deed shall not bind her to any warranty except a special warranty against herself and her heirs, and all persons claiming by or under her, and no covenant on her part, of a more extensive or different effect in such deed, shall be valid against her, nor shall such conveyances by her divest, abrogate, or in any manner interfere with the husband's estate by the curtesy should such estate attach.

(Code 1852, §§ 1469, 1614; 22 Del. Laws, c. 443, §§ 1, 2; Code 1915, §§ 3047, 3200; Code 1935, §§ 3540, 3661; 45 Del. Laws, c. 230, § 1; 25 Del. C. 1953, § 102; 70 Del. Laws, c. 186, § 1.)

§ 103 Circumstances under which wife may bar her dower without husband being a party.

In all cases of sales of lands and tenements under judgments, or by guardians for persons with mental disabilities, the wife of any defendant in such judgment, or of such person with a mental disability, may execute, acknowledge and deliver any conveyance, release or other instrument to bar her of dower in the land and tenements so sold, without her husband being a party to such conveyance, release or other instrument.

(Code 1852, § 1614; 14 Del. Laws, c. 78; Code 1915, § 3201; Code 1935, § 3662; 25 Del. C. 1953, § 103; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 34, § 4.)

§ 104 Trustee for wife with a mental disability; barring of dower.

Any married man, seized of any real estate, whose wife has a mental disability, and who desires to sell and convey or to mortgage any such real estate, or any part thereof, may present his petition to the Court of Chancery, stating the facts. The Court may, if it considers it a proper case, make an order appointing a trustee for such married woman with a mental disability to join in any deed or mortgage on her behalf with her husband, and to sign, seal and acknowledge the deed or mortgage as such trustee in the same manner as deeds and mortgages are by law acknowledged.

(17 Del. Laws, c. 616, § 1; Code 1915, § 3202; Code 1935, § 3663; 25 Del. C. 1953, § 104; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 371, § 25.)

§ 105 Trustee for husband with a mental disability; barring of curtesy.

Any married woman, seized of any real estate in her own right, whose husband has a mental disability, and who desires to sell, convey or to mortgage any such real estate, or any part thereof, may present her petition to the Court of Chancery, stating the facts, and the Court may, if it considers it a proper case, make an order appointing a trustee for such married man with a mental disability to join in any deed or mortgage in his behalf with his wife, and to sign, seal and acknowledge the same as such trustee in the same manner as deeds and mortgages are by law acknowledged.

(22 Del. Laws, c. 444, § 1; Code 1915, § 3203; Code 1935, § 3664; 25 Del. C. 1953, § 105; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 371, § 26.)

§ 106 Effect of deed executed by trustee for spouse with a mental disability.

Any deed executed and acknowledged by a trustee for a married man or woman with a mental disability, appointed pursuant to the provisions of § 104 or § 105 of this title, shall be as valid and effectual to bar and divest the right of dower or curtesy of the spouse with a mental disability, in case he or she survives, as if he or she had been legally capable and had in fact executed and acknowledged such deed. Any such deed, or the record thereof, shall be competent evidence in all the courts of this State.

(17 Del. Laws, c. 616, § 2; 22 Del. Laws, c. 444, § 2; Code 1915, §§ 3202, 3203; Code 1935, §§ 3663, 3664; 25 Del. C. 1953, § 106; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 371, § 27.)

§ 107 Conveyance of real estate by married woman deserted without just cause.

Every married woman abandoned by her husband without just cause, who is the owner in her own right of real estate in this State, may sell or otherwise dispose of such real estate as effectually as if she were a single woman. A deed executed and certified as provided in § 124 of this title and recorded in the county in which the lands lie shall be as effectual as if the grantor executing the deed were a single woman.

(19 Del. Laws, c. 772, §§ 1-3; Code 1915, § 3048; 30 Del. Laws, c. 197; Code 1935, § 3544; 25 Del. C. 1953, § 107; 70 Del. Laws, c. 186, § 1.)

§ 108 Deeds and other instruments executed by the Home Owners' Loan Corporation.

(a) Deeds concerning lands or tenements, releases from the lien of any judgment, or mortgages, powers of attorney to individuals to satisfy mortgages, or any other written instruments entitled to be recorded, executed by the Home Owners' Loan Corporation, a corporation of the United States of America, may be executed and acknowledged before any judge of this State, or a Judge of the District Court of the United States, or a notary public, or 2 justices of the peace of the same county, by the Regional Manager of the Home Owners' Loan Corporation, or Regional Treasurer thereof, provided there is recorded in the recorder's office in the county wherein any instrument so executed and acknowledged is entitled to be recorded a resolution of the Managing Board of such Corporation, showing the appointment by name of the Regional Manager and Regional Treasurer, duly certified to under the hand of the Chairman of the Board, attested by the Secretary, with the seal of the Corporation thereto attached, and acknowledged in the same manner and form as other recorded corporate instruments. The resolution may be kept on file by the recorder of deeds, and the same shall be indexed and recorded in the same way and manner as provided by law in the case of commissions of notaries for the State. The resolution, so certified and acknowledged, concerning the named appointments of Regional Manager and Regional Treasurer, shall be binding on the Home Owners' Loan Corporation until revoked or cancelled by the recording, in the recorder's office, of a resolution of the Managing Board of the Home Owners' Loan Corporation, duly executed, certified to and acknowledged in the same manner and form as the appointment.

(b) Any deed or conveyance of lands and tenements, or any release of the lien of a mortgage or judgment, or any other written instrument entitled to be recorded, executed by the Regional Manager or Regional Treasurer for the Home Owners' Loan Corporation, after a full compliance with this section, shall have the same effect as though the instrument had been executed by the President or other presiding officer or a Vice-President duly authorized by proper resolution.

(40 Del. Laws, c. 215; 40 Del. Laws, c. 217; Code 1935, § 3675; 41 Del. Laws, c. 189, § 1; 25 Del. C. 1953, § 108.)

§ 109 Defeasance or contract for reconveyance; recording; acknowledgment or proof.

If a conveyance of lands, tenements or hereditaments is absolute on its face and there is a defeasance, or written contract in the nature of a defeasance, or for a reconveyance of the premises, or any part thereof, the person to whom such conveyance is made shall cause to be indorsed thereon, and recorded therewith, a note stating that there is such defeasance, or contract, and the general purport of it, or the recording of such conveyance shall be of no effect. Such defeasance, or contract, shall be duly acknowledged, or proved, and recorded in the recorder's office for the county wherein such lands, tenements or hereditaments are situate within 60 days after the day of making the same, or it shall not avail against a fair creditor, mortgagee or purchaser for a valuable consideration of or from the person to whom such conveyance is made, unless it appears that such creditor, when giving the credit, or such mortgagee or purchaser when advancing the consideration, had notice of such defeasance, or contract. Such contract, although not under seal, may be acknowledged or proved in the same manner as a deed.

(Code 1852, § 1631; Code 1915, § 3221; Code 1935, § 3683; 25 Del. C. 1953, § 109.)

§ 110 Certificates of notaries public; validity.

No official certificate of any notary public shall be invalid or defective because the impression of the official seal of such officer upon the certificate does not strictly comport with the requirements of § 4309 of Title 29. All such certificates shall be valid in all respects; and in all cases where such certificates are annexed to papers proper to be recorded, the several recorders shall admit such papers to record. The record of the same, or a duly certified copy thereof, shall be competent evidence, and every such paper shall be as good and effectual in law as though the seal used by the officer certifying the acknowledgment of the same had been engraved in exact conformity with the provisions of the law.

(16 Del. Laws, c. 129, § 1; Code 1915, § 3213; Code 1935, § 3674; 25 Del. C. 1953, § 110.)

Subchapter II

Form, Acknowledgment and Proof of Deeds and Other Legal Instruments

§ 121 Form of deed; legal effect; other forms as valid.

(a) The following shall be a sufficient form of deed for the conveyance of real estate:

This Deed made this ..... day of ....., A.D. .....

Between A. B., of ....., party of the first part and C. D. of ....., party of the second part.

Witnesseth, that the said party of the first part for and in consideration of the sum of ..... , the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part.

ALL

(Description of premises).

(Recital of title).

In witness whereof, the said party of the first part hath hereunto set his hand and seal.

Sealed and Delivered in ..... (Seal)

The Presence of:

.....

.....

(b) A deed in the form prescribed in subsection (a) of this section, duly executed and acknowledged, unless otherwise restricted or limited, or unless contrary intention appears therein, shall be construed to pass and convey to the grantee therein and to his heirs and assigns the fee simple title or other whole estate or interest which the grantor could lawfully convey in and to the property therein described together with the tenements, hereditaments, franchises and appurtenances thereunto belonging, and the reversions and remainders, rents, issues and profits thereof. The words "grant and convey" in any deed shall, unless specifically restricted or limited operate as a special warranty against the grantor and the grantor's heirs and all persons claiming under the grantor or them. Nothing contained in this section shall invalidate a deed not made in the form prescribed in subsection (a) of this section, but a deed made in the form heretofore in common use within this State shall be valid and effectual.

(Code 1852, § 1612; Code 1915, § 3198; 33 Del. Laws, c. 207; Code 1935, § 3659; 25 Del. C. 1953, § 121; 70 Del. Laws, c. 186, § 1.)

§ 122 Acknowledgment and proof of deeds.

A deed concerning lands, tenements or hereditaments may be acknowledged in any county, by any party to the deed, in the Superior Court, or before any judge of this State, or notary public, or before 2 justices of the peace for the same county, or before the Mayor of the City of Wilmington. Such deed may also be acknowledged in the Superior Court by attorney, by virtue of a power contained in it or separate from it, the power being first proved in the Court. Also, such deed may be proved in the Court by 1 or more of the subscribing witnesses.

(Code 1852, § 1613; 17 Del. Laws, c. 207, §§ 8, 28; Code 1915, § 3199; Code 1935, § 3660; 25 Del. C. 1953, § 122; 71 Del. Laws, c. 176, § 32.)

§ 123 Certification of acknowledgment or proof.

Acknowledgment or proof shall be certified under the hand and seal of office of the clerk, or prothonotary, of the court in which, or under the hand of the judge, notary public or justices of the peace before whom, the acknowledgment or proof is taken, in a certificate indorsed upon or annexed to the deed.

(Code 1852, § 1618; Code 1915, § 3207; Code 1935, § 3668; 45 Del. Laws, c. 230, § 3; 25 Del. C. 1953, § 123.)

§ 124 Acknowledgment and execution of deed by married woman deserted without just cause.

Conveyances made in pursuance of § 107 of this title by a married woman abandoned without just cause shall be acknowledged before any judge of the Court of Chancery or Superior Court of this State; and in addition to the certificate that it is the act and deed of the party signing the instrument, the judge shall further certify that it had satisfactorily appeared to the judge that the party executing the instrument had been abandoned by her husband without just cause.

(19 Del. Laws, c. 772, §§ 1-3; Code 1915, § 3048; 30 Del. Laws, c. 197; Code 1935, § 3544; 25 Del. C. 1953, § 124; 70 Del. Laws, c. 186, § 1.)

§ 125 Place for taking acknowledgment or proof.

It shall not be necessary that the acknowledgment or proof of a deed be taken in the county wherein the premises are situate.

(Code 1852, § 1617; Code 1915, § 3206; Code 1935, § 3667; 45 Del. Laws, c. 230, § 2; 25 Del. C. 1953, § 125.)

§ 126 Certification of acknowledgments by justices of the peace; form.

(a) Two justices of the peace, when taking or certifying an acknowledgment, shall be together; and a certificate of acknowledgment taken before them, may be according to the following form, viz:

b

State of Delaware ss.

..... County

}

x

Be it remembered, that on the ..... day of ....., in the year of our Lord, two thousand and ....., personally came before me, the subscribers, two of the Justices of the Peace for ..... County aforesaid, ... and ....., his wife, parties to this indenture known to us personally (or proved on the oath of .....), to be such, and severally acknowledged said indenture to be their act and deed respectively.

Witness our hands the day and year aforesaid.

(b) If the instrument acknowledged is not an indenture, the word "instrument" may be substituted for the word "indenture" in the form; if it is not under seal, the words "and deed" in the form shall be omitted. The certificate of acknowledgment may, in all cases, be according to the foregoing form. It may be varied in any case requiring a variance, the above form being given for general direction.

(Code 1852, §§ 1619, 1620; Code 1915, § 3208; Code 1935, § 3669; 45 Del. Laws, c. 230, § 4; 25 Del. C. 1953, § 126; 70 Del. Laws, c. 186, § 1.)

§ 127 Acknowledgment of corporate deeds or other instruments.

A deed concerning lands or tenements or any other written instrument entitled to be recorded, executed by a corporation, may be executed and acknowledged before any judge of this State, or a judge of the District Court or Court of Appeals of the United States, or a notary public, or 2 justices of the peace of the same county, by the president or other presiding officer or a vice-president or an assistant vice-president, duly authorized by resolution of the directors, trustees or other managers, or by the legally constituted attorney, of such corporation.

(Code 1852, § 1616; 16 Del. Laws, c. 521; 27 Del. Laws, c. 265; Code 1915, § 3205; Code 1935, § 3666; 48 Del. Laws, c. 130, § 1; 25 Del. C. 1953, § 127.)

§ 128 Certification of acknowledgments by Mayor of Wilmington; fee.

The Mayor of Wilmington may take and certify under the Mayor's own hand and seal of office the acknowledgment of deeds and letters of attorney in like manner as a judge or notary public may. For such service the Mayor of Wilmington shall receive a fee of 75 cents, and no more, whether there are 1 or more parties to the deed.

(17 Del. Laws, c. 207, § 8; Code 1915, § 2140; Code 1935, § 2433; 25 Del. C. 1953, § 128; 70 Del. Laws, c. 186, § 1.)

§ 129 Acknowledgment or proof outside State.

(a) A deed concerning lands, tenements or hereditaments within this State may be acknowledged or proved, or may be taken out of the State before any consul general, consul, vice-consul, consular agent, or commercial agent of the United States, duly appointed in any foreign country, at the places of their respective official residence, the judge of any United States District Court or United States Court of Appeals, or any judge of a court of record of any state, territory or country, or the mayor or chief officer of any city or borough, and certified under the hands of such judge, mayor or officer, and the seal of that official's office, court, city or borough, by certificate indorsed upon or annexed to the deed; or such acknowledgment or proof may be taken in such court and certified under the hand of the clerk, or other officer of the court, and the seal of the court in like manner. If certified by a judge, the seal of that judge's court may be affixed to that judge's certificate or to a certificate of attestation of the clerk, or keeper of the seal.

(b) Acknowledgment and proof of a deed may also be taken out of this State by any commissioner of deeds, appointed by the governor in any of the states or territories of the United States, or in the District of Columbia, or in the possessions of the United States, or in foreign countries, the deed to be certified, in like manner, under the hand and seal of the commissioner.

(c) Any deed concerning lands, tenements or hereditaments within this State, any other instrument of writing whatsoever, or any affidavit or other statement requiring acknowledgment or proof may be so acknowledged and proved out of this State before a notary public of any state or territory or of the District of Columbia. The provisions of this paragraph shall extend to affidavits of demand and defense as provided for in § 3901 of Title 10.

(Code 1852, §§ 1621, 1622; 13 Del. Laws, c. 28; 17 Del. Laws, c. 212; 18 Del. Laws, c. 211; 18 Del. Laws, c. 212; 22 Del. Laws, c. 82; Code 1915, § 3209; Code 1935, § 3670; 45 Del. Laws, c. 230, § 5; 25 Del. C. 1953, § 129; 70 Del. Laws, c. 186, § 1.)

§ 130 Notarial acts by members of the armed forces.

(a) In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army, marine corps, or air force, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States by any person who either is:

(1) A member of the armed forces of the United States; or

(2) Serving as a merchant seaman outside the limits of the United States included within the 48 states and the District of Columbia; or

(3) Outside the limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

(b) Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts made or taken are declared legal, valid and binding. Instruments and documents so acknowledged, authenticated or sworn to shall be admissible in evidence and eligible to record in this State under the same circumstances, and with the same force and effect, as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit or other notarial act had been made or taken within this State before or by a duly qualified officer or official as otherwise provided by law.

(c) In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate indorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

(d) If the signature, rank and branch of service or subdivision thereof of any such commissioned officer appears upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required, and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section.

(Code 1915, § 3209; Code 1935, § 3670; 44 Del. Laws, c. 165; 45 Del. Laws, c. 227, §§ 1, 2; 25 Del. C. 1953, § 130; 70 Del. Laws, c. 186, § 1.)

§ 131 Validation of certain instruments as deeds.

An instrument which by its terms purports to alienate or convey lands, tenements or hereditaments situated in this State and which was signed by the persons or corporations who at the time were the owners of the lands, tenements or hereditaments mentioned therein and which was also acknowledged by owners before an officer authorized by the laws of Delaware to take acknowledgments, as the act and deed of such persons, shall be deemed to alienate or convey the title, estate and interest, both at law and in equity, of the owners signing and acknowledging such instrument, according to the true intent and meaning of such instrument, notwithstanding that the instrument is not under the seals of the owners and notwithstanding that the instrument does not contain the words commonly known as the "use clause" and/or the word "grant" and/or the words "bargain and sell." No right of dower or curtesy shall be barred or released except when the person who would have such right of dower or of curtesy has signed and acknowledged the instrument. Nothing in this section shall preclude any action or right of action, either at law or in equity, which any party in interest would have had if the instrument had been under the seals of the persons executing the same and had been in the customary form of a deed in this State and this section had not been passed.

(35 Del. Laws, c. 194; Code 1935, § 3676; 46 Del. Laws, c. 203, § 1; 25 Del. C. 1953, § 131; 49 Del. Laws, c. 181, §§ 1, 2; 50 Del. Laws, c. 157, § 1; 59 Del. Laws, c. 451, § 1; 68 Del. Laws, c. 319, § 1.)

§ 132 Validity of legal instruments having defective acknowledgments; admissibility in evidence.

The record of all legal instruments which by law are directed to be recorded or are entitled to be recorded, and which have been duly executed by the proper party or parties, notwithstanding the instruments have not been acknowledged before an officer authorized by the laws of Delaware to take acknowledgments, or which have not been otherwise properly acknowledged, or the acknowledgments of which have not been taken and certified in conformity with the laws of this State in force at the time each such instrument was executed, are severally made as valid and effective in law as if each instrument had been correctly acknowledged and the acknowledgment correctly certified. The record of each such instrument or any office copy thereof or the original instrument itself shall be admitted as evidence in all courts of this State and shall be as valid and conclusive evidence as if such instrument had been in all respects acknowledged and the acknowledgment certified in accordance with the then existing law.

(47 Del. Laws, c. 396, § 1; 25 Del. C. 1953, § 132.)

§ 133 Address of grantee on deed.

Anyone leaving for record any deed conveying lands and tenements shall place upon or attach to the deed the address of the grantee.

(Code 1852, §§ 1626, 1627; 16 Del. Laws, c. 520, § 1; 17 Del. Laws, c. 213, § 3; Code 1915, § 3215; Code 1935, § 3677; 46 Del. Laws, c. 267, § 1; 25 Del. C. 1953, § 133.)

§ 134 Authentication and recognition of acknowledgments.

The authentication and recognition of the acknowledgment of a foreign notary public or other officer on an instrument necessary under this chapter shall be in accordance with subchapter II of Chapter 43 of Title 29.

(63 Del. Laws, c. 61, § 2.)

§ 135 Tax ditch, tax lagoon, right-of-way, or assessment.

Any deed transferring a parcel of real property listed in an order recorded pursuant to § 4195 or § 4389 of Title 7 shall specifically state in the deed that such parcel of real property may be subject to a tax ditch right-of-way and/or assessment, or a tax lagoon right-of-way and/or assessment pursuant to Superior Court order, and shall state the date of the court order and the order's recording information in the recorder of deeds' office of the county.

(75 Del. Laws, c. 321, § 3.)

Subchapter III
Recording

§ 151 Recording of deeds and letters of attorney.

A deed or letter of attorney concerning lands or tenements, acknowledged or proved and the acknowledgment or proof certified as provided in this chapter, shall, with the certificate of the acknowledgment or proof and all indorsements and annexations, be recorded in the recorder's office for the county wherein such lands or tenements or any part thereof are situated, when lodged in such office at any time after the sealing and delivery of such deed or letter of attorney; and the record or an office copy thereof shall be sufficient evidence.

(Code 1852, §§ 1626, 1627; 16 Del. Laws, c. 520, § 1; 17 Del. Laws, c. 213, § 3; Code 1915, § 3215; Code 1935, § 3677; 25 Del. C. 1953, § 151.)

§ 152 Recording as affecting lands in county of recording.

The recording of a deed or instrument in the recorder's office for 1 county shall have effect only in respect to lands or tenements mentioned in the deed or instrument situate in such county.

(Code 1852, § 1628; Code 1915, § 3216; Code 1935, § 3678; 25 Del. C. 1953, § 152.)

§ 153 Priority of deed concerning lands or tenements.

A deed concerning lands or tenements shall have priority from the time that it is recorded in the proper office without respect to the time that it was signed, sealed and delivered.

(Code 1852, § 1630; 16 Del. Laws, c. 520, § 2; 17 Del. Laws, c. 213, § 2; Code 1915, § 3218; Code 1935, § 3680; 41 Del. Laws, c. 190, § 1; 25 Del. C. 1953, § 153; 56 Del. Laws, c. 318.)

§ 154 Deeds and letters of attorney; recording at any time.

All deeds and letters of attorney concerning lands or tenements, at any time sealed and delivered, being duly acknowledged or proved, and the acknowledgment or proof being duly certified, may, with the certificate of the acknowledgment or proof and all indorsements and annexations, be at any time recorded in the recorder's office for the county wherein such lands or tenements or any part thereof are situate.

(16 Del. Laws, c. 520, § 3; 17 Del. Laws, c. 213, § 2; Code 1915, § 3219; Code 1935, § 3681; 25 Del. C. 1953, § 154.)

§ 155 Acknowledgment or proof as evidence of recording; private examination of married woman.

The private examination of a married woman, duly taken and certified, shall remain valid, although the deed upon which it is taken and certified is not recorded; but no other acknowledgment or proof, duly certified, of a deed or letter of attorney shall make such deed or letter of attorney evidence without its being duly recorded.

(Code 1852, § 1629; Code 1915, § 3217; Code 1935, § 3679; 25 Del. C. 1953, § 155; 70 Del. Laws, c. 186, § 1.)

§ 156 Recording on date of sealing and delivery.

Any and all deeds and letters of attorney which have been recorded on the day of the sealing and delivery thereof shall be deemed to have been properly recorded.

(17 Del. Laws, c. 213, § 4; Code 1915, § 3220; Code 1935, § 3682; 25 Del. C. 1953, § 156.)

§ 157 Potter charity leases.

The record or duly certified copies, heretofore made by authority of law, or which are hereafter made by order of the Court of Chancery, of any and every lease of any portion of the lands, tenements or hereditaments situated in Kent or Sussex Counties, which were devised by Benjamin Potter, deceased, to certain charitable uses, shall be competent evidence in the courts of this State. The fee for recording any such lease or certifying the record thereof by any register in chancery shall be the same as fixed by law, to be paid to the recorder of deeds for like services.

(15 Del. Laws, c. 167; Code 1915, § 3225; Code 1935, § 3687; 25 Del. C. 1953, § 157.)

§ 158 Enforceability of certain leases and documents pertaining to lands and tenements.

No document defined or described in § 5401(4) of Title 30 and not exempt from transfer tax on the basis of § 5401(1) of Title 30 or otherwise, shall be enforceable in any court of this State unless such document, or a memorandum thereof identifying the parties thereto, the premises, and the duration of the interest created thereby, including any renewals and purchase options, shall have been recorded in the office of the recorder of deeds in the county in which the premises or any part thereof are located within 15 days of the commencement of the term provided by such document; provided, however, that upon recordation and payment of any and all taxes, penalties and other charges relating thereto, any document rendered unenforceable by this statute or any predecessor statute shall be renewed and revived with the same force and effect as if it had never been unenforceable.

(25 Del. C. 1953, § 154; 59 Del. Laws, c. 153, § 6; 70 Del. Laws, c. 252, § 1.)

Subchapter IV
Powers of Attorney

§ 171 Acknowledgment or proof.

A letter of attorney to sell or dispose of lands, tenements or hereditaments, or to acknowledge a deed concerning lands, tenements or hereditaments, may be acknowledged or proved, and the acknowledgment or proof certified, as prescribed in this chapter in respect to the acknowledgment or proof of a deed. If a party making a letter of attorney is out of the State, the provisions of § 129 of this title, concerning the acknowledgment or proof of a deed when the party making it is out of the State, shall apply.

(Code 1852, § 1623; Code 1915, § 3210; Code 1935, § 3671; 25 Del. C. 1953, § 171.)

§ 172 Acknowledgment of deed after recording letter of attorney.

When a letter of attorney to sell and dispose of lands is acknowledged or proved and the acknowledgment or proof is certified and it is recorded as required by law, a deed may be acknowledged by the attorney in such letter, in any county, before any judge of this State, or notary public, or 2 justices of the peace for the same county, if the letter of attorney authorizes such acknowledgment. An authority to sell or dispose of premises, if not restrained, shall extend to authorize the acknowledgment of a deed therefor.

(Code 1852, § 1624; Code 1915, § 3211; Code 1935, § 3672; 25 Del. C. 1953, § 172.)

§ 173 Power of married woman to make letter.

A married woman may make a letter of attorney the same as though she were a femme sole.

(Code 1852, §§ 1625, 1469; 15 Del. Laws, c. 467; Code 1915, §§ 3047, 3212; Code 1935, §§ 3540, 3673; 25 Del. C. 1953, § 173; 70 Del. Laws, c. 186, § 1.)

§ 174 Persons serving with armed forces.

(a) No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either:

(1) A member of the armed forces of the United States; or

(2) A person serving as a merchant seaman outside the limits of the United States, included within the 50 states and the District of Columbia; or

(3) A person outside the limits by permission, assignment or direction of any department or official of the United States government in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged,

shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, has acted or acts, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees or personal representative of the principal.

(b) An affidavit executed by the attorney-in-fact or agent setting forth that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this State, such affidavit (when authenticated for record in the manner prescribed by law) shall likewise be recordable.

(c) No report or listing, either official or otherwise, of "missing" or "missing in action," as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency.

(d) This section shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney.

(Code 1935, § 3673A; 45 Del. Laws, c. 228, § 1; 25 Del. C. 1953, § 174.)

Subchapter V
Electronic Recording

§ 180 Short title.

This subchapter may be cited as the "Uniform Real Property Electronic Recording Act."

(75 Del. Laws, c. 23, § 1.)

§ 181 Definitions in this subchapter.

(a) "Document" means information that is:

(1) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(2) Eligible to be recorded in the land records maintained by the recorder.

(b) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(c) "Electronic document" means a document that is received by the recorder in an electronic form.

(d) "Electronic recording commission" means the commission established by § 184 of this title.

(e) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(f) "Paper document" means a document that is received by the recorder in a form that is not electronic.

(g) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(h) "Recorder" means the recorder of deeds for the county in which a document is received.

(i) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(75 Del. Laws, c. 23, § 1.)

§ 182 Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or other tangible medium, or be in writing, an electronic document satisfying this subchapter satisfies the law.

(b) If a law requires, as a condition for recording, that a document be signed, an electronic signature satisfies the law.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal is not required to accompany an electronic signature.

(75 Del. Laws, c. 23, § 1.)

§ 183 Recording of documents.

(a) A recorder who implements any of the functions described in this section shall do so in compliance with standards established by the electronic recording commission.

(b) A recorder may receive, index, store, archive, and transmit electronic documents.

(c) A recorder may provide for access to, and for search and retrieval of, documents and information by electronic means.

(d) A recorder who accepts electronic documents for recording shall continue to accept paper documents and shall place entries for both types of documents in the same index.

(e) A recorder may convert paper documents accepted for recording into electronic form. The recorder may convert into electronic form information recorded before the recorder began to record electronic documents.

(f) Any fee or tax that a recorder is authorized to collect may be collected electronically.

(g) A recorder and other officials of a state or a political subdivision thereof, or of the United States, may agree on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

(75 Del. Laws, c. 23, § 1.)

§ 184 Uniform standards.

(a) An electronic recording commission is created to adopt standards to implement this subchapter. The commission must consist of the recorder for each county of the State and 2 members at large appointed by the Secretary of State.

(b) The electric recording commission shall promote harmony and uniformity of standards and practices in the use of electronic recording so far as is consistent with the purposes, policies, and provisions of this subchapter. When adopting, amending, and repealing standards, the commission shall consider standards and practices of other jurisdictions; the most recent standards promulgated by national standard-setting bodies, such as the Property Records Industry Association; the views of interested persons and other governmental entities; the needs of counties of varying size, population, and resources; and the need for security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(75 Del. Laws, c. 23, § 1.)

Part I
General Provisions
Chapter 3
TITLES AND CONVEYANCES

§ 301 Fines and common recoveries.

All fines and common recoveries levied and suffered within this State, in pursuance of or according to the common or statute laws of England, in the Superior Court of the county wherein the lands, tenements or hereditaments entailed lie shall be as good in law, to bar estates so entailed, as fines and common recoveries of lands, tenements or hereditaments levied, or suffered, in England are. Any heir at law or other person claiming any right in the lands, tenements or hereditaments may, either by appeal or writ of error, reverse such fines or recoveries for any errors in levying or suffering the fines or recoveries.

(Code 1852, §§ 1639, 1640; Code 1915, § 3234; Code 1935, § 3697; 25 Del. C. 1953, § 301.)

§ 302 Bar of estate tail by deed.

A person having a legal or equitable estate or right in fee tail in possession, remainder or reversion, in any lands, tenements or hereditaments may alien the lands, tenements or hereditaments, in fee simple, or for other less estate, by deed, in the same manner and as effectually as if such estate or right were in fee simple. The deed of alienation in fee simple of any person, of any lands, tenements or hereditaments shall have the same effect and operation for barring all estate tail and other interests in the lands, tenements or hereditaments, as such persons being a party cognizor to a fine in due manner levied, or party vouchee to a common recovery with a double voucher in due manner suffered, of the lands, tenements or hereditaments. No deed shall avail within either of these provisions, unless it is duly acknowledged or proved according to law, or unless it would be a valid and lawful deed sufficient to pass the premises, if the maker were seized of the premises in fee simple.

(Code 1852, § 1641; Code 1915, § 3235; Code 1935, § 3698; 25 Del. C. 1953, § 302.)

§ 303 Warranty by life tenant and collateral warranty.

A warranty made by a tenant for life shall not, by descending or coming to a person in remainder or reversion, bar or affect that tenant's title. A collateral warranty shall not in any case bar or affect a title not derived from the person making such warranty.

(Code 1852, § 1642; Code 1915, § 3236; Code 1935, § 3699; 25 Del. C. 1953, § 303; 70 Del. Laws, c. 186, § 1.)

§ 304 Permanent leasehold estates as estates in fee simple.

Permanent leasehold estates, renewable forever, shall be considered to be estates in fee simple, and shall be subject to the same modes of alienation, power of devise, and rules of descent and distribution, and to all the incidents of an estate in fee, provided that the grantor of the leasehold or the person entitled to the estate, out of which the term issues, has first released to the grantee of the term or the person in possession of the leasehold all his right to the rent charged upon or growing out of the leasehold.

(15 Del. Laws, c. 168; Code 1915, § 3237; Code 1935, § 3700; 25 Del. C. 1953, § 304; 70 Del. Laws, c. 186, § 1.)

§ 305 Deeds by foreign corporations; recording as evidence; ownership rights.

All deeds to lands in Delaware executed and delivered by corporations created by and existing under the laws of the states and territories of the United States of America, other than Delaware, or created by and existing under the laws of any foreign state or nation, are made valid and effective to convey the fee simple or other estate purported to be conveyed in such deeds, with the same force and effect as if the corporation grantor had been a corporation lawfully created by and existing under the laws of this State. Such deeds, when recorded, or any office copy thereof, shall be admitted as evidence in all courts of this State, and shall be valid and conclusive evidence, with the same force and effect as if such deeds had been properly executed, acknowledged and delivered by corporations created by and existing under the laws of this State. A foreign corporation owning lands in Delaware may exercise all rights and privileges of ownership to the same extent as if such corporation were a corporation lawfully created by and existing under the laws of this State.

(26 Del. Laws, c. 253; Code 1915, § 3238; 38 Del. Laws, c. 174; Code 1935, § 3701; 25 Del. C. 1953, § 305.)

§ 306 Title and disposal of property by aliens.

All real and personal property situate in this State may be taken, acquired, held and disposed of by an alien in the same manner as by a citizen of this State.

(26 Del. Laws, c. 251, § 1; Code 1915, § 3194; 32 Del. Laws, c. 188, § 1; 39 Del. Laws, c. 35, §§ 1, 2; Code 1935, § 3655; 25 Del. C. 1953, § 306.)

§ 307 Title derived through alien.

A good title to real and personal property situate in this State may be derived through, from or in succession to an alien in the same manner as through, from or in succession to a citizen of the State.

(26 Del. Laws, c. 251, § 2; Code 1915, § 3195; 32 Del. Laws, c. 188, § 2; 39 Del. Laws, c. 35, §§ 1, 2; Code 1935, § 3656; 25 Del. C. 1953, § 307.)

§ 308 Validity of conveyances to or from aliens.

All conveyances to or from aliens of real or personal property situate in this State, at any time made, are validated, ratified and confirmed; and it is declared that the conveyances vested in the purchaser or purchasers the same estates and rights as they would have taken if the conveyance had been made between citizens of the State.

(26 Del. Laws, c. 251, § 3; Code 1915, § 3196; 39 Del. Laws, c. 35, § 2; Code 1935, § 3657; 25 Del. C. 1953, § 308.)

§ 309 Conveyance of real estate between spouses.

(a) A married man may convey by deed, duly executed and acknowledged, real estate or any interest therein directly to his wife, and a married woman may convey by deed, duly executed and acknowledged, real estate or any interest therein directly to her husband, and every such conveyance of real estate or any interest therein, located in this State, made prior to or on or after December 21, 1965, shall be valid and effective in law and equity to convey the grantor's title and interest therein and thereto, whether both the grantor and grantee or either, respectively, shall have resided at the time of such conveyance within or without this State, and notwithstanding the wife or the husband, respectively, did not or does not join herein.

(b) This section shall be construed as authorizing a conveyance of an interest in real property:

(1) By either spouse, in any estate, tenancy or capacity other than tenancy by the entireties, without the joinder of the other spouse, to both spouses in any estate, tenancy or capacity;

(2) By either spouse, in any estate, tenancy or capacity other than tenancy by the entireties, without the joinder of the other spouse to the other spouse alone;

(3) By both spouses, in any estate, tenancy or capacity, to both spouses in any estate, tenancy or capacity; and

(4) By both spouses, in any estate, tenancy or capacity, to either spouse alone.

(c) All conveyance prior to June 29, 1998, and of a type described therein shall be deemed valid ab initio.

(25 Del. C. 1953, § 309; 55 Del. Laws, c. 247; 68 Del. Laws, c. 318, § 1; 70 Del Laws, c. 186, § 1; 71 Del. Laws, c. 333, § 1.)

§ 310 Release of rights of curtesy or dower.

A married man may relinquish or release to his wife his right of curtesy in any real estate whereof his wife is seized of an estate of inheritance, and a married woman may relinquish or release to her husband her right of dower in any real estate whereof her husband is seized of an estate of inheritance, by deed duly executed and acknowledged, in the manner provided by law for deeds to be recorded, or by deed conveying such estate of inheritance in the real estate by the husband to the wife, or by the wife to the husband, wherein the husband's right of curtesy or the wife's right of dower is specifically relinquished or released and thereafter the real estate may be conveyed, encumbered, devised, or otherwise disposed of, and shall descend free and clear of any such right or estate of curtesy or dower, but the real estate may descend to the husband or wife, as the case may be, in case of the death of the wife or husband intestate, in accordance with law, notwithstanding such relinquishment or release.

(25 Del. C. 1953, § 310; 55 Del. Laws, c. 247; 70 Del. Laws, c. 186, § 1.)

§ 311 Conveyance of real estate to create either joint tenancy with right of survivorship or tenancy in common with grantor.

Any conveyance of real estate made by the grantor to himself, herself or itself and another or others, either as joint tenants with right of survivorship or as tenants in common, shall, if otherwise valid, be as fully effective to vest either an estate in joint tenancy with right of survivorship or an estate as tenancy in common, as the case may be, in such real estate, in the grantees named, including the grantor, as if the same had been conveyed by the grantor therein to a third party and by such third party to said grantees.

(25 Del. C. 1953, § 311; 58 Del. Laws, c. 269; 70 Del. Laws, c. 186, § 1.)

§ 312 Acquisition and conveyance of title to real estate by persons of the age of 18 years or older.

Any person of the age of 18 years or older who is not otherwise incompetent may contract to purchase, acquire, take, hold, sell, transfer, assign, lease, demise, encumber, or otherwise convey any estate, right, title or interest in real estate, may take title to and accept delivery of a deed, indenture, mortgage, lease, or other instrument of conveyance to any estate, right, title or interest in real estate and may execute, acknowledge and deliver a deed, indenture, mortgage, lease, or other instrument of conveyance for any interest, estate, right or title in real estate without the interference of a guardian, trustee or the like, and such deed, indenture, mortgage, lease or other instrument of conveyance for any interest, estate, right or title in real estate shall be valid and legally effective for all intents and purposes in law or in equity and shall bind that person, that person's heirs, executors and administrators.

(25 Del. C. 1953, § 312; 58 Del. Laws, c. 439, § 3; 70 Del. Laws, c. 186, § 1.)

§ 313 Contract for sale of unimproved real estate; notice to buyer of public sewerage and water facilities.

Every contract for the sale of unimproved real estate located in the State shall have the following notice provision appear conspicuously therein:

"NOTICE TO BUYER: If the property being purchased hereunder is an unimproved parcel of land, buyer should consult with the appropriate public authorities to ascertain whether central sewerage and water facilities are available, or, if not, whether the property will be approved by appropriate public authorities for the installation of a well and private sewerage disposal system. If central sewerage and water facilities are not available, then this Contract is contingent upon: (1) a satisfactory site evaluation that will allow the installation of an approved on-site disposal system, in accordance with the regulations promulgated by the Department of Natural Resources & Environmental Control, that is acceptable to the buyer; (2) the availability of a water supply; and (3) the lot conforming with the local zoning ordinance; or this Contract shall become null and void and all deposits shall be returned to the buyer. The (buyer/sellers/ authorized agent) _____ shall request the site evaluation on or before (date) _____. (Buyer/Seller) _____ shall pay all costs of complying with these provisions. The buyer and seller may modify these provisions or the buyer may waive these provisions of the Contract by attaching an addendum signed by the seller and the buyer."

(65 Del. Laws, c. 306, § 1; 66 Del. Laws, c. 396, § 1.)

§ 314 Contract requirements for the sale of real estate involving seller financing.

(a) Every contract for the sale of improved or unimproved real estate under which the seller or sellers agree to provide any financing for the purchaser or purchasers shall include as an integral part of the contract a complete amortization schedule for all payments to be made under such financing agreement. Such amortization schedule shall:

(1) Include a per payment breakdown of principal and interest and a per payment computation of the unpaid principal balance remaining;

(2) Include a statement that the seller or sellers and purchaser or purchasers have read and understand the amortization schedule; and

(3) Be signed by the seller or sellers and purchaser or purchasers.

(b) Every contract for the sale of improved or unimproved real estate under which the seller or sellers agree to provide any financing for the purchaser or purchasers shall clearly state the principal amount of seller financing, exclusive of interest, which comprises the purchase price thereunder, and the amount of any interest to accrue under said seller financing shall not be included in the purchase price stated thereunder.

(c) No contract for the sale of consumer purpose property under which the seller or sellers agree to provide any financing for the purchaser or purchasers, unless specifically permitted by preempting Federal law or regulation, shall remain executory for a period exceeding 6 months. The parties may renew the executory contract, by written agreement, for a period not exceeding more than an additional 6 months. The time between execution and final settlement of such a contract shall be no longer than those combined time periods. For purposes of this subsection "final settlement" shall mean a transaction wherein the seller conveys or sellers convey a deed to the residential real estate to the buyers in return for payment amounting to the purchase price, which may include a mortgage in the amount of any financing extended by the seller or sellers. For purposes of this subsection "consumer purpose property" shall mean 1-to-4-family residential real property used primarily for personal, family or household purposes, and shall not include any other property, including multi-unit residential property such as an apartment building, office property, commercial property or industrial property.

(d) Notwithstanding the provisions of subsection (c) of this section, the parties may agree, under the contract of sale to not engage in a final settlement until fulfillment of a condition of paying the last installment of the purchase price under a conditional sale, provided that the conditional sales agreement includes provisions indicating:

(1) The periodic rental value of the real estate, which is not to exceed 75% of the original periodic installment amount under the conditional sales agreement;

(2) In the event of buyer or buyers default for failure to pay, the buyer or buyers have a right to redeem the property by making full payment of the remaining contract amount within 120 days of the seller or sellers providing written notice of the default;

(3) If, after default, the buyer or buyers fail to redeem the property by full payment within 120 days, the contract converts by law to a landlord/tenant agreement, wherein rent shall be the rental value established in paragraph (d)(1) of this section above and which shall apply retroactive to the date of default;

(4) In the event of the agreement being converted to a landlord/tenant agreement after default, any amount paid by the buyer or buyers as a down payment on the conditional sales agreement shall be deemed a security deposit, with any amount exceeding that allowed by § 5514 of this title first being credited towards arrears in rent and any remainder excess paid to the tenant.

(e) Failure to comply with the requirements of either subsection (a), (b) or (c) of this section shall make the contract voidable at the option of either party to the contract prior to settlement.

(f) Failure to comply with the requirements of subsection (d) of this section shall make the contract voidable by the buyer or buyers under the conditional sales agreement at any time prior to the payment of the last installment under the agreement, unless in default for failure to pay under the agreement, under which circumstance the agreement shall be voidable by either party until such time as the conditional sales agreement is converted to a landlord/tenant agreement.

(g) In the event of a dissolution of an agreement under conditions stated in subsection (d) or (f) of this section, the Justice of the Peace Court shall have concurrent jurisdiction with the Court of Chancery to hear and adjudicate cases brought to enforce the rights of parties in the property, including, but not limited to, an action for an accounting.

(68 Del. Laws, c. 227, § 1; 76 Del. Laws, c. 311, §§ 1-3; 78 Del. Laws, c. 128, §§ 1, 2.)

§ 315 Contracts for sale of agricultural lands.

Every contract for the sale of agricultural lands which are, either at the time of execution or at the time of settlement of said contract, subject to an agricultural lease shall include within its terms notice to the purchaser of the terms of said agricultural lease and the agricultural lease renewal provisions of Chapter 67 of this title.

(69 Del. Laws, c. 211, § 1.)

§ 316 Display of flags.

No restriction shall be enforceable with respect to real property which prohibits or limits the ability of a property owner or tenant to display the flag of the United States of America on a pole attached to the exterior of the property's building or structure within the owned or leased property's boundaries or on a flagpole located within the owned or leased property's boundaries, if the flagpole is installed prior to termination of any period of community developer control, provided such flag's measurement does not exceed 3 feet by 5 feet and such flagpole installed by the owner does not exceed 25 feet in height and conforms to all setback requirements. Any such installed flagpole shall not be required to be removed after termination of community developer control.

(74 Del. Laws, c. 389, § 1; 79 Del. Laws, c. 93, § 1.)

§ 317 Restriction on fee collection for community amenities by community developers and/or homeowner associations.

(a) A community developer, homeowner association, or other similar entity may not collect fees for an amenity that is not yet completed and available for residents' use in a community development.

(b) If fees for amenities are not differentiated on an itemized basis, no fee may be collected until all amenities are completed and available for use by residents in a community development.

(c) The Attorney General may enforce a violation of this section as a violation of consumer law under Chapter 25 of Title 6.

(76 Del. Laws, c. 215, § 1; 77 Del. Laws, c. 284, § 1.)

§ 317A Required disclosure of financial obligations in chain of title for new home sales.

(a) On or before the date that the contract of sale of a new home is delivered to the buyer, the seller shall deliver to the buyer:

(1) A copy of all documents in the chain of title that create any financial obligation for the buyer; and

(2) A written summary of all financial obligations created by documents in the chain of title.

(b) At the time the seller delivers the documents required by subsection (a) of this section, the seller shall obtain from the buyer a written acknowledgement that the buyer received those documents.

(c) The Attorney General may enforce a violation of this section as a violation of consumer law under Chapter 25 of Title 6.

(d) This section does not apply to transactions in which the seller has provided to the buyer either a public offering statement that includes the information required by § 81-403(a)(4) and (16) of this title, or a resale certificate form, under Chapter 81 of this title, known as the Delaware Uniform Common Interest Ownership Act, or to a disposition that is exempt under § 81-401 of this title.

(e) The Delaware Real Estate Commission (DREC) shall modify or amend existing disclosure forms, or create forms as necessary, to ensure the timely and consistent delivery of financial information to the seller pursuant to subsection (a) of this section. The DREC shall have these forms modified, amended, or created by January 1, 2011.

(77 Del. Laws, c. 283, § 1.)

§ 318 Restrictive covenants.

(a) As used in this section, "roof" or "roofs" means:

(1) A roof of a single family dwelling unit which is solely owned by a person, persons, trust or entity and which is not designated as a common element or common property in the governing documents of an association; and

(2) A roof of a townhouse dwelling unit, which for the purposes of this section means any single-family dwelling unit constructed with attached walls to another such unit on at least 1 side, which unit extends from the foundation to the roof, and has at least 2 sides which are unattached to any other building, and the repair of the roof for the townhouse dwelling unit is designated as the responsibility of the owner and not the association in the governing documents.

(b) No covenant, restriction, or condition contained in a deed, contract or other legal instrument which affects the transfer, sale or any other interest in real property that prohibits or unreasonably restricts the owner of the property from using a roof mounted system for obtaining solar energy on that owner's property shall be allowed in any deed contract or legal instrument recorded after January 1, 2010.

(c) This section shall not amend, nullify, or affect the enforceability of any covenant, restriction, or condition contained in a deed, declaration, contract or other legal instrument concerning land owned by a maintenance corporation or homeowner's association.

(d) This section shall not amend, nullify, or affect the enforceability of any conservation easement or historic preservation covenant.

(e) Any covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property Act [§ 2201 et seq. of this title], for residential property which does not explicitly include a mechanism to amend the document, may hereafter

be amended by a vote requiring the affirmative vote of 2/3 of the property owners. Covenants, restrictions, or conditions contained in a deed or declaration, including a declaration under the Unit Property Act [§ 2201 et seq. of this title], for residential property that prohibit or restrict the installation of rooftop or ground-mounted solar systems may be amended to allow or promote installation of rooftop or ground-mounted solar systems by an affirmative vote of 2/3 of the property owners.

(f) No covenant, restriction, or condition contained in a deed, contract, or other legal instrument which affects the transfer, sale, or any other interest in real property, which is zoned for residential use and the lot or lots are 1/2 of an acre or greater in size, that prohibits or unreasonably restricts the owner of the property from installing or using a ground mounted system for obtaining solar energy on that owner's property shall be allowed in any deed, contract or other legal instrument. A covenant, restriction, or condition which requires that fencing, landscaping, or other appropriate means be used to shield the system from view, so that it is not readily visible from adjacent streets shall be deemed to be a reasonable restriction.

(77 Del. Laws, c. 144, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 454, §§ 1, 3.)

§ 319 Private transfer fee prohibition.

(a) *Definitions.* — The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *"Private transfer fee".* —

a. "Private transfer fee" means a fee or charge payable upon the transfer of an estate or interest in real property, or payable for the right to make or accept a transfer of an estate or interest in real property, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer.

b. "Private transfer fee" does not include any of the following:

1. Any consideration payable by the transferee to the transferor for the estate or interest in real property being transferred or for a purchase money mortgage from the purchaser to the seller, or for payments from the transferee to transferor under a conditional sales agreement or installment sale.

2. Any commission or fee payable to the personal representative of an estate of a deceased person, a guardian, or trustee upon transfer of property.

3. Any commission or fee payable to an auctioneer or a licensed real estate broker upon the transfer of property under an agreement between the auctioneer or broker and the transferor or transferee.

4. Any commission or fee payable to a trustee in bankruptcy proceedings.

5. Any principal, interest, charges, fees, or other amounts payable by a borrower to a lender under a bona fide loan secured by a mortgage against real property, including but not limited to any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage, any fees or charges payable to the lender for estoppel letters or certificates, and any other consideration allowed by law and payable to the lender in connection with the loan or forgiveness of all or part of the loan. A payment by a transferor or transferee to a developer or builder or its assigns for a transfer of an estate or interest after the initial sale by the developer or builder is not a bona fide loan.

6. Any rent, reimbursement, charge, fee, or other amount payable by a tenant to a landlord under a rental agreement or lease, including but not limited to any fee payable to the landlord for consenting to an assignment, subletting, encumbrance, or transfer of the rental agreement or lease.

7. Any consideration payable to the holder of an option to purchase an estate or interest in real property or the holder of a right of first refusal or first offer to purchase an estate or interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the property to another person.

8. Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by any governmental authority, a Sustainable Energy Utility under § 8059 of Title 29, or a public utility. or

9. Any fee, charge, assessment, fine, or other amount payable to the unit owners association of a common interest community or of a condominium for the benefit of the unit owners pursuant to a declaration, covenant, or law applicable to such association, including, but not limited to, permissible charges payable for resale certificates issued by the association or its authorized agent, or a start-up fee or capital contribution to the reserve fund providing such fund is not for the payment of financing arranged by the developer or builder.

(2) "Transfer" means the sale, gift, conveyance, assignment, devise by will, inheritance through intestate laws, or other transfer or release of an estate or interest in real property located in this State.

(3) "Transfer fee covenant" means a declaration or covenant purporting to affect real property which requires or purports to require the payment of a private transfer fee to the declarant or other person or entity specified in the covenant or declaration, or to their successors or assigns, upon a subsequent transfer of an estate or interest in the real property.

(b) *Transfer fee covenant prohibition.* — A transfer fee covenant recorded in this State on or after July 27, 2010, or unrecorded shall not run with the title to real property and is not binding on or enforceable at law or in equity against any owner (legal or equitable), subsequent owner (legal or equitable), purchaser, or mortgagee of any estate or interest in real property as an equitable servitude, contract,

or otherwise. Any lien purporting to secure the payment of a private transfer fee under a transfer fee covenant recorded in this State on or after July 27, 2010, is void and unenforceable. This section does not mean that a transfer fee covenant or lien arising from a transfer fee covenant recorded in this State before July 27, 2010, or unrecorded is presumed valid and enforceable.

(c) The Attorney General may charge the use of a transfer fee covenant in violation of this section as a violation of consumer law under § 2513 of Title 6 or this section may be enforced by private action.

(77 Del. Laws, c. 448, § 1.)

Part I
General Provisions

Chapter 5
RULE AGAINST PERPETUITIES; POWERS OF APPOINTMENT; RULE AGAINST ACCUMULATIONS

§ 501 Powers of appointment; effect of rule against perpetuities [For application of this section, see 79 Del. Laws, c. 352, § 6]

Every estate or interest in property, real or personal, created through the exercise, by will, deed or other instrument, of a power of appointment, irrespective of:

(1) Whether such power is nongeneral or general as to appointees;

(2) The manner in which such power was created or may be exercised;

(3) Whether such power was created before or after the passage of this section,

shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or accumulations now in effect or hereafter enacted be deemed to have been created at the time of the exercise and not at the time of the creation of such power of appointment. No such estate or interest shall be void on account of any such rule unless the estate or interest would have been void had it been created at the date of the exercise of such power of appointment otherwise than through the exercise of a power of appointment.

(Code 1915, § 3907(a); 38 Del. Laws, c. 198; Code 1935, § 4414; 25 Del. C. 1953, § 501; 79 Del. Laws, c. 352, § 5.)

§ 502 Release of powers of appointment [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

(a) Any power which is exercisable by deed, by will, by deed or will, or otherwise, whether general or nongeneral, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the grantee and delivered as provided in this section.

(b) A power which is releasable may be released with respect to the whole or any part of the property subject to such power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or objects, in whose favor such power would otherwise be exercisable. No release of a power shall be deemed to make imperative a power which was not imperative prior to such release, unless the instrument of release expressly so provides.

(c) A release of a power of appointment shall be effective upon delivery to any 1 of the following:

(1) Any person specified for such purpose in the instrument creating the power;

(2) Any trustee of the property to which the power relates;

(3) Any person, other than the grantee, who could be adversely affected by an exercise of the power;

(4) The recorder in any county and when so filed the recorder shall record the release in a separate docket, but any such release, recorded in any county record prior to April 7, 1947, shall be deemed to be sufficient delivery within the provisions of this section.

(d) This section shall apply to releases heretofore and hereafter executed, but nothing herein contained shall be deemed to affect the validity of any release heretofore executed.

(Code 1935, § 4414a; 46 Del. Laws, c. 207, § 1; 25 Del. C. 1953, § 502; 79 Del. Laws, c. 172, § 5; 79 Del. Laws, c. 352, § 5.)

§ 503 Rule against perpetuities [For application of this section, see 79 Del. Laws, c. 352, § 6]

(a) No interest created in real property held in trust shall be void by reason of the common-law rule against perpetuities or any common-law rule limiting the duration of noncharitable purpose trusts, and no interest created in personal property held in trust shall be void by reason of any rule, whether the common-law rule against perpetuities, any common-law rule limiting the duration of noncharitable purpose trusts, or otherwise.

(b) In this State, the rule against perpetuities for real property held in trust is that at the expiration of 110 years from the later of the date on which a parcel of real property or an interest in real property is added to or purchased by a trust or the date the trust became irrevocable, such parcel or interest, if still held in such trust, shall be distributed in accordance with the trust instrument regarding distribution of such property upon termination of the trust as though termination occurred at that time, or if no such provisions exist, to the persons then entitled to receive the income of the trust in proportion to the amount of the income so receivable by such beneficiaries, or in equal shares if specific proportions are not specified in the trust instrument. In the event that the trust instrument does not provide for distribution upon termination and there are no income beneficiaries of the trust, such parcel or interest shall be distributed to such then living persons who are then determined to be the trustor's or testator's distributees by the application of the intestacy laws of this State then in effect governing the distribution of intestate real property as though the trustor or testator had died at that particular time, intestate, a resident of this State, and owning the property so distributable.

This rule shall not apply to the following trusts, all of which may be perpetual:

(1) A trust for the benefit of 1 or more charitable organizations as described in §§ 170(c), 2055(a) and 2522(a) of the United States Internal Revenue Code of 1986 (Title 26 of the United States Code) [26 U.S.C. §§ 170(c), 2055(a) and 2522(a)], or under any similar statute;

(2) A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit plan or profit sharing plan for the exclusive benefit of some or all of its employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the earnings or the principal, or both earnings and principal, of the fund held in trust;

(3) A statutory trust formed under Chapter 38 of Title 12 for which a certificate of statutory trust is on file in the office of the Secretary of State; or

(4) A trust of real or personal property created for the perpetual care of cemeteries pursuant to the provisions of subchapter IV of Chapter 35 of Title 12.

(c) For purposes of this rule against perpetuities, trusts created by the exercise of a power of appointment, whether nongeneral or general, and whether by will, deed or other instrument, shall be deemed to have become irrevocable by the trustor or testator on the date on which such exercise became irrevocable. Donors, not donees, of nongeneral powers of appointment and donees exercising, not donors of, general powers of appointment, shall be deemed the trustors or testators for purposes of distributions to the trustor's or testator's distributees pursuant to subsection (b) of this section. Notwithstanding the foregoing, in the case of a power of appointment described in § 504 of this title as a "first power," and subject to § 504(a) of this title, trusts created by the exercise of the power of appointment, whether by will, deed or other instrument, shall be deemed to have become irrevocable by the trustor or testator on the date on which the first power was created.

(d) The rule contained in this section is subject to §§ 501 and 502 of this title concerning powers of appointment.

(e) For purposes of this section, real property does not include any intangible personal property such as an interest in a corporation, limited liability company, partnership, statutory trust, business trust or other entity, regardless of whether such entity is the owner of real property or any interest therein. If a trust owns an interest in an entity described in the preceding sentence and the entity is the owner of real property, but the entity ceases to exist so that the trust becomes the owner of any interest in such real property, the trust shall not become void or subject to termination by reason of the common-law rule against perpetuities or other similar rule, and except as otherwise provided in the governing instrument, the trustee may either distribute the interest in real property in accordance with subsection (b) of this section or convey the interest in real property to another such entity in exchange for an interest in the entity to be held as before.

(45 Del. Laws, c. 224, § 1; 25 Del. C. 1953, § 503; 65 Del. Laws, c. 422, § 8; 68 Del. Laws, c. 404, § 1; 70 Del. Laws, c. 164, §§ 1-3; 70 Del. Laws, c. 538, § 1; 72 Del. Laws, c. 385, § 1; 72 Del. Laws, c. 397, § 1; 73 Del. Laws, c. 329, §§ 68, 69; 76 Del. Laws, c. 254, § 16; 78 Del. Laws, c. 117, § 18; 79 Del. Laws, c. 352, § 5.)

§ 504 Certain powers of appointment [For application of this section, see 79 Del. Laws, c. 352, § 6]

(a) Notwithstanding any other provision of this chapter, and except as otherwise provided in subsection (b) of this section, in the case of a power of appointment over property held in trust (the "first power"), if the trust is not subject to, or has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers imposed pursuant to Chapter 13 of the Internal Revenue Code (26 U.S.C. Ch. 13) or any successor provision thereto and the first power may not be exercised in favor of the donee, the donee's creditors, the donee's estate or the creditors of the donee's estate, then every estate or interest in property, real or personal, created through the exercise, by will, deed or other instrument, of the first power, irrespective of:

(1) The manner in which the first power was created or may be exercised, or

(2) Whether the first power was created before or after the passage of this section,

shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or accumulations now in effect or hereafter enacted, be deemed to have been created at the time of the creation of, and not at the time of the exercise of, the first power. For purposes of applying the foregoing rule, if any part of an estate or interest in property created through the exercise of the first power includes another power of appointment (the "second power"), then the second power of appointment and any estate or interest in property (including additional powers of appointment) created through the exercise of the second power shall be deemed to have been created at the time of the creation of the first power.

(b) Subsection (a) of this section shall not apply to the exercise of a first power or second power over property held in a trust that is not subject to, or has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers imposed pursuant to Chapter 13 of the Internal Revenue Code (26 U.S.C. Ch. 13) or any successor provision thereto if the instrument of exercise of any such power makes express reference to subsection (a) of this section and expressly states that subsection (a) of this section shall not apply to the exercise of the power or makes express reference to § 501 of this title and expressly states that § 501 of this title shall apply to the exercise of the power.

(72 Del. Laws, c. 397, § 2; 79 Del. Laws, c. 352, § 5.)

§ 505 Exercise of powers of appointment [For application of this section, see 79 Del. Laws, c. 352, § 6]

(a) Unless the instrument creating a nongeneral power of appointment expressly manifests a contrary intent of the donor, the donee of such a power, in addition to exercising the power in any other manner permitted by law and the instrument creating the power, may

effectively appoint all or a portion of the assets subject to such power to a trustee or trustees for the benefit of 1 or more objects of the power and may, in addition, create in an object of the power a general power of appointment, exercisable during life or at death, over assets subject to the original power or a nongeneral power of appointment, exercisable during life or at death, to appoint such assets among objects all of whom are objects of the original power.

(b) Even if the instrument creating a general power of appointment that is exercisable in favor of the donee or the donee's estate expressly manifests a contrary intent of the donor, the donee of such a power may make any appointment of all or a portion of the assets subject to such power, including one in trust and one that creates a power of appointment in another, that the donee could make by appointing to the donee or the donee's estate and then disposing of the appointive assets as owned property.

(c) The donee of a general power of appointment that is exercisable only in favor of the donee's creditors or the creditors of the donee's estate may effectively appoint all or a portion of the assets subject to such power only to those creditors.

(d) For purposes of this section, the donee of a general power of appointment that is exercisable in favor of the donee's creditors or the creditors of the donee's estate and is also exercisable in favor of other objects of the power not including the donee or the donee's estate shall be treated as having 2 powers of appointment including:

(1) A general power of appointment described in subsection (c) of this section above; and

(2) A nongeneral power of appointment described in subsection (a) of this section above.

(74 Del. Laws, c. 102, § 2; 79 Del. Laws, c. 352, § 5.)

§ 506 Rule against accumulations.

No provision directing or authorizing accumulation of trust income shall be invalid.

(74 Del. Laws, c. 102, § 3.)

Part I
General Provisions

Chapter 7
JOINT ESTATES AND PARTITION

Subchapter I
General Provisions

§ 701 Creation of estate in joint tenancy; exception.

No estate, in joint tenancy, in lands, tenements or hereditaments shall be held or claimed by or under any grant, devise or conveyance made to any persons, other than to executors or trustees, unless the premises therein mentioned are expressly granted, devised or conveyed to such persons, to be held as joint tenants and not as tenants in common.

(Code 1852, § 1720; Code 1915, § 3270; Code 1935, § 3734; 25 Del. C. 1953, § 701.)

§ 702 Actions for use and occupation between cotenants.

A tenant in common or a joint tenant or a coparcener may maintain against a cotenant an action for use and occupation.

(Code 1852, § 1721; Code 1915, § 3271; Code 1935, § 3735; 25 Del. C. 1953, § 702; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Partition Proceedings

§ 721 Petition for partition; persons entitled to apply.

(a) When any 2 or more persons hold lands and tenements within this State as joint tenants or tenants in common, or as parceners under the intestate laws of this State, or when any persons hold an interest either in possession or in remainder in lands and tenements within this State, as members of a class, which class may be enlarged by the happening of a future contingency, any 1 or more of them, being of lawful age, or the guardian of any being under age, may present a petition to the Court of Chancery of the county wherein the lands and tenements are situate, or, if such real estate is situate in several counties, then to the Court of Chancery of either county wherein any of the real estate is situate. The petition shall state the facts, describe the lands and tenements so held, and pray partition thereof among the several parties entitled to such lands and tenements according to their several and respective interests.

(b) Thereupon, the Court of Chancery, or any Judge thereof in vacation, shall order a summons in partition to be issued, directed to the persons interested, who may not have joined in such petitions, returnable on some day, which shall not be less than 20 days after the date of such order requiring such persons to appear before the Court of Chancery, and show cause why partition of the premises should not be made, according to the prayer of the petition.

(c) Partition may be had notwithstanding the share held by any parcener, joint tenant or tenant in common may be for a less estate than a fee, or may be limited over after an estate for life, or any estate therein. A partition shall bind all tenants of their share in remainder, reversion or expectancy who are entitled only to that part of the lands partitioned which may be set off in severalty to the share upon which such remainder or expectancy is limited. If no partition is made, but a sale of the lands is had and confirmed, the rights of all parties in interest, whether in possession, remainder, reversion or expectancy, shall cease and terminate as to the land and be transferred to the proceeds of the sale thereof.

(d) Where a remainder, reversion or expectancy is limited over to any person in being, such person shall be served with like summons and in the same manner as is provided by law with respect to service of summons in partition causes.

(Code 1852, § 1727; Code 1915, § 3272; 34 Del. Laws, c. 200, § 1; 35 Del. Laws, c. 197, § 1; Code 1935, § 3736; 25 Del. C. 1953, § 721.)

§ 722 Service of summons.

(a) If a party, named in the summons for partition cannot be found in the county, to be served personally, service may be made by leaving a copy of the summons at the usual place of abode of such party within the county at least 6 days before the return day thereof in the presence of an adult person, or, if such party has no known place of abode within the county and cannot be served personally, and his appearance is not duly entered at the return of the summons, the Court shall make such further order for service of the summons as seems proper to it.

(b) In case it appears to the Court by the petition and affidavit or other proof at the hearing of the petition, that any persons interested in the proceedings other than the petitioners are nonresidents of the State and cannot be served personally with a summons in partition, an order may be made for the appearance of the nonresidents at a day to be fixed by the Court in order. The day fixed shall not be less than 2 weeks after the date of the order. The order shall likewise prescribe the manner of serving notice thereof on the nonresidents.

(Code 1852, § 1728; Code 1915, § 3273; 33 Del. Laws, c. 213; Code 1935, § 3737; 25 Del. C. 1953, § 722.)

§ 723 Unknown or uncertain parties in interest; description in petition; service by publication.

If in any cause in partition it is unknown whether any person shown by the facts set forth in the petition to be interested in the lands and premises, or any of them, of which partition is desired is living or dead, or in any case where the person is dead and it is unknown whether that person left any heirs or any of the heirs are unknown, then the petition may describe such unknown heirs as the heirs of the person who, if living, would be a proper party, and the petition, in cases under this section, shall pray that notice of the substance and object thereof may be given by publication as provided by § 722 of this title and the rules of the Court of Chancery for publication in cases of nonresidents. Upon such a petition the Court shall order notice to be given to the heirs of such deceased person by publication.

(Code 1915, § 3298; Code 1935, § 3762; 25 Del. C. 1953, § 723; 70 Del. Laws, c. 186, § 1.)

§ 724 Decree of partition; appointment and duties of commissioners.

Upon the return of the summons, if the parties summoned do not appear, or appearing fail to show sufficient cause against making partition of the premises, the Court of Chancery shall enter upon the record of the Court a decree that the partition be made among the parties interested, stating the shares to be allotted to them, respectively. The Court may then direct that a commission be issued, directed to 3 freeholders of the county to be appointed in the decree as commissioners, authorizing and directing them, after being duly sworn or affirmed, according to the best of their skill and judgment, to go upon the premises and make a just and fair partition thereof amongst the parties in the proportions mentioned in the commission. The commission shall further direct the commissioners that, if in their opinion a partition of the premises will be detrimental to the interests of the parties entitled, the commissioners shall make no partition, but shall appraise the whole of the premises at the true value in money; and that they shall duly return their proceedings, under their hands and seals, according to the command of the commission, with a survey of the premises, when lands are divided, to be made by some skilful surveyor to be appointed by them, and to be sworn or affirmed. The Court may vary the terms of the commission and the oath or affirmation to be taken by the commissioners if necessary to carry into effect the purpose of such commission under this chapter. The acts of a majority of the commissioners shall be valid as if done by the whole.

(Code 1852, § 1729; Code 1915, § 3274; Code 1935, § 3738; 25 Del. C. 1953, § 724.)

§ 725 Appointment of a new commission.

If from any cause a commission is returned without partition, subdivision or appraisement of the premises, or 1 or more of the freeholders dies, becomes or is declared incompetent to serve as a commissioner, before the return, or for any cause it is deemed equitable by the Court of Chancery that a new commission should be appointed, the Court may in its discretion appoint a new commission.

(Code 1852, § 1692; Code 1915, § 3275; Code 1935, § 3739; 25 Del. C. 1953, § 725.)

§ 726 Final decree of partition.

If, upon the return of the commissioners, it appears that partition of the premises has been made, as directed, and the partition is approved by the Court of Chancery, a final decree shall be entered that the partition shall remain firm and stable forever, and the proceedings and decree shall be conclusive upon the parties and all claiming under them.

(Code 1852, § 1732; Code 1915, § 3276; Code 1935, § 3740; 25 Del. C. 1953, § 726.)

§ 727 Proportionment of shares among issue claiming by stocks.

Whenever the issue of any child or other kindred of an intestate claim according to stocks by right of representation, the representatives, however numerous, of 1 stock, shall have, among them, 1 share proportioned to their aggregate interest, which share, if allotted to several, shall be subdivided among the parties to whom it is allotted; and further subdivision, if necessary, shall be made, until the share of each owner is apportioned to each such owner in severalty; and the partition shall be the same, whether the deceased child or other kindred whose issue are parties died before or after the decease of the intestate.

(Code 1852, § 1680; Code 1915, § 3277; Code 1935, § 3741; 25 Del. C. 1953, § 727; 70 Del. Laws, c. 186, § 1.)

§ 728 Procedure upon petition by all interested parties.

Upon the petition of all the persons of lawful age entitled to or holding lands and tenements as joint tenants, tenants in common or parceners, together with the guardians of such as are not of lawful age, the Court of Chancery shall, without the issuance of a summons, enter a decree for partition, and may order the issuance of a commission for making the partition. The commission shall be proceeded in, executed and returned, and final decree entered thereon in the same manner and with the same effect as provided in this subchapter.

(Code 1852, § 1733; 28 Del. Laws, c. 225; Code 1915, § 3278; Code 1935, § 3742; 25 Del. C. 1953, § 728.)

§ 729 Appointment of trustee for public sale of premises; conveyance by trustee.

If from the return of the commissioners it appears that no partition of the premises has been made, and the return is approved by the Court, or if it is shown otherwise to the Court that partition of the premises will be detrimental to the interests of the parties entitled, the Court shall make an order for the sale of the premises by a trustee appointed for that purpose, at public vendue, to the highest bidder, upon notice of the time and place of the sale as prescribed in the order. After the sale is approved by the Court, and the purchase money is

first paid into Court, or secured in such manner as the Court directs, the Court shall order a deed to be executed by the trustee conveying the premises to the purchaser.

(Code 1852, § 1734; Code 1915, § 3279; Code 1935, § 3743; 25 Del. C. 1953, § 729.)

§ 730 Allotment of primary interests.

If it appears to the commissioners that partition of the lands mentioned in the petition for partition can be made among the primary interests and that a partition of the lands among all persons entitled would be detrimental to such persons, the commissioners shall make a return, with an allotment, accordingly, and shall also appraise the value of all of the lands in money. At any time after such a return of the commissioners and before final decree, any joint tenants, tenants in common or parceners representing an entire primary interest so allotted may apply to the Court to have the share or part of the lands, found by the return to belong to the primary interest, allotted to the persons entitled to the primary interest in kind, to hold to them in severalty or as tenants in common or as joint tenants or parceners as the case may be. In such case the Court may make an allotment of the primary interest concerned in the application, order a sale of the residue of the lands, and make distribution of the proceeds thereof, in accordance with this chapter.

(Code 1852, § 1686; Code 1915, § 3280; Code 1935, § 3744; 25 Del. C. 1953, § 730.)

§ 731 Deed upon death of purchaser.

If the purchaser of any lands and premises sold under the provisions of this chapter dies before the return and confirmation of the sale and deed made accordingly, the Court of Chancery, under its general equity powers in this behalf, may, upon the payment or securing of the purchase money, in accordance with the provisions of this chapter, direct the deed to be made to the persons entitled in such case to the lands and premises so sold.

(Code 1915, § 3281; Code 1935, § 3745; 25 Del. C. 1953, § 731.)

§ 732 Title upon sale; transfer of liens to proceeds.

A purchase of the premises pursuant to the foregoing provisions of this subchapter shall pass to the purchaser of the premises all the estate and interest of the joint tenants, tenants in common or parceners or persons whether in esse or not in esse having an interest in remainder, reversion or expectancy, whether the interest is vested or contingent, free and discharged from all liens and encumbrances except liens and encumbrances as may be paramount to the title of the joint tenants, tenants in common or parceners or person of a class having an interest either in possession or in remainder, which class may be enlarged by the happenings of a future contingency. All liens and encumbrances on the estate or interest of any joint tenants, tenant in common or parcener or person of such class shall be without change or priority transferred to the interest or share of the joint tenant, tenant in common or parcener or person of such class in the proceeds of sale.

(Code 1852, § 1735; Code 1915, § 3282; 34 Del. Laws, c. 200, § 2; 35 Del. Laws, c. 197, § 2; Code 1935, § 3746; 25 Del. C. 1953, § 732.)

§ 733 Investment or division of sale proceeds.

The proceeds of the sale, after deducting the costs of the proceedings, shall be invested by the Court in whole or in part for the benefit of the various parties and interests as their rights appear, or divided among the parties entitled according to their several interests and the rules of law and equity.

(Code 1852, § 1794; Code 1915, § 3283; 35 Del. Laws, c. 197, § 3; Code 1935, § 3747; 25 Del. C. 1953, § 733.)

§ 734 Sales upon credit; purchase money security; preference of mortgage.

The Court may, in its discretion, direct that sales made under this subchapter, be made upon credit, either as to the whole or a part of the purchase money, the payment of the purchase money to be at such time and to be secured in such manner as the Court in the order of sale prescribes, or in the order of confirmation directs. The Court may order and direct all such acts and proceedings touching the execution of a deed to the purchaser and the securing, collection and distribution of the purchase money, as it deems necessary. If the purchase money, or a part thereof, is secured by the mortgage of the purchaser and the mortgage is recorded within 30 days after the date of the mortgage, the mortgage shall have preference to any judgment against the purchaser or any other lien created or suffered by that purchaser, although such judgment or other lien be of a date prior to the mortgage.

(Code 1915, § 3284; Code 1935, § 3748; 25 Del. C. 1953, § 734; 70 Del. Laws, c. 186, § 1.)

§ 735 Costs.

The costs of a proceeding for partition shall be taxed and allowed by the Court and paid from the proceeds of sale or by the parties according to their respective interests in the premises, in the manner as the Court orders.

(Code 1852, § 1738; Code 1915, § 3285; Code 1935, § 3749; 25 Del. C. 1953, § 735.)

§ 736 Dower, curtesy or other estate in undivided shares of parties to partition proceedings.

A sale of any lands, tenements and hereditaments, pursuant to the provisions of § 729 of this title, shall pass to the purchaser thereof a title, free and discharged from all claims by virtue of any estate or interest in dower or by the curtesy, or other estate, in any undivided share of any of the parties entitled if the person entitled to the interest at the filing of the petition for partition was a party to the proceeding.

The Court may make all orders touching the investment and disposal of the proceeds of sale of any share of the premises sold which may be necessary to secure to a person having a right of dower or curtesy, or other estate, in such share, an equivalent interest in the proceeds of sale.

(Code 1852, § 1699; Code 1915, § 3286; Code 1935, § 3750; 25 Del. C. 1953, § 736.)

§ 737 Procedure where dower, curtesy or life estate exists.

If there is a tenant by the curtesy or other life estate, other than in any undivided share of any of the parties entitled, partition of the real estate shall not be made until the determination of the curtesy or life estate, unless upon the joint petition of the tenant by the curtesy or other life estate and 1 or more of the other parties entitled, in which case partition may be made among the parties entitled, subject to the rights of the tenant by the curtesy or other life estate. If there is a widow entitled to dower in the real estate, other than in any undivided share of any of the parties entitled, partition of her part as the widow shall be postponed until the determination of her estate. After assigning the widow's dower, partition of the residue may be made, or other proceedings had concerning it, in the same manner and to the same effect as if such residue were all the real estate, and after the determination of the widow's estate, partition of the part assigned to her in dower may be made, or other proceedings had concerning it.

(Code 1852, §§ 1678, 1679; Code 1915, § 3287; Code 1935, § 3751; 25 Del. C. 1953, § 737; 70 Del. Laws, c. 186, § 1.)

§ 738 Advancements; treatment upon partition.

(a) If any child of an intestate or any issue of such child has received any lands, tenements or hereditaments as an advancement out of the intestate's estate, or by settlement of or by way of gift from the intestate in the intestate's own lifetime, or by means of purchase the consideration of which was paid or satisfied by the intestate, the lands, tenements or hereditaments shall be estimated in the partition, or distribution of the intestate's real estate, or proceeds of sale of real estate, as part thereof, and shall be held by the child or issue for or towards that child's or issue's share of the estate or proceeds.

(b) The settlement, gift or other advancement shall not be considered in determining or assigning the widow's dower.

(Code 1852, § 1681; Code 1915, § 3288; Code 1935, § 3752; 25 Del. C. 1953, § 738; 70 Del. Laws, c. 186, § 1.)

§ 739 Assignment of dower without embracing residue.

Upon the petition of a widow entitled to dower, or of any other person entitled to her part, or of any other person interested, an order may be made assigning such part without embracing the residue. The assignment shall be made by like proceedings and in the same manner as in the case of partition of real estate.

(Code 1852, §§ 1689, 1755; Code 1915, § 3289; Code 1935, § 3753; 25 Del. C. 1953, § 739; 70 Del. Laws, c. 186, § 1.)

§ 740 Election to take dower from proceeds of sale; investment or deposit of widow's share.

If there is a widow entitled to dower, and the return of the commissioners shows that there has been no partition of the residue after the assignment of her dower, she may, by petition, elect to take, in lieu of her dower by metes and bounds, an equivalent share of the proceeds of sale of the whole of the real estate. Thereupon, the Court may set aside the assignment of dower as made by the commissioners, and shall order the real estate to be sold. Out of the proceeds of the sale, after the payment of the costs of the proceedings, the Court may invest the share upon which the widow is entitled to receive the interest or may deposit the share in any bank or trust company in this State so that the widow shall receive the income during her life and the principal shall be paid to the other parties entitled after the death of the widow.

(Code 1852, § 1696; Code 1915, § 3290; Code 1935, § 3754; 25 Del. C. 1953, § 740; 70 Del. Laws, c. 186, § 1.)

§ 741 Appointment of trustee for joint owner's widow with a mental disability.

If a parcener, tenant in common or joint tenant, or assignee of the interest, in real estate, dies leaving a widow with a mental disability, or a widow becomes mentally disabled before the assignment of dower and partition of the residue of the lands of the decedent, a trustee for the widow with a mental disability may be appointed by the Court of Chancery and proceedings for partition may be had in the manner and form as prescribed by § 911 of Title 12 [repealed].

(Code 1915, § 3291; Code 1935, § 3755; 25 Del. C. 1953, § 741; 49 Del. Laws, c. 57, § 1; 79 Del. Laws, c. 371, § 28.)

§ 742 Appraisement of value of widow's dower; payment of widow's share and distribution of residue.

The Court of Chancery in which a partition proceeding may be pending, at any time prior to the decree of distribution, upon the petition of a widow entitled to dower in the whole or any part of the real estate which is the subject of the partition proceedings, or upon the petition of any party to such proceedings, may appraise the value of the widow's dower in the real estate, and in the decree of distribution order the appraised valuation shall be paid to the widow, and the residue paid to the other parties entitled thereto.

(Code 1915, § 3292; Code 1935, § 3756; 25 Del. C. 1953, § 742.)

§ 743 Investment or deposit of share of persons holding curtesy interest or life estate; appraisement and payment upon petition.

A tenant by the curtesy or other life tenant of any real estate sold under the provisions of this chapter shall for the term of that tenant's life be entitled to have and receive the interest of the proceeds of sale of the real estate, and the Court of Chancery in which such partition

is pending may invest the proceeds, after the payment of the costs of the proceedings, or deposit the proceeds in any bank or trust company of this State in such manner that the tenant by the curtesy or other life tenant shall receive the interest and income during that tenant's life, and the principal shall be paid, after the death of the tenant by the curtesy or other life tenant, to the other parties entitled. Upon the petition of the tenant by the curtesy or other life tenant, or any party to the proceeding, the Court may appraise the value of the interest and direct the payment to the tenant by the curtesy or other life tenant out of the proceeds of sale, the appraised valuation, and distribute the residue among the other parties entitled.

(Code 1852, § 1703; Code 1915, § 3293; Code 1935, § 3757; 25 Del. C. 1953, § 743; 70 Del. Laws, c. 186, § 1.)

§ 744 Curtesy; barred by wrongful conduct of husband.

If a husband leaves his wife to go with an adulteress or willingly lives in adultery in a state of separation from his wife, not occasioned by her fault, in either case, unless his wife is reconciled to him and suffers him to dwell with her, or if he is convicted of wrongfully killing his wife, he shall forfeit his curtesy and all demands, as her husband, upon her real or personal estate and any estate, charge or benefit settled upon him, or upon trust for him, in lieu of curtesy.

(Code 1935, § 3757A; 47 Del. Laws, c. 343, § 1; 25 Del. C. 1953, § 744; 70 Del. Laws, c. 186, § 1.)

§ 745 Real estate in more than 1 county; appointment of freeholders; effect of recording in another county.

(a) Where the real estate which is the subject of partition under this chapter lies in more than 1 of the counties of this State, the freeholders to make the partition may be selected from 1 county or from several counties, in the discretion of the Court. The Court shall order the part of the proceedings which relates to real estate in another county than that wherein the petition for partition is presented to be certified and recorded in the Court of Chancery in that county; and the record shall have all the effect of an original record.

(b) Satisfactions of the share or interest of parties entitled to the purchase money, secured by a recognizance entered into by the purchaser of lands in another county than that wherein the petition for partition is presented, entered upon the record of the county wherein the petition is presented by the county to which the proceedings are certified and recorded, shall be certified by the Clerk of the Court of Chancery of the other county noted on the record of the recognizance there, and the notation shall be considered as a satisfaction of the shares as though the satisfaction had been originally entered on the record of the county to which the proceeding is certified.

(Code 1852, § 1707; Code 1915, § 3294; 35 Del. Laws, c. 196; Code 1935, § 3758; 25 Del. C. 1953, § 745.)

§ 746 Partition of several tracts held by same joint owners; power of commissioners and Court.

The Court of Chancery may make a decree for partition in 1 proceeding under this chapter of several tracts or parcels of land and premises held by the same persons as joint tenants, tenants in common or parceners, although the several tracts or parcels of land may have been derived by different titles, and although any 1 or more of the tenants or parceners may not hold a like share, proportion or interest in all of the several tracts or parcels. In such case it shall be competent for commissioners appointed under § 724 of this title to return a partition of a part of the lands and premises embraced in the proceeding, and to return the residue of the same without partition, and further proceedings shall be in accordance with the return so made. The Court may vary the terms of the commission as may be necessary to adapt it to cases contemplated by this section.

(Code 1852, §§ 1710, 1711; Code 1915, § 3295; Code 1935, § 3759; 25 Del. C. 1953, § 746.)

§ 747 Partition of several tracts where some parties hold interest in all and other parties hold interest in part.

In a partition of several tracts or parcels of land held by the same persons, though by different titles or in different shares, as provided by § 746 of this title, if 1 or more of the persons entitled as joint tenants, tenants in common or parceners has some share, proportion or interest in all the tracts or parcels of land and premises named in the petition, and any other person is entitled as joint tenant, tenant in common or parcener to a share, proportion or interest in any 1 or more of the tracts or parcels of land, though not in all of them, the Court may in like manner make a decree for partition in 1 proceeding as aforesaid.

(Code 1852, §§ 1710, 1711; Code 1915, § 3296; Code 1935, § 3760; 25 Del. C. 1953, § 747.)

§ 748 Power of commissioners to make return of partition of part of lands; procedure.

The commissioners appointed under § 724 of this title may, in any case, return a partition of a part of the lands and premises embraced in the proceedings for partition and return the residue without partition, and further proceedings shall be in accordance with the return so made. The Court may vary the terms of the commission as may be necessary to adapt it to cases contemplated by this section.

(Code 1852, § 1730; Code 1915, § 3297; Code 1935, § 3761; 25 Del. C. 1953, § 748.)

§ 749 Certified copy of record as evidence.

A copy of any proceedings for partition had pursuant to this chapter, certified under the hand of the Register in Chancery of the county and the seal of the Court, shall be competent evidence of the proceedings therein stated in any court of law or equity.

(Code 1852, § 1739; Code 1915, § 3299; Code 1935, § 3763; 25 Del. C. 1953, § 749.)

§ 750 Limitation of appeals.

No appeal shall lie from any order or decree of the Court of Chancery touching any of these premises, unless taken within 3 months from the date of the order or decree.

(Code 1915, § 3300; Code 1935, § 3764; 25 Del. C. 1953, § 750.)

§ 751 Powers of Court of Chancery.

For the purpose of effectuating the provisions of this chapter, the Court of Chancery shall have, in addition to the jurisdiction and powers already conferred upon it, general equity powers concerning the subject matter of this chapter and authority to make any order or decree not inconsistent with the provisions of this chapter relating to causes in partition, or matters incidental or pertaining thereto, which the right or justice of the cause may demand. The Court of Chancery may make all rules and orders necessary for effectuating the provisions of this chapter.

(Code 1915, §§ 3301, 3302; Code 1935, §§ 3765, 3766; 25 Del. C. 1953, § 751.)

Part I
General Provisions

Chapter 9
WASTE

§ 901 Liability in actions for waste.

If any tenant by the curtesy, tenant in dower, or tenant for life or years commits waste, during the tenant's estate or term, of the houses, woods or any other thing belonging to the tenements so held, without special license in writing, the tenant shall be liable to an action of waste.

(Code 1852, § 1756; Code 1915, § 3323; Code 1935, § 3788; 25 Del. C. 1953, § 901; 70 Del. Laws, c. 186, § 1.)

§ 902 Liability of an assignee and tenant in possession.

If the assignee of the estate of either of the tenants commits waste, the assignee shall be liable to an action of waste. If, notwithstanding assignment, the tenant remains in possession and commits waste, the tenant shall be liable to an action of waste in the same manner as if no assignment were made.

(Code 1852, § 1757; Code 1915, § 3324; Code 1935, § 3789; 25 Del. C. 1953, § 902; 70 Del. Laws, c. 186, § 1.)

§ 903 Liability of husband or assignee of tenant.

If the husband of a tenant in dower or for life, or if an assignee of such tenant, commits waste, he shall continue liable to an action of waste, notwithstanding the decease of his wife.

(Code 1852, § 1758; Code 1915, § 3325; Code 1935, § 3790; 25 Del. C. 1953, § 903; 70 Del. Laws, c. 186, § 1.)

§ 904 Liability of cotenants.

A tenant in common, joint tenant or coparcener committing waste of the estate held in common, joint tenancy or coparcenary shall be liable to an action of waste at the suit of his or her cotenant.

(Code 1852, § 1759; Code 1915, § 3326; Code 1935, § 3791; 25 Del. C. 1953, § 904; 70 Del. Laws, c. 186, § 1.)

§ 905 Actions by heirs.

An action of waste shall be maintainable by the heir for waste done in the time of the heir's ancestor, as well as in the heir's own time, and as well against the executors or administrators of the tenant who committed the waste, as against the tenant himself or herself.

(Code 1852, § 1760; Code 1915, § 3327; Code 1935, § 3792; 25 Del. C. 1953, § 905; 70 Del. Laws, c. 186, § 1.)

§ 906 Accidental fire in house not waste.

(a) A person in whose house or chamber fire accidentally begins shall not be answerable for waste.

(b) No contract between landlord and tenant shall be contravened by this section.

(Code 1852, § 1761; Code 1915, § 3328; Code 1935, § 3793; 25 Del. C. 1953, § 906.)

§ 907 Service of writ; judgment by default.

A writ of waste shall be served in the same manner as a writ of dower. There shall be no process of pone or attachment; and if the writ is served and the defendant does not appear at the return, there shall be judgment by default, unless the court deems it proper to allow further time for the defendant's appearance.

(Code 1852, § 1762; Code 1915, § 3329; Code 1935, § 3794; 25 Del. C. 1953, § 907.)

§ 908 Procedure upon death of either party.

The action for waste shall not abate by the death of either party, but the heir shall be admitted to prosecute the action for waste on the death of the plaintiff. If the defendant dies, the defendant's executors or administrators may be made parties by a writ of scire facias.

(Code 1852, § 1763; Code 1915, § 3330; Code 1935, § 3795; 25 Del. C. 1953, § 908; 70 Del. Laws, c. 186, § 1.)

§ 909 Judgment.

In an action of waste the plaintiff shall recover the place wasted and double damages.

(Code 1852, § 1764; Code 1915, § 3331; Code 1935, § 3796; 25 Del. C. 1953, § 909.)

§ 910 Writ of estrepement.

During the pendency of an action of ejectment or of an action of waste to recover the place wasted, the court in which the action is pending may award a writ of estrepement to prevent waste being committed on the premises which are the subject of such action.

(Code 1852, § 1765; Code 1915, § 3332; Code 1935, § 3797; 25 Del. C. 1953, § 910.)

§ 911 Injunction or writ of estrepement upon petition of lienholder.

Upon the petition of a person holding any lien upon real estate, whether by judgment, recognizance, mortgage, or otherwise, the Court of Chancery may, in a proper case, award an injunction, or the Superior Court of the county, wherein such real estate is situate, may award a writ of estrepement, for the purpose of restraining waste upon the premises subject to the lien.

(Code 1852, § 1766; Code 1915, § 3333; Code 1935, § 3798; 25 Del. C. 1953, § 911.)

Part I
General Provisions

Chapter 11
BOUNDARIES

§ 1101 Unauthorized removal of landmarks and marking of boundary trees; penalty.

No person shall cut, fell, alter or remove any boundary tree or other landmark, nor shall any person, without lawful authority, mark any boundary tree upon any land that is not person's own, under penalty of forfeiting $200 to the party wronged.

(Code 1852, § 987; Code 1915, § 3616; Code 1935, § 4165; 25 Del. C. 1953, § 1101; 69 Del. Laws, c. 359, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1102 Perpetuating testimony of boundaries.

(a) Any person interested in perpetuating testimony respecting boundaries or landmarks may file a petition in the Court of Chancery representing the case, and naming the tenants and the owners of adjoining land, and praying for an order to take depositions to perpetuate testimony respecting the bounds. A summons shall be issued for summoning the tenants and owners to appear and show cause if they have any objection to such order. If any of them cannot be found, the Court may order proper service or publication of notice to them. If no sufficient objection is shown, the Court shall order that commission issue to 1 or more persons to take depositions on interrogatories filed after 10 days written notice of the filing thereof. Notice to an attorney or solicitor of record shall be sufficient notice to the party for whom he appears, and notice need not be given to any person not residing in the county where the lands lie.

(b) Each party may produce witnesses to be examined under the commission. The Court may suppress the depositions and make new orders, or it may order the depositions to be recorded, and they shall then be evidence against the parties to the petition and their privies in any suit or controversy in which the bounds which they concern shall come in question, in case of the death of the witnesses or inability to procure their attendance.

(c) If any person is not summoned or notified, the order for commission may be made without notice to that person; but that person shall not be affected by the proceedings.

(d) Each party shall bear the costs of the attendance and examination of witnesses produced by each such party; all the other costs shall be paid by the petitioner.

(e) The commissioners may employ a clerk. The commissioners and the clerk shall be sworn faithfully to perform their duty. A commission directed to several may be joint and several.

(Code 1852, §§ 988-992; Code 1915, § 3617; Code 1935, § 4166; 25 Del. C. 1953, § 1102; 70 Del. Laws, c. 186, § 1.)

§ 1103 Marking and bounding lands; procedure.

(a) Any person seised of any estate in possession, reversion or remainder, or possessed of any term, not less than 15 years, in any lands, the bounds of which are unknown or are in danger of being lost, may apply to the Superior Court in the county where the lands are situate for a commission to mark and bound the estate. The Court may issue the commission to any 5 persons agreed on by the parties or appointed by the Court, but no surveyor shall be appointed on such commission.

(b) Three months notice of the application shall be given by advertisements posted at the courthouse door of the county and at 5 public places of the 100 where the land lies, and also delivered to the persons in possession of the adjoining lands or left at their dwellings, and to the owners of such lands, if within the State. If the lands are unoccupied or the owners unknown, the Court may direct the service or the publication of notice, as shall be judged proper.

(Code 1852, §§ 993, 994; Code 1915, § 3618; Code 1935, § 4167; 25 Del. C. 1953, § 1103.)

§ 1104 Notice of commission meeting; powers of commission; recording of certificate.

The commissioners shall give at least 20 days notice of their meeting to execute the commission by advertisements at the courthouse door and at 5 public places in the 100 where the land lies; and shall meet on the land accordingly. They shall be sworn to mark and bound the land mentioned in the commission most agreeably to the true original location thereof, according to the evidence, without favor, affection or partiality, according to the best of their experience, ability and judgment, and make true return thereof. They may direct writs of summons for witnesses to be issued out of the Court, and the neglect of the witnesses to attend may be punished as a contempt of court. They may cause the land mentioned in the commission, or any other land, to be surveyed, and may appoint 1 or more surveyors and chain carriers to make the survey, and may swear them to do their duty faithfully and impartially, according to the best of their skill and ability. They may also swear the witnesses. They may adjourn from time to time. The commissioners, or a majority of them concurring, shall cause the land mentioned in the commission to be marked and bounded according to its true original location, and shall return a certificate of the marked bounds or lines to the Court, under their hands, which return shall be recorded in the recorder's office of the county, unless it is set aside by the Court for irregularity.

(Code 1852, § 995; Code 1915, § 3619; Code 1935, § 4168; 25 Del. C. 1953, § 1104.)

§ 1105 Effect of commission's return; savings provision.

If suit is not brought within 7 years from the return to controvert the decision of the commissioners, or in which the accuracy of the bounds or lines fixed by them is questioned, the record of the return shall be conclusive evidence of the original location of the land, and of the lines and boundaries. If the return shall, in any such suit, be confirmed in any particular by the verdict of a jury, it shall be conclusive to that extent, as between the same parties and those claiming under them, or any of them; saving to infants, and persons mentally ill, imprisoned, or beyond sea, and those claiming under them, the right to bring any such suit, within 5 years from the removal of their disability. The term of 7 years shall not begin to run against any person while that person is in possession of the land in controversy.

(Code 1852, § 996; Code 1915, § 3620; Code 1935, § 4169; 25 Del. C. 1953, § 1105; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1106 Boundaries fixed by agreement of parties.

If any lines or boundaries are ascertained and fixed by agreement of parties, they shall not be disturbed by any commission, as between the same parties or those claiming under either of them. If any persons agree to ascertain and fix the lines or boundaries of their land, the agreement and a plot of the land so settled may, by the consent of the parties interested, be recorded, and shall have the same effect as if the location of the land had been settled by commissioners.

(Code 1852, § 997; Code 1915, § 3621; Code 1935, § 4170; 25 Del. C. 1953, § 1106.)

§ 1107 Right of holders of separate parts of tract or of younger survey to a commission.

When several persons hold separate parts of the same tract, they, or any of them, may have a commission to mark and bound the whole, as well as the several parts thereof. When any person holding a younger survey is interested in the locating of interfering or neighboring elder surveys, he shall have a commission to mark and bound the elder survey. Three months' written notice shall be given to the person seised of the elder tract of the intention to apply for such commission. The commission may be obtained only if the person seised of the elder tract neglects to apply for and obtain the commission. The commission shall be executed in like manner and have the same effect as if obtained by a person seised of the land therein mentioned.

(Code 1852, § 998; Code 1915, § 3622; Code 1935, § 4171; 25 Del. C. 1953, § 1107.)

§ 1108 Fees of commissioners, surveyors, chain carriers and witnesses.

Each commissioner shall be entitled to $1.00 per day for each such commissioner's services, each surveyor to $2.00 per day, the chain carriers to 80 cents per day, and each witness to 50 cents per day, to be paid by the person at whose request the service is performed. The Court may compel payment by attachment.

(Code 1852, § 999; Code 1915, § 3623; Code 1935, § 4172; 25 Del. C. 1953, § 1108; 70 Del. Laws, c. 186, § 1.)

Part I
General Provisions

Chapter 13
FENCES

§ 1301 Lawful fences; height; barbed wire.

A good fence of wood, iron, wood and iron rods or wire, stone, or well set thorn, 4 1/2 feet high or 4 feet high and having a ditch within 2 feet of it, shall be deemed a lawful fence in New Castle and Kent Counties, and in Sussex County 4 feet shall be the height of lawful fences. Barbed wire shall not be used for division fences except by the mutual consent of the owners of the properties divided by such fences. No fence of any kind which is composed in whole or in part of, or to which there is or has been added, barbed wire, razor wire or any barbed wire type of fencing material shall be permitted in any residential district without prior approval of the county or municipal zoning board or its board of adjustment, unless the property being enclosed by such fence is being used for farming or educational purposes.

(Code 1852, § 1000; 19 Del. Laws, c. 656; Code 1915, § 3624; Code 1935, § 4173; 25 Del. C. 1953, § 1301; 71 Del. Laws, c. 157, § 1.)

§ 1302 Liability for trespasses; fence-viewers to assess damages.

If any horse, cattle, goat, sheep or hog trespasses on any grounds enclosed with lawful fence, the owner of the animal so trespassing shall pay such damages as shall be awarded by the fence-viewers. Any person having unruly horses, goats, sheep, hogs or cattle, which break through lawful fences, shall, after notice thereof, be liable for double damages for any trespass committed by such animal, after such notice, to be awarded by the fence-viewers.

(Code 1852, § 1001; Code 1915, § 3625; Code 1935, § 4174; 25 Del. C. 1953, § 1302.)

§ 1303 Fence-viewers; appointment; powers; quorum; compensation.

(a) The Superior Court shall annually appoint not more than 8 nor less than 5 persons in each hundred to be fence-viewers. The fence-viewers shall be the sole judges of the sufficiency of any fences, of the charges of making or repairing partition or other fences, and how borne, and of damages by animals trespassing.

(b) Any 3 of the fence-viewers may act, and the majority of those acting may decide any pertinent matter.

(c) The person whose name heads the list of fence-viewers in the respective hundreds shall act as chair, and in that person's absence the second person so listed shall be chair, and in that second person's absence the chair shall be the next in order of the names listed. The chair shall make a record of the terms of settlement in each dispute and shall keep such records available until all terms of settlement have been complied with. One month before the date of appointing fence-viewers for the ensuing year, the chair shall submit to the prothonotary of the respective counties the names of any present members who desire their names to be removed from the list of fence-viewers, stating the reasons therefor.

(d) The fence-viewers shall be allowed $8.00 per day and 7 cents per mile for travel to and from the point of dispute. The chair shall receive in addition to fees received by other members the further sum of $1.00 for each day as stated. The fees and mileage allowances shall be paid for each necessary trip made in connection with a dispute.

(e) The chair shall submit and certify to the Levy Court or County Council of the county in which services as fence-viewers have been performed a list of the names of those fence-viewers who have acted in each case specifying the amount of fees due to each fence-viewer. The Levy Court or County Council of the county in which such list is submitted, properly certified to as aforesaid, shall make payment of the amount of money shown to be due thereon to each fence-viewer out of any moneys in the county treasury not otherwise appropriated.

(Code 1852, §§ 1002-1004; Code 1915, § 3626; Code 1935, § 4175; 48 Del. Laws, c. 318, § 1; 25 Del. C. 1953, § 1303; 55 Del. Laws, c. 85, § 37; 70 Del. Laws, c. 186, § 1.)

§ 1304 Maintenance of partition fences; liability for enclosure of another's lands.

(a) The respective occupants of lands enclosed by fences shall maintain partition fences between them in equal shares, as long as both parties continue to improve the same.

(b) Where any person encloses land adjoining another's enclosed land, so that any part of the fence, or fence and ditch, or hedge and ditch, or wall, already made, becomes a partition fence, the fence-viewers shall determine what sum shall be paid by the one to the other, and the fence shall then be maintained by the parties equally.

(Code 1852, §§ 1005, 1006; Code 1915, § 3627; Code 1935, § 4176; 25 Del. C. 1953, § 1304.)

§ 1305 Judgment of fence-viewers; enforcement and penalty for noncompliance.

If the fence-viewers judge any fence to be insufficient, they shall give notice thereof to the person bound to maintain the fence. If 1 of several persons so bound, upon such notice and request, neglects, for 5 days, to make that 1 person's own part of the fence good, or

pay that 1 person's share of the same or of any partition fence before made, any justice of the peace may, on complaint, direct the party aggrieved to repair the fence, and the aggrieved party shall be reimbursed double the cost which the person, so neglecting to repair the same, was bound to pay or contribute.

(Code 1852, § 1007; Code 1915, § 3628; Code 1935, § 4177; 25 Del. C. 1953, § 1305; 70 Del. Laws, c. 186, § 1.)

§ 1306 Division ditches and fences; remedy for neglect to maintain; allowance to guardian or lessee; special marsh laws.

(a) The adjoining owners or possessors of embanked marshes or meadows shall be obliged to join in cutting division ditches at least 8 feet wide and 2 1/2 feet deep, and in making fences at least 2 feet high within 1 foot of the edge of the ditches, at their common cost. The division ditches shall be well cleansed at least once a year and the fences kept in good repair, and they shall be deemed lawful fences.

(b) If any owner or possessor refuses or neglects to join in making the ditch and fence, or to keep the ditch in good order and repair, the adjoining owner or possessor may make or cleanse and repair the same, and may recover the proportion of the cost thereof as the fence-viewers determine the party neglecting ought to pay.

(c) A guardian shall be allowed any sum so expended or paid for that guardian's ward, and a lessee or tenant may deduct the same from his rent, unless otherwise stipulated by the contract. This section shall not be construed to repeal any special law respecting the improvement of marsh or meadow whereby any other provision is made concerning dividing ditches or fences.

(Code 1852, §§ 1008-1010; Code 1915, § 3629; Code 1935, § 4178; 25 Del. C. 1953, § 1306; 70 Del. Laws, c. 186, § 1.)

§ 1307 Recovery of awards by fence-viewers.

All sums awarded by fence-viewers, or directed by them to be paid, may be recovered as other debts of like amount are recoverable.

(Code 1852, § 1011; Code 1915, § 3630; Code 1935, § 4179; 25 Del. C. 1953, § 1307.)

Part I
General Provisions

Chapter 14
TIMBER TRESPASS

§ 1401 Liability for damages; court's authority to determine whether trespass intentional; exemplary and actual damages.

(a) Whoever wilfully, negligently or maliciously cuts down or fells or causes to be cut down or felled a tree or trees growing upon the land of another, without the consent of the owner, shall be liable for damages as set forth in subsection (b) of this section.

(b) In civil actions brought for an act of timber trespass the court shall have the authority to determine whether such trespass was unintentional or wilful and award damages accordingly. If the plaintiff shall satisfy the court that the metes and bounds of that plaintiff's property at the place of the trespass were appropriately established and marked by reasonably permanent and visible markers, or establish that the trespasser was on notice that the rights of the plaintiff were in jeopardy, the court shall find that the trespass was wilful and shall award exemplary damages equal to triple the fair value of the trees removed plus the cost of litigation. If, however, the court shall find that the trespass was unintentional, the court may award the plaintiff damages equal to the conversion value of the trees taken or damaged plus cost of litigation.

(25 Del. C. 1953, § 1401; 49 Del. Laws, c. 236; 61 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1402 Method of ascertaining value of trees removed.

In the absence of a more accurate means of ascertaining the value of trees removed in a timber trespass, the court may accept that figure which shall be arrived at by accepting the diameters of the stumps of the severed trees measured inside the bark as the assumed diameter of the trees measured outside the bark at 4 1/4 feet above the ground and apply the values given for gross tree volume as published in U.S.D.A., Farmers Bulletin No. 1989, and the numerous privately published forestry publications which give board foot volume contents of timber trees based on the International Long Rule formula.

(25 Del. C. 1953, § 1402; 49 Del. Laws, c. 236.)

§ 1403 Failure of defendant to answer.

If the defendant in an action, as provided in this chapter, shall not appear or shall not answer the complaint at the return of the writ or notice served therefor, the court shall determine the trespass wilful and award damages accordingly.

(25 Del. C. 1953, § 1403; 49 Del. Laws, c. 236.)

§ 1404 Abatement of action.

An action begun under this chapter shall not abate by the death of either party thereto, but shall be continued by the administrator or executor.

(25 Del. C. 1953, § 1404; 49 Del. Laws, c. 236.)

Part I
General Provisions

Chapter 15
TORT LIABILITY OF PROPERTY OWNERS

§ 1501 Liability of owners or occupiers of land for injury to guests or trespassers.

No person who enters onto private residential or farm premises owned or occupied by another person, either as a guest without payment or as a trespasser, shall have a cause of action against the owner or occupier of such premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by the wilful or wanton disregard of the rights of others.

(25 Del. C. 1953, § 1501; 59 Del. Laws, c. 171, § 1; 62 Del. Laws, c. 322, § 1.)

Part I
General Provisions

Chapter 16
LIS PENDENS

§ 1601 Written notice of pendency of action.

(a) In any action instituted in any court of this State having civil jurisdiction or in the United States District Court for the District of Delaware, any party asserting a claim, the object of which is to affect the title to, or enforce an equitable lien on, real estate may, after filing of such claim, file in the office of the recorder of deeds of any county in which all or any part of the affected real estate is situate a written notice of the pendency of the action, which shall be under oath, and shall set forth:

(1) The court in which the action was brought, the caption of the action and the civil action number;

(2) The object of the action or the affirmative relief sought;

(3) A legal description sufficient to identify the property affected; and

(4) A designation of the names of each party against whom the notice is directed to be indexed.

(b) No notice of pendency shall be filed under this chapter:

(1) On a claim relating to real estate which, if sustained, would entitle the party to recovery solely of money or money damages; or

(2) To enforce a mechanic's lien or to foreclose upon a mortgage at law, which actions shall continue to be governed by the notice procedures of this Code specifically applicable thereto.

(67 Del. Laws, c. 59, § 1.)

§ 1602 Recording; indexing; cancellation.

Upon payment of the proper fee, the recorder of deeds shall record the notice of pendency. Each notice recorded shall be indexed, direct and indirect, against the name of each party designated in the notice of pendency. Such entry shall note next to such name the book and page number where the notice of pendency is recorded.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 1.)

§ 1603 Filed notice of pendency; effect as to persons claiming interest in real estate identified in notice of pendency.

(a) The recording of a notice of pendency shall be notice to any person acquiring an interest in the real property identified in the notice from or through any party named in the notice from the time of the recording of the notice. Any person claiming an interest in the real property which is the subject of the notice of pendency is bound by all proceedings taken in the action after such recording and until cancellation or discharge to the same extent as if such person were a party.

(b) Unless and until a notice of pendency is filed as provided by this chapter, no action shall, before final judgment is entered therein, be deemed to be constructive notice to a person acquiring or having acquired a lien on or any other interest in the affected real estate.

(67 Del. Laws, c. 59, § 1.)

§ 1604 Effective term.

A notice of pendency shall be effective for a term of 3 years from the date of recording with the recorder of deeds. Before expiration of a term or an extended term, the court, upon motion of the party recording the notice, for good cause shown, may grant an extension for a like additional term. An extension order shall be recorded with the recorder of deeds before expiration of the prior term. An extension order shall be recorded with the recorder of deeds before expiration of the prior term and no extension order may be entered by any court after the expiration of the original term or any extended term.

(67 Del. Laws, c. 59, § 1.)

§ 1605 Mailing of notice of pendency to parties against whom notice is indexed.

Within 5 days after filing the written notice of pendency with the recorder of deeds, the party recording the notice of pendency shall serve or mail a copy of such notice by first-class mail to the last known address of each party against whom the notice of pendency has been indexed, and to all persons shown on the public records to have an interest in or lien upon the real estate which is the subject of the notice. Not later than 10 days after filing the written notice of pendency, an affidavit of the party recording the notice of pendency or of the attorney for such party shall be filed with the clerk of the court in which the action has been filed, indicating compliance with the foregoing requirements, including the parties to whom the notice was sent, the date of mailing and the address or addresses to which the notice or notices were sent.

(67 Del. Laws, c. 59, § 1.)

§ 1606 Mandatory cancellation.

The court, upon motion of any party aggrieved, shall direct any recorder of deeds to cancel a notice of pendency and mark the indices accordingly if:

(1) Mailing of the notice has not been completed within the time required by § 1605 of this title;

(2) The final judgment entered denying the claim covered by the notice of pendency is no longer appealable; or

(3) The claim relating to the real estate is one which, if sustained, would entitle the party solely to recover money or money damages.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 2.)

§ 1607 Cancellation upon condition of security.

In an action for the enforcement of an equitable lien, the objective of which is to secure the payment of money, the court, upon motion of any party aggrieved, as a condition of cancellation of the notice of pendency, may direct that such party post sufficient security to insure the payment of money as may, by the final determination of the action, be ascertained to be chargeable upon the affected real estate. Nothing herein contained shall preclude the posting of bond or other security by agreement of the parties as a condition of cancellation.

(67 Del. Laws, c. 59, § 1.)

§ 1608 Discretionary cancellation; hearing on probability of success on the merits.

The court, upon motion, supported by affidavit or affidavits, of any party aggrieved, may direct any recorder of deeds to cancel a notice of pendency and mark the indices accordingly if the court determines that there is not a probability that final judgment will be entered in favor of the party recording the notice of pendency. The party recording the notice of pendency shall bear the burden of establishing such probability. The court may order oral argument on the motion. No discovery on such motion shall be permitted unless so ordered by the court. The order of the court on the motion may contain such conditions as the court deems just and proper.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 3.)

§ 1609 Voluntary cancellation by party recording the notice.

At any time, the recorder of deeds shall cancel the notice of pendency and mark the indices accordingly upon written request, under oath, for such cancellation and upon payment of the proper fee by the party who recorded the notice, or by such party's attorney of record. The written request shall be recorded.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 4.)

§ 1610 Effect of canceled or expired notice.

A canceled or expired notice of pendency shall not be deemed to be actual or constructive notice to any person for any purpose.

(67 Del. Laws, c. 59, § 1.)

§ 1611 Costs and attorneys' fees.

In an order either upholding a notice of pendency or cancelling a notice of pendency, the court may, for good cause shown, and in the interest of justice, direct a party to pay the prevailing party's damages, if any, together with court costs of the action. In addition, the court, in exceptional cases, may award reasonable attorneys' fees to the prevailing party. Attorneys' fees may be assessed against a party only if the court finds that such party has wilfully asserted a claim or defense thereof without foundation in law or fact and/or not supported by a good faith request for an extension of the law, or for an improper purpose such as to harass or cause unnecessary delay in a legal proceeding or transaction.

(67 Del. Laws, c. 59, § 1.)

§ 1612 Fee for recording notice as taxable costs.

The fee for recording any notices required under this chapter shall be taxable as a part of the costs in the action.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 5.)

§ 1613 Recording and marginal notation of judgment or stipulation of dismissal.

Whenever a stipulation of dismissal is filed, or whenever a final judgment entered is no longer appealable, notice of the pendency of which action has been filed in the office of the recorder of deeds, the party who filed the notice of pendency shall cause a certified copy of the order of final judgment or a copy of the stipulation to be recorded in the office of the recorder of deeds. Upon payment of the proper fee, the recorder of deeds shall record the order or stipulation and mark the indices accordingly. If the party who filed the notice of pendency fails or refuses to file a certified copy of the final order or stipulation of dismissal, any party aggrieved by the filing of the notice may cause the order or stipulation to be filed.

(67 Del. Laws, c. 59, § 1; 72 Del. Laws, c. 27, § 6.)

§ 1614 Express repeal of common law.

The common-law doctrine of lis pendens is hereby abolished and no action instituted after June 29, 1989, shall constitute constructive notice to any person unless notice of such action complies with the requirements of this chapter.

(67 Del. Laws, c. 59, § 1.)

Part II
Mortgages and Other Liens

Chapter 21
MORTGAGES ON REAL ESTATE

§ 2101 Form of mortgage; effect [For application of section, see 80 Del. Laws, c. 280, § 2]

(a) The following shall be a sufficient form of mortgage for the purpose of creating a lien on real estate within this State:

WHEREAS, A. D. of....., hereinafter called party of the first part, in and by his certain obligation duly executed, bearing even date herewith, stands bound unto C. D. of..... in the sum of..... Dollars, payable..... together with interest thereon, at the rate of..... per centum per annum, payable....., from the date thereof, together with costs and counsel fees, under the terms and conditions therein expressed.

NOW THIS MORTGAGE WITNESSETH, that the said party of the first part for and in consideration of the aforesaid debt of..... Dollars, and for the better securing the payment of the same, with interest, as aforesaid and costs and counsel fees, doth hereby grant and convey unto the said party of the second part,

ALL

DESCRIPTION OF PREMISES

RECITAL

And it is hereby expressly provided and agreed that if any action, suit, matter or proceeding be brought for the enforcement of this mortgage or the accompanying bond, and if the plaintiff or lien holder in said action, suit or proceeding shall recover judgment in any sum, such plaintiff or lien holder shall also recover as reasonable counsel fees..... per centum of the amount decreed for principal and interest, which said counsel fees shall be entered, allowed and paid as a part of the decree or judgment in said action, suit or proceeding.

Provided Always, Nevertheless, that if the said party of the first part, his Heirs, Executors, Administrators or Assigns, shall and do well and truly pay, or cause to be paid, unto the said party of the second part, his Executors, Administrators or Assigns, the aforesaid debt of..... dollars on the day and time hereinbefore mentioned and appointed for the payment thereof with interest, then and from henceforth, as well this present Indenture, and the estate hereby granted, as the said recited Obligation, shall cease, determine and become void and of no effect, anything hereinbefore contained to the contrary thereof, in anywise notwithstanding.

In Witness Whereof, the said party of the first part has hereunto set the party of the first part's hand and seal this..... day of..... A.D.....

Sealed and delivered in

the presence of

(Seal)

(b) A mortgage in the above form duly executed, acknowledged and recorded shall operate and be effective as a valid mortgage lien upon the entire interest of the mortgagors in the premises therein described, and irrespective of whether the mortgage is under seal, it may be foreclosed in the Superior Court pursuant to Chapter 49 of Title 10.

(c) Nothing herein contained shall invalidate a mortgage not made in the above form, but a mortgage made in the form heretofore in common use within this State shall be valid and effectual.

(33 Del. Laws, c. 209; Code 1935, § 3688; 25 Del. C. 1953, § 2101; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 280, § 1.)

§ 2102 Minor's bond, obligation or mortgage.

The signature, seal and acknowledgment of a person under the age of 21 years and of the age of at least 18 years to any bond, other obligation and/or mortgage shall be valid and legally effective for all intents and purposes in law or in equity, and shall bind that person, that person's heirs, executors and administrators.

(33 Del. Laws, c. 209; Code 1935, § 3688; 45 Del. Laws, c. 230, § 6; 46 Del. Laws, c. 164; 47 Del. Laws, c. 124; 25 Del. C. 1953, § 2102; 58 Del. Laws, c. 511, § 60; 70 Del. Laws, c. 186, § 1.)

§ 2103 Effect of mortgage executed by trustee for mentally ill spouse.

Any mortgage executed and acknowledged by a trustee for a mentally ill married man or woman, appointed pursuant to the provisions of § 104 or § 105 of this title, shall be as valid and effectual to bar and divest his or her estate as tenant by the curtesy or dower interest in case he or she survives his or her spouse, as if he or she had been legally capable, and had in fact executed and acknowledged such mortgage; and any such mortgage, or the record thereof, shall be competent evidence in all courts of this State.

(17 Del. Laws, c. 616, § 2; 22 Del. Laws, c. 444, §§ 1, 2; Code 1915, §§ 3202, 3203; Code 1935, §§ 3663, 3664; 25 Del. C. 1953, § 2103; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2104 Purchase money mortgage of married woman; liability of husband.

Where a married woman becomes a purchaser of real estate, she may secure the purchase money, or part of it, by recognizance, bond, mortgage or otherwise as single women may, and her husband need not be a party nor consent to such act of giving security. In such case any such recognizance, bond, mortgage or other obligation or lien shall not be subject to any right or estate in curtesy of the husband of such married woman. In case of her entering into recognizance or giving bond or mortgage, or making other contract for the payment of the purchase money of such real estate, her husband shall not be liable, unless he is a party thereto.

(14 Del. Laws, c. 550, § 4; Code 1915, § 3052; 30 Del. Laws, c. 197; Code 1935, § 3545; 25 Del. C. 1953, § 2104; 70 Del. Laws, c. 186, § 1.)

§ 2105 Purchase money mortgage by married woman.

A married woman may secure the purchase money or part of it for real estate purchased by her, and give a bond, as provided by § 2104 of this title.

(Code 1852, § 1614; Code 1915, § 3200; Code 1935, § 3661; 25 Del. C. 1953, § 2105; 70 Del. Laws, c. 186, § 1.)

§ 2106 Priority of mortgage from time of recording.

A mortgage, or a conveyance in the nature of a mortgage, of lands or tenements shall have priority according to the time of recording it in the proper office, without respect to the time of its being sealed and delivered, and shall be a lien from the time of recording it and not before.

(Code 1852, § 1632; Code 1915, § 3222; Code 1935, § 3684; 25 Del. C. 1953, § 2106.)

§ 2107 Priority of mortgages recorded at same time.

If 2 or more mortgages, or conveyances in the nature of mortgages, of the same premises are lodged in the same office at the same time, they shall stand in priority in relation to each other, according to their respective dates.

(Code 1852, § 1633; Code 1915, § 3223; Code 1935, § 3685; 25 Del. C. 1953, § 2107.)

§ 2108 Priority of purchase money mortgages.

If lands or tenements are sold and 1 or more mortgages on the same, or any part thereof, are made by the purchaser to the vendor for securing the purchase money or any part thereof, and if such mortgages are recorded within 5 days after the deed conveying such land or tenements from such vendor to such purchaser shall be recorded, the lien of the mortgages on the lands or tenements or any part thereof shall have preference to and priority over any judgment against the mortgagor or any other lien created or suffered by that mortgagor, although such judgment or lien is of a date prior to the mortgages. As between 2 or more such purchase money mortgages on the same land, they shall have priority and preference according to the times that they are severally recorded in the proper office. Two or more such mortgages, recorded at the same time, shall have no preference or priority as between themselves.

(Code 1852, § 1634; Code 1915, § 3224; 28 Del. Laws, c. 223; Code 1935, § 3686; 25 Del. C. 1953, § 2108; 70 Del. Laws, c. 186, § 1.)

§ 2109 Assignment of mortgages.

(a) An assignment of a mortgage or any sealed instrument attested by 1 creditable witness shall be valid and effectual to convey all the right and interests of the assignor.

(b) All assignments of mortgages or any sealed instruments heretofore made in the presence of 1 witness and all satisfactions made by assignees in such assignments are made good and valid.

(18 Del. Laws, c. 213, §§ 1, 2; Code 1915, § 3226; Code 1935, § 3689; 25 Del. C. 1953, § 2109.)

§ 2110 Effect of release of part of mortgaged premises; acknowledgment and recording.

The release by the mortgagee or that mortgagee's assigns, executed at the instance of the mortgagor, that mortgagor's heirs or assigns, of any part of the mortgaged premises shall not be deemed or taken to operate as a release or discharge of any other part of the lands included in such mortgage, but such other lands shall be and remain subject to the lien of the mortgage, and execution may be had thereof in the same manner as if the mortgage had originally included only such lands. Every such release shall be under hand and seal, and shall be acknowledged in the same manner as provided by law for the acknowledgment of deeds, and shall become effective upon the date of filing in the office of the recorder of deeds in and for the county in which such lands so released are situated.

(11 Del. Laws, c. 612; Code 1915, § 3227; Code 1935, § 3690; 25 Del. C. 1953, § 2110; 49 Del. Laws, c. 80; 70 Del. Laws, c. 186, § 1.)

§ 2111 Satisfaction of mortgages; penalty; enforcement in Superior Court.

(a) Whenever the debt or duty secured by a mortgage or conveyance in the nature of a mortgage is satisfied or performed, the legal holder of such mortgage or conveyance at the time the satisfaction or performance is completed shall, within 60 days after satisfaction or performance is completed (including the payment of any required satisfaction fees), cause an entry of such satisfaction or performance

to be made upon the record by the procedure enumerated in this subsection. The fee for entering such satisfaction or performance upon the record shall be paid by the debtor or obligor unless the mortgage or conveyance provides otherwise.

(1) A satisfaction of a mortgage or conveyance shall be made by recordation of either a satisfaction piece, if the instrument is presented in substantially the same form as set out in subsection (b) of this section and acknowledged in the same manner as provided by law for the acknowledgment of deeds, or an attorney's affidavit pursuant to § 2120 of this title. The satisfaction piece shall be presented to the recorder, and the recorder shall accept such document for recordation providing such document conforms to the requirements set out in subsection (b) of this section.

(2) If a full or partial release of the mortgage or conveyance is recorded, the recorder of deeds shall place a reference to a book and page number in the indices as to where the release is recorded.

(b) The following shall be a sufficient form of satisfaction piece as authorized by paragraph (a)(1) of this section:

To: Recorder of Deeds This instrument prepared by:

..... County Name:

State of Delaware Address:

Tax Parcel Identification Number: .....

Property Address: ..... .

You are hereby requested and authorized to enter satisfaction of, and cancel of record, the mortgage executed by ....., mortgagor, to ....., mortgagee, dated ....., ..., and recorded ....., ..., in your office in Mortgage Record ....., at Page ..... . [and if applicable, Assigned by ..... to ..... and recorded in Assignment Record ....., Page ..... .]

INDIVIDUAL SIGNATURE AND ACKNOWLEDGEMENT

IN WITNESS WHEREOF, Mortgagee(s), [Assignee(s)] has(ve) hereunto set its/their hand(s) and seal(s) this ..... day of ....., ...

.....

..... (Seal)

WITNESS MORTGAGEE

State of .....

County of .....

This instrument was acknowledged before me on (date) by (Name(s) of person(s).

(Signature of notarial officer)

(Seal, if any)

(Title and rank)

My commission expires

SIGNATURE AND ACKNOWLEDGEMENT IN A REPRESENTATIVE CAPACITY

IN WITNESS WHEREOF, Mortgagee [Assignee] has hereunto set its hand and seal this ..... day of ....., ...

MORTGAGEE [ASSIGNEE] NAME

..... BY: ..... (SEAL)

WITNESS ATTEST: ..... (SEAL)

State of .....

County of .....

This Instrument was acknowledged before me on ..... (date), by ..... [name(s) of person(s)] as ..... [type of authority, e.g., officer, trustee, etc.] of ..... [name of party on behalf of whom instrument was executed].

(Signature of notarial officer)

(Seal, if any)

(Title and rank)

My commission expires .....

(c) Each recorder shall either create and maintain a separate index and record of the recording of documents which are authorized to be recorded by this chapter including, but not limited to, powers of attorney to satisfy mortgages, satisfaction pieces, partial and complete releases of mortgages and security interests or index the same in the index used for recorded mortgages. If the recorder creates a separate index, it may be called the Release and Satisfaction Index, which shall reference the mortgagor, mortgagee, record book and page of the mortgage being released or satisfied and the address or lot number, if any, of the property being released or satisfied. The recorder may also maintain a separate record of said instruments and shall not be required to maintain other than a micrographic or electronic record of said instruments.

(d) If the legal holder of a mortgage fails to satisfy the mortgage in accordance with the requirements of subsection (a) of this section, the mortgagor, or that mortgager's agent, shall be entitled to submit a notice to the legal holder of the mortgage demanding that the mortgage be satisfied. The notice shall be sent by certified or registered mail, return receipt requested. The notice shall be sent to the legal holder of the mortgage at the address designated in the payoff statement, or to such other person and/or address as the legal holder may designate in the payoff statement. If:

(1) No payoff statement is received by the mortgagor or that mortgager's agent; or

(2) No address is provided in the payoff statement and the person issuing the notice has received no address to which to send such notices; or

(3) Payments are made electronically and no payment address is given by the legal holder; or

(4) Payment in satisfaction has been made at maturity or otherwise when due and without a payoff statement having been issued,

then the address for notice shall be deemed to be the last address used by the legal holder in written communications with the mortgagor, and the notice shall be sent to the attention of "Mortgage Satisfaction Department." A copy of such notice shall also be sent to the registered agent (if any) in the State of Delaware of the legal holder.

(e) Whoever, being the holder of a mortgage, wilfully fails to satisfy a mortgage upon the record as required by subsection (a) of this section shall be fined not more than $1,000 for each such failure together with assessed costs, for each failure, not to exceed $1,000.

(f) The recorder of deeds or the mortgage commissioner of the county in which any mortgage is recorded that has been satisfied or performed shall file a complaint with the Attorney General's office in said county against any mortgage holder who has not satisfied of record said mortgage within 60 days of its satisfaction or performance.

(g) The Superior Court shall have jurisdiction of offenses under this section.

(Code 1852, § 1635; 22 Del. Laws, c. 205; Code 1915, § 3228; 37 Del. Laws, c. 243; Code 1935, § 3691; 45 Del. Laws, c. 229; 25 Del. C. 1953, § 2111; 55 Del. Laws, c. 341, § 4; 65 Del. Laws, c. 310, §§ 1, 2; 68 Del. Laws, c. 245, §§ 1-3; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 543, §§ 1-8; 72 Del. Laws, c. 189, §§ 1-6; 75 Del. Laws, c. 307, §§ 1-4.)

§ 2112 Effect of satisfaction of mortgage by Regional Manager or Treasurer of Home Owners' Loan Corporation.

When any mortgage has been satisfied pursuant to a power of attorney executed by the Regional Manager or Regional Treasurer in the name of the Home Owners' Loan Corporation, in accordance with the provisions contained in § 108(a) of this title, the mortgage or conveyance shall be extinguished.

(40 Del. Laws, c. 217; Code 1935, § 3675; 25 Del. C. 1953, § 2112; 70 Del. Laws, c. 186, § 1.)

§ 2113 Effect of entry of satisfaction.

An entry of satisfaction or performance made in accordance with this chapter shall extinguish the mortgage or conveyance, and the effect shall be the same as if such mortgage or conveyance had not been made.

(Code 1852, § 1636; Code 1915, § 3229; Code 1935, § 3692; 25 Del. C. 1953, § 2113.)

§ 2114 Damages for nonentry of satisfaction.

If any person commits a default under § 2111 of this title, such person, that person's executors or administrators, or if it is a corporation, such corporation, in addition to the other penalties provided for shall be liable to the party by or on whose behalf the satisfaction or performance has been made or completed, in damages to be recovered by a civil action. The damages shall not be less than $10 nor more than $500, except when special damage to a larger amount is alleged in the complaint and proved.

(Code 1852, § 1637; Code 1915, § 3230; Code 1935, § 3693; 25 Del. C. 1953, § 2114; 55 Del. Laws, c. 341, § 5; 70 Del. Laws, c. 186, § 1.)

§ 2115 Procedure to compel entry of satisfaction of mortgage or judgment.

(a) In all cases where mortgages or judgments are liens on real estate in this State and the same have been paid and the mortgagee or obligee or their executors, administrators or assigns refuses or neglects to enter satisfaction of such mortgage or judgment on the record thereof in the office where the same is recorded or entered, forthwith after the payment thereof, the mortgagor or obligor or their heirs or assigns may, upon sworn petition to the Superior Court of the county in which such mortgage or judgment is recorded or entered, setting forth the facts, obtain from such Court a rule on the mortgagee or obligee or their executors, administrators or assigns, returnable

at such time as the Court may direct, requiring such mortgagee or obligee or their executors, administrators or assigns to appear on the day fixed by the Court and show cause, if they have any, why such mortgage or judgment shall not be marked satisfied on the record thereof. Such rule shall be served as provided by law for service of writs of scire facias. In case the mortgagee or obligee or their executors, administrators or assigns reside out of the State and cannot be served, or in case the mortgagee or obligee is a corporation which has been dissolved for more than 3 years prior to the filing of the petition, and for whom no trustee or receiver has been appointed, the rule shall be continued and a copy thereof shall be published by the sheriff in a newspaper of the county once each week for 4 successive weeks, and upon proof of such advertisement by affidavit of the sheriff made at the time to which such rule was continued, shall be deemed and considered sufficient service of such rule.

(b) Upon the return of the rule, if the Court is satisfied from the evidence produced that such mortgage or judgment, together with all interest and costs due thereon, has been satisfied and paid, the rule shall be made absolute, and the Court shall order and decree that the mortgage or judgment is paid and satisfied, and shall order and direct the recorder or the prothonotary, in whose office such mortgage or judgment is entered, to enter on the record thereof full and complete satisfaction thereof.

(22 Del. Laws, c. 211, §§ 1, 2; Code 1915, § 3231; 29 Del. Laws, c. 237; Code 1935, § 3694; 25 Del. C. 1953, § 2115; 55 Del. Laws, c. 341, § 5.)

§ 2116 Reconveyance upon satisfaction or performance.

When a debt or duty, secured by a mortgage, or conveyance in the nature of a mortgage is satisfied or performed, the person or corporation in whom the title under such mortgage or conveyance is, shall upon the reasonable request and at the proper cost of the mortgagor, that mortgagor's heirs or assigns, execute and acknowledge a sufficient reconveyance of the premises contained in such mortgage, or conveyance in the nature of a mortgage.

(Code 1852, § 1638; Code 1915, § 3232; Code 1935, § 3695; 25 Del. C. 1953, § 2116; 70 Del. Laws, c. 186, § 1.)

§ 2117 Entry of partial payments on record; penalty for refusal; exceptions.

Repealed by 72 Del. Laws, c. 29, § 1, effective May 12, 1999.

§ 2118 Priority of mortgages and other instruments securing future advances and certain other advances; modifications of mortgages and other instruments.

(a) Any mortgage or other instrument given for the purpose of creating a lien on real property, when so expressed therein or when so expressed in a separate instrument or other agreement specifically referred to therein and incorporated by reference (which instrument or other agreement need not be recorded), may secure not only existing indebtedness, but also future advances, whether such advances are obligatory or to be made at the option of the lender, or otherwise, and whether made before or after default or maturity or other similar events, to the same extent as if such future advances were made on the date of the execution of such mortgage or other such instrument, although there may be no advance made at the time of the execution of such mortgage or other instrument and although there may be no indebtedness outstanding at the time any advance is made. Such lien, as to third persons with or without actual knowledge thereof, shall be valid as to all such indebtedness and future advances from the time the mortgage or other such instrument is recorded or filed in the proper office as provided by law. The total amount of the indebtedness having the priority established by such lien may decrease or increase from time to time, but the total unpaid principal balance at any 1 time shall not exceed the maximum principal amount of the obligation which must be specified in such mortgage or other such recorded instrument.

Any mortgage or other instrument to which this subsection applies, and all such existing indebtedness, future advances and interest thereon, shall have preference to and priority over any lien, other than those liens the priority of which is governed by § 2901 of this title, which is subsequent in time to the time such mortgage or other such instrument is recorded or filed in the proper office as provided by law.

(b) In addition to the stated indebtedness, a mortgage or other instrument given for the purpose of creating a lien on real property may secure disbursements and other advances thereunder for the payment of taxes, assessments, maintenance charges, insurance premiums or costs relating to the property encumbered by such mortgage or other instrument, for the discharge of liens having priority over the lien of such mortgage or other instrument, for the curing of waste of the property that is the subject of the lien, for the indemnification obligations regarding environmental liabilities of the property that is the subject of the lien, and for the payment of service charges and expenses incurred by reason of default, and including late charges, attorneys' fees and court costs, if such mortgage or other such instrument states that it shall secure any such advances and disbursements, together with all interest thereon.

Any mortgage or other instrument to which this subsection applies, and all such stated indebtedness, disbursements and other advances expressed therein and interest thereon, shall have preference to and priority over any lien, other than those liens the priority of which is governed by § 2901 of this title, which is subsequent in time to the time such mortgage or other such instrument is recorded or filed in the proper office as provided by law.

(c) Nothing in this section is intended to limit or restrict the obligations, indebtedness, liabilities, covenants, disbursements or advances that may be secured by any mortgage or other instrument given for the purpose of creating a lien on real property.

(d) The preference and priority of the lien of any mortgage or other such instrument given for the purpose of creating a lien on real property and all matters secured thereby shall extend to any and all future modifications thereof, or of the obligations secured by the

mortgage or such other instrument, that have been recorded or filed in the proper office as provided by law, except for such modification as expressly increases the maximum principal amount that is specified in such mortgage or other such instrument or separate instrument or agreement referred to in subsection (a) of this section.

(e) Nothing herein shall be construed to limit any agreement between the lender and the borrower or other parties to any such mortgage or other such instrument given for the purpose of creating a lien on real property as to the time period for the repayment of such existing indebtedness, future advances, interest, service charges and disbursements as aforesaid, as to other obligations, advances or disbursements that are secured thereby or as to any other terms and conditions of such mortgages or other such instrument.

(59 Del. Laws, c. 444, § 1; 65 Del. Laws, c. 32, §§ 1, 2; 70 Del. Laws, c. 254, § 1.)

§ 2119 Insurance requirements for mortgages.

(a) The mortgagee or obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall accept as evidence of insurance a written binder issued by any authorized insurer or its agent if the binder includes or is accompanied by:

(1) The name and address of the insured borrower;

(2) The name and address of the lender as loss payee;

(3) A description of the insured real property;

(4) A provision that the binder may not be cancelled within the term of the binder unless the lender and the insured borrower receive written notice of the cancellation at least 10 days prior to the cancellation;

(5) Except in the case of a renewal of a policy subsequent to the closing of the loan, a paid receipt for the full amount of the applicable premium; and

(6) The amount of insurance coverage.

A mortgagee or obligee may refuse to honor a binder in cases where the lender receives notice of the cancellation of the binder by the insurer; or, at the expiration of 30 days of the date the binder was given, the insurer has failed to issue the policy of insurance.

(b) The mortgagee or obligee of any mortgage or other instrument given for the purpose of creating a lien on real property shall not require hazard insurance in an amount which exceeds the greater of:

(1) The value placed on the improvements by the insurer; or

(2) The value placed on the improvements as determined by the lender's appraisal of the real property.

(c) In the event that subsection (a) or (b) of this section is wilfully violated, the original mortgagee or obligee listed upon the original mortgage or other instrument shall be obligated to pay to the mortgagor or obligor:

(1) Reasonable attorneys' fees; and

(2) The greater of the actual damages directly resulting from the violation or 5% of the face amount of the mortgage.

(d) A violation of this section shall not affect the validity of the mortgage or other instrument which creates the lien securing the loan.

(e) For purposes of this section, a "mortgage or other instrument given for the purpose of creating a lien on real property" shall mean a consumer purpose mortgage or other consumer purpose instrument given for the purpose of creating a lien. For purposes of this section, "consumer purpose mortgage" and "consumer purpose instrument given for the purpose of creating a lien" shall mean mortgages or other instruments given for the purpose of creating a lien encumbering 1-to-4 family residential properties, and shall not include mortgages or other instruments given for the purpose of creating a lien encumbering other multi-unit residential properties, such as apartment buildings, or encumbering office, commercial or industrial properties.

(68 Del. Laws, c. 350, § 1; 77 Del. Laws, c. 434, § 1.)

§ 2120 Authorization to satisfy mortgage.

(a) An attorney authorized to practice law in the State who has paid in full or caused to be paid in full a debt owed by any debtor to any creditor holding a mortgage securing such debt and encumbering a property owned by the debtor, may, at any time after the expiration of 60 days after such debt has been paid in full, and after giving a minimum of 15 days' notice to said creditor, record with the recorder of deeds in the county in which such property is located, an affidavit and request which shall contain the following information:

(1) The mortgage record, volume and page of the mortgage proposed to be marked fully paid and satisfied;

(2) The full name and address of the original mortgagee;

(3) The name of the original mortgagor or mortgagors;

(4) The original date of the mortgage;

(5) The original amount of the mortgage;

(6) A satisfactory description of the property which is encumbered by the mortgage, including, but not limited to:

a. The property address and/or lot number;

b. Subdivision name, if any; and

c. The tax parcel number assigned to such property;

(7) The name of each entity to whom the mortgage was subsequently assigned, together with the dates and recording information of said assignments;

(8) The full name and address of the last mortgagee in interest which appears of record on the mortgage;

(9) The full name and address of the creditor or mortgage loan servicer who was fully paid;

(10) If the fully paid creditor or mortgage loan servicer is other than the last mortgagee of record on the date of full payment, a statement by the attorney whose signature appears on the affidavit that:

a. The attorney was provided with a written payoff statement by the creditor or mortgage loan servicer;

b. The attorney relied upon the written payoff statement; and

c. The attorney made payment or caused payment to be made of the outstanding debt to the creditor or mortgage loan servicer;

(11) If the mortgage secured a home equity or other consumer open line of credit, affiant attorney, where requested in writing by the mortgagee, shall, also in writing, instruct said mortgagee to close, effective upon the date and time of receipt of the mortgage "payoff figure," the open line of credit and that no additional funds are to be advanced under the open line of credit;

(12) The date on which the debt was fully paid;

(13) That at least 60 days have elapsed since the debt was fully paid;

(14) That the affiant attorney has fully paid or has caused to be fully paid the debt to the creditor or to the mortgage loan servicer and retains evidence of that payment;

(15) That after a minimum of 15 days' notice, by certified mail, return receipts requested, the mortgagee of record at the time of the full payment described in the affidavit, has failed to accomplish satisfaction of the mortgage in the mortgage record, volume and page in which such mortgage appears in the public records;

(16) That the attorney requests the recorder of deeds in the county in which such property is located to indicate in the property records of that county that such mortgage is fully paid and satisfied;

(17) That the attorney whose signature appears on said affidavit has personally reviewed all of the information and each of the facts contained in said affidavit and request; and

(18) That the information contained in said affidavit and request is true and correct to the best of the attorney's knowledge.

(b) The recorder of deeds, or a duly appointed deputy, in the county in which the debtor's property encumbered by such mortgage is located shall be authorized to cause said mortgage to be satisfied upon receipt of such affidavit and request by the attorney fully paying such debt.

(c) The recorder of deed's office may charge a fee for accepting and recording the affidavit and satisfying the mortgage.

(d) This section shall, in no way, limit the authority of the recorder of deeds to otherwise satisfy mortgages as provided by law.

(e) The following or substantially consistent revisions by the recorder of deeds shall be a sufficient form of mortgage satisfaction affidavit pursuant to this section:

AFFIDAVIT CERTIFYING MORTGAGE PAYOFF AND REQUEST FOR MORTGAGE SATISFACTION PURSUANT TO 25 DEL. C. § 2120

STATE OF DELAWARE)
) SS.
NEW CASTLE COUNTY)

I, the undersigned, an attorney authorized to practice law in the State of Delaware, after having first been duly sworn, depose and say as follows:

(1) The mortgage proposed to be marked fully paid and satisfied appears in Mortgage Record ____, Volume ____, Page ____;

(2) The full name and address of the original mortgagee is _____;

(3) The name of the original mortgagor(s) is (are) _____;

(4) The original date of the mortgage is _____;

(5) The original amount of the mortgage is _____;

(6) A satisfactory description of the property which is encumbered by the mortgage, including, but not limited to the following is:

a. The property address and/or lot number is _____;

b. Subdivision name, if any, _____;

and

c. The county tax parcel number assigned to such property is _____;

(7) After the original mortgage was recorded, the mortgage was subsequently assigned of record to each of the following entities on the date and at the book and page there noted:

to ____ on ____ at Book/Volume ____ and Page No. ____

to ____ on ____ at Book/Volume ____ and Page No. ____

to ____ on ____ at Book/Volume ____ and Page No. ____

to ____ on ____ at Book/Volume ____ and Page No. ____

(8) The full name and address of the last mortgagee in interest on the mortgage is _____;

(9) The full name and address of the creditor or mortgage loan servicer who was fully paid is _____;

(10) _____, who is the creditor or mortgage loan servicer that was fully paid is other than _____, the last mortgagee in interest which appeared of record on the date of said payment. I did, however, obtain a written payoff statement from the creditor or mortgage loan servicer on account of said mortgage, and, in accordance with and in reliance on the payoff statement, I made payment or caused payment to be made of the outstanding debt to the creditor or mortgage loan servicer;

(11) I have, where applicable, instructed the mortgagee, in writing, effective the date and time of receipt of the mortgage "payoff figure", to close and decline any further advances on the home equity or other consumer open line of credit which was secured by the affected mortgage;

(12) The date on which the debt was fully paid is _____;

(13) At least 4 months have elapsed since the debt was fully paid and the amount of the debt so paid is not in dispute;

(14) I fully paid or caused to be fully paid such debt to the creditor or mortgage loan servicer and I retain evidence of that payment;

(15) After a minimum of 15 days' notice by me, by certified mail, return receipt requested, the last mortgagee in interest has failed to take appropriate steps to accomplish satisfaction of the mortgage in the mortgage record, volume and page where such mortgage appears in the public records;

(16) I request the Recorder of Deeds in _____ County to indicate in the record of said County that such mortgage is fully paid and satisfied;

(17) I have personally reviewed all of the information and each of the facts contained in this affidavit and request; and

(18) The information contained in this affidavit and request is true and correct to the best of my knowledge.

(f) An affidavit given in the form above shall be notarized by a notary public.

(69 Del. Laws, c. 465, § 1; 71 Del. Laws, c. 190, §§ 1-7; 75 Del. Laws, c. 307, § 5.)

§ 2121 Instruments transferring, pledging or assigning lessors' interests in leases or rents arising from real property as security.

(a) Upon recording, in the office of the recorder of deeds in and for the county where the real property lies, of any instrument transferring, pledging or assigning the lessor's interest in leases (whether in existence or thereafter existing) of or rents (including security deposits) arising from real property as conditional or unconditional security for a debt or duty, the interest of the transferee, pledgee or assignee shall be fully perfected as to the transferor, pledgor or assignor and as to all third parties without the necessity of furnishing further notice to the transferor, pledgor or assignor or any lessee, of obtaining possession of the real property, of impounding the rents or security deposits, of filing a financing statement under the Delaware Uniform Commercial Code, of securing the appointment of a receiver, or of taking any other affirmative action, and such interest shall have priority according to the time of recording the instrument in the proper office, without respect to the time of its being signed and delivered.

(b) Except as may be provided in the lease or other agreement by which it is bound, the lessee under any such lease identified in subsection (a) of this section is authorized to pay the transferor, pledgor or assignor, rents and security deposits until the lessee receives written notification that rents due or to become due have been transferred, pledged or assigned and that payment is to be made to the transferee, pledgee or assignee. A notification that does not reasonably identify the rents transferred, pledged or assigned is ineffective. If requested by the lessee, the transferee, pledgee or assignee must furnish reasonable proof that the assignment has been made and is in full force and effect and unless so furnished the lessee may pay the transferor, pledgor or assignor.

(c) Whenever the debt or duty secured by an instrument described in this section is satisfied or performed, and to the extent such instrument is not self-terminating, upon such an event, the transferee, pledgee or assignee shall forthwith cause to be recorded in the office in which the instrument is recorded a document pursuant to which it declares that the instrument is terminated. The recording of such document shall extinguish the instrument and the effect shall be the same as if such instrument had not been made.

(d) Any recorded instrument transferring, pledging or assigning an interest in leases of or rents arising from real property shall be duly perfected as herein provided, except that nothing herein shall alter, change or modify any perfected order of priority of interests in such leases or rents which exists on the date that this legislation is enacted.

(70 Del. Laws, c. 253, § 1.)

§ 2122 Procedure to strike an entry of satisfaction or other indication of a mortgage satisfaction.

(a) When entry of satisfaction, recordation of a mortgage satisfaction piece or other indication of a mortgage satisfaction has been made upon the record through inadvertence, error or mistake, any person or party affected by such inadvertence, error or mistake may, upon sworn petition to the Superior Court of the county in which such mortgage was recorded, setting forth the facts, obtain from such Court a rule on the mortgagor or obligor or their heirs, executors, administrators or assigns, returnable at such time as the Court may direct, requiring such mortgagor or obligor or their heirs, executors, administrators or assigns to appear on the day fixed by the Court and show cause, if they have any, why the entry of satisfaction or other indication of a mortgage satisfaction should not be stricken. Such rule shall be served as provided by law for service of writs of scire facias. In case the mortgagor or obligor or their heirs, executors, administrators or assigns reside out of the State and cannot be served, or in case the mortgagor or obligor is a corporation which has been dissolved for more than 3 years prior to the filing of the petition, and for whom no trustee or receiver has been appointed, the rule shall be continued and a copy thereof shall be published by the sheriff in a newspaper of the county once each week for 4 successive weeks, and upon proof of such advertisement by affidavit of the sheriff made at the time to which such rule was continued, shall be deemed and considered sufficient service of such rule.

(b) Upon the return of the rule, if the Court is satisfied from the evidence produced that entry of satisfaction or other indication of a mortgage satisfaction had been made upon the record of such mortgage through inadvertence, error or mistake, the rule shall be made absolute, and the Court shall order and decree that the entry of satisfaction or other indication of a mortgage satisfaction of such mortgage shall be stricken as if such satisfaction or other indication of a mortgage satisfaction had not been made.

(c) Upon the issuance of an order striking an entry of satisfaction or other indication of a mortgage satisfaction, the party who obtains such order shall forthwith file with the recorder of deeds a certified copy of said order. The recorder shall at once record said order and make a proper note of the same in the indices. The recorder shall collect recording fees upon receipt of the instrument as provided for in § 9607 of Title 9.

(72 Del. Laws, c. 141, § 1.)

§ 2123 Satisfaction of mortgage after lapse of time.

(a) Any consumer purpose mortgage or consumer purpose deed of trust having the effect of a mortgage (hereinafter "mortgage") that is unsatisfied upon the public records and remains a lien on any real estate may be satisfied pursuant to the procedures set forth in subsection (b) of this section:

(1) After the lapse of 20 years from the date for the maturity of such lien set forth in such mortgage, or in any modification, extension or continuance thereof duly recorded in like manner and place; or

(2) In the absence of any fixed or ascertainable maturity date stated in such mortgage or any such modification, extension or continuance thereof, after the lapse of 50 years from the latest of the date of recording the mortgage or of any modification; extension or continuance thereof (as the case may be).

(b) An attorney authorized to practice law in the State of Delaware shall be authorized to satisfy a mortgage that remains a lien pursuant to subsection (a) of this section above, provided the following procedures are followed:

(1) Written notice, by certified mail, return receipt requested, must be sent to the last mortgagee of record as defined below requesting that the mortgage be immediately satisfied or that the last mortgagee of record notify the attorney, by certified mail, return receipt requested, within 60 days of the mailing of said notice, that the obligation secured by the mortgage has not been satisfied or performed pursuant to § 2111(a) of this title. The last mortgagee of record shall mean the legal holder of the mortgage and at the address which appears upon the recorded mortgage, or any assignment, modification, extension or continuance thereof, or counsel of record for the legal holder of the mortgage duly recorded in like manner or place, or if such addresses are not ascertainable from the public records, at the last known available or reasonably ascertainable address of the last mortgagee of record or if none, addressed care of the Office of the Delaware Bank Commissioner.

(2) If the mortgage remains unsatisfied for an additional period of 60 days after the above notice has been mailed, and during such time the attorney has not received any notification from the last mortgagee of record that the obligation secured by the mortgage has not been satisfied or performed pursuant to § 2111(a) of this title, the attorney may file an affidavit of satisfaction in the form set forth in subsection (c) of this section below.

(c) An affidavit of satisfaction permitted under this section shall contain the following information:

(1) The mortgage record, volume and page, instrument number or other recording data of the mortgage proposed to be marked fully paid and satisfied;

(2) The name of the original mortgagee, as the same appears in the mortgage;

(3) The name of the original mortgagor or mortgagors, as the same appears in the mortgage;

(4) The original date of the mortgage (if specified therein);

(5) The original principal amount of the mortgage (if specified therein);

(6) The name of each assignee to whom the mortgage was subsequently assigned of record, together with the dates and recording information of said assignments;

(7) The full name and address of the last mortgagee of record;

(8) A statement by the attorney that:

a. Such attorney has sent the notice required by paragraph (b)(1) of this section;

b. Such attorney has not received from the last mortgagee of record notice that the obligation secured by the mortgage has not been satisfied or performed pursuant to § 2111(a) of this title;

c. After passage of the period of time specified in paragraph (b)(2) of this section, the mortgage has not been satisfied; and

d. The attorney has reason to believe that the mortgage is a consumer purpose mortgage or consumer purpose deed of trust;

(9) That the attorney requests the recorder of deeds in the county in which the mortgage is recorded to indicate in the property records of that county that such mortgage is fully paid and satisfied;

(10) That the attorney whose signature appears on said affidavit has personally reviewed all of the information and each of the facts contained in said affidavit and request; and

(11) That the information contained in said affidavit and request is true and correct to the best of the attorney's knowledge.

(d) The recorder of deeds, or a duly appointed deputy, in the county in which the mortgage is recorded shall be authorized to cause said mortgage to be satisfied upon the receipt of such affidavit and request by the attorney.

(e) The recorder of deeds office may charge a fee for accepting and recording the affidavit and satisfying the mortgage.

(f) An affidavit filed pursuant to this section does not in itself extinguish any obligation secured by the mortgage that is the subject of the affidavit. An attorney who files an affidavit pursuant to subsection (c) of this section is not liable to any person if the attorney complied with this section and the last mortgagee of record did not respond in a timely manner to the notification pursuant to paragraph (b)(1) of this section.

(g) This section shall in no way limit the authority of the recorder of deeds to otherwise satisfy mortgages as provided by law.

(h) This section does not supplant any other remedy or process available for the satisfaction or release of mortgages.

(i) The provisions of this section will be effective on December 24, 2006, and shall apply to all mortgages as defined in subsection (j) of this section.

(j) For purposes of this section, "consumer purpose mortgage" and "consumer purpose deed of trust" shall mean mortgages or deeds of trust securing debt incurred primarily for personal, family or household purposes and encumbering only 1-to-4-family residential properties, and shall not include mortgages or deeds of trust encumbering any other properties, including multi-unit residential properties such as apartment buildings, office, commercial or industrial properties.

(75 Del. Laws, c. 307, § 6.)

Part II
Mortgages and Other Liens
Chapter 22
UNIT PROPERTIES
Subchapter I
Preliminary Provisions

§ 2201 Short title; applicability.

This chapter shall be known and may be cited as the "Unit Property Act." This chapter shall be subject to the provisions of Part VII, Chapter 81 of this title, which supersedes various provisions hereof, as provided in § 81-119 of that chapter.

(25 Del. C. 1953, § 2201; 54 Del. Laws, c. 282; 76 Del. Laws, c. 422, § 1; 77 Del. Laws, c. 92, § 1.)

§ 2202 Definitions.

The following words or phrases, as used in this chapter, shall have the meanings ascribed to them in this section, unless the context of this chapter clearly indicates otherwise:

(1) "Building" means any multi-unit building or buildings or complex thereof, whether in vertical or horizontal arrangement, as well as other improvements comprising a part of the property and used or intended for use for residential, commercial or industrial purposes or for any other lawful purpose or for any combination of such uses.

(2) "Code of regulations" means such governing regulations as are adopted pursuant to this chapter for the regulation and management of the property, including such amendments thereof as may be adopted from time to time.

(3) "Common elements" means and includes:

a. The land on which the building is located and portions of the building which are not included in a unit;

b. The foundations, structural parts, supports, main walls, roofs, basements, halls, corridors, lobbies, stairways and entrances and exits of the building;

c. The yards, parking areas and driveways;

d. Portions of the land and building used exclusively for the management, operation or maintenance of the common elements;

e. Installations of all central services and utilities;

f. All apparatus and installations existing for common use;

g. All other elements of the building necessary or convenient to its existence, management, operation, maintenance and safety or normally in common use; and

h. Such facilities as are designated in the declaration as common elements.

(4) "Common expenses" means and includes:

a. Expenses of administration, maintenance, repair and replacement of the common elements;

b. Expenses agreed upon as common by all the unit owners; and

c. Expenses declared common by provisions of this chapter or by the declaration or the code of regulations.

(5) "Council" means a board of natural individuals of the number stated in the code of regulations all of whom shall be either residents of this State or unit owners, as defined in paragraph (21) of this section, but need not be both, and who shall manage the business operation and affairs of the property on behalf of the unit owners and in compliance with and subject to the provisions of this chapter.

(6) "Declaration" means the instrument by which the owner in fee simple or lessee of the property submits it to the provisions of this chapter as hereinafter provided and all amendments thereof.

(7) "Declaration plan" means a survey of the property prepared in accordance with § 2219 of this title.

(8) "Fully funded," or any variation thereof, with respect to the repair and replacement reserve, means a repair and replacement reserve which:

a. When supplemented by a fixed, budgeted annual addition compliant with § 2244 of this title, contains that balance of funds which will meet fully, without supplementation by borrowed funds or special assessments, the cost of each projected repair and replacement noted in the reserve study no later than the date when each such repair or replacement is projected to be required by the reserve study as defined in paragraph (17) of this section, and

b. With all budgeted contributions and expenditures for repairs and replacements projected out no less than 20 years, will never fall below a positive balance.

(9) "Majority" or "majority of the unit owners" means the owners of more than 50 percent in the aggregate in interest of the undivided ownership of the common elements as specified in the declaration.

(10) "Nonresidential condominium" means a condominium in which all units are restricted exclusively to nonresidential purposes.

(11) "Nonresidential purposes" means use for a purpose other than use for a dwelling and appurtenant recreational purposes, or both.

(12) "Person" means a natural individual, corporation, partnership, association, trustee or other legal entity.

(13) "Property" means and includes the land, the building, all improvements thereon, all owned either in fee simple or under lease, and all easements, rights and appurtenances belonging thereto which have been or are intended to be submitted to the provisions of this chapter.

(14) "Recorded" means that an instrument has been duly entered of record in the office of the recorder of deeds of the county in which the property is situate.

(15) "Recorder" means the recorder of deeds of the county in which the property is situate.

(16) "Repair and replacement reserve" means a reserve fund maintained by the council solely for the repair and replacement of common elements, and for no other purpose (including operating budget shortfalls or other expenditures appropriate to a contingency reserve).

(17) "Reserve study" means an analysis, performed or updated within the last 5 years by 1 or more independent engineering, architectural or construction contractors, or other qualified persons, of the remaining useful life and the estimated cost to replace each separate system and component of the common elements, the purpose of which analysis is to inform the council and the unit owners of the amount which should be maintained from year to year in a fully funded repair and replacement reserve to minimize the need for special assessments.

(18) "Revocation" means an instrument signed by all of the unit owners and by all holders of liens against the units by which the property is removed from the provisions of this chapter.

(19) "Unit" means a part of the property designed or intended for any type of independent use which has a direct exit to a public street or way, or to a common element or common elements leading to a public street or way, or to an easement or right-of-way leading to a public street or way, and includes the proportionate undivided interest in the common elements which is assigned thereto in the declaration or any amounts thereof.

(20) "Unit designation" means the number, letter or combination thereof designating a unit in the declaration plan.

(21) "Unit owner" means the person or persons owning a unit.

(25 Del. C. 1953, § 2202; 54 Del. Laws, c. 282; 56 Del. Laws, c. 195, §§ 1-3, 6; 76 Del. Laws, c. 422, § 1; 77 Del. Laws, c. 92, §§ 2-5.)

§ 2203 Application.

This chapter shall be applicable only to real property, the sole owner, or all the owners, or the lessee, or all the lessees of which submit the same to the provisions hereof by a duly recorded declaration.

(25 Del. C. 1953, § 2203; 54 Del. Laws, c. 282; 56 Del. Laws, c. 195, § 4.)

Subchapter II

General Provisions

§ 2204 Status of units; ownership thereof.

Each unit, together with its proportionate undivided interest in the common elements, is for all purposes real property, and the ownership of each unit, together with its proportionate undivided interest in the common elements, is for all purposes the ownership of real property.

(25 Del. C. 1953, § 2204; 54 Del. Laws, c. 282.)

§ 2205 Common elements.

The percentage of undivided interest in the common elements assigned to each unit shall be set forth in the declaration, and such percentage shall not be altered except by recording an amended declaration duly executed by all of the unit owners affected thereby. The undivided interest in the common elements may not be separated from the unit to which such interest pertains and shall be deemed to be conveyed, leased or encumbered with the unit even though such interest is not expressly referred to or described in the deed, lease, mortgage or other instrument. The common elements shall remain undivided and no owner may exempt himself or herself from liability with respect to the common expenses by waiver of the enjoyment of the right to use any of the common elements or by the abandonment of that owner's unit or otherwise and no action for partition or division of any part of the common elements shall be permitted, except as provided in § 2239 of this title. Each unit owner or lessee thereof may use the common elements in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other unit owners. The maintenance and repair of the common elements and the making of any additions or improvements thereto shall be carried out only as provided in the code of regulations.

(25 Del. C. 1953, § 2205; 54 Del. Laws, c. 282; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Administrative Provisions

§ 2206 Code of regulations as governing.

The administration of every property shall be governed by a code of regulations, a true and correct copy of which and all duly adopted amendments of which shall be duly recorded.

(25 Del. C. 1953, § 2206; 54 Del. Laws, c. 282.)

§ 2207 Adoption and amendment of code of regulations.

The council has authority to make, alter, amend and repeal the code of regulations, subject to the right of a majority of the unit owners to change any such actions.

(25 Del. C. 1953, § 2207; 54 Del. Laws, c. 282.)

§ 2208 Contents of the code of regulations.

The code of regulations shall provide for at least the following and may include other lawful provisions:

(1) Identification of the property by reference to the place of record of the declaration and the declaration plan;

(2) The method of calling meetings of unit owners and meetings of the council;

(3) The number of unit owners and the number of members of council which shall constitute a quorum for the transaction of business;

(4) The number and qualification of members of council, the duration of the term of such members, and the method of filling vacancies;

(5) The annual election by the council of a president, secretary and treasurer and any other officers which the code of regulations may specify;

(6) The duties of each officer, the compensation and removal of officers and the method of filling vacancies;

(7) Maintenance, repair and replacement of the common elements and payment of the cost thereof;

(8) The manner of collecting common expenses from unit owners; and

(9) The method of adopting and amending rules governing the details of the use and operation of the property and the use of the common elements.

(25 Del. C. 1953, § 2208; 54 Del. Laws, c. 282.)

§ 2209 Compliance with code of regulations and administrative provisions.

Each unit owner shall comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his unit or in the declaration plan.

(25 Del. C. 1953, § 2209; 54 Del. Laws, c. 282.)

§ 2210 Noncompliance with code of regulations and administrative provisions.

Failure to comply with the code of regulations and with such rules governing the details of the use and operation of the property and the use of the common elements as may be in effect from time to time and with the covenants, conditions and restrictions set forth in the declaration or in deeds of units or in the declaration plan shall be grounds for an action for the recovery of damages or for injunctive relief or both maintainable by any member of the council on behalf of the council or the unit owners or in a proper case by an aggrieved unit owner or by any person who holds a mortgage lien upon a unit and is aggrieved by any such noncompliance.

(25 Del. C. 1953, § 2210; 54 Del. Laws, c. 282.)

§ 2211 Duties of council.

The duties of the council shall include the following:

(1) The maintenance, repair and replacement of the common elements, and the maintenance of a repair and replacement reserve as defined in § 2202(16) of this title, fully funded as defined in § 2202(8) of this title, subject to the provisions of § 2245 of this title, as applicable;

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

(3) The adoption and amendment of the code of regulations and the promulgation, distribution and enforcement of rules governing the details of the use and operation of the property and the use of the common elements, subject to the right of a majority of the unit owners to change any such actions; and

(4) Any other duties which may be set forth in the declaration or code of regulations.

(25 Del. C. 1953, § 2211; 54 Del. Laws, c. 282; 76 Del. Laws, c. 422, § 1; 77 Del. Laws, c. 92, §§ 6, 7.)

§ 2212 Powers of council.

Subject to the limitations and restrictions contained in this chapter, the council shall on behalf of the unit owners:

(1) Have power to manage the business operations and affairs of the property and for such purposes to engage employees and appoint agents and to define their duties and fix their compensation, enter into contracts, leases and other written instruments or documents and to authorize the execution thereof by officers elected by the council; and

(2) Have such incidental powers as may be appropriate to the performance of their duties.

(25 Del. C. 1953, § 2212; 54 Del. Laws, c. 282.)

§ 2213 Work on common elements.

The maintenance, repair and replacement of the common elements and the making of improvements or additions thereto shall be carried on only as provided in the code of regulations.

(25 Del. C. 1953, § 2213; 54 Del. Laws, c. 282.)

§ 2214 Certain work prohibited.

No unit owner shall do any work which would jeopardize the soundness or safety of the property or impair any easement or hereditament without the unanimous consent of the unit owners affected thereby.

(25 Del. C. 1953, § 2214; 54 Del. Laws, c. 282.)

§ 2215 Easements for work.

The council shall have an easement to enter any unit to maintain, repair or replace the common elements, as well as to make repairs to units if such repairs are reasonably necessary for public safety or to prevent damage to other units or to the common elements.

(25 Del. C. 1953, § 2215; 54 Del. Laws, c. 282.)

§ 2216 Common profits and expenses.

The common profits of the property shall be distributed among and the common expenses shall be charged to the unit owners according to the percentage of the undivided interest of each in the common elements, as set forth in the declaration and any amendments thereto.

(25 Del. C. 1953, § 2216; 54 Del. Laws, c. 282.)

§ 2217 Voting by unit owners.

At any meeting of unit owners each unit owner shall be entitled to the same number of votes as the percentage of ownership in the common elements assigned to that unit owner's unit in the declaration and any amendments thereto.

(25 Del. C. 1953, § 2217; 54 Del. Laws, c. 282; 70 Del. Laws, c. 186, § 1.)

§ 2218 Books of receipts and expenditures, availability for examination.

The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the common elements specifying and itemizing the maintenance, repair and replacement expenses of the common elements and any other expenses incurred. Such records shall be available for examination by the unit owners during regular business hours. In accordance with the actions of the council assessing common expenses against the units and unit owners, he shall keep an accurate record of such assessments and of the payment thereof by each unit owner.

(25 Del. C. 1953, § 2218; 54 Del. Laws, c. 282.)

Subchapter IV

Declaration; Reservations of Charges Thereunder; Conveyances; Mortgages and Leases

§ 2219 Contents of declaration.

The declaration shall contain the following:

(1) A reference to this chapter and an expression of the intention to submit the property to the provisions of this chapter;

(2) A description of the land and building;

(3) The name by which the property will be known;

(4) A statement that the property is to consist of units and common elements as shown in a declaration plan;

(5) A description of the common elements and the proportionate undivided interest expressed as a percentage assigned to each unit therein, provided the sum of the undivided interests in the common elements allocated at any time to all the units must equal 1 if stated as a fraction or 100 percent if stated as a percentage, except for minor variations due to rounding. In the event of any discrepancy between an allocated interest and the result derived from application of the pertinent formula, then the allocated interest prevails;

(6) A statement that the proportionate undivided interest in the common elements may be altered by the recording of an amendment duly executed by all unit owners affected thereby;

(7) A statement of the purposes or uses for which each unit is intended and restrictions, if any, as to use;

(8) The names of the first members of council;

(9) Any further details in connection with the property which the party or parties executing the declaration may deem appropriate.

(25 Del. C. 1953, § 2219; 54 Del. Laws, c. 282; 77 Del. Laws, c. 92, § 8.)

§ 2220 Declaration plan.

The declaration plan shall bear the verified statement of a registered architect or licensed professional engineer certifying that the declaration plan fully and accurately:

(1) Shows the property, the location of the building thereon, the building and the layout of the floors of the building, including the units and the common elements; and

(2) Sets forth the name by which the property will be known and the unit designation for each unit therein.

(25 Del. C. 1953, § 2220; 54 Del. Laws, c. 282.)

§ 2221 Contents of deeds of units.

Deeds of units shall include the following:

(1) The name by which the property is identified in the declaration plan and the name of the political subdivision and the name of the county in which the building is situate, together with a reference to the declaration and the declaration plan including reference to the place where both instruments and any amendments thereof are recorded;

(2) The unit designation of the unit in the declaration plan and any other data necessary for its proper identification;

(3) A reference to the last unit deed if the unit was previously conveyed;

(4) The proportionate undivided interest expressed as a percentage in the common elements which is assigned to the unit in the declaration and any amendments thereof;

(5) In addition to the foregoing the first deed conveying each unit shall contain the following specific provisions:

"The grantee, for and on behalf of the grantee and the grantee's heirs, personal representatives, successors and assigns, by the acceptance of this deed, covenants and agrees to pay such charges for the maintenance of, repairs to, replacement of and expenses in connection with the common elements as may be assessed from time to time by the council in accordance with the Unit Property Act of Delaware (Chapter 22 of Title 25) and further covenants and agrees that the unit conveyed by this deed shall be subject to a charge for all amounts so assessed and that, except in so far as §§ 2236 and 2237 of Title 25 may relieve a subsequent unit owner of liability for prior unpaid assessments; this covenant shall run with and bind the land or unit hereby conveyed and all subsequent owners thereof"; and

(6) Any further details which the grantor and grantee may deem appropriate.

(25 Del. C. 1953, § 2221; 54 Del. Laws, c. 282.)

§ 2222 Mortgages and other liens of record affecting property at time of the first conveyance of each unit.

At the time of the first conveyance of each unit following the recording of the original declaration, every mortgage and other lien of record affecting the entire building or property or a greater portion thereof than the unit being conveyed shall be paid and satisfied of record, or the unit being conveyed shall be released therefrom by partial release duly recorded.

(25 Del. C. 1953, § 2222; 54 Del. Laws, c. 282.)

§ 2223 Sales, conveyances or leases of or liens upon separate units.

Units may be sold, conveyed, mortgaged, leased or otherwise dealt with in the same manner as like dealings are conducted with respect to real property and interests therein. Every written instrument dealing with a unit shall specifically set forth the name by which the property is identified and the unit designation identifying the unit involved.

(25 Del. C. 1953, § 2223; 54 Del. Laws, c. 282.)

Subchapter V
Recording

§ 2224 Instruments recordable.

All instruments relating to the property or any unit, including the instruments provided for in this chapter, shall be entitled to be recorded, provided that they are acknowledged in the manner provided by law.

(25 Del. C. 1953, § 2224; 54 Del. Laws, c. 282.)

§ 2225 Recording a prerequisite to effectiveness of certain instruments.

No declaration, declaration plan or code of regulations or any amendments thereto shall be effective until the same have been duly recorded.

(25 Del. C. 1953, § 2225; 54 Del. Laws, c. 282.)

§ 2226 Place of recording.

The recorder shall record declarations, deeds of units, codes of regulations and revocations in the same records as are maintained for the recording of deeds of real property. Mortgages relating to units shall be recorded in the same records as are maintained by the recorder for the recording of real estate mortgages. Declaration plans and any and all amendments thereto shall be recorded in the same records as are maintained for the recording of subdivision plans.

(25 Del. C. 1953, § 2226; 54 Del. Laws, c. 282.)

§ 2227 Indexing by recording officer.

The recorder shall index each declaration against the maker thereof as the grantor, and the name by which the property is identified therein as the grantee. The recorder shall index each declaration plan and code of regulations and any revocation in the name by which the property is identified therein in both the grantor index and the grantee index. The recorder shall index each unit deed and mortgage and lease covering a unit in the same manner as like instruments are indexed.

(25 Del. C. 1953, § 2227; 54 Del. Laws, c. 282.)

§ 2228 Recording fees.

The recorder shall be entitled to charge the same fees for recording instruments which are recordable under this chapter as the recorder is entitled to charge for like services with respect to the recording of other instruments.

(25 Del. C. 1953, § 2228; 54 Del. Laws, c. 282.)

Subchapter VI

Removal of Property From Provisions of Chapter

§ 2229 Procedure.

Property may be removed from the provisions of this chapter by a revocation expressing the intention to so remove property previously made subject to the provisions of this chapter. No such revocation shall be effective unless the same is executed by all of the unit owners and by the holders of all mortgages, judgments or other liens affecting the units, and is duly recorded.

(25 Del. C. 1953, § 2229; 54 Del. Laws, c. 282.)

§ 2230 Effect of removal.

When property subject to the provisions of this chapter has been removed as provided in § 2229 of this title, the former unit owners shall at the time such removal becomes effective become tenants in common of the property. The undivided interest in the property owned in common which shall appertain to each unit owner at the time of removal shall be the percentage of undivided interest previously owned by such person in the common elements.

(25 Del. C. 1953, § 2230; 54 Del. Laws, c. 282.)

§ 2231 Resubmission.

The removal of property from the provisions of this chapter shall not preclude such property from being resubmitted to the provisions of the chapter in the manner herein provided.

(25 Del. C. 1953, § 2231; 54 Del. Laws, c. 282.)

Subchapter VII

Assessments; Taxation; Liens

§ 2232 Assessments and taxes.

Each unit and its proportionate undivided interest in the common elements, as determined by the declaration and any amendments thereof, shall be assessed and taxed for all purposes as a separate parcel of real estate entirely independent of the building or property of which the unit is a part. Neither the building, the property nor any of the common elements shall be assessed or taxed separately after the declaration and declaration plan are recorded nor shall the same be subject to assessment or taxation except as the units and their proportionate undivided interests in the common elements are assessed and taxed pursuant to the provisions of this section.

(25 Del. C. 1953, § 2232; 54 Del. Laws, c. 282.)

§ 2233 Assessment of charges.

All sums assessed by resolutions duly adopted by the council against any unit for the share of common expenses chargeable to that unit shall constitute the personal liability of the owner of the unit so assessed and shall, until fully paid, together with interest thereon at a rate not to exceed 18% per annum from the thirtieth day following the adoption of such resolutions, constitute a charge against such unit which shall be enforceable as provided in the next section.

(25 Del. C. 1953, § 2233; 54 Del. Laws, c. 282; 63 Del. Laws, c. 394, § 1.)

§ 2234 Method of enforcing charges.

Any charge assessed against a unit may be enforced by an action at law by the council acting on behalf of the unit owners, provided that each action, when filed, shall refer to this chapter and to the unit against which the assessment is made and the owner thereof. Any judgment against a unit and its owner shall be enforceable in the same manner as is otherwise provided by law.

(25 Del. C. 1953, § 2234; 54 Del. Laws, c. 282.)

§ 2235 Mechanics' liens against units.

Any mechanics' liens arising as a result of repairs to or improvements of a unit by a unit owner shall be liens only against such unit. Any mechanics' liens arising as a result of repairs to or improvements of the common elements, if authorized in writing pursuant to a duly adopted resolution of the council, shall be paid by the council as a common expense and until so paid shall be liens against each unit in a percentage equal to the proportionate share of the common elements relating to such unit.

(25 Del. C. 1953, § 2235; 54 Del. Laws, c. 282.)

§ 2236 Unpaid assessments at time of execution sale against a unit.

In the event that title to a unit is transferred by sheriff's sale pursuant to execution upon any lien against the unit, the council may give notice in writing to the sheriff of any unpaid assessments for common expenses which are a charge against the unit, but have not been reduced to lien pursuant to § 2234 of this title, and the sheriff shall pay the assessments of which the sheriff has such notice out of any proceeds of the sale which remain in the sheriff's hands for distribution after payment of all other claims, which the sheriff is required by law to pay, but prior to any distribution of the balance to the former unit owner against whom the execution issued. The purchaser at such sheriff's sale and the unit involved shall not be liable for unpaid assessments for common expenses which became due prior to the sheriff's sale of the unit. Any such unpaid assessments which cannot be promptly collected from the former unit owner may be reassessed by the council as a common expense to be collected from all of the unit owners including such purchaser, the purchaser's heirs, personal representatives, successors and assigns. To protect its right to collect unpaid assessments which are a charge against a unit, the council may, on behalf of the unit owners, purchase the unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of council and, if it does so purchase, the council shall thereafter have the power to hold, sell, convey, mortgage or lease such unit to any person whatsoever.

(25 Del. C. 1953, § 2236; 54 Del. Laws, c. 282; 70 Del. Laws, c. 186, § 1.)

§ 2237 Unpaid assessments at time of voluntary sale of a unit.

Upon the voluntary sale or conveyance of a unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments for common expenses which are a charge against the unit as of the date of the sale or conveyance, but such joint and several liability shall be without prejudice to the grantee's right to recover from the grantor the amount of any such unpaid assessments which the grantee may pay, and until any such assessments are paid, they shall continue to be a charge against the unit which may be enforced in the manner set forth in § 2234 of this title. Provided, however, that any person who shall have entered into a written agreement to purchase a unit shall be entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the unit and its owners and, if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the unit shall be liable for the payment of an amount in excess of the unpaid assessments shown thereon. Any such excess which cannot be promptly collected from the former unit owner may be reassessed by the council as a common expense to be collected from all of the unit owners including the purchaser, the former unit owner's heirs, personal representatives, successors and assigns.

(25 Del. C. 1953, § 2237; 54 Del. Laws, c. 282; 70 Del. Laws, c. 186, § 1.)

Subchapter VIII
Miscellaneous

§ 2238 Insurance.

The council shall, if required by the declaration, the code of regulations, or by a majority of the unit owners, insure the building against loss or damage by fire and such hazards as shall be required or requested without prejudice to the right of each unit owner to insure each such unit owner's own unit for each such unit owner's own benefit. The premiums for such insurance on the building shall be deemed common expenses.

(25 Del. C. 1953, § 2238; 54 Del. Laws, c. 282; 70 Del. Laws, c. 186, § 1.)

§ 2239 Repair or reconstruction.

Except as hereinafter provided, damage to or destruction of the building or of 1 or more of several buildings which comprise the property shall be promptly repaired and restored by the council using the proceeds of insurance held by the council, if any, for that purpose, and the unit owners directly affected thereby shall be liable for assessment for any deficiency in proportion to their respective undivided ownership of the common elements. Provided, however, that if there is substantially total destruction of the building or of 1 or more of several buildings which comprise the property and if 75 percent of the unit owners directly affected thereby duly resolve not to proceed with repair or restoration, then, and in that event, the salvage value of the property or of the substantially destroyed building or buildings shall be subject to partition at the suit of any unit owner directly affected thereby, in which event the net proceeds of sale, together with the net proceeds of insurance policies held by the council, if any, shall be considered as 1 fund and shall be divided among the unit owners directly affected thereby in proportion to their respective undivided ownership of the common elements after discharging out of the respective shares of unit owners, directly affected thereby, to the extent sufficient for the purpose all liens against the units of such unit owners.

(25 Del. C. 1953, § 2239; 54 Del. Laws, c. 282; 58 Del. Laws, c. 117.)

§ 2240 Ownership of land.

Nothing in this chapter shall be construed to prevent the construction of unit properties, as defined in § 2202 of this title, upon land held under a lease by the developer of the unit property, provided that the declaration required under § 2219 of this title shall be signed not only by the lessee, but also by the lessor of the land who holds legal title to the land in fee simple.

(25 Del. C. 1953, § 2240; 56 Del. Laws, c. 195, § 5.)

§ 2241 Notice and record of meetings.

(a) No meetings of unit owners or meetings of any council pursuant to this chapter may be held unless notice of the meeting, with the agenda for the meeting, has been either:

(1) Posted conspicuously in each building in an area open to all unit owners at least 7 days prior to the meeting; or

(2) Sent to the mailing address provided to the council by the owner and mailed at least 14 days prior to date of the meeting.

(b) All meetings of unit owners or meetings of any council shall be open to all other unit owners governed by the same council; provided, however, that where a portion of any meeting of unit owners or any council is reserved for consultations with legal counsel, or for personnel matters relating to employees of the council, such portion of the meeting shall be excluded from the provisions of this subsection.

(c) The council shall maintain written minutes of all meetings of unit owners or the council. The minutes shall be made available to all unit owners.

(68 Del. Laws, c. 115, § 1; 69 Del. Laws, c. 94, § 1.)

§ 2242 Display of flags.

Any unit owner shall have the right to display the flag of the United States of America, measuring up to 3 feet by 5 feet, on a pole located within the property's boundaries or attached to the exterior wall of the unit or the common elements proximate to the unit, provided such display conforms with § 316 of this title. This right may not be impaired by any state or private regulation or by any agreement, covenant or restriction whatsoever, including removal of property from the provisions of this chapter under subchapter VI of this chapter.

Unit owners may effect regulations consistent with this section.

(70 Del. Laws, c. 178, § 1; 79 Del. Laws, c. 93, § 2.)

§ 2243 "For Sale" signs.

Any unit owner shall have the right to display a "For Sale" sign, measuring up to 12 inches by 18 inches (12" X 18") on the exterior wall of such person's unit or the common elements proximate to the unit. Such "For Sale" sign shall be entitled "For Sale", and contain such information as accurately describes the unit and any applicable names, addresses and phone numbers of the person or persons who are offering the unit for sale, unless unit owners enact a covenant that prohibits this practice.

Developers may initially ban such signs for 2 years from the first sale of a unit, or until 75 percent of the units are sold, whichever comes first.

(74 Del. Laws, c. 142, § 1.)

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

The minimum percentage of the annual budget of a condominium that must be assigned to the repair and replacement reserve will depend on how many of the following components and systems are to be maintained, repaired and replaced by the council:

(1) One or more hallways;

(2) One or more stairwells;

(3) One or more management or administrative offices;

(4) One or more roofs;

(5) One or more windows;

(6) One or more exterior walls;

(7) One or more elevators;

(8) One or more HVAC systems;

(9) One or more swimming pools;

(10) One or more exercise facilities;

(11) One or more clubhouses;

(12) One or more parking garages (but not including surface parking lots);

(13) One or more masonry bridges used by motor vehicles;

(14) One or more bulkheads; and

(15) One or more docks.

In the event that the council is responsible for the maintenance, repair and replacement of 4 or more of the above-described systems or components, the minimum percentage of the condominium's annual budget that must be assigned to the repair and replacement reserve is 15%; if the responsibility extends to only 3 of the above-described systems and components, the minimum percentage is 10%; and if the responsibility extends to only 2 or fewer of the above-described systems and components, the minimum percentage is 5%. In the event that the condominium's accountant certifies that the funds in the repair and replacement reserve are in excess of the sum required to constitute a fully funded repair and replacement reserve as defined in § 2202(8) of this title, the council shall treat the excess as a common profit subject to distribution pursuant to § 2216 of this title. In the event that the association does not have a current repair and replacement reserve as required by this chapter, the minimum percentages of the association's budget to be assigned to the reserve study shall be the percentages prescribed in this section.

(77 Del. Laws, c. 92, § 9.)

§ 2245 Compliance phase-in.

Anything in this title to the contrary notwithstanding, if the amount held by a condominium in its repair and replacement reserve as of October 1, 2009, in lieu thereof,

(1) Constitutes less than 25% of the level of funding required for a fully funded reserve as defined in § 2202(8) of this title, then the council shall have 8 years to make the repair and replacement reserve fully funded (as defined in § 2202(8) of this title);

(2) Constitutes 25% or more, but less than 50%, of the level defined as fully funded, then the council shall have 6 years to make the repair and replacement reserve fully funded (as defined in § 2202(8) of this title); or

(3) Constitutes 50% or more, but less than 70%, of the level defined as fully funded, then the council shall have 5 years to make the repair and replacement reserve fully funded (as defined in § 2202(8) of this title).

(77 Del. Laws, c. 92, § 10; 77 Del. Laws, c. 364, § 11.)

§ 2246 Exceptions for nonresidential condominiums.

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

(77 Del. Laws, c. 92, § 11.)

Part II
Mortgages and Other Liens

Chapter 25
MORTGAGING OF LEASEHOLD INTERESTS

§ 2501 Authorization and effect.

(a) It shall be lawful for any lessee of any lands or premises situate in this State for a term of 10 years or more to mortgage that lessee's lease or term in the demised premises with all buildings, fixtures and machinery thereon belonging to the lessee and appurtenant to that lessee's interests with the same effect as to lien, notice, evidence and priority of payment as to the lessee's interest and title as in the case of the mortgaging of a freehold interest and title. The mortgage of such term of the lessee shall be in like manner acknowledged, recorded in the proper county and indexed in the same manner as required by law for the acknowledging, recording and indexing of mortgages covering freehold interests and titles. Such mortgage shall in no manner or in any wise interfere with the landlord's rights, priority or remedy for rent. Writs of scire facias for the enforcement of the lien of such mortgages may be sued out as in other cases. In all cases of mortgages upon leasehold estates, the mortgagees shall have the same remedies for collection thereof which mortgagees of fee simple interests in real estate have under the laws of this State for the collection of such mortgages.

(b) For purposes of this section, a lease or term of years shall be considered to be for a term of 10 years or more, if at the time of entering into the lease or term of years that is to be mortgaged, the stated term of the lease or term of years shall have been for 10 years or more (not including any renewals or extensions that may be provided for under that lease or term of years), and notwithstanding that the unexpired term of the lease or the term of years at the time of mortgaging the same is less than 10 years.

(39 Del. Laws, c. 36; 40 Del. Laws, c. 216; Code 1935, § 3386; 25 Del. C. 1953, § 2501; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 422, § 1.)

Part II
Mortgages and Other Liens
Chapter 26
COMMERCIAL REAL ESTATE BROKER'S LIEN ACT [FOR APPLICATION OF THIS CHAPTER, SEE 79 DEL. LAWS, C. 18, § 2]

§ 2601 Short title [For application of this section, see 79 Del. Laws, c. 18, § 2]

This chapter shall be known and may be cited as the "Commercial Real Estate Broker's Lien Act."

(79 Del. Laws, c. 18, § 1.)

§ 2602 Definitions [For application of this section, see 79 Del. Laws, c. 18, § 2]

As used in this chapter, the term:

(1) "Broker" means any individual who holds a broker license from the Delaware Real Estate Commission and who for a compensation or valuable consideration, is self-employed or is employed directly or indirectly by a brokerage organization to sell or offer to sell, or to buy or offer to buy, or to negotiate the purchase, sale, or exchange of real estate, or to lease or rent or offer for rent any real estate, or to negotiate leases or rental agreements thereof or of the improvements thereon for others. The broker is responsible for providing real estate services and is primarily responsible for the day to day management and supervision of a brokerage organization. "Broker" does not include any associate broker, real estate salesperson, or appraiser.

(2) "Brokerage agreement" means any written agreement for the payment for brokerage services of a broker for the management, sale, purchase, lease, or other conveyance or acquisition of commercial real estate. The brokerage agreement may be stated in any document signed by the party obligated to make payment for the services of a broker such as a listing agreement, representation agreement, property management agreement, agreement of sale, lease, option, or exchange agreement that expressly states the amount or the method of calculating the amount of compensation for the services of a broker. No oral brokerage agreements are subject to enforcement under this chapter.

(3) "Broker's lien" means the lien of a broker as permitted by this chapter.

(4) "Commercial real estate" means any estate or interest owned in:

a. Any real estate with improvements other than 1 to 4 residential units;

b. Any real estate with improvements, including 1 to 4 residential units, that has any part of the property used for non-residential purposes;

c. Land on which no buildings or structures are located and which is zoned or available for commercial, manufacturing, industrial, retail, or multifamily use;

d. Land of any zoning classification being purchased for development or subdivision other than land with 4 or fewer single-family residential lots; or

e. Real estate that is used for agricultural purposes unless the purchaser is buying the property for the purpose of continuing the agricultural use.

Notwithstanding the above, "commercial real estate" shall not include single-family residential units such as residential condominiums, townhomes, mobile homes, or homes sold, purchased, leased, or otherwise conveyed or acquired on a unit-by-unit basis even though these units may be part of a larger building or property containing more than 4 residential units unless used for nonresidential purposes.

(5) "Conveyance" or "conveying" means a sale, lease, exchange, or other transfer of any estate or interest in commercial real estate.

(79 Del. Laws, c. 18, § 1.)

§ 2603 Right to lien [For application of this section, see 79 Del. Laws, c. 18, § 2]

Upon performance of all of the duties of the real estate broker as stated in the brokerage agreement except completing settlement, the broker shall have the right to place a lien upon commercial real estate that is the subject of the brokerage agreement for the unpaid amount of compensation due the broker as stated in the brokerage agreement. The brokerage agreement must expressly:

(1) State the amount or the method of calculating the amount of compensation for the services of the broker; and

(2) State that the brokerage agreement is a binding contract under state law; and

(3) Identify the real estate that is covered by the brokerage agreement by description and/or tax parcel number.

Failure of the brokerage agreement to contain these provisions shall render the brokerage agreement ineligible for a broker's lien, but shall not otherwise affect the validity or enforceability of the brokerage agreement.

(79 Del. Laws, c. 18, § 1.)

§ 2604 Claim of lien [For application of this section, see 79 Del. Laws, c. 18, § 2]

(a) The claim for a broker's lien shall attach to the commercial real estate upon the broker filing an affidavit and notice of broker's lien in the form required in this chapter in the office of the recorder of deeds in the county (including any incorporated or unincorporated

municipality located therein) where the commercial real estate is located. If the commercial real estate is located in more than 1 county, the affidavit and notice of broker's lien shall be filed in the office of the recorder of deeds for each such county. Affidavits and notices of broker's liens shall be indexed by the name of the person or entity charged and the name of the broker claiming the lien. The index shall also include the name of the person or entity charged, and the date and time the affidavit and notice of broker's lien was filed. A fee for filing the affidavit and notice of broker's lien shall be the same as for filing a miscellaneous document and shall be paid at the time of filing. The notice of broker's lien shall be available to the public upon request. The broker who placed the lien shall within 10 days cause a copy to be served upon the person or entity charged by certified mail, return receipt requested, or process server. The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the party or party's agent; and notation of refusal shall constitute presumptive evidence that refusal was by the party or party's agent.

(b) If a broker has a brokerage agreement with a buyer or tenant for the buyer or tenant to compensate the broker, then the claim for lien pursuant to the notice of lien so filed according to subsection (a) of this section shall attach to the buyer's or tenant's estate or interest in the commercial real estate only upon either:

(1) The recording of the document conveying the commercial real estate to the buyer; or

(2) The signing of the lease by the landlord and tenant

whichever is applicable, and not before either of those events has occurred. Since in this instance the broker's lien only attaches to the buyer's or tenant's interest in the property, it shall not be a lien upon the seller's or landlord's interest in the property even if it was filed prior to completion of the conveyance to the buyer or tenant.

(c) Notwithstanding the filing of an affidavit and notice of broker's lien, the broker's lien shall not be enforceable or enforced except as provided in § 2610 of this title. Notwithstanding any other provision in this chapter, the affidavit and notice of broker's lien may only be filed by an attorney-at-law admitted to the bar of the Supreme Court of the State of Delaware and in good standing.

(79 Del. Laws, c. 18, § 1.)

§ 2605 When to file the affidavit and notice of broker's lien [For application of this section, see 79 Del. Laws, c. 18, § 2]

The lien shall be recorded within 90 days of the failure to pay upon completion of the duties under § 2603 of this title or the agreed upon payment schedule. The affidavit and notice of broker's lien shall be effective for 1 year following the date of filing and while any litigation concerning it is pending. For a notice of lien to be effective while a complaint is pending under § 2610 of this title, the broker is required to file a continuation of lien prior to the expiration of the current notice of lien to provide notice that litigation concerning the lien is pending. Renewal of leases that were the subject of a brokerage agreement shall restart the 90-day period in which to file the form of affidavit and notice upon failure to pay the stated compensation.

(79 Del. Laws, c. 18, § 1.)

§ 2606 Form of affidavit and notice [For application of this section, see 79 Del. Laws, c. 18, § 2]

The affidavit and notice of broker's lien shall state the name of the broker claiming the broker's lien, the name of the record owner of the commercial real estate that is the subject of the broker's lien as stated in the brokerage agreement, the name of the tenant if the lien is upon the leasehold estate of the tenant, a description of the commercial real estate upon which the broker's lien is being claimed, the amount or method of computing the compensation for which the broker's lien is claimed, the real estate license number of the broker claiming the broker's lien, the names of the parties to the brokerage agreement, and the date of the brokerage agreement. The affidavit and notice of broker's lien shall contain a sworn statement of the person signing before a notary public that the information contained in the notice of lien is true and correct. In the event of any lien claimed against a leasehold estate of a tenant, the broker who placed the lien shall within 10 days serve a copy of the affidavit and notice of broker's lien upon the landlord of such tenant by certified mail, return receipt requested, or process server, however, the lien against the leasehold estate of a tenant shall not be a lien against the landlord's interest in the property.

(79 Del. Laws, c. 18, § 1.)

§ 2607 Notice of lien to be mailed [For application of this section, see 79 Del. Laws, c. 18, § 2]

The broker shall cause a copy of the affidavit and notice of broker's lien to be mailed to the record owner of the commercial real estate by certified mail, return receipt requested, or by process server, to the last known address of the owner or, if that is unknown, then to the address for the owner shown on the county real estate tax records, or, if the lien is claimed on the leasehold estate of the tenant, then to the tenant at the address shown on the lease agreement.

(79 Del. Laws, c. 18, § 1.)

§ 2608 Lien void if not filed timely [For application of this section, see 79 Del. Laws, c. 18, § 2]

The broker's lien shall be void and unenforceable if filing does not occur within the time and in the manner required by this chapter. A broker's lien properly asserted against a seller because the seller was obligated to pay the broker, but not filed until after the deed to the buyer is recorded, shall not be a lien against the property.

(79 Del. Laws, c. 18, § 1.)

§ 2609 Escrow of lien amount [For application of this section, see 79 Del. Laws, c. 18, § 2]

Whenever an affidavit and notice of broker's lien has been recorded, the record owner of the commercial real estate or the tenant in case of a lien upon the leasehold estate may have the lien released by depositing funds equal to the full amount stated in the notice of lien plus 10% to be applied towards any sums awarded the broker under § 2611 of this title. These funds shall be held in escrow by such person and by such process which may be agreed to by the parties, either in the brokerage agreement or otherwise, for the payment to the broker or otherwise for resolution for their dispute or, in the absence of any such mutually agreed person or process, the funds may be deposited with the Superior Court by the filing of an interpleader. Upon such deposit of funds by interpleader, the commercial real estate shall be considered released from such lien or claim of lien. Upon written notice to the broker that the funds have been escrowed or an interpleader filed, the broker shall within 10 business days file in the same office of the recorder of deeds where the affidavit and notice of broker's lien was filed a document stating that the lien is released, and the commercial real estate released, by an escrow established pursuant to this section or by interpleader. If the broker fails to file such document, the person holding the funds may sign and file such document and deduct from the escrow the reasonable cost of preparing and filing the document. Upon the filing of such document, the broker shall be deemed to have an equitable lien on the escrow funds pending a resolution of the broker's claim for payment and the funds shall not be paid to any person (except for such payment to the holder of the funds as aforesaid) until a resolution of the broker's claim for payment has been agreed to by all necessary parties or ordered by a court having jurisdiction.

(79 Del. Laws, c. 18, § 1.)

§ 2610 Enforcement of lien [For application of this section, see 79 Del. Laws, c. 18, § 2]

A broker may bring suit to enforce the broker's lien in the Superior Court in the county where the commercial real estate is located (or in either county if the commercial real estate is located in more than 1 county) by filing and prosecuting a complaint as a debt action pursuant to that Court's Rules of Civil Procedure. Such complaint may be filed following the occurrence of the failure to make the payment to the broker, as required by the brokerage agreement, for which the affidavit and notice of broker's lien had been filed. Notwithstanding any statute of limitation or repose or other procedural limitation, any such complaint may be brought any time prior to the expiration of a notice of lien or continuation of lien, and shall be subject to alternative dispute resolution in the Superior Court pursuant to court rules regardless of the claimed amount.

(79 Del. Laws, c. 18, § 1.)

§ 2611 Costs, expenses, and attorneys' fees [For application of this section, see 79 Del. Laws, c. 18, § 2]

The costs and expenses of all proceedings brought under this chapter, including the enforcement of the broker's lien, including reasonable attorneys' fees actually incurred, costs, and prejudgment and postjudgment interest at the contract rate specified in the brokerage agreement or, if no rate is specified, then at the legal rate, shall be borne by the party or parties to such proceeding against whom judgment is entered. If more than 1 party is so responsible for such costs, fees, expenses, and interest, then the costs, fees, expenses, and interest may be equitably apportioned by the court among those responsible parties, but in the absence of such apportionment, such responsible parties shall be jointly and severally liable.

In the event that a court or arbitrator determines that no lien should have been filed under this chapter, then the court or arbitrator shall order the broker to pay the prevailing defendant's expenses of all proceedings under this chapter, including reasonable attorneys' fees actually incurred, and costs.

(79 Del. Laws, c. 18, § 1.)

§ 2612 Priority of liens [For application of this section, see 79 Del. Laws, c. 18, § 2]

The broker's lien shall be a lien on the commercial real estate that is the subject of the notice of lien and shall have priority from the time it has been filed as required by this chapter, except as to all mortgages whenever recorded or filed, mechanic's liens, other liens imposed or created by statute, and liens of the federal government, state government and/or their respective political subdivisions, each of which shall have priority over a broker's lien.

(79 Del. Laws, c. 18, § 1.)

§ 2613 Release or satisfaction of lien [For application of this section, see 79 Del. Laws, c. 18, § 2]

(a) Whenever a notice of lien has been filed and a condition occurs that in good faith would preclude the broker from receiving compensation under the terms of the brokerage agreement, the broker shall provide to the record owner of the commercial real estate and the person who would have been liable for such payment, a written release or satisfaction of the broker's lien.

(b) The record owner, the person liable for payment to the broker pursuant to the brokerage agreement, or the holder of any lien against the commercial real estate may serve a demand on the broker who filed the affidavit and notice of broker's lien requiring that suit be commenced to enforce the broker's lien, a suit shall be commenced as provided in this chapter within 20 days, or the broker's lien shall be deemed released and satisfied. Service of such demand shall be in the manner required for the service of a summons and complaint under the Rules of Civil Procedure of the Superior Court.

(c) Whenever a claim is paid for which an affidavit and notice of broker's lien has been timely filed, or where there is failure to institute a suit to enforce the broker's lien within the times provided by this chapter, or if the affidavit and notice of lien has not been continued

as provided in this chapter, the broker's lien shall be deemed released and satisfied and the broker shall file a satisfaction and release as provided in this chapter with the office of the recorder of deeds where the affidavit and notice of broker's lien is filed and acknowledge release and satisfaction of the broker's lien, in writing, on written demand of the record owner or the person who was liable for the payment pursuant to the brokerage agreement.

(d) A Delaware lawyer representing a party in a real estate settlement may require a broker who has been paid the full compensation due at settlement to execute a release or estoppels affidavit stating that no lien has been filed for the compensation that has been paid, no lien will be filed, and if a notice of lien was filed, that the broker authorizes the filing of a written release or satisfaction of the lien by the settlement attorney. Such release, whether signed by the broker or an associate broker or salesperson licensed under the broker, is binding upon the broker and brokerage organization and may be relied upon by the parties and title insurance company.

(79 Del. Laws, c. 18, § 1.)

§ 2614 No waiver [For application of this section, see 79 Del. Laws, c. 18, § 2]

An agreement by a broker to waive its right to a broker's lien without having first received full payment is against public policy, void, and unenforceable.

(79 Del. Laws, c. 18, § 1.)

§ 2615 Inconsistent law invalid [For application of this section, see 79 Del. Laws, c. 18, § 2]

To the extent that this chapter conflicts with § 1601(b)(1) of this title, this later chapter shall control.

(79 Del. Laws, c. 18, § 1.)

Part II
Mortgages and Other Liens

Chapter 27
MECHANICS' LIENS

Subchapter I
General Provisions

§ 2701 Definitions.

As used in this chapter, unless the context requires a different meaning.

(1) "Construction management services" includes services performed pursuant to a contract with an owner of a structure, or with the agent of such owner, for the management of the erection, alteration or repair of such structure, where the person or entity providing such services does not perform or furnish labor or material for such erection, alteration or repair.

(2) "Labor" includes work.

(3) "Structure" includes a building or house.

(25 Del. C. 1953, § 2701; 72 Del. C. 203, § 1.)

§ 2702 Persons entitled to obtain lien.

(a) It shall be lawful for any person having performed or furnished labor or material, or both, to an amount exceeding $25 in or for the erection, alteration or repair of any structure, in pursuance of any contract, express or implied, with the owners of such structure or with the agent of such owner or with any contractor who has contracted for the erection, alteration or repair of the same and for the furnishing of the whole or any part of the materials therefor, including any person who has performed or furnished labor or material, or both, for or at such structure under a contract with or order from any subcontractor to obtain a lien upon such structure and upon the ground upon which the same may be situated or erected.

(b) Liens may also be obtained in connection with: labor performed and materials furnished in plumbing, gas fitting, paper hanging, paving, placing iron works and machinery of every kind in mills and factories, bridge building, the erection, construction and filling in of wharves, piers and docks and all improvements to land by drainage, dredging, filling in, irrigating and erecting banks and the services rendered and labor performed and materials furnished by architects.

(16 Del. Laws, c. 145, §§ 1, 4; 18 Del. Laws, c. 679; Code 1915, §§ 2843, 2846; 29 Del. Laws, c. 225; 29 Del. Laws, c. 226; Code 1935, §§ 3324, 3327; 25 Del. C. 1953, § 2702.)

§ 2703 Contract requirements to obtain lien based solely on improvement to land.

No lien shall attach in case the improvements are to the land alone, unless a contract in writing, signed by the owner or owners thereof, setting forth the names of all parties to the contract and containing a description by the metes and bounds of the land to be affected and by a statement of the general character of the work to be done, and of the total amount to be paid thereunder, and the amounts of the partial payments, together with the time when such payments shall be due and payable.

(16 Del. Laws, c. 145, § 4; Code 1915, § 2846; 29 Del. Laws, c. 226; Code 1935, § 3327; 25 Del. C. 1953, § 2703.)

§ 2704 Liens effective for or against corporations.

Liens may be filed for or against corporations or individuals.

(16 Del. Laws, c. 145, § 4; Code 1915, § 2846; 29 Del. Laws, c. 226; Code 1935, § 3327; 25 Del. C. 1953, § 2704.)

§ 2705 Duty of contractor to provide list of persons furnishing labor and material; effect of failure to provide list.

The owner of any structure built, repaired or altered by any contractor or subcontractor may require such contractor or subcontractor from time to time to furnish and submit to the owner complete and accurate list in writing of all persons who have furnished labor or material, or both, in connection therewith, and who may be entitled to avail themselves of the provisions of this chapter. Should any such contractor or subcontractor fail to furnish such list for 10 days after demand made therefor by such owner, the contractor or subcontractor shall be entitled to receive no further payments from the owner until such list be furnished and shall not be entitled to avail himself or herself of any of the provisions of this chapter.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2705; 70 Del. Laws, c. 186, § 1.)

§ 2706 Waiver of lien.

(a) Persons entitled to avail themselves of the lien provided for in this chapter shall not be considered as waiving the same by granting a credit or receiving notes or other securities, unless the same be received as payment or the lien expressly waived, but the sole effect

thereof shall be to prevent such persons from availing themselves of the liens provided for in this chapter until the expiration of the time agreed upon.

(b) Notwithstanding the provisions of any other law, except as provided in this subsection: Any contract, any agreement or understanding whereby the right to file or enforce any lien created under this chapter is waived, shall be void as against public policy and wholly unenforceable. This section shall not preclude a requirement for a written waiver of the right to file a mechanics' lien executed and delivered by a contractor, subcontractor, material supplier or laborer simultaneously with or after payment for the labor performed or the materials supplied has been made to such contractor, subcontractor, material supplier or laborer nor shall this section be applicable to a written agreement to subordinate, release or satisfy all or part of such lien made after a statement of claim has been filed under this chapter. Nothing in this subsection shall amend, exempt, limit or qualify the provisions of § 2707 of this title.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2706; 68 Del. Laws, c. 302, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2707 Payment of contractor by owner of residence as a defense; certification of payment for labor and materials or release of liens by contractor.

No lien shall be obtained under this chapter upon the lands, structure, or both, of any owner which is used solely as a residence of said owner when the owner has made either full or final payment to the contractor, in good faith, with whom he contracted for the construction, erection, building, improvement, alteration or repair thereof. Prior to or simultaneous with the receipt of any full or final payment by the contractor, the contractor must provide the owner either:

(1) A notarized, verified written certification that the contractor has paid in full for all labor performed and materials furnished to the date of such full or final payment in or for such construction, erection, building, improvement, alteration or repair or

(2) A written release of mechanics' liens signed by all persons who would otherwise be entitled to avail themselves of the provisions of this chapter, containing a notarized, verified certification signed by the contractor that all of the persons signing the release constitute all of the persons who have furnished materials and performed labor in and for the construction, erection, building, improvement, alteration and repair to the date of the release and who would be entitled otherwise to file mechanics' liens claims.

Failure of the contractor to provide the owner a written certification or a release of mechanics' liens at such time shall constitute sufficient cause for the immediate suspension, revocation or cancellation of the contractor's occupational and business licenses. If the owner has not made full payment in good faith to such contractor, the lien may be obtained in accordance with this chapter, but it shall be a lien only to the extent of the balance of the payment due such contractor, which balance or portion shall be payable pro rata among the claimants who perfect liens. Payments made to the contractor by the owner after service of process, as provided in § 2715 of this title, shall not be deemed to be "in good faith."

(25 Del. C. 1953, § 2707; 57 Del. Laws, c. 498; 58 Del. Laws, c. 274, § 1.)

§ 2708 Fringe benefits.

A mechanics' lien may be used to secure payment of any unpaid amounts due under contract from the contractor arising from a subcontractor's labor including payment of fringe benefit items. As used in this section, the phrase "fringe benefit items" shall have the same meaning as the phrase "benefits or wage supplements" defined in § 1109(b) of Title 19.

(65 Del. Laws, c. 467, § 1.)

Subchapter II

Enforcement in Superior Court

§ 2711 Time for filing of statement of claim.

(a)(1) A contractor who:

a. Has made that contractor's contract directly with the owner or reputed owner of any structure; and

b. Has furnished both labor and material in and for such structure, or has provided construction management services in connection with the furnishing of such labor and material, in order to avail himself or herself of the benefits of this subchapter, shall file that contractor's statement of claim within 180 days after the completion of such structure.

(2) For purposes of this subsection, and without limitation, a statement of claim shall be deemed timely if it is filed within 180 days of any of the following:

a. The date of purported completion of all the work called for by the contract as provided by the contract if such date has been agreed to in the contract itself;

b. The date when the statute of limitations commences to run in relation to the particular phase or segment of work performed pursuant to the contract, to which phase or segment of work the statement of claim relates, where such date for such phase or segment has been specifically provided for in the contract itself;

c. The date when the statute of limitations commences to run in relation to the contract itself where such date has been specifically provided for in the contract itself;

d. The date when payment of 90% of the contract price, including the value of any work done pursuant to contract modifications or change orders, has been received by the contractor;

e. The date when the contractor submits that contractor's own final invoice to the owner or reputed owner of such structure;

f. With respect to a structure for which a certificate of occupancy must be issued, the date when such certificate is issued;

g. The date when the structure has been accepted, as provided in the contract, by the owner or reputed owner;

h. The date when the engineer or architect retained by the owner or reputed owner, or such other representative designated by the owner or reputed owner for this purpose, issues a certificate of completion; or

i. The date when permanent financing for the structure is completed.

(b) All other persons embraced within this chapter and entitled to avail themselves of the liens herein provided shall file a statement of their respective claims within 120 days from the date from the completion of the labor performed or from the last delivery of materials furnished by them respectively. For purposes of this subsection, and without limitation, a statement of claim on behalf of such person shall be deemed timely if it is filed within 120 days of either of the following:

(1) The date final payment, including all retainage, is due to such person; or

(2) The date final payment is made to the contractor:

a. Who has contracted directly with the owner or reputed owner of any structure for the erection, alteration or repair of same; and

b. With whom such person has a contract, express or implied, for the furnishing of labor or materials, or both, in connection with such erection, alteration or repair.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2711; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 203, § 2.)

§ 2712 Requirements of complaint or statement of claim.

(a) Every person entitled to the benefits conferred by this chapter and desiring to avail himself or herself of the lien provided for in this chapter, shall, within the time specified in this chapter, file a statement of claim, which may also serve as a complaint when so denominated, in the office of the Prothonotary of the Superior Court in and for the county wherein such structure is situated.

(b) The complaint and/r statement of claim shall set forth:

(1) The name of the plaintiff or claimant;

(2) The name of the owner or reputed owner of the structure;

(3) The name of the contractor and whether the contract of the plaintiff-claimant was made with such owner or his agent or with such contractor;

(4) The amount claimed to be due, and, if the amount is not fixed by the contract, a statement of the nature and kind of the labor done or materials furnished with a bill of particulars annexed, showing the kind and amount of labor done or materials furnished or construction management services provided; provided, that if the amount claimed to be due is fixed by the contract, then a true and correct copy of such contract, including all modifications or amendments thereto, shall be annexed;

(5) The time when the doing of the labor or the furnishing of the materials was commenced;

(6) The time when the doing of the labor or the furnishing of the material or the providing of the construction management services was finished, except that:

a. With respect to claims on behalf of contractors covered by § 2711(a) of this title, the date of the completion of the structure, including a specification of the act or event upon which the contractor relies for such date, and

b. With respect to claims on behalf of other persons covered by § 2711(b) of this title, the date of completion of the labor performed or of the last delivery of materials furnished, or both, as the case may be, or a specification of such other act or event upon which such person relies for such date.

(7) The location of the structure with such description as may be sufficient to identify the same;

(8) That the labor was done or the materials were furnished or the construction management services were provided on the credit of the structure;

(9) The amount of plaintiff's claim (which must be in excess of $25) and that neither this amount nor any part thereof has been paid to plaintiff; and

(10) The amount which plaintiff claims to be due him on each structure.

(11) The time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50% of the loan proceeds are used for the payment of labor or materials, or both, for such structure.

(c) The complaint and/r statement of claim shall be supported by the affidavit of the plaintiff-claimant that the facts therein are true and correct.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2712; 68 Del. Laws, c. 302, § 3; 72 Del. Laws, c. 203, §§ 3-5, 9; 70 Del. Laws, c. 186, § 1.)

§ 2713 Claims against 2 or more structures owned by same person.

In every case in which 1 claim for labor or materials is filed by the same person against 2 or more structures owned by the same person for building, altering or repairing 2 or more structures owned by the same person, the claimant shall, at the time of filing such joint claim, designate the amount which the claimant claims to be due to that claimant on each of such structures.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2713; 70 Del. Laws, c. 186, § 1.)

§ 2714 Proceedings by scire facias; form.

(a) The proceedings to recover the amount of any claim shall be by writ of scire facias.

(b) The writ of scire facias used under the provisions of this chapter shall be in the form prescribed by the Superior Court.

(16 Del. Laws, c. 145, § 2; Code 1915, § 2844; 30 Del. Laws, c. 194; Code 1935, § 3325; 25 Del. C. 1953, § 2714.)

§ 2715 Issuance and service of scire facias.

The writ shall be issued, returnable and served in the same manner as other writs of scire facias upon the defendant therein named, if he can be found within the county. A copy of the writ shall be left with some person residing in the structure to which the labor was done or for which the materials were furnished, if occupied as a place of residence, but if not so occupied, the sheriff shall affix a copy of such writ upon the door or other front part of such structure.

(16 Del. Laws, c. 145, § 2; Code 1915, § 2844; 30 Del. Laws, c. 194; Code 1935, § 3325; 25 Del. C. 1953, § 2715.)

§ 2716 Default judgment; affidavit of defense.

Judgment by default may be entered for the plaintiff at such time and in the manner prescribed by the rules of the Superior Court, unless the defendant has previously filed in the cause an affidavit that the defendant verily believes there is a legal defense to the whole or part of such cause of action and setting forth the nature and character of the defense. If the defense is to a part only, then the defendant shall specify the sum really due, and judgment may be entered for the plaintiff at the plaintiff's own election for the sum acknowledged to be due. If judgment is not so entered by default, then like proceedings shall be had as in other cases of scire facias.

(16 Del. Laws, c. 145, § 2; Code 1915, § 2844; 30 Del. Laws, c. 194; Code 1935, § 3325; 25 Del. C. 1953, § 2716; 70 Del. Laws, c. 186, § 1.)

§ 2717 Proof of work done or materials furnished as prima facie evidence of extension of credit on structure.

Proof by the claimant that labor or materials, or both, was performed or furnished upon or to any structure, or immediately adjacent thereto, or that construction management services were provided in connection with the performance or furnishing of such labor or materials, shall be prima facie evidence that the same was performed or furnished or provided for and on the credit of such structure.

(16 Del. Laws, c. 145, § 1; Code 1915, § 2843; 29 Del. Laws, c. 225; Code 1935, § 3324; 25 Del. C. 1953, § 2717; 72 Del. Laws, c. 203, § 6.)

§ 2718 Lien of judgment.

(a) Any judgment obtained under a claim made in accordance with this subchapter shall become a lien upon such structure and upon the ground upon which the same is situated, erected or constructed and shall relate back to the day upon which the labor was begun or the furnishing of material was commenced, or the time immediately following the time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50% of the loan proceeds are used for the payment of labor or materials, or both, for such structure, whichever shall last occur.

(b) In the case of the erection, construction and filling in of wharves, piers and docks and improvements to land, the liens shall extend to the lots or lands in front of which improvements are made.

(16 Del. Laws, c. 145, §§ 1, 4; 18 Del. Laws, c. 679; Code 1915, §§ 2843, 2846; 29 Del. Laws, c. 225; 29 Del. Laws, c. 226; Code 1935, §§ 3324, 3327; 25 Del. C. 1953, § 2718; 68 Del. Laws, c. 302, § 2.)

§ 2719 Execution by levari facias; form.

The execution of every judgment under the foregoing provisions shall be by writ of levari facias in the following form:

"..... County, ss.:

The State of Delaware.

To the Sheriff of said County, greeting:

We command you that without any other writ from us of the following described building and lot of ground, to wit (describing the same according to the record), in your bailiwick, you cause to be levied as well a certain debt of..... which..... lately in our Superior Court for the County aforesaid, before the Judges thereof, recovered against..... to be levied of the said building and lot of ground, as also the interest thereon from the..... day of....., A. D.,..... and also the sum of..... for the cost which accrued thereon, according to the form and effect of an act of the General Assembly in such cases made and provided, and have you there moneys before

our Judges at..... at our Superior Court in and for the County of..... there to be held on the.....day of..... next to render unto the said..... for his debt, interest and costs aforesaid, and have you then there this writ."

Witness (as in similar writs).

(16 Del. Laws, c. 145, § 2; Code 1915, § 2844; 30 Del. Laws, c. 194; Code 1935, § 3325; 25 Del. C. 1953, § 2719.)

§ 2720 Division of proceeds.

If the proceeds received from any sale under the writ of levari facias is not sufficient to pay in full all liens, such proceeds shall be ratably divided among the persons who have availed themselves of the provisions of this chapter without priority or preference of 1 over the other.

(16 Del. Laws, c. 145, § 2; Code 1915, § 2844; 30 Del. Laws, c. 194; Code 1935, § 3325; 25 Del. C. 1953, § 2720.)

§ 2721 Savings provision for personal actions.

(a) Nothing contained in this subchapter shall be construed to impair or otherwise affect the right of any person to whom any debt may be due for labor done or materials furnished to maintain any personal action against the owner or contractor of such structure to recover the amount of such debt.

(b) Nothing contained in this subchapter shall be construed to impair or otherwise affect the right of any person to whom any debt may be due for labor done or materials furnished in the erection, alteration or repair of any structure, or for any construction management services provided in connection with such labor done or materials furnished, to maintain any personal action against the owner or reputed owner of the structure or against any contractor or against the same and other contracting parties for the same or for any greater or less demand before, concurrently with or after the proceedings for obtaining the lien upon the structure as provided in this chapter, and the judgment whether for the plaintiff or defendant or any of the defendants in such personal action shall in no wise impair, alter or affect the lien or the proceedings or judgment or execution provided for in this chapter.

(16 Del. Laws, c. 145, § 1; Code 1915, §§ 2843, 2843A; 29 Del. Laws, c. 225; 38 Del. Laws, c. 159; Code 1935, § 3324; 25 Del. C. 1953, § 2721; 72 Del. Laws, c. 203, §§ 7, 8.)

§ 2722 Lien where labor is done or materials furnished at instance of lessee or tenant.

Nothing contained in this subchapter shall be construed to render property liable to liens under this chapter for repairs, alterations or additions, when such property has been altered, added to or repaired by or at the instance of any lessee or tenant without the prior written consent of the owner or his duly authorized agent.

(16 Del. Laws, c. 145, § 1; Code 1915, §§ 2843, 2843A; 29 Del. Laws, c. 225; 38 Del. Laws, c. 159; Code 1935, § 3324; 25 Del. C. 1953, § 2722.)

§ 2723 Rights of owner where lien or judgment is obtained by a subcontractor.

The owner of any structure built, repaired or altered by any contractor who has contracted to build, erect, alter or repair the same and furnish the materials therefor may, in case any liens are entered under this chapter upon the structure, upon any claim for materials which by the terms of his contract the contractor was bound to furnish, by any person or persons other than such contractor, retain and withhold from such contractor so much of the moneys to be paid to him in pursuance of the contract made with such contractor as may be necessary to liquidate and discharge such liens; and, in case judgment is recovered by such lien creditors, the owner may apply the moneys or such part thereof as may be necessary to satisfy the judgment to the payment and satisfaction thereof. Such payment shall be considered and treated as a payment pro tanto to the contractor towards the moneys provided to be paid by the contractor.

(16 Del. Laws, c. 145, § 1; Code 1915, §§ 2843, 2843A; 29 Del. Laws, c. 225; 38 Del. Laws, c. 159; Code 1935, § 3324; 25 Del. C. 1953, § 2723.)

§ 2724 Entries in Mechanics' Lien Docket.

The prothonotary in each county of this State shall procure and keep a docket, to be called "The Mechanics' Lien Docket," in which the prothonotary shall make an entry of each claim filed, setting down therein the names of the parties, plaintiff and defendant, the amount claimed, the day upon which the claim is filed and of the issuing of the scire facias, a description of the property against which the claim is sought to be charged, amount for which judgment is rendered, the day on which the same is rendered, the party for and against whom it is rendered and, in case of judgment for the plaintiff, the time to which the judgment relates back as a lien and other entries necessary and proper to a full understanding of the case. The time to which the judgment relates back as a lien shall be ascertained in the same manner as the amount of the judgment is ascertained.

(16 Del. Laws, c. 145, § 3; Code 1915, § 2845; Code 1935, § 3326; 25 Del. C. 1953, § 2724; 70 Del. Laws, c. 186, § 1.)

§ 2725 Procedure where claimant institutes personal action and also proceeds under this chapter.

(a) When the claimant proceeds under this chapter for availing himself or herself of that claimant's lien and institutes any personal action for the same demand or any part thereof or for a demand of which the amount for which the claimant claims a lien is a part, it shall be no objection in either suit that some of the parties defendant in the 1 suit are not also parties defendant in the other suit. In any

such personal action or in the suit to avail himself or herself of the lien, whichever is last docketed, the plaintiff shall file an affidavit setting out the demand in each of the suits and stating to what extent the respective demands are identical. The judgment in either of the actions shall not be pleaded as a bar in the other action.

(b) Whenever any moneys are applied on the judgment on either of the demands pursuant to the execution thereof or pursuant to any other execution proceedings, the Superior Court may order all or any part to be credited on the judgment in the other of the demands according to the equity of the matter as the equity appears to the Court.

(Code 1915, § 2843A; 38 Del. Laws, c. 159; Code 1935, § 3324; 25 Del. C. 1953, § 2725; 70 Del. Laws, c. 186, § 1.)

§ 2726 Mechanics' lien on ship or vessel; time for filing claim; procedure.

This subchapter shall also extend to labor or materials performed or furnished in the construction, alteration, furnishing, rigging, launching or repairing of any ship or vessel within this State. No bill of particulars and affidavit shall be filed more than 1 year after such ship or vessel has been launched, rigged, furnished and ready for sea or after such repairs have been completed and shall contain the name of the ship or vessel or a description thereof sufficient for identification. Upon filing the bill of particulars and affidavit under the provisions of this section, the Prothonotary may issue a writ of attachment, directed to the sheriff of the county in which the ship or vessel may be, commanding the sheriff to attach the defendant by such ship or vessel, together with the tackle, apparel and furniture, wheresoever the same may be found in his bailiwick, so that he appears at the next term of the Superior Court to answer the plaintiff's demands. The sheriff shall, under such writ, seize and take possession of the ship or vessel and have the same inventoried and appraised and shall be answerable therefor. If the defendant in the attachment at any time before judgment appears and enters into recognizance to the plaintiff in the writ of attachment in a reasonable penalty and with surety to be approved by the Prothonotary with condition to pay the condemnation money and all costs or otherwise abide the judgment of the Superior Court in the case and if he fails to make good his plea, the attachment shall be dissolved, the ship or vessel shall be discharged, and the case shall proceed as in other cases of assumpsit for work and labor or materials furnished.

(16 Del. Laws, c. 145, § 5; 20 Del. Laws, c. 591; Code 1915, § 2847; Code 1935, § 3328; 25 Del. C. 1953, § 2726.)

§ 2727 Auditors; powers and duties; report to Court; exceptions to report.

On the return of the writ of attachment or summons the Court may, upon petition of any person claiming to have performed or furnished labor or materials at the request of the plaintiff or plaintiffs in the attachment, appoint 3 suitable persons to audit and determine the claim of the plaintiff and also the claim of the petitioner, who shall adjust and ascertain all the demands, including that of the plaintiff in the writ. The auditors shall severally be sworn or affirmed to perform their duties according to the best of their skill and knowledge. They shall give 10 days' notice to the parties of the time and place of their first meeting by advertisement, posted at the courthouse door and at least 5 other public places in the county. Their subsequent sittings shall be by adjournment duly made and publicly announced. They may investigate any claim presented in any form they judge best and may examine any of the parties upon oath or affirmation. On receipt of the proceeds of the sale of the property attached or against which judgment is obtained or any part thereof, the auditors shall calculate and settle the proportions and dividends due the several parties and shall make report to the next term of the Court after such appointment and, upon confirmation of the report, pay over to the several parties their respective share of the proceeds according to such appointment. The Court may hear exceptions to and correct such account and report, either in the calculations, dividends, apportionment, or otherwise.

(16 Del. Laws, c. 145, § 6; Code 1915, § 2848; Code 1935, § 3329; 25 Del. C. 1953, § 2727.)

§ 2728 Judgment on attachment; sale and distribution; suit for deficiency; return of surplus; title under sale.

If the attachment has not been dissolved, as provided in this subchapter, judgment may be given for the plaintiff in the attachment at the second term after issuing the writ as in other cases of attachment, and thereupon the Court may order that the sheriff shall sell the property attached, on due notice, and pay the proceeds, deducting legal costs and charges, to auditors for distribution. Any balance remaining due from the defendant in the attachment to any of the parties after such distribution of the proceeds may be collected as other debts, and any surplus after paying costs shall be returned to the defendant or the defendant's executors, administrators or assigns. All sales made under this subchapter shall be good against the defendant, the defendant's executors, administrators or assigns.

(16 Del. Laws, c. 145, § 7; Code 1915, § 2849; Code 1935, § 3330; 25 Del. C. 1953, § 2728; 70 Del. Laws, c. 186, § 1.)

§ 2729 Discharge of lien on payment into Court or entry of security.

(a) *Cash deposit.* — Any claim filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the Court in said proceedings for application to the payment of the amount finally determined to be due. Said petition shall include an affidavit by the owner or party in interest setting forth which parts of the claim filed hereunder are disputed and which parts are not disputed. The nondisputed part of the claim shall be paid to the claimant before the lien against the property is discharged. If it is finally determined by the Court that the disputed portion of the claim has been grossly overstated by the affiant, the Court may, in its discretion, award damages to the claimant against the affiant in an amount up to twice the figure stated by the affiant to be disputed.

(b) *Refund of excess.* — Any excess of funds paid into Court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application.

(c) *Security in lieu of cash.* — In lieu of the deposit of any such sum or sums in cash, approved security may be entered in such proceedings in an amount which the Court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums have been deposited in Court as aforesaid.

(d) *Authority of Court.* — The Court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

(1) Require the increase or decrease of any deposit or security;

(2) Strike off security improperly filed;

(3) Permit the substitution of security and enter an exoneration of security already given.

(61 Del. Laws, c. 283, § 1; 67 Del. Laws, c. 373, § 1.)

Subchapter III

Enforcement Before Justice of the Peace

§ 2731 Lien for less than $100.

Any person having performed any labor to any amount less than $100 in or for the erection, alteration or repair of any structure or bridge, in pursuance of any contract, expressed or implied, with the owner or reputed owner of such structure or bridge or with any contractor who has contracted for the erection, alteration or repair of any structure or bridge, or any part thereof, may obtain a lien upon such structure or bridge and upon the ground upon which the same may be situated or erected in the manner provided in this subchapter.

(16 Del. Laws, c. 145; 19 Del. Laws, c. 263; Code 1915, § 2850; Code 1935, § 3331; 25 Del. C. 1953, § 2731.)

§ 2732 Time for filing statement of claim; place.

No person having done or performed any labor in or about the erection, alteration or repair of any structure or bridge shall be allowed to file any statement of that person's claim before a justice of the peace until after the expiration of 20 days from the time of the last labor done or performed by that person, but, in order to avail himself or herself of the benefits of this subchapter, the person shall file that person's claim within 10 days after the expiration of the 20 days aforesaid. Any person entitled to the benefits of this subchapter shall file that person's claim under oath, within the time above specified, with any justice of the peace of the county wherein such structure or bridge is situated.

(16 Del. Laws, c. 145; 19 Del. Laws, c. 263; Code 1915, § 2850; Code 1935, § 3331; 25 Del. C. 1953, § 2732; 70 Del. Laws, c. 186, § 1.)

§ 2733 Requirements of statement of claim.

The statement of claim shall set forth the names of the party claimant, the owner or reputed owner of the structure or bridge, the contractor and the kind of labor done and whether the contract was with the owner or the owner's agent or with the contractor, the sum claimed to be due, the time when the labor was commenced and finished, the location of such structure or bridge, the ground upon which the same is situated, and a description sufficient to identify the same.

(16 Del. Laws, c. 145; 19 Del. Laws, c. 263; Code 1915, § 2850; Code 1935, § 3331; 25 Del. C. 1953, § 2733; 70 Del. Laws, c. 186, § 1.)

§ 2734 Summons; judgment; transcript.

Immediately upon the filing of any claim under this subchapter, the justice of the peace with whom the claim is filed shall issue a summons, as in other civil cases, to the owner and contractor, directed to any constable of the county. The time for the defendant's appearance shall not be more than 3 days from the date of the summons, and not more than 2 adjournments shall be had and then only from day to day. If the defendant fails to appear at the time appointed or if after a hearing the justice is satisfied of the correctness of the claim, the justice shall give judgment as in other cases and, upon the payment of cost and a demand for the transcript, he shall furnish such transcript.

(16 Del. Laws, c. 145; 19 Del. Laws, c. 263; 19 Del. Laws, c. 264; Code 1915, § 2850; Code 1935, § 3331; 25 Del. C. 1953, § 2734; 70 Del. Laws, c. 186, § 1.)

§ 2735 Entry of transcript and judgment in Superior Court; effect; costs; contractor to give security to owner.

The transcript and judgment may be entered in the Superior Court of the county in which the structure is situated and, when so entered, if within 2 days from the date of the judgment, shall become a lien on such structure or bridge and upon the ground upon which the same is erected and shall relate back to the day when the labor was commenced and shall take priority accordingly. Any and all transcripts taken and entered in the Superior Court under this subchapter shall contain a description of the property upon which it is to become a lien

and shall conform to the description set forth in the plaintiff's statement. All costs and charges shall follow the judgment and shall be the same as are authorized by law in civil cases before justices of the peace. Every contractor, when so required, shall give ample security to the owner of any structure being altered, erected or repaired by him to save such owner harmless from the provisions of this subchapter.

(16 Del. Laws, c. 145; 19 Del. Laws, c. 263; Code 1915, § 2850; Code 1935, § 3331; 25 Del. C. 1953, § 2735; 70 Del. Laws, c. 186, § 1.)

§ 2736 Execution by levari facias; form.

The execution of every judgment entered in the Superior Court upon transcript under the provisions of this subchapter shall be by writ of levari facias in the following form:

"..... County, ss.:

The State of Delaware.

To the Sheriff of said County, Greeting:

We command you that without any other writ from us, of the following described building and lot of ground, to wit (describing the same according to the record) in your bailiwick, you cause to be levied as well a certain debt of....., which..... lately before one of the justices of the peace for the County aforesaid recovered against..... to be levied of the said building and lot of ground, as also the interest thereon from the..... day of..... A.D....., and also the sum of..... for the costs which accrued thereon according to the form and effect of an Act of the General Assembly in such cases made and provided, and have you there the moneys before our Judges at....., at our Superior Court in and for the County of....., there to be held on the..... day of..... next, to render unto the said..... for his debt, interest and costs aforesaid and have you then there this writ."

Witness (as in similar writs).

(16 Del. Laws, c. 145; 25 Del. Laws, c. 237; Code 1915, § 2851; Code 1935, § 3332; 25 Del. C. 1953, § 2736; 70 Del. Laws, c. 186, § 1.)

§ 2737 Discharge of lien on payment into Court or entry of security.

Transferred to § 2729 of this title, effective July 17, 1990, by 67 Del. Laws, c. 373.

Part II
Mortgages and Other Liens
Chapter 29
LIENS OF THE STATE AND/OR ITS POLITICAL SUBDIVISIONS

§ 2901 Lien of taxes and other charges; Notice of Lien.

(a)(1) Except as otherwise provided, "lien" or "liens" as used in this section shall arise whenever the following charges, as defined in this section, are levied or imposed by the State or any political subdivision thereof (including the Levy Court or county council of any county, any united, consolidated or incorporated school district, or any incorporated town or city in this State) and such charges become due:

a. Real property taxes, including penalty and interest thereon;

b. School taxes, including taxes for a vocational-technical high school district or county vocational-technical center district, including penalty and interest thereon;

c. Service charges for maintenance or use of sewer systems, including penalty and interest thereon;

d. Service charges for maintenance or use of water systems, including penalty and interest thereon;

e. Service charges for garbage collection;

f. Charges for the costs of razing or demolition of buildings done through public expenditure;

g. Charges for duly authorized improvements or maintenance to the exteriors of buildings or property done through public expenditure;

h. Assessments for the installation of sewer lines, water mains, sidewalks and curbing, including penalty and interest thereon;

i. Fines imposed by any court and/or civil penalties imposed by the City of Wilmington or any department of the City of Wilmington, for local building, housing, sanitation, or animal code citations or violations. The unpaid amounts of such fines and/or civil penalties may be added to local property tax billings for the property which was the subject of said citation or violation when authorized by local ordinance. "Fines" as used in this section shall also include any civil judgment awarded to the State or any political subdivision thereof entered pursuant to § 4101 of Title 11;

j. Fees imposed by law or ordinance of any political subdivision of the State, which shall include, without limitation, municipal corporations, for registration of ownership of any vacant buildings located within the political subdivision, the imposition of which fees is final and non-appealable; and

k. Charges for the costs of removing weeds, grasses, refuse, rubbish, trash or other waste material done through public expenditure.

(2) "Liens" shall not include administrative costs incurred by the sheriff in the sheriff's sale process.

(3) Except as provided in paragraph (b)(1) of this section, the liens created by this subsection are levied or imposed only upon that parcel of real property against or upon which such charges have been levied or imposed. Except as provided in paragraph (b)(1) of this section, the liens created by paragraphs (a)(1)a. through (a)(1)i. and (a)(1)k. of this section shall have preference to and priority over all other liens on such real property, including liens of a date prior in time to the attaching of the liens created by this section. The liens created by paragraph (a)(1)j. of this section shall have preference and priority with respect to all other liens on such real property as of the time such fees become final and non-appealable.

(4) Any political subdivision having the power to levy or collect any of the charges described herein shall maintain a record of all charges creating liens under this section, including the amount of the lien, the name of the chargeable, and the location of the real property against or upon which such charges have been levied or imposed. The record or information contained therein shall be available to the public upon request.

(b)(1) Upon the filing of a Notice of Lien by a political subsection in accordance with this subsection, the charges described in paragraph (a)(1) of this section shall, as of the date of filing a Notice of Lien pursuant to this subsection, be and constitute a lien upon all real property of which the chargeable was seized at the time, or at any time after such Notice of Lien has been filed in accordance with this subsection, situate in the county (including all real property situate within any incorporated town or city located within the county) in which such charges are levied or imposed.

(2) Notices of Lien shall be in the form of an affidavit, executed by an attorney for the political subdivision or by an employee of the political subdivision having custody and control over the records relating to the charges that constitute the lien, reciting that the chargeable is the owner of record of real property situate in the county (including all real property situate within any incorporated town or city located within the county) in which such charges are levied or imposed, that charges have been duly levied or imposed upon the chargeable, the types of charge as specified in paragraph (a)(1) of this section, the amount of such charges as of the date of filing the Notice of Lien and that the chargeable has failed to pay said charges despite notice by the political subdivision.

(3) A Notice of Lien for any chargeable may be filed at any time after the charges have become delinquent. Charges shall be deemed "delinquent" if they are unpaid as of the date upon which any penalty or interest shall accrue thereon in accordance with law or, in the event that there is no such date established by law, as of 90 days after the date upon which an authorized representative of the political subdivision made a demand for payment upon the chargeable.

(4) Notices of Lien shall be indexed by the name of the chargeable, in a separate index for such purposes maintained in the office of the prothonotary in each county. The index shall be maintained by the office of the prothonotary in the county in which the real property is located and shall include the name of the chargeable and the date and time the Notice of Lien was filed. A fee for filing the Notice of Lien shall be established by the Superior Court pursuant to § 8705 of Title 10 and shall be paid at the time of filing the Notice of Lien. The affidavit filed for each Notice of Lien shall be available to the public upon request. The lien created hereunder shall be a lien upon all real property owned by the chargeable at the time of filing that is situate in the county (including any incorporated town or city located within the county) in which such charges are levied or imposed, and such lien shall have priority as of the time it is filed.

(5) The political subdivision that filed any Notice of Lien may, in its sole discretion and at any time and without receiving payment of all charges owed by the chargeable, release from the lien created hereby any or all parcels of real property owned by the chargeable by filing a writing to that effect with the prothonotary, and such release shall be without prejudice to the right of the political subdivision to collect the remainder of any charges from any real property of the chargeable that is subject to the lien created under this subsection (b) and has not been so released. Any release, whether partial or complete, shall be noted in the index for Notices of Lien.

(6) A Notice of Lien shall be ineffective as of the date all charges owed by the chargeable have been paid in full, subject to paragraph (b)(7) of this section.

(7) A Notice of Lien shall be effective for a period of 3 years after the date of filing such notice, unless the political subdivision files a subsequent Continuation of Lien against the same chargeable prior to the expiration of the 3-year period and in such event the lien created by the subsequent Continuation of Lien will have priority as of the date of filing of the previous Notice of Lien. A Continuation of Lien will be effective for a period of 3 years following the initial 3-year period of the Notice of Lien and shall constitute a lien against any real property acquired by the chargeable after the filing of the Notice of Lien, and located in the county in which the Notice of Lien was filed. No more than 1 Continuation of Lien may be filed for any 1 Notice of Lien, provided, however, that this limitation shall not preclude the later filing of a new Notice of Lien against the chargeable which shall be effective and have priority as of the date of such later filing.

(8) Upon written notice by the chargeable to the political subdivision that all charges for which the Notice of Lien was filed have been paid, the political subdivision shall enter a satisfaction of record on the Notice of Lien index.

(9) Nothing contained herein shall be deemed to affect or limit the ability of the political subdivision to collect any charge through any other legal procedure including, without limitation, proceedings pursuant to a Writ of Monition.

(10) All liens for the nonpayment of charges (including any created pursuant to § 8701 of Title 9), other than the lien upon the real property against which the charge was levied or imposed as provided in subsection (a) of this section, are hereby extinguished, provided, however, that this subsection shall not affect any lien obtained by any political subdivision prior to October 5, 1990, by any legal procedure including, without limitation, proceedings pursuant to a Writ of Monition.

(15 Del. Laws, c. 476; 16 Del. Laws, c. 141; 19 Del. Laws, c. 556; Code 1915, § 2870; 40 Del. Laws, c. 238, §§ 1-3; Code 1935, § 3351; 25 Del. C. 1953, § 2901; 62 Del. Laws, c. 374, § 1; 67 Del. Laws, c. 127, § 3; 67 Del. Laws, c. 445, § 1; 68 Del. Laws, c. 279, §§ 1-3; 70 Del. Laws, c. 431, § 1; 71 Del. Laws, c. 387, §§ 2-5; 74 Del. Laws, c. 382, §§ 1-3; 75 Del. Laws, c. 212, §§ 3-5; 75 Del. Laws, c. 331, § 3.)

§ 2902 Attachment of lien to proceeds of sale.

In case any real estate upon which a tax lien exists is sold by an order of the Court of Chancery directing an executor or administrator to sell the real estate to pay the debts of a deceased person or is sold by virtue of an execution process, such tax lien shall be transferred to the fund arising from such sale in the hands of the officer making the sale, and the real estate so sold shall be discharged therefrom. If the fund is not sufficient to pay and discharge the tax lien, by reason of the real estate having been sold subject to another or other lien or liens created by the taxable, the unpaid balance of the tax shall remain a lien upon the land so sold.

(15 Del. Laws, c. 476; 16 Del. Laws, c. 141; 19 Del. Laws, c. 262; Code 1915, § 2870; 40 Del. Laws, c. 238, § 3; Code 1935, § 3351; 25 Del. C. 1953, § 2902.)

§ 2903 Duration of lien.

(a) In New Castle County all taxes assessed against real estate shall continue a lien against the real estate within the County for 10 years from July 1 of the year for which the taxes were levied, but if the real estate remains the property of the person who was the owner at the time it was assessed, the lien shall continue until the tax is collected.

(b) In Kent and Sussex Counties the lien for county and state taxes shall remain a lien for the period of 2 years from July 1 of the year in which such tax has been imposed and no longer, and the lien for school taxes shall remain a lien for the period of 2 years from August 10 of the year in which the tax has been imposed and no longer, and the lien for town or municipal taxes shall remain a lien for the period of 2 years from the date prescribed by the charter of the town or city for the delivery of the duplicate of the town or city to the collector thereof and no longer. The collectors, in collecting taxes out of real estate upon which they are a lien under the provisions of § 2901 of this title, shall proceed in the manner prescribed by law for the collection of taxes out of real estate.

(15 Del. Laws, c. 476; 16 Del. Laws, c. 141; 19 Del. Laws, c. 556; 20 Del. Laws, Appendix, page 8, § 11; Code 1915, §§ 1152, 2870; 33 Del. Laws, c. 82, § 2; 40 Del. Laws, c. 135, § 1; 40 Del. Laws, c. 238, §§ 1-3; Code 1935, §§ 1348, 3351; 25 Del. C. 1953, § 2903.)

§ 2904 Payment of taxes by lienholder; action for collection.

Any person having a lien upon any real estate located within the State may pay to the parties entitled thereto any taxes which are by law liens upon or against the real estate. Any person who has paid any such taxes shall be entitled to receive the full amount of such taxes so paid from the owner of the property or properties upon which the taxes were a lien and may proceed in any court of competent jurisdiction to collect the same in a civil action for money paid out and expended for the use of the defendant.

(15 Del. Laws, c. 476; 16 Del. Laws, c. 141; Code 1915, § 2870; Code 1935, § 3351; 25 Del. C. 1953, § 2904.)

§ 2905 Action by lienholder to collect tax lien; amount of recovery; affidavit of demand.

In any action brought to collect any lien upon real estate located within this State, the lienholder shall obtain in the final judgment in the cause the amount of money paid on account of the taxes levied upon the real estate covered by such lien or liens, provided there is set forth in the affidavit of demand filed in the action an itemized list of the taxes paid, the total amount of the payments, that the taxes were justly and truly due at the time of payment and that attached to the affidavit of demand are original and duplicate tax receipts from the officer to whom such taxes were paid. The affidavit of demand shall be filed as any other affidavit of demand is or shall be required to be filed in such proceeding. If judgment has been obtained prior to the payment of the taxes, then, and in that event, such affidavit of demand shall be filed in the office where such judgment is recorded and the amount thereof shall be noted on all writs issued in execution of such judgment or judgments and shall be collected and paid by the officer to whom such writ of execution is issued before any other part of such judgment is paid except only the costs taxed on the proceedings as shown on the writ and any amount of taxes levied and unpaid which constitute a lien on the real estate.

(15 Del. Laws, c. 476; 16 Del. Laws, c. 141; Code 1915, § 2870; Code 1935, § 3351; 25 Del. C. 1953, § 2905.)

§ 2906 Priority of liens of the State and political subdivisions on real estate; extinction of such liens.

(a) Except as otherwise provided in subsection (b) of this section, liens for taxes and other government charges levied and imposed by the State or its political subdivisions, which liens are assessed against real property, shall be equal in status, regardless of the time of assessment of said lien; no such lien shall have priority over any other such lien in the distribution of proceeds of the sale of real estate pursuant to a writ of venditioni exponis, levari facias or any other process or order of any court resulting in a sheriff's sale. In the event that the proceeds of a sheriff's sale are insufficient to satisfy all such liens encumbering the property sold, then the State and/or its political subdivisions holding such liens shall share that portion of the proceeds of the sheriff's sale allotted to such liens on a prorata basis.

(b) In the event that real property is sold to the State or any of its political subdivisions pursuant to a writ of venditioni exponas, levari facias or any other process or order of any court resulting in a sheriff's sale and such writ or process was filed by the entity purchasing the real property, then the liens of the purchasing entity shall have priority over all other liens of the State or its political subdivisions and in the event that the proceeds of the sheriff's sale are insufficient to satisfy all liens of the State or its political subdivisions encumbering the real estate, the liens of the purchasing entity will be paid to the extent funds are available for such purposes and the remaining funds, if any, shall then be distributed on a prorata basis to other governmental entities having such liens on the real estate sold, in full satisfaction of all such liens.

(c) When real property is sold pursuant to a writ of venditioni exponas, levari facias or any other process resulting in a sheriff's sale, said writ having been filed by the State or any of its political subdivisions, the purchasing party, other than the original owner, shall take the property free and clear of any and all liens on such real property, including liens of the State and/or its political subdivisions whether or not such liens have been fully satisfied from the proceeds of the sale.

(d) Except as specifically provided herein, nothing in this section shall be construed as affecting the order or priority of payment of any other liens, charges, costs or other debts against real estate sold at a sheriff's sale or the effect of such a sheriff's sale on the quality of title of real estate sold as provided in any other statute or ordinance of this State or its political subdivisions.

(e) All liens of the State or any of its political subdivisions encumbering real estate sold at a sheriff's sale prior to July 10, 1980, and purchased by the State or any of its political subdivisions at such sale are hereby extinguished; provided, however, that such lien existed at the time of said sheriff's sale.

(f) Nothing in this section shall affect the priority of any liens not of the State or any of its political subdivisions which existed of record on or prior to July 10, 1980.

(62 Del. Laws, c. 374, § 2.)

Part II
Mortgages and Other Liens

Chapter 31
REGISTRATION OF FEDERAL LIENS

§ 3101 Federal tax liens and liens notices.

This chapter applies to federal tax liens, and also to other federal liens notices, of which under any Act of Congress or any regulations drafted pursuant thereto, are required or permitted to be filed in the same manner as notices of federal tax liens.

(70 Del. Laws, c. 504, § 1.)

§ 3102 Place of filing.

(a) Notices of liens, certificates and other notices affecting federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting such liens shall be filed in the office of the recorder of deeds of the county or counties in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens, shall be filed as follows:

(1) If the person against whose interest the lien applies is a corporation, partnership or limited liability company whose principal executive office is in this State, as these entities are described in Titles 6 and 8, in the office of the Secretary of State;

(2) If the person against whose interest the lien applies is a trust or other entity that is not covered by paragraph (c)(1) of this section, in the office of the Secretary of State;

(3) If the person against whose interest the lien applies is the estate of a decedent, in the office of the Secretary of State;

(4) In all other cases, including, but not limited to, an individual conducting business as a sole proprietorship, in the office of the recorder of deeds of the county or counties where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

(70 Del. Laws, c. 504, § 1; 71 Del. Laws, c. 123, §§ 1-3.)

§ 3103 Execution of notices and certificates.

Certification of notices of liens, certificates or other notices affecting federal liens by the Secretary of the Treasury of the United States or the Secretary's delegate or by any official or entity of the United States responsible for filing or certifying of notice of any other lien entitles them to be filed, and no other attestation, certification or acknowledgment is necessary.

(70 Del. Laws, c. 504, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3104 Duties of filing officer.

(a) If a notice of federal lien, a refiling of a notice of federal lien or a notice of revocation of any certificate in subsection (b) of this section is presented to a filing officer who is:

(1) The Secretary of State, the Secretary of State shall cause the notice to be marked, held and indexed in accordance with the provisions of § 9-502 of Title 6 (Uniform Commercial Code) as if the notice were a financing statement within the meaning of that Code; or

(2) Any other officer described in § 3102 of this title, the officer shall endorse thereon the officer's identification and the date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien and the total amount appearing on the notice of lien.

(b) If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the Secretary of State for filing the Secretary of State shall:

(1) Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, but the notice of lien to which the certificate relates may not be removed from the files; and

(2) Cause a certificate of discharge or subordination to be marked, held and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(c) If a refiled notice of federal lien referred to in subsection (a) of this section or any of the certificates or notices referred to in subsection (b) of this section is presented for filing to any other filing officer specified in § 3102 of this title, the officer shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where the original notice of lien is entered.

(d) Upon the request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated therein, any notice of lien, or certificate, or notice affecting any lien under this chapter, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is $10. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of $1.00 per page.

(70 Del. Laws, c. 504, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3105 Fees.

(a) The fee for filing and indexing each notice of lien, or certificate or notice affecting the lien, is:

(1) For a lien on real estate, $20;

(2) For a lien on tangible and intangible personal property, $10;

(3) For a certificate of discharge or subordination, $5;

(4) For all other notices, including a certificate of release or non-attachment, $3.

(b) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

(70 Del. Laws, c. 504, § 1.)

Part II
Mortgages and Other Liens

Chapter 35
LIEN OF COMMISSION MERCHANT, FACTOR AND CARRIER

§ 3501 Enforcement by public sale; nature of sale.

In all cases in which commission merchants, factors and all common carriers or other persons have a lien under existing laws upon any goods, wares, merchandise or other personal property for or on account of the costs or expenses of carriage, storage or labor bestowed on such goods, wares, merchandise or other personal property, if the owner or consignee of the property fails or neglects or refuses to pay the amount of charges upon any such property, goods, wares or merchandise, within 60 days after demand thereof, made personally upon such owner or consignee or at his last known place of residence, then in such case the commission merchant, factor, common carrier or other person having such lien may, after the expiration of the period of 60 days, expose the goods, wares, merchandise or other personal property to sale at public auction and sell the same, or so much thereof as is sufficient to discharge the lien together with costs of sale and advertising. Notice of the sale, together with the name of the person to whom the goods have been consigned, shall first be published for 3 successive weeks in a newspaper published in the county and by 6 written or printed handbills, put up in the most public and conspicuous places in the vicinity of the depot where the goods are located.

(13 Del. Laws, c. 164, § 1; Code 1915, § 2857; Code 1935, § 3338; 25 Del. C. 1953, § 3501.)

§ 3502 Notice in special cases; jurisdiction of justices of the peace in cases of perishable property.

Upon the application of any of the persons or corporations having a lien upon goods, wares, merchandise or other property, as mentioned in § 3501 of this title verified by affidavit, to any judge of the Superior Court or to the Court of Chancery setting forth that the place of residence of the owner or consignee of any such goods, wares, merchandise or other property is unknown or that such goods, wares, merchandise or other property are of such a perishable nature or so damaged or showing any other cause that renders it impracticable to give the notice as required in § 3501 of this title, then, in such case, the judge hearing such application may make an order, to be signed by him, authorizing the sale of such goods, wares, merchandise or other property upon such terms as to notice as the nature of the case may admit of and to such judge seems proper. In cases of perishable property, the affidavit and proceedings required by this section may be had before a justice of the peace.

(13 Del. Laws, c. 164, § 2; Code 1915, § 2858; Code 1935, § 3339; 25 Del. C. 1953, § 3502.)

§ 3503 Disposition of proceeds of sale.

The residue of moneys arising from any sales, either under § 3501 or § 3502 of this title, after deducting the amount of the lien together with costs of advertising and sales, shall be held subject to the order of the owner of the property.

(13 Del. Laws, c. 164, § 3; Code 1915, § 2859; Code 1935, § 3340; 25 Del. C. 1953, § 3503.)

Part II
Mortgages and Other Liens

Chapter 37
LIENS UPON VESSELS FOR WORK, MATERIAL AND SUPPLIES

§ 3701 Preference of lien.

Ships and vessels of all kinds built, repaired, fitted, furnished and supplied with necessities for navigation within this State, shall be subject to a lien for all debts contracted by the builders, owners, master, agents or consignees thereof for work done or materials and supplies found or provided in the building, repairing, fitting, furnishing, supplying or equipping of the same in preference to any other debt due from the builders, masters, owners, agents or consignees thereof, except for salvage, and such debts shall be a lien upon the ship or vessel in the same manner as if the work had been done or the materials or supplies had been furnished outside of this State and in a port foreign to the home port of the ship or vessel.

(22 Del. Laws, c. 208, § 1; Code 1915, § 2860; Code 1935, § 3341; 25 Del. C. 1953, § 3701.)

§ 3702 Duration of lien.

The lien shall continue for and during the period of 2 years next after the work is done or the materials or supplies are furnished or provided to the ship or vessel and no longer.

(22 Del. Laws, c. 208, § 2; Code 1915, § 2861; Code 1935, § 3342; 25 Del. C. 1953, § 3702.)

§ 3703 Persons entitled to lien.

The lien for work done or materials and supplies furnished shall exist in favor of all ship builders, ship chandlers, merchants, dealers, tradesmen and mechanics for all work done or materials and supplies furnished or provided in or about the building, repairing, fitting, furnishing, supplying or equipping of such ships or vessels.

(22 Del. Laws, c. 208, § 3; Code 1915, § 2862; Code 1935, § 3343; 25 Del. C. 1953, § 3703.)

Part II
Mortgages and Other Liens
Chapter 39
LIENS OF GARAGE OWNERS, LIVERY AND STABLE KEEPERS; REPLEVIN BY OWNER

§ 3901 Persons entitled to liens.

(a) Any hotelkeeper, innkeeper, garage owner, auction service or other person who keeps a livery, boarding stable, garage, airport, marina or other establishment and, for price or reward at such livery, boarding stable, garage, airport, marina or other establishment, furnishes food or care for any horse or has the custody or care of any carriage, cart, wagon, sleigh, motor vehicle, trailer, moped, boat, airplane or other vehicle or any harness, robes or other equipment for the same or makes repairs, auctions, performs labor upon, furnishes services, supplies or materials for, stores, safekeeps or tows any carriage, cart, wagon, sleigh, motor vehicle, trailer, moped, boat, airplane or other vehicle or any harness, robes or other equipment for the same shall have a lien upon such horse, carriage, cart, wagon, sleigh, motor vehicle, trailer, moped, boat, airplane or other vehicle, harness, robes or equipment and the right to detain the same to secure the payment of such price or reward.

(b) Unless the context of this chapter requires otherwise, a lienholder shall mean any person defined in subsection (a) of this section.

(17 Del. Laws, c. 620, § 1; Code 1915, § 2863; 34 Del. Laws, c. 193; Code 1935, § 3344; 25 Del. C. 1953, § 3901; 61 Del. Laws, c. 367, § 1; 68 Del. Laws, c. 62, §§ 1, 2.)

§ 3902 Lienholder's loss of possession.

In case, either before or after the price or reward become due and payable, the lienholder under § 3901 of this title loses possession of the encumbered property, except by court order pursuant to this chapter, the lienholder's lien shall continue in full force and effect, provided that within 10 days from the time of the loss of possession the lienholder pursuant to § 3903 of this title files an application for the issuance of an authorization to conduct a lien sale or files a counterclaim for the sale of the encumbered property pursuant to this chapter in a replevin action brought pursuant to Chapter 95 of Title 10 by the owners or other persons claiming an interest in the property.

(17 Del. Laws, c. 620, § 1; Code 1915, § 2863; 34 Del. Laws, c. 193; Code 1935, § 3344; 25 Del. C. 1953, § 3901; 61 Del. Laws, c. 367, § 1.)

§ 3903 Sale to satisfy liens.

(a) If a lienholder under § 3901 or § 3902 of this title is not paid the amount due, and for which the lien is given within 30 days after the same or any part thereof became due, then the lienholder may proceed to sell the property, or so much thereof as may be necessary, to satisfy the lien and costs of sale pursuant to § 3905 of this title if:

(1) An authorization to conduct a lien sale has been issued pursuant to this section;

(2) A judgment has been entered in favor of the lienholder on the claim which gives rise to the lien; or

(3) The owners and any secured parties of record or known lienholders of the property have signed, after the lien has arisen, a release of any interest in the property in the form prescribed by § 3904 of this title.

(b) A lienholder may apply to a Justice of the Peace Court in the county in which the lienholder's business establishment is situated for the issuance of any authorization to conduct a lien sale under § 3905 of this title. In the event that the lienholder's business establishment is located in more than 1 county, the Justice of the Peace Court in the county where the property is, or most recently was, located shall have exclusive original jurisdiction. The application shall be executed under penalty of perjury and shall include all of the following:

(1) A description of the property.

(2) The names and addresses of the owners of the property and the names and addresses of any other persons who the lienholder knows claim an interest in the property.

(3) A statement of the amount of the lien and facts concerning the claim which gives rise to the lien. If compensation for storage is claimed, the per diem rate of storage shall be shown.

(4) The date, time and place that the property will be sold if the authorization to conduct a lien sale is issued.

(5) A statement that the lienholder has no information or belief that there is a valid defense to the claim which gives rise to the lien.

(c) Upon receipt of an application which is made pursuant to subsection (b) of this section, the justice of the peace shall send a notice and a copy of the application by certified mail or registered mail, return receipt requested, to the owners, secured parties of record and any known lienholders and any other persons whose names and addresses are listed in the application. If the identity of the last registered owner or secured party cannot be determined with reasonable certainty, § 3905 of this title shall have the same effect as notice sent by certified or registered mail. The notice shall include all of the following:

(1) A statement that an application has been made with the justice of the peace for the issuance of an authorization to conduct a lien sale.

(2) A statement that the person has a legal right to a hearing in court; if a hearing in court is desired, the enclosed declaration under penalty of perjury must be signed and returned and if the declaration is signed and returned, the lienholder will be allowed to sell the vehicle only if he obtains a judgment in court or obtains a release from the owners and any known lienholders.

(3) A statement that if the declaration is signed and returned, a hearing will be promptly scheduled and the owners may then appear to contest the claim of the lienholder.

(4) A statement of the date, time and place that the property will be sold if the authorization to conduct a lien sale is issued.

(5) A statement that the justice of the peace will issue the authorization to conduct a lien sale unless the person signs and returns, within 20 days after the date on which the notice was mailed, the enclosed declaration stating that the person desires to contest the claim which gives rise to the lien.

(6) A statement that the person shall be liable for costs if a judgment is entered in favor of the lienholder on the claim which gives rise to the lien.

(7) A declaration which may be executed by the person under penalty of perjury stating that he desires to contest the claim which gives rise to the lien and that he has a valid defense to the claim and he shall furnish names and addresses where official notice may be received of any person or persons including himself known to claim an interest in the property of the hearing date.

(d) If the justice of the peace receives a declaration described in paragraph (3) of subsection (c) of this section which is mailed within 20 days after the date upon which the notice described in subsection (c) of this section is mailed, the justice of the peace shall notify the lienholder and owners and any other persons listed in the application or declaration of the hearing date unless the owners of the property and any known lienholder or lienholders have signed, after the lien has arisen, a release of any interest in the property in the form prescribed by § 3904 of this title. In any other case, the justice of the peace shall issue an authorization to conduct a lien sale.

(e) In any hearing, the lienholder may have the amount of the indebtedness and right to sale determined and the person requesting the hearing may present and have determined any defenses, setoffs, counterclaims, cross-claims or third-party actions.

(f) Any fees shall be recoverable as a cost by the lienholder if a sale is conducted.

(g) The form of the applications, notices and declarations described in this section shall be prescribed by the justice of the peace. The language used in the applications, notices and declarations should be simple and nontechnical.

(17 Del. Laws, c. 620, § 1; Code 1915, § 2863; 34 Del. Laws, c. 193; Code 1935, § 3344; 25 Del. C. 1953, § 3901; 61 Del. Laws, c. 367, § 1; 78 Del. Laws, c. 62, § 1.)

§ 3904 Release of owner's interest in vehicle or property.

(a) An owner of property subject to a lien under § 3901 or § 3902 of this title may release any interest in the property after the lien has risen. The release shall be dated when signed and a copy shall be given at the time the release is signed to the person releasing the interest.

(b) The release shall contain all of the following information in simple, nontechnical language:

(1) A description of the property sufficient to identify it.

(2) The names and addresses of the owners.

(3) A statement of the amount of the lien and the facts concerning the claim which gives rise to the lien.

(4) A statement that the person releasing the interest understands that the person has a legal right to a hearing in court prior to any sale of the property to satisfy the lien and the person is giving up the right to appear to contest the claim of the lienholder.

(5) A statement that the person releasing the interest gives up any interest that person may have in the property and the person is giving the lienholder permission to sell the property.

(6) A statement that there is no other person, persons or lienholders who have an outstanding interest in the property.

(61 Del. Laws, c. 367, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3905 Notice of sale; disposition of proceeds.

(a) Prior to any such sale the lienholder shall give at least 15 days' notice of the sale by handbills posted in 5 or more public places and by advertising in a newspaper published and/or circulated in the county in which the sale is to be held.

(b) The proceeds of the sale shall be applied to the discharge of the lien and the cost of keeping and selling the property. The balance, if any, of the proceeds of the sale shall be deposited not later than 10 days from the date of the sale with the court to be applied by the court to the payment of any lien or security interest to which the property may be subject in the order of their priority, with any remaining proceeds to be paid to the owner or owners of the property sold but, in case such owner or owners cannot be found, such balance shall be turned over to the State Treasurer not later than 60 days from the date of the sale who shall create a special fund thereof and who shall pay to the owner the moneys left if a claim is made within 1 year of the sale, or deposit the moneys in the General Fund if no claim is made within 1 year of the sale.

(c) In every lien sale authorized under this chapter, it shall be the duty of the lienholder to complete and file with the Court a disposition of proceeds form, as designated by the Court, within 10 days from the date of the sale. No transfer of or new certificate of title to the vehicle sold or salvage certificate shall be issued by the Department of Motor Vehicles without proof of the filing of said disposition of proceeds form with the Court within the required time period. A copy of the disposition of proceeds form sealed with the Court's seal shall constitute sufficient proof of filing.

(17 Del. Laws, c. 620, § 1; Code 1915, § 2863; 34 Del. Laws, c. 193; Code 1935, § 3344; 25 Del. C. 1953, § 3901; 61 Del. Laws, c. 367, § 1; 64 Del. Laws, c. 34, §§ 1, 2; 78 Del. Laws, c. 62, § 2.)

§ 3906 Motor vehicles.

In the case of motor vehicles required to be registered under the motor vehicle laws of this or any other state, notice containing the information required in § 3903(b) of this title shall be given to the registered owners and known lienholders at their addresses of record with the Division of Motor Vehicles or similar agency and the return receipt, signed or unsigned, shall be held and considered as prima facie evidence of service of such notice. The lienholder shall notify the appropriate Delaware auto theft unit.

(61 Del. Laws, c. 367, § 1.)

§ 3907 Priority of lien.

(a) All liens created pursuant to § 3901 or § 3902 of this title shall be superior to any lien, title or interest of any person who has a security interest by virtue of a conditional sales contract or a prior perfected security interest in accordance with Article 9 of Title 6.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who stores or safekeeps any motor vehicle towed at the request of a party other than the owner of the vehicle may attain priority of lien as follows:

(1) By providing notice by certified mail to a title holder of record within 7 business days of the date upon which possession is taken;

(2) By providing notice by certified mail to lienholders of record within 7 business days of the date upon which possession is taken; and

(3) By providing notice by telephone or in person to the appropriate police agency.

(61 Del. Laws, c. 367, § 1; 68 Del. Laws, c. 315, § 1.)

§ 3908 Remedy of owner.

The owners or other persons claiming an interest in the property, in addition to the right to a hearing as provided herein, shall have the right to file an action in replevin or detinue at any time in accordance with Chapter 95 of Title 10, and no bond shall be required to be posted as a prerequisite to the filing of such an action or the issuance of the writ.

(17 Del. Laws, c. 620, § 2; Code 1915, § 2864; 34 Del. Laws, c. 193; Code 1935, § 3345; 25 Del. C. 1953, § 3902; 61 Del. Laws, c. 367, § 1; 78 Del. Laws, c. 62, § 3.)

§ 3909 Jurisdiction.

The Justice of the Peace Court in the county in which the lienholder's business establishment is located shall have exclusive original jurisdiction of all petitions for sale under this chapter, notwithstanding the monetary amount claimed by the lienholder. In the event that the lienholder's business establishment is located in more than 1 county, the Justice of the Peace Court in the county where the property is, or most recently was, located shall have exclusive jurisdiction. The Justice of the Peace Court shall also hear actions in replevin or detinue filed under this chapter, unless a party requests a jury and pays all necessary costs to transfer the action to Superior Court.

(61 Del. Laws, c. 367, § 1; 65 Del. Laws, c. 42, § 1; 78 Del. Laws, c. 62, § 4.)

§ 3910 Rules.

The Justice of the Peace Court and Superior Court may adopt appropriate and specific rules to effectuate the intent and purpose of this chapter.

(61 Del. Laws, c. 367, § 1; 78 Del. Laws, c. 62, § 5.)

Part II
Mortgages and Other Liens

Chapter 40
RIGHTS AND TITLE TO ABANDONED PERSONAL PROPERTY

§ 4001 Definition of abandoned personal property.

(a) For the purposes of this chapter "abandoned personal property" shall be deemed to be tangible personal property which the rightful owner has left in the care or custody of another person and has failed to maintain, pay for the storage of, exercise dominion or control over, and has failed to otherwise assert or declare the ownership rights to the tangible personal property for a period of 1 year.

(b) The following personal property shall not be deemed to be "abandoned personal property":

(1) Marital property subject to division in a proceeding for divorce or annulment under § 1513 of Title 13;

(2) Personal property which has been stolen or otherwise taken from its rightful owner in violation of Title 11;

(3) Personal property which has been taken from the rightful owner by conversion;

(4) Personal property of a person who dies intestate subject to subchapter I of Chapter 11 of Title 12;

(5) Unclaimed property held by banking organizations as defined by subchapter II of Chapter 11 of Title 12; or

(6) Any intangible personal property and the tangible evidence thereof under Chapter 11 of Title 12.

(72 Del. Laws, c. 192, § 1; 78 Del. Laws, c. 21, § 1.)

§ 4002 Right and title to abandoned personal property.

Notwithstanding any other provision of the Delaware Code to the contrary, including § 1157 of Title 12, upon order of the court as provided in this chapter, any person who holds, stores, safekeeps or otherwise is left with possession of any abandoned personal property, including automobiles, motorcycles, boats and furnishings, which has been abandoned by the owner as defined in § 4001 of this title, shall be vested with complete and absolute title to said abandoned personal property and shall have all right to sell, alienate, gift or otherwise dispose of the said abandoned personal property provided such transfer does not violate preliminary injunctions in effect pursuant to § 1509(a)(1) of Title 13.

(72 Del. Laws, c. 192, § 1; 81 Del. Laws, c. 1, § 3.)

§ 4003 Procedure to obtain title.

(a) Any person who holds, stores, safekeeps or otherwise is left with possession of any abandoned personal property may be vested with complete right and title to said abandoned personal property upon application to a court of competent jurisdiction. The petition filed pursuant to this subsection shall be executed under oath and penalty of perjury and shall include the following:

(1) A complete description of the property including all identification and registration numbers if applicable;

(2) The name and last known address of the owner or owners of the property;

(3) The names and addresses of any persons who claim to or have an interest or lien in the subject property;

(4) A statement that the petitioner has conducted a lien search concerning the subject property for any liens filed with the Delaware Secretary of State and, if applicable, that the petitioner has conducted a title and lien search with the Division of Motor Vehicles concerning any lienholders that may have an interest in any motor vehicle, and the reports of the Secretary of State and the Division of Motor Vehicles resulting from the searches shall be attached to the petition;

(5) If a motor vehicle, a statement that the petitioner has had the vehicle examined and approved for sale by the auto theft unit or a civilian auto theft technician of the Delaware State Police;

(6) A statement of the value of the subject property; and

(7) A statement by the petitioner that the property has been abandoned as defined by § 4001 of this title and the owner of the property is not an infant or incompetent person, and is not a member of the military.

(b) Upon receipt of a petition which is made pursuant to subsection (a) of this section, the court shall send a notice and a copy of the petition and a Request for Information Form requesting the party who receives the notice and petition to provide all information concerning the identification and address of all other owners and/or lienholders of said abandoned property by certified mail or registered mail, return receipt requested, to the owners, secured parties of record, any known lienholder of the property, and any other persons whose names and addresses are listed in the petition. The petitioner shall further cause notice of filing of the petition to be posted in 5 or more public places and shall advertise the fact that the petition has been filed in a newspaper published and/or circulated in the county in which the petition was filed. The notice shall include a copy of the petition and shall include the following information:

(1) A statement that a petition has been made with the court;

(2) A statement that the owner or other person has a legal right to a hearing in the courts and that if a hearing is desired then the owner or other person shall file with the court an answer to the petition;

(3) A statement that if an answer is filed a hearing will be promptly scheduled and the owners or other interested persons may appear to contest the claim;

(4) A statement that the court will enter a judgment in favor of the petitioner unless an answer is filed within 20 days after the date on which the notice was mailed;

(5) A statement that the person may be liable for costs if a judgment is entered in favor of the petitioner.

(c) If the court receives an answer described in paragraph (b)(3) of this section, the court shall notify the petitioner and all parties of the hearing date to determine ownership of the subject property. If no answer is filed pursuant to paragraph (b)(3) of this section and there are no lienholders or other interested party, then the court shall issue an order declaring that the petitioner has full right, title and interest to the said abandoned property.

(d) The form of the applications, notices and declarations described in this section shall be prescribed by the court of competent jurisdiction. The language used in the applications, notices and declarations should be simple and nontechnical.

(72 Del. Laws, c. 192, § 1; 74 Del. Laws, c. 110, § 139; 75 Del. Laws, c. 237, § 1; 78 Del. Laws, c. 21, §§ 2, 3.)

§ 4004 Sheriff's or constable's sale of the property when there are lienholders.

(a) If it is determined that there are lienholders or other persons with secured or other interests in the abandoned property, the court shall further order that the subject property shall be sold at sheriff's sale or constable's sale, if the petition was filed in the Justice of the Peace Court after notice as required in this section.

(b) Prior to any sale of the abandoned property, the petitioner shall give at least 15 days' notice of the sale by handbills posted in 5 or more public places and by advertising in a newspaper published and/or circulated in the county in which the sale is to be held.

(c) The proceeds of the sale shall be applied first to the costs of keeping and selling the property, costs of execution and court costs. The balance, if any, of the proceeds of the sale shall be deposited not later than 10 days from the date of the sale with the court to be applied by the court to the payment of any lien or security interest to which the property may be subjected in order of their priority, with any remaining proceeds to be paid to the petitioner after all liens and other interests have been paid.

(d) In every sale authorized under this chapter, it shall be the duty of the lienholder or other interest holder to file with the court a form required by the court satisfying the judgment or indicating the disposition of the proceeds.

(72 Del. Laws, c. 192, § 1; 73 Del. Laws, c. 283, §§ 1, 2; 78 Del. Laws, c. 21, §§ 4, 5.)

§ 4005 Remedy of owner.

The owners or other persons claiming an interest in the property, in addition to the right to a hearing as provided herein, shall have the right to file an action in replevin at any time prior to a final determination of title by the court and no bond shall be required to be posted as a prerequisite to the filing of such an action or the issuance of the writ of replevin.

(78 Del. Laws, c. 21, § 7.)

§ 4006 Motor vehicles.

In the case of motor vehicles, the court shall enter an order requiring the Division of Motor Vehicles to issue title to the vehicle in the name of the petitioner or other person who has purchased the vehicle through sheriff's or constable's sale, and the petitioner or other person to whom title to the vehicle is to be issued shall present to the Division of Motor Vehicles a copy of the order of the court with the court's seal affixed thereto. Upon receipt of the Certified Order, the Division of Motor Vehicles shall issue title as directed by the court.

(72 Del. Laws, c. 192, § 1; 73 Del. Laws, c. 283, § 3; 74 Del. Laws, c. 110, § 139; 78 Del. Laws, c. 21, § 6.)

§ 4007 Jurisdiction.

The Justice of the Peace Courts, Court of Common Pleas and Superior Court shall have concurrent jurisdiction over actions instituted under this chapter.

(72 Del. Laws, c. 192, § 1; 78 Del. Laws, c. 21, § 6.)

§ 4008 Rules.

The courts may adopt appropriate and specific rules to effectuate the intent and purpose of this chapter.

(72 Del. Laws, c. 192, § 1; 78 Del. Laws, c. 21, § 6.)

Part II
Mortgages and Other Liens

Chapter 41
LIEN OF OWNER OF THRESHING MACHINE, CORN PICKER OR HAY BALER

§ 4101 Priority of lien.

The owner of a threshing machine, corn picker or hay baler shall have first lien upon any wheat, corn, hay or other grain threshed, picked or baled by that owner with the threshing machine, corn picker or hay baler to the full amount of the owner's claim or bill for threshing, picking or baling the same. If any chattel mortgage or other lien or claim of any kind whatsoever is placed upon any such wheat, corn, hay or other grain, either before or after the same is threshed, picked or baled, such chattel mortgage or other lien or claim shall always be subject to such claim for threshing, picking or baling; and, in case of the sale of any such wheat, corn, hay or other grain, upon any claim whatsoever, the claim for threshing, picking or baling the same shall be paid out of the proceeds of any such sale before any part of such proceeds of such sale is applied to any other claim.

(35 Del. Laws, c. 184, § 1; Code 1935, § 3352; 47 Del. Laws, c. 350; 25 Del. C. 1953, § 4101; 70 Del. Laws, c. 186, § 1.)

§ 4102 Removal of grain under lien.

No person shall take, remove or carry away from the premises where it is threshed any wheat, corn, hay or other grain upon which there is a lien of any kind without the written consent of the person having such lien or without first paying in full the claim or bill of the person having such lien.

(35 Del. Laws, c. 184, § 2; Code 1935, § 3353; 25 Del. C. 1953, § 4102.)

§ 4103 Penalties.

(a) Whoever violates this chapter shall be fined not less than $10 nor more than $100 for each offense.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(35 Del. Laws, c. 184, § 3; Code 1935, § 3354; 25 Del. C. 1953, § 4103.)

Part II
Mortgages and Other Liens
Chapter 43
HOSPITAL LIENS

§ 4301 Liens in favor of charitable hospitals.

Every charitable association, corporation or other institution maintaining a hospital in this State, supported in whole or in part by private charity, shall have a lien upon any and all claims or demands, all rights of action, suits, counterclaims of any person admitted to any such hospital and receiving treatment, care and maintenance therein which arise out of any personal injuries received in any such accident which any such injured person may have, assert or maintain against any such other person or corporation for damages, compensation or other claim on account of such injuries for the amount of the reasonable charges of such hospital for all medical treatment, care and nursing and maintenance of such injured person while in such hospital to the extent of the full and true consideration paid or given to, or on behalf of, such injured person or his legal representative.

(37 Del. Laws, c. 179, § 1; Code 1935, § 3360; 25 Del. C. 1953, § 4301.)

§ 4302 Establishment of lien; notice of claim.

A charitable association, corporation or other institution shall file in the office of the Prothonotary of the county in which such injuries shall have occurred a notice in writing, containing the names and addresses of the injured person, the date of the accident, the name and location of the hospital and, if then known, the name of the person alleged to be liable to such injured person by reason of the injuries received, prior to the payment of any moneys to such injured person or his legal representative by such person to such injured person. Copies of the notice shall be sent by registered mail by the hospital to such injured person and all parties in interest who are then known. Thereafter an affidavit by a competent person acting on behalf of such institution, setting forth such service, and all attempts to serve the same shall be filed in the office of the Prothonotary.

(37 Del. Laws, c. 179, § 2; Code 1935, § 3361; 25 Del. C. 1953, § 4302.)

§ 4303 Attachment of lien to judgment.

The lien of any hospital shall attach to any verdict, report, decision, decree, award, judgment or final order made or rendered in any action or proceeding in any court of record of Delaware or any public board or bureau in any suit, action, or proceeding brought by the injured person or by the estate of the injured person, in case of deaths as the result of such injuries, against any other person for the recovery of damages or other compensation or payment in any way arising out of injuries received in any such accident, as well as to the proceeds of any settlement thereof, any claim or demand effected by any such injured person or on such injured person's behalf with any other person or corporation in any way liable to the injured person or the injured person's legal representative in case of death, by reason of the injuries effected with any other person on account thereof.

(37 Del. Laws, c. 179, § 3; Code 1935, § 3362; 25 Del. C. 1953, § 4303; 70 Del. Laws, c. 186, § 1.)

§ 4304 Release as effective; liability of person making payment; limitation.

After the filing of the notice as provided in this chapter, no release of any judgment, claim or demand by the injured person shall be valid or effectual as against such lien, and the person making any payment to such injured person or such injured person's legal representative as compensation for the injuries sustained shall for a period of 1 year from the date of such payment remain liable to such hospital for the amount of its reasonable charges due at the time of such payment to the extent of the full and true consideration paid or given to, or on behalf of, such injured person or such injured person's legal representative, and any such charitable association, corporation or other institution or body maintaining such hospital may, within such period, enforce its lien by a suit at law against such person making any such payment.

(37 Del. Laws, c. 179, § 4; Code 1935, § 3363; 25 Del. C. 1953, § 4304; 70 Del. Laws, c. 186, § 1.)

§ 4305 Recording of liens; fees.

(a) Every prothonotary shall, at the expense of the county, provide a suitable, well-bound book, to be called the Hospital Lien Docket, in which, upon the filing of any lien claim under this chapter, the prothonotary shall enter the name of the injured person, the date of the accident, the name of the hospital or other institution making the claim and the filing of an affidavit setting forth the service of or attempts to serve of all parties in interest.

(b) The prothonotary shall make a proper index of the Docket in the name of the injured person and shall be entitled to $1 for filing each claim and at the rate of 25 cents per folio for such entry made in the Lien Docket and 25 cents for every search in the office for such lien claim.

(37 Del. Laws, c. 179, § 5; Code 1935, § 3364; 25 Del. C. 1953, § 4305; 70 Del. Laws, c. 186, § 1.)

§ 4306 Examination of hospital records.

Any person legally liable or against whom a claim shall be asserted for compensation for injuries shall be permitted to examine the records of any association, corporation or other institution or body maintaining a hospital in reference to the treatment, care and maintenance of the injured person.

(37 Del. Laws, c. 179, § 6; Code 1935, § 3365; 25 Del. C. 1953, § 4306.)

Part II
Mortgages and Other Liens

Chapter 45
WATER RENT LIENS IN WILMINGTON

§ 4501 Priority of lien; transfer of lien upon execution sale.

(a) All water rents laid or imposed by the Board of Water Commissioners for the City of Wilmington, remaining unpaid and in arrears for 30 days after they become due, shall be and constitute a lien upon the lands and premises of the owner to which the water was furnished. Such liens shall have preference and priority to all liens of recognizance, mortgage or judgment on such lands and premises created or suffered by the owner, although such other lien or liens shall be of a date prior to the time of the attaching of such lien for water rents.

(b) In case of the sale under execution process of any lands and premises upon which liens for water rents exist, the liens shall be transferred to the fund arising from the sale in the hands of the officer making the sale, and the real estate so sold shall be discharged therefrom.

(43 Del. Laws, c. 142, § 1; 25 Del. C. 1953, § 4501.)

§ 4502 Duration of lien.

The lien for water rents shall remain a lien for the period of 5 years and no longer from the expiration of 30 days after the water rents became due and payable.

(43 Del. Laws, c. 142, § 2; 25 Del. C. 1953, § 4502.)

Part II
Mortgages and Other Liens

Chapter 46
LIENS FOR RAZING OR DEMOLITION OF STRUCTURES BY PUBLIC EXPENDITURE

§ 4601 Demolition; notice; reimbursement; lien; lien docket.

(a) Except where a building or structure is demolished under emergency conditions, no lien or personal judgment, as provided in subsections (b) and (c) of this section, may be obtained for the recovery of demolition costs by any municipality or other political subdivision unless notice to the record owner or owners of such building or structure and to any record lien holders thereof has been given prior to such demolition. For purposes of this subsection, the mailing of a certified letter, return receipt requested, at least 5 days prior to demolition, to the last known address of the record owner, owners or lien holders and notifying same of the address of the property to be demolished, the condition of the property and the legal right of the municipality or political subdivision to obtain a judgment against the owner and a lien against the property after demolition, shall be deemed sufficient notice. Where a building or structure is demolished under emergency conditions, a municipality or political subdivision may subsequently secure a personal judgment or obtain a lien against the property without first having complied with the foregoing notice provisions.

(b) In the event any municipality or other political subdivision of this State, in the exercise of its slum clearance and redevelopment authority or its urban renewal authority or its authority in carrying out any duly adopted building code, shall have expended public funds for the purpose of razing or demolishing any abandoned or vacant building deemed to be unsafe or any other unsafe building or structure within its jurisdiction, after such notice is provided for in subsection (a) of this section, the sums so expended, with legal interest thereon from the date of expenditure, shall be reimbursed to such municipality or political subdivision, on demand, by the person or persons who were the owner or owners of such building or structure at the time such work of razing or demolition commenced, and if not so reimbursed, said sums, with interest accrued thereon, may be collected from such owner or owners in an action at law commenced by such municipality or political subdivision within 6 years after the date of the final expenditure of funds for such razing or demolition.

(c) Where a municipality or other political subdivision of this State shall expend public funds for the purpose of razing or demolishing any abandoned building deemed to be unsafe or any other unsafe building or structure within its jurisdiction, after such notice as is provided for in subsection (a) of this section, such municipality or political subdivision may enter a lien for the amount so expended, with interest accrued thereon, on the lands and premises on which such work of razing or demolition was performed, in the office of the prothonotary for the county in which such lands and premises are situate in the docket provided for in subsection (d) of this section and such liens shall continue until paid and discharged.

(d) The prothonotary of each county shall, under the direction and supervision of the county government, prepare a docket to be known as the "Lien Docket for Public Expenditures for Razing and Demolition" in which shall be recorded all liens provided for by subsection (b) of this section. Such liens shall be certified in writing to the Prothonotary by the municipality or other governmental subdivisions of this State entitled to the same, which certification shall list the owner of the lands and premises as such owner appears on the tax assessment records of such municipality or other political subdivision on the date of lien certification, the principal amount of the lien and the applicable interest rate, and shall identify the lands and premises by brief description and by the parcel number thereof as said parcel number appears on the real estate tax records of such municipality or other governmental subdivision. Such information and the date of filing shall be entered by the prothonotary in the lien docket, which docket shall contain in the back thereof an index according to the name of the owner of the property against which such lien is entered. When any such lien is satisfied by payment, the prothonotary, acting under the supervision of the municipality or other political subdivision holding such lien, shall enter thereon the date of final payment and the words "satisfied in full." The prothonotary, for the use of the county government, shall receive a fee of $1.00 for each satisfaction.

(60 Del. Laws, c. 684, § 1; 61 Del. Laws, c. 175, § 1.)

§ 4602 Demolition; priority of lien; transfer of lien upon executed sale.

Any lien filed pursuant to this chapter shall have priority over any other lien upon or interest in the lands and premises upon which the razed or demolished building or structure was situated, even though such other lien was entered of record or such interest vested prior to the date of filing of the lien arising under this chapter, excepting any lien for taxes. In the case of sale under execution process of any premises upon which any lien for such public expenditures exists, the lien shall be transferred to the fund arising from the sale in the hands of the officer making the sale, and the premises so sold shall be discharged therefrom.

(60 Del. Laws, c. 684, § 1; 61 Del. Laws, c. 175, § 1.)

§ 4603 Improvements; notice; reimbursement; lien; lien docket.

(a) Except where a building or structure is improved under emergency conditions, no lien or personal judgment, as provided in subsections (b) and (c) of this section, may be obtained for the recovery of costs of duly authorized improvements to the exteriors of vacant buildings and the land on which they are situate, including but not limited to repairs to or replacement of structural components, sidewalks, steps, porches, windows, doors and roofing, hereinafter "exterior improvement costs," so incurred by any municipality or other

political subdivision unless notice to the record owner or owners of such building or structure and to any record lien holders thereof has been given prior to commencement of such exterior improvements. For purposes of this subsection, the mailing of a certified letter, return receipt requested, at least 30 days prior to commencement of any exterior improvements, to the last known address of the record owner, owners or lien holders and notifying same of the address of the property to be improved, the condition of the property and the legal right of the municipality or political subdivision to obtain a judgment against the owner and a lien against the property after completion of the exterior improvements, shall be deemed sufficient notice. Where a building or structure is improved under emergency conditions, a municipality or political subdivision may subsequently secure a personal judgment or obtain a lien against the property without first having complied with the foregoing notice provisions.

(b) In the event any municipality or other political subdivision of this State, in the exercise of its slum clearance and redevelopment authority or its urban renewal authority or its authority in carrying out any duly adopted building code, shall have expended public funds for the purpose of exterior improvements to any abandoned or vacant building deemed to be unsafe or to any other vacant building or structure within its jurisdiction, after such notice as is provided for in subsection (a) of this section, the sums so expended, with legal interest thereon from the date of expenditure, shall be reimbursed to such municipality or political subdivision, on demand, by the person or persons who were the owner or owners of such building or structure at the time such work of exterior improvement commenced; and if not so reimbursed, said sums, with interest accrued thereon, may be collected from such owner or owners in an action at law commenced by such municipality or political subdivision within 6 years after the date of the final expenditure of funds for such exterior improvement costs.

(c) Where a municipality or other political subdivision of this State shall expend public funds for the purpose of exterior improvements to any vacant or abandoned building deemed to be unsafe or any other vacant building or structure within its jurisdiction, after such notice as is provided for in subsection (a) of this section, such municipality or political subdivision may enter a lien for the amount so expended, with interest accrued thereon, on the lands and premises on which such work of exterior improvement was performed, in the office of the prothonotary for the county in which such lands and premises are situate in the docket provided for in subsection (d) of this section and such liens shall continue until paid and discharged.

(d) The prothonotary of each county shall prepare a docket to be known as the "Lien Docket for Public Expenditures for Exterior Improvements" in which shall be recorded all liens provided for by subsection (b) of this section. Such liens shall be certified in writing to the prothonotary by the municipality or other governmental subdivision of this State entitled to the same, which certification shall list the owner of the lands and premises as such owner appears on the tax assessment records of such municipality or other political subdivision on the date of lien certification, the principal amount of the lien and the applicable interest rate, and shall identify the lands and premises by brief description and by the parcel number thereof as said parcel number appears on the real estate tax records of such municipality or other governmental subdivision. Such information and the date of filing shall be entered by the prothonotary in the lien docket, which docket shall contain in the back thereof an index according to the name of the owner of the property against which such lien is entered. When any such lien is satisfied by payment, the prothonotary, acting under the supervision of the municipality or other political subdivision holding such lien, shall enter thereon the date of final payment and the words "satisfied in full." The prothonotary shall receive a fee of $1.00 for each satisfaction.

(67 Del. Laws, c. 127, § 2.)

§ 4604 Improvements; priority of lien; transfer of lien upon executed sale.

Any lien filed pursuant to this chapter shall have priority over any other lien upon or interest in the lands and premises upon which the building or structure which has received exterior improvements was situated, even though such other lien was entered of record or such interest vested prior to the date of filing of the lien arising under this chapter, excepting any lien for taxes. In the case of sale under execution process of any premises upon which any lien for such public expenditures exists, the lien shall be transferred to the fund arising from the sale in the hands of the officer making the sale, and the premises so sold shall be discharged therefrom.

(67 Del. Laws, c. 127, § 2.)

Part II
Mortgages and Other Liens

Chapter 47
FIRE INSURANCE TO PROTECT LIENHOLDER

§ 4701 Failure to obtain fire insurance on demand of lienholder.

Any person, failing within 30 days after notice to furnish to any lienholder of record an adequate fire insurance policy or policies, the premium or premiums upon which have been paid in full in an amount sufficient to protect the interest of the lienholder, shall forfeit the right to procure such policy or policies of fire insurance, and the lienholder of record may obtain the necessary fire insurance and charge the premium or premiums paid to the principal amount of the indebtedness.

(40 Del. Laws, c. 239, § 1; Code 1935, § 3387; 25 Del. C. 1953, § 4701.)

§ 4702 Right of mortgagee to recover fire insurance premiums.

Any mortgagee having paid any premium or premiums of fire insurance covering the mortgaged premises shall, in any action of scire facias sur mortgage or other civil action, obtain in the final judgment in the cause the amount of money paid for such fire insurance premium or premiums. There shall be set forth in the affidavit of demand filed in the action an itemized list of the insurance premium or premiums paid, the total amount of the payments thereof and that the amount has been paid. There shall be attached to the affidavit of demand fire insurance premium receipts from the agent issuing the policy or policies.

(40 Del. Laws, c. 239, § 2; Code 1935, § 3388; 25 Del. C. 1953, § 4702.)

Part II
Mortgages and Other Liens

Chapter 48
REGISTRATION OF FEDERAL TAX LIENS

§§ 4801 -4805. Federal tax lien; execution of notices and certificates; duties of filing officer; fees; short title.

Repealed by 70 Del. Laws, c. 504, § 1, eff. July 12, 1996.

Part II
Mortgages and Other Liens

Chapter 49
SELF-SERVICE STORAGE FACILITIES

§ 4901 Short title.

This chapter shall be known as the "Self-Service Storage Facility Act."

(62 Del. Laws, c. 364, § 1.)

§ 4902 Definitions.

As used in this chapter, unless the context clearly requires otherwise, the following words shall have the following meaning:

(1) "Electronic mail" means communication delivered by electronic means as set forth in § 107(a)(1)a. and b. of Title 18.

(2) "Last-known address" means that address provided by the occupant in the latest rental agreement or the address provided by the occupant in a subsequent written notice of a change of address.

(3) "Occupant" means a person, that person's sublessee, successor or assign, entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Owner" means the owner, operator, lessor or sublessor of a self-service storage facility, his agent or any other person authorized by him or her to manage the facility or to receive rent from an occupant under a rental agreement.

(5) "Personal property" means movable property not affixed to land and includes, but is not limited to, goods, merchandise and household items.

(6) "Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules or any other provisions concerning the use and occupancy of a self-service storage facility.

(7) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse as used in Article 7 of Title 6. If an owner issues any warehouse receipt, bill of lading or other document of title for the personal property stored, the owner and the occupant are subject to Article 7 of Title 6, and this chapter does not apply.

(8) "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

(62 Del. Laws, c. 364, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 266, § 1.)

§ 4903 Creation of lien.

The owner of a self-service storage facility and the owner's heirs, executors, administrators, successors and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor or other charges, present or future, in relation to the personal property and for expenses necessary for its preservation or expenses reasonably incurred in its sale or other disposition pursuant to this chapter. The lien provided for in this section is superior to any other lien or security interest, except liens or security interests secured by motor vehicles titled pursuant to Chapter 23 of Title 21. The lien attaches as of the date the personal property is brought to the self-service storage facility; provided that the written rental agreement states that such lien will attach.

(62 Del. Laws, c. 364, § 1.)

§ 4904 Enforcement; satisfaction of lien.

(a) An owner's lien as provided for in § 4903 of this title for a claim which has become due may be satisfied as follows:

(1) The occupant shall be notified;

(2) The notice shall be delivered in person, by verified mail, by electronic mail, or sent by certified mail to the last-known address of the occupant; provided, however, if an owner sends notice to the occupant's last known electronic mail address and does not receive an electronic receipt that establishes delivery of the notice to the occupant's electronic mail address, the owner will deliver a copy of the notice via verified mail or certified mail to the occupant's last-known address;

(3) The notice shall include:

a. An itemized statement of the owner's claim showing the sum due at the time of the notice and the date when the sum became due;

b. A brief and general description of the personal property subject to the lien. The description shall be reasonably adequate to permit the person notified to identify it, except that any container including, but not limited to, a trunk, valise or box that is locked, fastened, sealed or tied in a manner which deters immediate access to its contents may be described as such without describing its contents;

c. A notice of denial of access to the personal property, if such denial is permitted under the terms of the rental agreement, which provides the name, street address and telephone number of the owner or his designated agent whom the occupant may contact to respond to said notice;

d. A demand for payment within a specified time not less than 30 days after delivery of the notice;

e. A conspicuous statement that unless the claim is paid within the time stated in the notice the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

(b) Any notice made pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid or by electronic mail to an electronic mailing address provided by the occupant. For purposes of notice of default, electronic mail may be used to notify an occupant of the default only if all of the following apply:

(1) The occupant is informed in the original rental agreement, or by subsequent modification of the agreement, that notification by electronic mail is an authorized means of communication under this subsection.

(2) The occupant affirmatively consents to be contacted using electronic means and to promptly advise owner of any change in the occupant's electronic mail address.

(3) The occupant affirmation consenting to electronic means of communication and to promptly advise owner of any change in the occupant's electronic mail address is printed in bold type or underlined in the rental agreement.

(c) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the county where the self-service storage facility is located. The advertisement shall include:

(1) A brief and general description of the personal property reasonably adequate to permit its identification as provided for in paragraph (a)(3)b. of this section;

(2) The address of the self-service storage facility and the number, if any, of the space where the personal property is located and the name of the occupant;

(3) The time, place and manner of the sale or other disposition. The sale or other disposition shall take place not sooner than 30 days after the first publication.

(d) Any sale or other disposition of the personal property shall conform to the terms of the notification as provided for in this section.

(e) Any sale or other disposition of the personal property shall be held at the self-service storage facility or at the nearest suitable place to where the personal property is held or stored.

(f) Before any sale or other disposition of personal property pursuant to this section, the occupant may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section and thereby redeem the personal property. Upon receipt of such payment, the owner shall return the personal property and thereafter the owner shall have no liability to any person with respect to such personal property.

(g) A purchaser in good faith of the personal property sold to satisfy a lien as provided for in § 4903 of this title takes the property free of any rights of persons against whom the lien was valid, despite noncompliance by the owner with the requirements of this section.

(h) In the event of a sale under this section, the owner may satisfy that owner's lien from the proceeds of the sale but shall hold the balance, if any, for delivery on demand to the occupant. If the occupant does not claim the balance of the proceeds within 2 years of the date of sale, it shall become the property of the owner without further recourse by the occupant.

(62 Del. Laws, c. 364, § 1; 70 Del. Laws, c. 186, § 1; 80 Del. Laws, c. 266, § 1.)

§ 4905 Construction of chapter.

Nothing in this chapter shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this State, or any other lien provided for in §§ 4902-4904 of this title.

(62 Del. Laws, c. 364, § 1.)

Part II
Mortgages and Other Liens

Chapter 50
LIENS AND ESTATE RECOVERIES

§ 5001 Definitions.

(a) "Department" means the Delaware Department of Health and Social Services.

(b) "Discharge from a long-term care service" means the release of a person from a long-term care facility for the purpose of returning to the home for permanent residence or discontinuance of home and community-based services.

(c) "Estate" means all real property, as well as all personal property which constitutes assets of the individual's estate as described in Chapter 19 of Title 12.

(d) "Lawfully residing in the home" means residing in the home with the permission of the owner or, if under guardianship, the owner's legal guardian.

(e) "Long-term care" means a service provided in a long-term care facility or in the home, under federally approved home and community-based services, as an alternative to institutionalization.

(f) "Medical assistance" means payment by the State's program under Title XIX of the Social Security Act [42 U.S.C. §§ 1396-1396w-1], or Medicaid Program, administered by the Department.

(g) "Real property" means land, including houses or immovable structures or objects attached permanently to the land. The terms "real estate," "realty," and "real property" are used synonymously with one another and designate real property in which an individual has ownership rights and interests.

(h) "Residing in the home on a continuous basis" means using the home as the principal place of residence.

(69 Del. Laws, c. 392, § 1; 70 Del. Laws, c. 545, §§ 1, 2.)

§ 5002 Liens; notice.

(a) Subject to the provisions of subsections (b) and (c) of this section, for any individual who is 55 years of age or older when the individual receives services in a long-term care facility under the auspices of the Department, a lien shall be created against all real property of such individual, prior to the individual's death, upon approval of such individual for, and receipt of, services that will be paid on that individual's behalf, fully or in part by the Department, and only after notice and opportunity for a hearing before the Department to establish that the person cannot reasonably be expected to return home.

(b) No lien may be imposed on an individual's home under subsection (a) of this section if any of the following persons is lawfully residing in the home:

(1) The spouse of the individual;

(2) The individual's child who is either under the age of 21, blind or permanently and totally disabled; or

(3) A sibling of the individual who has an equity interest in the home and who was residing in the home for a period of at least 1 year immediately prior to the date of the individual's admission to the long-term care facility.

(c) The lien shall attach to real property upon the recording of a notice of lien being recorded by the Department at the Recorder of Deeds office in the county where such real property is located.

(d) The lien may be released by the Department recording a release of lien form at the Recorder of Deeds office in the county where the real property is located.

(e) Any lien imposed pursuant to this section shall dissolve and be null and void upon the individual's discharge from the long-term care facility and return home. Any such lien shall be released by the Department upon such discharge.

(69 Del. Laws, c. 392, § 1; 70 Del. Laws, c. 545, §§ 3-5.)

§ 5003 Estate recovery.

In the case of any individual receiving long-term care from the Department, the Department shall seek recovery for any disbursements made on behalf of such individual under the State Plan for Medical Assistance, from the individual's estate or upon sale of property subject to a lien. The Department will seek recovery of moneys expended for correctly paid medical assistance from all periods of eligibility for medical assistance on behalf of the individual only:

(1) After the death of the individual and the death of a surviving spouse who was residing in the home on a continuous basis; and

(2) In the case of liens on an individual's home, when there is no:

a. Surviving child who is blind or disabled as defined in accordance with the disability rule of the federally administered Supplemental Security Income (Title XVI of the Social Security Act [42 U.S.C. §§ 1381-1383f]) who was residing in the home on a continuous basis immediately prior to the death of the individual; or

b. Nondisabled child or sibling of the individual lawfully residing in the home, who has resided there for a period of at least 2 years immediately prior the date of the individual's admission to a long-term care service, who has lawfully resided there on a continuous basis since that time, and who can establish to the Department's satisfaction that the person provided the care that permitted the individual to reside in the home rather than in a long-term care facility; or

c. Minor child who was residing in the home on a continuous basis immediately prior to the death of the individual, until that child reaches majority.

(69 Del. Laws, c. 392, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5004 Voluntary reimbursement.

The Department shall accept reimbursement for medical assistance it has rendered when voluntarily offered by a current or former recipient of long-term care or someone acting on the recipient's behalf to offset any recovery under § 5003 of this title.

(69 Del. Laws, c. 392, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5005 Undue hardship.

The Department shall, by October 13, 1994, establish procedures under which the Department shall waive the application of § 5003 of this title if it would work an undue hardship. However, a waiver granted pursuant to this section shall remain in effect only as long as the undue hardship condition continues.

(69 Del. Laws, c. 392, § 1; 70 Del. Laws, c. 545, §§ 6, 7.)

§ 5006 Rules and regulations.

The Department shall establish rules and regulations by which it can carry out the terms of this law.

(69 Del. Laws, c. 392, § 1.)

Part III
Residential Landlord-Tenant Code

Chapter 51
GENERAL PROVISIONS

Subchapter I

Rights, Obligations and Procedures, Generally

§ 5101 Applicability of Code.

(a) This Code shall regulate and determine all legal rights, remedies and obligations of all parties and beneficiaries of any rental agreement of a rental unit within this State, wherever executed. Any rental agreement, whether written or oral, shall be unenforceable insofar as the agreement or any provision thereof conflicts with any provision of this Code, and is not expressly authorized herein. The unenforceability shall not affect other provisions of the agreement which can be given effect without the void provision.

(b) Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles; and only Chapter 57 of Title 25 and Part IV of Title 25 shall have any application to commercial rental agreements.

(c) This Code shall apply to any relationship between parties arising by law under a conditional sales agreement which has been converted to a landlord/tenant agreement by operation of § 314(d)(3) of this title, but shall not apply to any other conditional sales agreement.

(70 Del. Laws, c. 513, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 311, § 4.)

§ 5102 Exclusions from application of this Code.

The following arrangements are not intended to be governed by this Code, unless created solely to avoid such application:

(1) Residence at an institution, whether public or private, where such residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious or similar services, including (but not limited to) prisons, student housing provided by a college or school, old-age homes, nursing homes, homes for unwed mothers, monasteries, nunneries and hospitals.

(2) Residence by a member of a fraternal organization in a structure operated for the benefit of the organization.

(3) Residence in a hotel, motel, cubicle hotel or other similar lodgings.

(4) Nonrenewable rental agreements of 120 days or less for any calendar year for a dwelling located within the boundaries of Broadkill Hundred, Lewes-Rehoboth Hundred, Indian River Hundred, Baltimore Hundred and Cedar Creek Hundred.

(5) A rental agreement for ground upon which improvements were constructed or installed by the tenant and used as a dwelling, where the tenant retains ownership or title thereto, or obtains title to existing improvement on the property.

(70 Del. Laws, c. 513, § 1; 80 Del. Laws, c. 8, § 1.)

§ 5103 Jurisdiction.

Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits himself, herself or itself or such person's personal representative to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation arising under this Code.

(70 Del. Laws, c. 513, § 1; 70 Del. Laws, c. 186, § 1.)

§ 5104 Obligations of good faith.

Every duty under this Code, and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code, imposes an obligation of good faith in its performance or enforcement.

(70 Del. Laws, c. 513, § 1.)

§ 5105 Disclosure.

(a) On each written rental agreement, the landlord shall prominently disclose:

(1) The names and usual business addresses of all persons who are owners of the rental unit or the property of which the rental unit is a part, or the names and business addresses of their appointed resident agents; and/or

(2) The names and usual business addresses of any person who would be deemed a landlord of the unit pursuant to § 5141 of this title.

(b) Where there is a written rental agreement, the landlord shall provide a copy of such written rental agreement to the tenant, free of charge. In the case of an oral agreement, the landlord shall, on demand, furnish the tenant with a written statement containing the information required by subsection (a) of this section.

(c) Any owner or resident agent not dealing with the tenant as a landlord shall be responsible for compliance with this section by the landlord and may not take advantage of any failure to serve process upon such owner or resident agent in any proceeding arising under this Code where such failure is due to the owner or resident agent's failure to comply with this section.

(70 Del. Laws, c. 513, § 1; 79 Del. Laws, c. 47, § 20.)

§ 5106 Rental agreement; term and termination of rental agreement.

(a) No rental agreement, unless in writing, shall be effective for a longer term than 1 year.

(b) Where no term is expressly provided, a rental agreement for premises shall be deemed and construed to be for a month-to-month term.

(c) The landlord may terminate any rental agreement, other than month-to-month agreements, by giving a minimum of 60 days' written notice to the tenant prior to the expiration of the term of the rental agreement. The notice shall indicate that the agreement shall terminate upon its expiration date. A tenant may terminate a rental agreement by giving a minimum of 60 days' written notice prior to the expiration of the term of the rental agreement that the agreement shall terminate upon its expiration date.

(d) Where the term of the rental agreement is month-to-month, the landlord or tenant may terminate the rental agreement by giving the other party a minimum of 60 days' written notice, which 60-day period shall begin on the first day of the month following the day of actual notice.

(e) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

(70 Del. Laws, c. 513, § 1.)

§ 5107 Renewals of rental agreements with modifications.

(a) If the landlord intends to renew the rental agreement subject to amended or modified provisions, the landlord shall give the tenant a minimum of 60 days' written notice prior to the expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including, but not limited to, amended provisions relating to the length of term or the amount of security deposit or rent. Such notice shall specify the modified or amended provisions, the amount of any rent or security deposit and the date on which any modifications or amendments shall take effect.

(b) After receipt of such notice from the landlord, unless the tenant notifies the landlord of the tenant's intention to terminate the existing rental agreement a minimum of 45 days prior to the last day of the term, the provisions of the amended or modified rental agreement shall be deemed to have been accepted and agreed to by the tenant, and the terms of the lease, as amended, shall take full force and effect.

(c) If the tenant rejects the modified terms or provisions set forth in a notice of renewal given under this section, then the rejected notice of renewal shall be considered an effective termination notice.

(d) The terms of subsections (a) through (c) of this section shall not be applicable where the tenant's rent and security deposit are a function of the tenant's income in accordance with any form of regulations or guidelines of the United States Department of Housing and Urban Development (HUD); in the event that they are a function of income, the regulations and guidelines established by HUD with regard to the determination and future adjustments of a tenant's rent and security deposit shall govern. With regard to a tenant's occupying HUD-subsidized units, in the event of any conflict between the terms of this Code and the terms of any HUD regulation or guideline, the terms of a HUD regulation or guideline shall control.

(70 Del. Laws, c. 513, § 1.)

§ 5108 Rental agreement; automatic extension of agreements where parties fail to terminate or renew subject to modifications.

(a) Where a rental agreement, other than for farm unit, is for 1 or more years, and 60 days or upward before the end of the term either the landlord does not give notice in writing to the tenant of landlord's intention to terminate the rental agreement and the tenant does not give 45 days' notice to the landlord of tenant's intention to terminate the rental agreement, the term shall be month-to-month, and all other terms of the rental agreement shall continue in full force and effect.

(b) The provisions of § 5107(a) through (c) of this title shall control if a notice of renewal with modifications has been sent.

(c) With regard to a tenant occupying a federally-subsidized housing unit, in the event of any conflict between the terms of this Code and the terms of any federal law, regulations or guidelines, the terms of the federal law, regulations or guidelines shall control.

(70 Del. Laws, c. 513, § 1.)

§ 5109 Rental agreement; promises mutual and dependent.

(a) Material promises, agreements, covenants or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performance of material promises, agreements, covenants and undertakings by the other party.

(b) A party undertaking to remedy a breach by the other party in accordance with this Code shall be deemed to have complied with the terms of this Code if their noncompliance with the exact instructions of this Code is nonmaterial and nonprejudicial to the other party.

(70 Del. Laws, c. 513, § 1.)

§ 5110 Rental agreement; effect of unsigned rental agreement.

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to the landlord by the tenant, acceptance of rent without reservation by the landlord shall give to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a written rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession and payment of rent by the tenant, without reservation, shall give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Where a rental agreement which has been given effect by the operation of this section provides by its terms for a term longer than 1 year, it shall operate to create only a 1-year term.

(70 Del. Laws, c. 513, § 1.)

§ 5111 Attorneys' fees prohibited.

No provision in a rental agreement providing for the recovery of attorneys' fees by either party in any suit, action or proceeding arising from the tenancy shall be enforceable.

(70 Del. Laws, c. 513, § 1.)

§ 5112 Time computation.

In computing any period of time prescribed or allowed by order of the Court or by any applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included unless specifically included by statute, order or rule. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computation.

(70 Del. Laws, c. 513, § 1.)

§ 5113 Service of notices or pleadings and process.

(a) Any notice or service of process required by this Code shall be served either personally upon the tenant or landlord or upon the tenant by leaving a copy thereof at the person's rental unit or usual place of abode with an adult person residing therein; and upon the landlord by leaving a copy thereof at the landlord's address as set forth in the lease or as otherwise provided by landlord with an adult person residing therein, or with an agent or other person in the employ of the landlord whose responsibility it is to accept such notice. If the landlord is an artificial entity, pursuant to Supreme Court Rule 57, service of the notice or process may be made by leaving a copy thereof at its office or place of business as set forth in the lease with an agent authorized by appointment or by law to receive service of process.

(b) In lieu of personal service or service by copy of the notice or process required by this Code, a copy of such notice or process may be sent by registered or certified mail or first-class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the tenant at the leased premises, or to the landlord at the landlord's business address as set forth in the lease or as otherwise provided by landlord, or if the landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business. The return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by first-class mail, shall be held and considered to be prima facie evidence of the service of the notice or process.

(c) In the alternative, service of notice or process may also be obtained by 1 of the following 2 alternatives:

(1) Posting of the notice on the rental unit, when combined with a return receipt or certificate of mailing; or

(2) Personal service by a special process-server appointed by the Court.

(70 Del. Laws, c. 513, § 1.)

§ 5114 Notice; contractual notice between the parties.

A person has notice of a fact if:

(1) The person has actual knowledge of it;

(2) The person has received a notice pursuant to the provisions of this Code; or

(3) From all the facts and circumstances known at the time in question, such person has reason to know that it exists.

(70 Del. Laws, c. 513, § 1.)

§ 5115 Application for a forthwith summons.

Where the landlord alleges and by substantial evidence demonstrates to the Court that a tenant has caused substantial or irreparable harm to landlord's person or property, or where the tenant alleges and by substantial evidence demonstrates to the Court that the landlord has caused substantial or irreparable harm to the tenant's person or property, the Justice of the Peace Court shall issue a forthwith summons to expedite the Court's consideration of the allegations.

(70 Del. Laws, c. 513, § 1.)

§ 5116 Fair housing provisions.

(a) No person, being an owner or agent of any real estate, house, apartment or other premises, shall refuse or decline to rent, subrent, sublease, assign or cancel any existing rental agreement to or of any tenant or any person by reason of race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age, source of income, or occupation or because the tenant or person has a child or children in the family.

(b) No person shall demand or receive a greater sum as rent for the use and occupancy of any premises because the person renting or desiring to rent the premises is of a particular race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, age, source of income, or occupation or has a child or children in the family.

(c) In the event of discrimination under this section, the tenant may recover damages sustained as a result of the landlord's action, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing.

(d) Notwithstanding subsection (a) of this section relating to age discrimination, and consistent with federal and state fair housing acts, a landlord may make rental units available exclusively for rental by senior citizens. A senior citizen rental unit shall be available for rent solely to senior citizens, without regard to race, creed, religion, marital status, color, sex, sexual orientation, gender identity, national origin, disability, source of income, or occupation of the senior citizen and without regard to whether or not the senior citizen has a dependent child or children in the residence.

(e) A landlord not be required to participate in any government-sponsored rental assistance program, voucher, or certificate system. A landlord's nonparticipation in any government-sponsored rental assistance program, voucher, or certificate system may not serve as the basis for any administrative or judicial proceeding under this chapter.

(f) The prohibitions in this section against discrimination based on source of income shall not limit the ability of a landlord participating in any government-sponsored rental assistance program, voucher, or certificate system from reserving rental units for tenants who qualify for such governmental program.

(g) The prohibitions in this chapter against discrimination based on source of income shall not limit the ability of any landlord or prospective landlord to consider the sufficiency or sustainability of income of, or the credit rating of, a tenant or prospective tenant, so long as sufficiency or sustainability of income, and the credit requirements, are applied in a commercially reasonable manner and without regard to source of income.

(70 Del. Laws, c. 513, § 1; 77 Del. Laws, c. 90, § 21; 79 Del. Laws, c. 47, § 21; 80 Del. Laws, c. 355, § 8.)

§ 5117 Remedies for violation of the rental agreement or the Code.

(a) For any violation of the rental agreement or this Code, or both, by either party, the injured party shall have a right to maintain a cause of action in any court of competent civil jurisdiction.

(b) In satisfaction of any judgment obtained by the landlord for rental arrearage or unlawful destruction of property, the wages of the judgment debtor may be attached in the manner provided by law.

(70 Del. Laws, c. 513, § 1.)

§ 5118 Summary of residential landlord-tenant code.

A summary of the Landlord-Tenant Code, as prepared by the Consumer Protection Unit of the Attorney General's Office or its successor agency, shall be given to the new tenant at the beginning of the rental term. If the landlord fails to provide the summary, the tenant may plead ignorance of the law as a defense.

(70 Del. Laws, c. 513, § 1.)

§ 5119 [Reserved.]

§ 5120 Landlord liens; distress for rent.

(a) The right of the landlord of distress for rent is hereby abolished, except as otherwise provided herein.

(b) Unless perfected before the effective date of this Code, no lien on behalf of the landlord in the personal property and possessions of the tenant shall be enforceable, except as otherwise provided herein.

(25 Del. C. 1953, § 6103; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 5.)

§ 5121 Confession of judgment.

A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

(25 Del. C. 1953, § 6104; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 6.)

§ 5122 Equitable jurisdiction relating to converted conditional sales agreements.

In addition to any other equitable authority granted to, or inherent in the powers of, the Justice of the Peace Court to hear and properly dispose of actions brought under Chapters 51 through 57, 63 and 70 of this title, that Court shall have the equitable jurisdiction, concurrent with the Court of Chancery, to fully determine the rights of all parties at the time of hearing any matter brought pursuant to the conversion

of a conditional sales agreement to a landlord/tenant agreement by operation of § 314(d)(3) of this title. Such authority shall include, but not be limited to, an accounting for all payments made under the conditional sales agreement prior to the conversion of the contract to a landlord/tenant agreement.

(76 Del. Laws, c. 311, § 5.)

Subchapter II
Definitions

§ 5141 Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Action" shall mean any claim advanced in a court proceeding in which rights are determined.

(2) "Building and housing codes" shall include any law, ordinance or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit.

(3) "Certificate of mailing" shall mean United States Postal Form No. 3817, or its successor.

(4) "Commercial rental unit" shall mean any lot, structure or portion thereof, which is occupied or rented solely or primarily for commercial or industrial purposes.

(5) "Deceased sole tenant" shall mean the sole leaseholder under a residential rental agreement entitled to occupy a residential rental unit to the exclusion of all others who has died. The right of nonleaseholder authorized occupant(s) of the residential rental unit, if any, to occupy the residential rental unit at the sole discretion of the deceased sole tenant while that tenant was alive shall immediately terminate upon the death of the sole tenant. The deceased sole tenant is also referred to as the "decedent" pursuant to § 2306(c)(3) of Title 12.

(6) "Disabled or handicapped" person shall have the same meaning as found in the Americans with Disabilities Act (1992) [42 U.S.C. § 12101 et seq.] as amended.

(7) "Domestic abuse" shall mean any act or threat against a victim of domestic abuse or violence that either constitutes a crime under Delaware law or any act or threat that constitutes domestic violence or domestic abuse as defined anywhere in the Delaware Code. Domestic abuse can be verified by an official document, such as a court order, or by a reliable third-party professional, including a law-enforcement agency or officer, a domestic violence or domestic abuse service provider, or health care provider. It is the domestic violence or abuse victim's responsibility to provide the reliable statement from the reliable third party.

(8) "Equivalent substitute housing" shall mean a rental unit of like or similar location, size, facilities and rent.

(9) "Extended absence" shall mean any absence of more than 7 days.

(10) "Forthwith summons" shall mean any summons requiring the personal appearance of a party or person or persons at the earliest convenience of the court.

(11) "Gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth. Gender identity may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity; provided, however, that gender identity shall not be asserted for any improper purpose.

(12) "Good faith dispute" shall mean the manifestation of an honest difference of opinion relating to the rights of the parties to a rental agreement pursuant to such agreement, or pursuant to this Code.

(13) "Holdover" or "holdover tenant" shall mean a tenant who wrongfully retains possession or who wrongfully exercises control of the rental unit after the expiration or termination of the rental agreement.

(14) "Injunction" shall mean a court order prohibiting a party from doing an act or restraining a party from continuing an act.

(15) "Landlord" shall mean:

a. The owner, lessor or sublessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person; or

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not; or

c. Any person with whom the tenant normally deals as a landlord; or

d. Any person to whom the person specified in paragraphs (15)b. and c. of this section is directly or ultimately responsible.

(16) "Legal holiday" shall mean any date designated as a legal holiday under § 501 of Title 1.

(17) "Local government unit" shall mean a political subdivision of this State, including, but not limited to, a county, city, town or other incorporated community or subdivision of the subdivision providing local government service for residents in a geographically limited area of the State as its primary purpose, and has the power to act primarily on behalf of the area.

(18) "Month to month" shall mean a renewable term of 1 month.

(19) "Normal wear and tear" shall mean the deterioration in the condition of a property or premises by the ordinary and reasonable use of such property or premises.

(20)a. "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to property; or

2. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.

b. The word "owner" shall include a mortgagee in possession.

(21) "Person" shall include an individual, artificial entity pursuant to Supreme Court Rule 57, government or governmental agency, statutory trust, business trust, 2 or more persons having a joint or common trust or any other legal or commercial entity.

(22) "Pet deposit" shall mean any deposit made to a landlord by a tenant to be held for the term of the rental agreement, or any part thereof, for the presence of an animal in a rental unit.

(23) "Premises" shall mean a rental unit and the structure of which it is a part, and the facilities and appurtenances therein, grounds, areas and facilities held out for the use of tenants generally, or whose use is contracted for between the landlord and the tenant.

(24) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.

(25) "Rental unit," "dwelling unit" or "dwelling place" shall mean any house, building, structure, or portion thereof, which is occupied, rented or leased as the home or residence of 1 or more persons.

(26) "Security deposit" shall mean any deposit, exclusive of a pet deposit, given to the landlord which is to be held for the term of the rental agreement or for any part thereof.

(27) "Senior citizen" shall mean any person, 62 years of age or older, regardless of the age of such person's spouse.

(28) The terms "sexual offenses" and "stalking" shall here have the same meanings as in Title 11. Sexual offenses and stalking can be verified by an official document, such as a court order, or by a reliable third party professional, including a law-enforcement agency or officer, a sexual assault service provider, or health care provider. It is the sexual assault or stalking victim's responsibility to provide the reliable statement from the reliable third party.

(29) "Sexual orientation" exclusively means heterosexuality, homosexuality, or bisexuality.

(30) "Source of income" shall have the meaning given in § 4602 of Title 6.

(31) "Support animal" shall mean any animal individually trained to do work or perform tasks to meet the requirements of a disabled person, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or retrieving dropped items.

(32) "Surety bond fee or premium" shall mean the amount of money the tenant pays to the surety for enrollment in a surety bond program in lieu of posting a security deposit.

(33) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others, and the word "tenant" shall include an occupant of any premises pursuant to a conditional sales agreement which has been converted to a landlord/tenant agreement pursuant to § 314(d)(3) of this title.

(34) "Utility services" shall mean water, sewer, electricity or fuel.

(70 Del. Laws, c. 513, § 1; 73 Del. Laws, c. 329, § 70; 75 Del. Laws, c. 293, § 1; 76 Del. Laws, c. 311, § 6; 77 Del. Laws, c. 90, § 20; 79 Del. Laws, c. 47, §§ 22, 23; 79 Del. Laws, c. 57, § 1; 79 Del. Laws, c. 65, § 2; 80 Del. Laws, c. 355, § 9.)

Part III
Residential Landlord-Tenant Code
Chapter 53
LANDLORD OBLIGATIONS AND TENANT REMEDIES

§ 5301 Landlord obligation; rental agreement.

(a) A rental agreement shall not provide that a tenant:

(1) Agrees to waive or forego rights or remedies under this Code;

(2) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(3) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith.

(b) A provision prohibited by subsection (a) of this section which is included in the rental agreement is unenforceable. If a landlord attempts to enforce provisions of a rental agreement known by the landlord to be prohibited by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees.

(70 Del. Laws, c. 513, § 2.)

§ 5302 Tenant remedy; termination at the beginning of term.

(a) If the landlord fails to substantially conform to the rental agreement, or if there is a material noncompliance with any code, statute, ordinance or regulation governing the maintenance or operation of the premises, the tenant may, on written notice to the landlord, terminate the rental agreement and vacate the premises at any time during the first month of occupancy, so long as the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord to correct all or any part of the condition or conditions which would justify termination by the tenant under this section.

(b) If the tenant remains in possession in reliance on a promise, whether written or oral, by the landlord, to correct all or any part of the condition or conditions which would justify termination by the tenant under this section; and if substantially the same act or omission which constitutes a prior noncompliance, of which prior notice was given under subsection (a) of this section, recurs within 6 months, the tenant may terminate the rental agreement upon at least 15 days' written notice, which notice shall specify the breach and the date of termination of the rental agreement.

(c) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition; and, if the landlord does not remedy the condition within 15 days, the tenant may terminate the rental agreement. The tenant must then initiate an action in the Justice of the Peace Court seeking a determination that the landlord has breached the rental agreement by depriving the tenant of a substantial part of the benefit or enjoyment of the bargain and may seek damages, including a rent deduction from the date written notice of the condition was given to the landlord.

(d) If the condition referred to in subsection (c) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between the rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

(e) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of tenant's family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(70 Del. Laws, c. 513, § 2.)

§ 5303 Landlord obligation to supply possession of rental unit.

The landlord shall supply the rental unit bargained for at the beginning of the term and shall put the tenant into full possession.

(70 Del. Laws, c. 513, § 2.)

§ 5304 Tenant's remedies for failure to supply possession.

(a) If the landlord fails to put the tenant into full possession of the rental unit at the beginning of the agreed term, the rent shall abate during any period the tenant is unable to enter and:

(1) Upon notice to the landlord, the tenant may terminate the rental agreement at any time the tenant is unable to enter into possession; and the landlord shall return all moneys paid to the landlord for the rental unit, including any pre-paid rent, pet deposit and security deposit; and

(2) If such inability to enter is caused wrongfully by the landlord or by anyone with the landlord's consent or license due to substantial failure to conform to existing building and housing codes, the tenant may recover reasonable expenditures necessary to secure equivalent substitute housing for up to 1 month. In no event shall such expenditures under this subsection exceed the agreed upon rent for 1

month. Such expenditures may be recovered by appropriate action or proceeding or by deduction from the rent upon the submission of receipts for same.

(b) If such inability to enter results from the wrongful occupancy of a holdover tenant and the landlord has not brought an action for summary possession against such holdover tenant, the entering tenant may maintain an action for summary possession against the holdover tenant. The expenses of such proceeding and substitute housing expenditures may be claimed from the rent in the manner specified in paragraph (a)(2) of this section.

(70 Del. Laws, c. 513, § 2.)

§ 5305 Landlord obligations relating to the rental unit.

(a) The landlord shall, at all times during the tenancy:

(1) Comply with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the rental unit and the property of which it is a part;

(2) Provide a rental unit which shall not endanger the health, welfare or safety of the tenants or occupants and which is fit for the purpose for which it is expressly rented;

(3) Keep in a clean and sanitary condition all common areas of the buildings, grounds, facilities and appurtenances thereto which are maintained by the landlord;

(4) Make all repairs and arrangements necessary to put and keep the rental unit and the appurtenances thereto in as good a condition as they were, or ought by law or agreement to have been, at the commencement of the tenancy; and

(5) Maintain all electrical, plumbing and other facilities supplied by the landlord in good working order.

(b) If the rental agreement so specifies, the landlord shall:

(1) Provide and maintain appropriate receptacles and conveniences for the removal of ashes, rubbish and garbage and arrange for the frequent removal of such waste; and

(2) Supply or cause to be supplied, water, hot water, heat and electricity to the rental unit.

(c) The landlord and tenant may agree by a conspicuous writing, separate from the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling, but only if:

(1) The particular work to be performed by the tenant is for the primary benefit of the rental unit; and

(2) The work is not necessary to bring a noncomplying rental unit into compliance with a building or housing code, ordinance or the like; and

(3) Adequate consideration, apart from any provision of the rental agreement, or a reduction in the rent is exchanged for the tenant's promise. In no event may the landlord treat any agreement under this subsection as a condition to any provision of rental agreements; and

(4) The agreement of the parties is entered into in good faith and is not for the purpose of evading an obligation of the landlord.

(d) Evidence of compliance with the applicable building and housing codes shall be prima facie evidence that the landlord has complied with this chapter or with any other chapter of Part III of this title.

(70 Del. Laws, c. 513, § 2.)

§ 5306 Tenant's remedies relating to the rental unit; termination.

(a) If there exists any condition which deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of the condition and, if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement. If such condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or any member of the family, then tenant may, after giving notice to the landlord, immediately terminate the rental agreement without proceeding in a Justice of the Peace Court.

(b) The tenant may not terminate the rental agreement for a condition caused by the want of due care by the tenant, a member of the family or any other person on the premises with the tenant's consent. If a tenant terminates wrongfully, the tenant shall remain obligated under the rental agreement.

(c) If the condition referred to in subsection (a) of this section was caused wilfully or negligently by the landlord, the tenant may recover the greater of:

(1) The difference between rent payable under the rental agreement and all expenses necessary to obtain equivalent substitute housing for the remainder of the rental term; or

(2) An amount equal to 1 month's rent and the security deposit.

(70 Del. Laws, c. 513, § 2.)

§ 5307 Tenant's remedies relating to the rental unit; repair and deduction from rent.

(a) If the landlord of a rental unit fails to repair, maintain or keep in a sanitary condition the leased premises or perform in any other manner required by statute, code or ordinance, or as agreed to in the a rental agreement; and, if after being notified in writing by the tenant to do so, the landlord:

(1) Fails to remedy such failure within 30 days from the receipt of the notice; or

(2) Fails to initiate reasonable corrective measures where appropriate, including, but not limited to, the obtaining of an estimate of the prospective costs of the correction, within 10 days from the receipt of the notice;

Then the tenant may immediately do or have done the necessary work in a professional manner. After the work is done, the tenant may deduct from the rent a reasonable sum, not exceeding $200, or 1/2 of 1 month's rent, whichever is less, for the expenditures by submitting to the landlord copies of those receipts covering at least the sum deducted.

(b) In no event may a tenant repair or cause anything to be repaired at the landlord's expense when the condition complained of was caused by the want of due care by the tenant, a member of the tenant's family or another person on the premises with the tenant's consent.

(c) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the remedies provided in this section.

(d) The tenant is liable for any damage to persons or property where such damage was caused by the tenant or by someone authorized by the tenant in making said repairs.

(70 Del. Laws, c. 513, § 2.)

§ 5308 Essential services; landlord obligation and tenant remedies.

(a) If the landlord substantially fails to provide hot water, heat, water or electricity to a tenant, or fails to remedy any condition which materially deprives a tenant of a substantial part of the benefit of the tenant's bargain in violation of the rental agreement; or in violation of a provision of this Code; or in violation of an applicable housing code and such failure continues for 48 hours or more, after the tenant gives the landlord actual or written notice of the failure, the tenant may:

(1) Upon written notice of the continuation of the problem to the landlord, immediately terminate the rental agreement; or

(2) Upon written notice to the landlord, keep 2/3 per diem rent accruing during any period when hot water, heat, water, electricity or equivalent substitute housing is not supplied. The landlord may avoid this liability by a showing of impossibility of performance.

(b) If the tenant has given the notice required under subsection (a) of this section and remains in the rental unit and the landlord still fails to provide water, hot water, heat and electricity to the rental unit as specified in the applicable city or county housing code in violation of the rental agreement, the tenant may:

(1) Upon written notice to the landlord, immediately terminate the rental agreement; or

(2) Upon notice to the landlord, procure equivalent substitute housing for as long as heat, water, hot water or electricity is not supplied, during which time the rent shall abate, and the landlord shall be liable for any additional expense incurred by the tenant, up to 1/2 of the amount of abated rent. This additional expense shall not be chargeable to the landlord if landlord is able to show impossibility of performance; or

(3) Upon written notice to the landlord, tenant may withhold 2/3 per diem rent accruing during any period when hot water, heat, water or equivalent substitute housing is not supplied.

(c) Rent withholding does not act as a bar to the subsequent recovery of damages by a tenant if those damages exceed the amount withheld.

(d) Where a landlord files an action for summary possession, claiming that a tenant has wrongfully withheld rent or deducted money from rent under this section and the court so finds, the landlord shall be entitled to receive from the tenant either possession of the premises or an amount of money equal to the amount wrongfully withheld ("damages") or, if the court finds the tenant acted in bad faith, an amount of money equal to double the amount wrongfully withheld ("double damages"). In the event the court awards damages or double damages and court costs excluding attorneys' fees, then the court shall issue an order requiring such damages or double damages to be paid by the tenant to the landlord within 10 days from the date of the court's judgment. If such damages are not paid in accordance with the court's order, the judgment for damages or double damages, together with court costs, shall become a judgment for the amount withheld, plus summary possession, without further notice to the tenant.

(70 Del. Laws, c. 513, § 2.)

§ 5309 Fire and casualty damage; landlord obligation and tenant remedies.

(a) If the rental unit or any other property or appurtenances necessary to the enjoyment thereof are damaged or destroyed by fire or casualty to an extent that enjoyment of the rental unit is substantially impaired, and such fire or other casualty occurs without fault on the part of the tenant, or a member of the tenant's family, or another person on the premises with the tenant's consent, the tenant may:

(1) Immediately quit the premises and promptly notify the landlord, in writing, of the tenant's election to quit within 1 week after vacating, in which case the rental agreement shall terminate as of the date of vacating. If the tenant fails to notify the landlord of the tenant's election to quit, the tenant shall be liable for rent accruing to the date of the landlord's actual knowledge of the tenant's vacating the rental unit or impossibility of further occupancy; or

(2) If continued occupancy is lawful, vacate any part of the premises rendered unusable by fire or casualty, in which case the tenant's liability for rent shall be reduced in proportion to the diminution of the fair rental value of the rental unit.

(b) If the rental agreement is terminated, the landlord shall timely return any security deposit, pet deposit and prepaid rent, except that to which the landlord is entitled to retain pursuant to this Code. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

(70 Del. Laws, c. 513, § 2.)

§ 5310 "Assurance money" prohibited.

(a) In every transaction wherein an application is made by a prospective tenant to lease a dwelling unit, the prospective landlord or owner of the dwelling unit shall not ask for, nor receive, any "assurance money" or other payment which is not an application fee, security deposit, surety bond fee or premium, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain. The prospective landlord shall not charge the prospective tenant, as a fee for any credit or other type of investigation, any more than the specific cost of such investigation. For purposes of this section, "assurance money" shall mean any payment to the prospective landlord by a prospective tenant, except an application fee, a payment in the way of a security deposit, surety bond fee or premium, pet deposit or similar deposit reserving the dwelling unit for the prospective tenant for a time certain or the reimbursing of the specific sums expended by the landlord in credit or other investigations.

(b) Each landlord shall retain, for a period of 6 months, the records of each application made by any prospective tenant. Upon any complaint of a violation of this section, the Consumer Protection Unit of the Attorney General's office shall investigate the same, shall interview tenants of the landlord and shall, under appropriate search warrant, have the right to investigate all records of the landlord pertaining to applications made within the preceding 6 months. If such investigation reveals good cause for the Attorney General's office to believe there has been a violation of this section, the Attorney General's office may issue such cease and desist orders in accordance with Chapter 25 of Title 29 as are required to remedy the violation.

(70 Del. Laws, c. 513, § 2; 77 Del. Laws, c. 282, § 15; 79 Del. Laws, c. 57, § 2.)

§ 5311 Fees.

Except for an optional service fee for actual services rendered, such as a pool fee or tennis court fee, a landlord shall not charge to a tenant any nonrefundable fee as a condition for occupancy of the rental unit. Nothing in this section shall prevent the tenant from electing, subject to the landlord's acceptance, to purchase an optional surety bond instead of or in combination with a security deposit.

(70 Del. Laws, c. 513, § 2; 79 Del. Laws, c. 57, § 3.)

§ 5312 Metering and charges for utility services [For applicability of subsection (i) of this section, see 80 Del. Laws, c. 71, § 2]

(a) A landlord may install, operate and maintain meters or other appliances for measurement to determine the consumption of utility services by each rental unit. Only if the rental agreement so provides, and in compliance with this section, may a landlord charge a tenant separately for the utility services as measured by such meter or other appliance. With the exception of metering systems already in use prior to July 17, 1996, a landlord shall not separately charge a tenant for any utility service, unless such utility service is separately metered. The metering system may be inspected by and must be approved by the Division of Weights and Measures.

(b) No landlord shall require that any tenant contract directly with the provider of a utility service for service to a tenant or to a rental unit, unless such rental unit is separately metered. No landlord who purchases utility services in bulk shall charge any tenant individually for utility services, unless such utility services are either individually metered or the cost of such services is included as part of each monthly rental payment, as provided for in the rental agreement.

(c) A landlord who charges a tenant separately for utility services under this section shall not charge the tenant an amount for such services which exceeds the actual cost of the utility service as determined by the cost of the service charged by the provider to the landlord or to any company owned in whole or in part by the landlord.

(d) Any tenant who is charged and who pays for utility services separately to the landlord shall be entitled to inspect the bills and records upon which such charges were calculated, during the landlord's regular business hours at the landlord's regular business office. A landlord shall retain such bills and records for 1 year from the date upon which tenants were billed.

(e) Charges for utility services made by a landlord to a tenant shall be considered rent for all purposes under this Code. With respect to security deposits, and unless the rental agreement otherwise provides, the rights and obligations of the parties as to payment and nonpayment of utility charges shall be enforced in the same manner as the rights and obligations of the parties relating to payment and nonpayment of rent. A landlord shall not discontinue or terminate utility service for nonpayment of rent, utility charges or other breach.

(f) A landlord who charges separately for utilities in accordance with this section shall bill the tenant for such charges not less frequently than monthly, and shall use reasonable efforts to obtain actual readings of meters or appliances for measurements, which readings shall reasonably coincide with the landlord's bulk billing. If, despite reasonable effort, a landlord is unable to obtain an actual reading, the landlord may estimate the tenant's utility consumption and bill the tenant for such estimated amount; provided however, that a landlord may not send more than 2 consecutive estimated billings. Notwithstanding the foregoing, an actual reading shall be made upon the commencement of the lease and at the expiration or termination of the lease.

(g)(1) A landlord, upon request by a tenant, shall cause to be examined or tested the meter or appliance for measurement. If the meter or appliance so tested or examined is found to be accurate within commercially reasonable limits, the costs and expenses of such test or examination shall be paid by the tenant as additional rent; but if the meter or appliance is found to be not accurate, then such costs and expenses shall be borne by the landlord, who shall forthwith replace the inaccurate meter or other appliance.

(2) In addition to those rights and powers vested by law in the Consumer Protection Unit of the Attorney General's office or its successor agency, the Attorney General's office may enter, by and through its agents, experts or examiners, upon any premises for

the purpose of making the examination and tests provided for in this section, and may set up and use on such premises any apparatus and appliances necessary therefor.

(h) A landlord who installs, operates and maintains meters or other appliances for measurement and who bills tenants separately for utilities, shall not be deemed a public utility, nor shall the Public Service Commission have any authority, power or jurisdiction over such landlords or their practices in connection with the installation, operation and maintenance of meters or other appliances for measurement, the reading of meters, calculation and determination of charges for utility services or otherwise. The Consumer Protection Unit of the Attorney General's office shall have authority to enforce this section.

(i) The requirement of separate metering set forth in this section shall not apply to charges for utility services that are not calculated based on consumption. If the rental agreement so provides, a landlord may pass on to the tenant the actual cost of such utility services, as determined by the cost for such service charged to the landlord or to any company owned in whole or in part by the landlord, or, if permitted by the local government unit or public utility, a landlord may require the tenant contract directly with the local government unit or public utility for service to the tenant or rental unit. A landlord may prorate or apportion charges for such utility services among units in a multi-unit or apartment building, provided the total charged to all units does not exceed the actual cost of the utility services charged to the landlord. A landlord may bill a tenant for such utility services monthly or quarterly as set forth in the rental agreement, and a tenant who pays for utility services pursuant to this subsection shall be entitled to inspect the bills and records upon which such charges were calculated as set forth in subsection (d) of this section.

(70 Del. Laws, c. 513, § 2; 80 Del. Laws, c. 71, § 1.)

§ 5313 Unlawful ouster or exclusion of tenant.

If removed from the premises or excluded therefrom by the landlord or the landlord's agent, except under color of a valid court order authorizing such removal or exclusion, the tenant may recover possession or terminate the rental agreement. The tenant may also recover treble the damages sustained or an amount equal to 3 times the per diem rent for the period of time the tenant was excluded from the unit, whichever is greater, and the costs of the suit excluding attorneys' fees.

(70 Del. Laws, c. 513, § 2.)

§ 5314 Tenant's right to early termination.

(a) Except as is otherwise provided in this part, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and all parties shall thereupon discharge any remaining obligations as soon as is practicable.

(b) Upon 30 days' written notice, which 30-day period shall begin on the first day of the month following the day of actual notice, the tenancy may be terminated:

(1) By the tenant, whenever a change in location of the tenant's employment with the tenant's present employer requires a change in the location of the tenant's residence in excess of 30 miles;

(2) By the tenant, whenever the serious illness of the tenant or the death or serious illness of a member of the tenant's immediate family, residing therein, requires a change in the location of the tenant's residence on a permanent basis;

(3) By the tenant, when the tenant is accepted for admission to a senior citizens' housing facility, including subsidized public or private housing, or a group or cooperative living facility or retirement home;

(4) By the tenant, when the tenant is accepted for admission into a rental unit subsidized by a governmental entity or by a private nonprofit corporation, including subsidized private or public housing;

(5) By the tenant who, after the execution of such rental agreement, enters the military service of the United States on active duty;

(6) By a tenant who is the victim of domestic abuse, sexual offenses, stalking, or a tenant who has obtained or is seeking relief from domestic violence or abuse from any court, police agency, or domestic violence program or service; or

(7) By the surviving spouse or personal representative of the estate of the tenant, upon the death of the tenant.

(70 Del. Laws, c. 513, § 2; 75 Del. Laws, c. 293, § 2.)

§ 5315 Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

(25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 7.)

§ 5316 Protection for victims of domestic abuse, sexual offenses and/or stalking.

(a) A landlord may not pursue any action for summary possession, demand any increase in rent, decrease any services, or otherwise cause any tenant to quit a rental unit where said tenant is a victim of domestic abuse, sexual offenses, or stalking, and where said tenant has

obtained or has sought assistance for domestic abuse, sexual offenses, or stalking from any court, police, medical emergency, domestic violence, or sexual offenses program or service.

(b) If the tenant proves that the landlord instituted any of the actions prohibited by subsection (a) of this section, above, within 90 days of any incident in which the tenant was a victim of domestic abuse, sexual offenses and/or stalking, it shall be a rebuttable presumption that said action is in violation of subsection (a) of this section, above.

(c) A landlord may rebut the presumption that the prohibited action is in violation of subsection (a) of this section, above, if:

(1) The landlord is seeking to recover possession of the rental unit on the basis of an appropriate notice to terminate which was given to the tenant prior to the incident of domestic abuse, sexual offenses, or stalking;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as the landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

(5) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation from the purchaser confirming that purchaser's intent to use the property in consistency with paragraphs (2), (3) or (4) of this subsection;

(6) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the prorata portion of the net increase in taxes or cost;

(7) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, prorated among the rental units benefited by the improvement;

(8) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex;

(9) The landlord can establish, by competent evidence, that the domestic abuse, sexual assault and/or stalking constitutes a viable and substantial risk of serious physical injury to a tenant who currently resides in another unit of the same multi-unit building as the domestic violence, sexual assault or stalking victim; or

(10) The landlord, after being given notice of the tenant's victimization per § 5141(7) or (28) of this title, discontinues those actions prohibited by subsection (a) of this section, above.

(d) A tenant who is otherwise delinquent in the payment of rent may not take advantage of the protection provided in this section.

(76 Del. Laws, c. 219, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 47, § 24; 79 Del. Laws, c. 65, § 2.)

Part III
Residential Landlord-Tenant Code
Chapter 55
TENANT OBLIGATIONS AND LANDLORD REMEDIES

§ 5501 Tenant obligations; rent.

(a) The landlord and tenant shall agree to the consideration for rent. In the absence of such agreement, the tenant shall pay to the landlord a reasonable sum for the use and occupation of the rental unit.

(b) Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the beginning of any term for 1 month or less, while 1 month's rent shall be payable at the beginning of each month of a longer term.

(c) Except for purposes of payment, rent shall be uniformly apportioned from day to day.

(d) Where the rental agreement provides for a late charge payable to the landlord for rent not paid at the agreed time, such late charge shall not exceed 5 percent of the monthly rent. A late charge is considered as additional rent for the purposes of this Code. The late charge shall not be imposed within 5 days of the agreed time for payment of rent. The landlord shall, in the county in which the rental unit is located, maintain an office or other permanent place for receipt of payments, where rent may be timely paid. Failure to maintain such an office, or other permanent place of payment where rent may be timely paid, shall extend the agreed on time for payment of rent by 3 days beyond the due date.

(e) If a landlord accepts a cash payment for rent, the landlord shall, within 15 days, give to the tenant a receipt for that payment. The landlord shall, for a period of 3 years, maintain a record of all cash receipts for rent.

(70 Del. Laws, c. 513, § 3.)

§ 5502 Landlord remedies for failure to pay rent.

(a) A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

(b) A landlord or the landlord's agent may bring an action for rent alone at any time after the landlord has demanded payment of past-due rent and has notified the tenant of the landlord's intention to bring such an action. This action may include late charges, which have accrued as additional rent.

(c) If a tenant pays all rent due before the landlord has initiated an action against the tenant and the landlord accepts such payment without a written reservation of rights, the landlord may not then initiate an action for summary possession or for failure to pay rent.

(d) If a tenant pays all rent due after the landlord has initiated an action for nonpayment or late payment of rent against the tenant and the landlord accepts such payment without a written reservation of rights, then the landlord may not maintain that action for past due rent.

(70 Del. Laws, c. 513, § 3.)

§ 5503 Tenant obligations relating to rental unit; waste.

A tenant shall:

(1) Comply with all obligations imposed upon tenants by applicable provisions of all municipal, county and state codes, regulations, ordinances and statutes;

(2) Keep that part of the premises which the tenant occupies and uses as clean and safe as the conditions of the premises permit;

(3) Dispose from the rental unit all ashes, rubbish, garbage and other organic or flammable waste, in a clean and safe manner;

(4) Keep all plumbing fixtures used by the tenant as clean and safe as their condition permits;

(5) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating and other facilities and appliances in the premises;

(6) Not wilfully or wantonly destroy, deface, damage, repair or remove any part of the structure or rental unit or the facilities, equipment or appurtenances thereto, nor permit any person on the premises with the tenant's permission to do any such thing;

(7) Not remove or tamper with a properly functioning smoke detector installed by the landlord, including removing any working batteries, so as to render the smoke detector inoperative;

(8) Not remove or tamper with a properly functioning carbon monoxide detector installed by the landlord, including removing any working batteries, so as to render the carbon monoxide detector inoperative; and

(9) Comply with all covenants, rules, requirements and the like which are in accordance with §§ 5511 and 5512 of this title; and which the landlord can demonstrate are reasonably necessary for the preservation of the property and persons of the landlord, other tenants or any other person.

(70 Del. Laws, c. 513, § 3; 79 Del. Laws, c. 52, § 1.)

§ 5504 Defense to an action for waste.

(a) It shall be a complete defense to any action, suit or proceeding for waste if the tenant alleges and establishes that the tenant notified the landlord a reasonable time in advance of the repair, alteration or replacement and that such repair, alteration or replacement:

(1) Is one which a prudent owner of an estate in fee simple absolute of the affected property would be likely to make in view of the conditions existing on or in the neighborhood of the affected property; or

(2) Has not reduced the market value of the reversion or other interest of the plaintiff; and

(3) If the conditions set forth in paragraph (a)(1) or (a)(2) of this section exist, and the landlord makes a demand that the tenant posts security to protect against a failure to complete the proposed work, and against any responsibility for expenditures incident to the making of such proposed repairs, alterations or replacements as the court demands.

(b) This section shall not be interpreted to bar an action for damages for breach of a written rental agreement nor bar an action or summary proceeding based on breach of a written rental agreement.

(70 Del. Laws, c. 513, § 3.)

§ 5505 Tenant's obligation relating to defective conditions.

(a) Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable. The tenant shall be responsible for any liability or injury resulting to the landlord as a result of the tenant's failure to timely report such condition.

(b) A tenant on whom a complaint in ejectment or an action against the premises is served shall immediately notify the landlord in writing.

(c) The provisions of this section shall not apply where the landlord has actual notice of the defective condition.

(70 Del. Laws, c. 513, § 3.)

§ 5506 Tenant obligation; notice of extended absence.

The landlord may require in the rental agreement that the tenant notify the landlord in writing of any anticipated extended absence from the premises no later than the 1st day of such absence.

(70 Del. Laws, c. 513, § 3.)

§ 5507 Landlord remedies for absence or abandonment.

(a) If the rental agreement provides for notification to the landlord by the tenant of an anticipated extended absence as defined in this Code or in the rental agreement, and the tenant fails to comply with such requirement, the tenant shall indemnify the landlord for any harm resulting from such absence.

(b) The landlord may, during any extended absence of the tenant, enter the rental unit as is reasonably necessary for inspection, maintenance and safekeeping.

(c) Unless otherwise agreed to in the rental agreement, the tenant shall use the rental unit only as the tenant's abode. A violation of this covenant shall constitute the breach of a rule under § 5511 of this title, and shall entitle the landlord to proceed as specified elsewhere in this chapter.

(d) If the tenant wrongfully quits the rental unit and unequivocally indicates by words or deeds the tenant's intention not to resume tenancy, such action by the tenant shall entitle the landlord to proceed as specified elsewhere in this chapter and the tenant shall be liable for the lesser of the following for such abandonment:

(1) The entire rent due for the remainder of the term and expenses for actual damages caused by the tenant (other than normal wear and tear) which are incurred in preparing the rental unit for a new tenant; or

(2) All rent accrued during the period reasonably necessary to re-rent the premises at a fair rental; plus the difference between such fair rental and the rent agreed to in the prior rental agreement; plus expenses incurred to re-rent; repair damage caused by the tenant (beyond normal wear and tear); plus a reasonable commission, if incurred by the landlord for the re-renting of the premises. In any event, the landlord has a duty to mitigate damages.

(e) If there is no appeal from a judgment granting summary possession under subsection (c) or (d) of this section, the landlord may immediately remove and store, at the tenant's expense, any and all items left on the premises by the tenant. Seven days after the appeal period has expired, the property shall be deemed abandoned and may be disposed of by the landlord without further notice or liability.

(70 Del. Laws, c. 513, § 3.)

§ 5508 Landlord remedies; restrictions on subleasing and assignments.

(a) Unless otherwise agreed in writing, the tenant may sublet the premises or assign the rental agreement to another.

(b) The rental agreement may restrict or prohibit the tenant's right to assign the rental agreement in any manner. The rental agreement may restrict the tenant's right to sublease the premises by conditioning such right on the landlord's consent. Such consent shall not be unreasonably withheld.

(c) In any proceeding under this section to determine whether or not consent has been unreasonably withheld, the burden of showing reasonableness shall be on the landlord.

(70 Del. Laws, c. 513, § 3.)

§ 5509 Tenant obligation to permit reasonable access.

(a) The tenant shall not unreasonably withhold consent for the landlord to enter into the rental unit in order to inspect the premises, make necessary repairs, decorations, alterations or improvements, supply services as agreed to or exhibit the rental unit to prospective purchasers, mortgagees or tenants. A tenant shall have the right to install a new lock at the tenant's cost, on the condition that:

(1) The tenant notifies the landlord in writing and supplies the landlord with a key to the lock;

(2) The new lock fits into the system already in place; and

(3) The lock installation does not cause damage to the door.

(b) The landlord shall not abuse this right of access nor use it to harass a tenant. The landlord shall give the tenant at least 48 hours' notice of landlord's intent to enter, except for repairs requested by the tenant, and shall enter only between 8:00 a.m. and 9:00 p.m. As to prospective tenants or purchasers only, the tenant may expressly waive in a signed addendum to the rental agreement or other separate signed document the requirement that the landlord provide 48 hours' notice prior to the entry into the premises. In the case of an emergency the landlord may enter at any time.

(c) The tenant shall permit the landlord to enter the rental unit at reasonable times in order to obtain readings of meters or appliances for measurement of utility consumption in accordance with § 5312 of this title.

(70 Del. Laws, c. 513, § 3.)

§ 5510 Landlord remedy for unreasonable refusal to allow access.

(a) The tenant shall be liable to the landlord for any harm proximately caused by the tenant's unreasonable refusal to allow access. Any court of competent jurisdiction may issue an injunction against a tenant who has unreasonably withheld access to the rental unit.

(b) The landlord shall be liable to the tenant for any theft, casualty or other harm proximately resulting from an entry into the rental unit by landlord, its employees or agents or with landlord's permission or license:

(1) When the tenant is absent and has not specifically consented to the entry;

(2) Without the tenant's actual consent when tenant is present and able to consent; and

(3) In any other case, where the harm suffered by the tenant is due to the landlord's negligence.

(c) Repeated demands for unreasonable entry or any actual entry which is unreasonable and not consented to by the tenant may be treated by the tenant as grounds for termination of the rental agreement. Any court of competent jurisdiction may issue an injunction against such unreasonable demands on behalf of 1 or more tenants.

(d) Every agreement or understanding between a landlord and a tenant which purports to exempt the landlord from any liability imposed by this section, except consent to a particular entry, shall be null and void.

(70 Del. Laws, c. 513, § 3.)

§ 5511 Rules and regulations; tenant obligations.

(a) The tenant and all others in the premises with the consent of the tenant shall obey all obligations or restrictions, whether denominated by the landlord as "rules," "regulations," "restrictions" or otherwise, concerning the tenant's use, occupation and maintenance of the rental unit, appurtenances thereto and the property of which the rental unit is a part, if:

(1) Such obligations and restrictions promote the health, safety, quiet, private enjoyment or welfare, peace and order of the tenants; promote the preservation of the landlord's property from abuse; and promote the fair distribution of services and facilities provided for all tenants generally; and

(2) Such obligations and restrictions are brought to the attention of the tenant at the time of the tenant's entry into the agreement to occupy the rental unit; and

(3) Such obligations and restrictions are reasonably related to the purpose for which they are promulgated; and

(4) Such obligations and restrictions apply to all tenants of the property in a fair manner; and

(5) Such obligations and restrictions are sufficiently explicit in the prohibition, direction or limitation of the tenant's conduct to fairly inform tenant of what tenant must or must not do to comply; and

(6) Such obligations or restrictions, if not made known to the tenant at the commencement of tenancy, are brought to the attention of the tenant and if said obligations work a substantial modifications of the lease agreement they have been consented to in writing by tenant.

(b) All tenants and other guests of the premises with the consent of tenant shall conduct themselves in a manner that does not unreasonably interfere with the peaceful enjoyment of the other tenants.

(70 Del. Laws, c. 513, § 3.)

§ 5512 Rules and regulations relating to certain buildings; landlord remedies.

Any provision of the Landlord-Tenant Code [Chapters 51 through 59 of this title] to the contrary notwithstanding, all rental agreements for the rental of single rooms in certain buildings may be terminated immediately upon notice to the tenant for a tenant's material violation of a regulation which has been given to a tenant at the time of contract or lease, and the landlord shall be entitled to bring a proceeding for possession where:

(1) The building is the primary residence of the landlord; and

(2) No more than 3 rooms in the building are rented to tenants; and

(3) No more than 3 tenants occupy such building.

(70 Del. Laws, c. 513, § 3.)

§ 5513 Landlord remedies relating to breach of rules and covenants.

(a) If the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach. This section shall not apply to late payment of rent which is covered under § 5502 of this title.

(1) Such notice shall substantially specify the rule allegedly breached and advise the tenant that, if the violation continues after 7 days, the landlord may terminate the rental agreement and bring an action for summary possession. Such notice shall also state that it is given pursuant to this section, and if the tenant commits a substantially similar breach within 1 year, the landlord may rely upon such notice as grounds for initiating an action for summary possession. The issuance of a notice pursuant to this section does not establish that the initial breach of the rental agreement actually occurred for purposes of this section.

(2) If the tenant's breach can be remedied by the landlord, as by cleaning, repairing, replacing a damaged item or the like, the landlord may so remedy the tenant's breach and bill the tenant for the actual and reasonable costs of such remedy. Such billing shall be due and payable as additional rent, immediately upon receipt.

(3) If the tenant's breach of a rule or covenant also constitutes a material breach of an obligation imposed upon tenants by a municipal, county or state code, ordinance or statute, the landlord may terminate the rental agreement and bring an action for summary possession.

(b) When a breach by a tenant causes or threatens to cause irreparable harm to any person or property, or the tenant is convicted of a class A misdemeanor or felony during the term of the tenancy which caused or threatened to cause irreparable harm to any person or property, the landlord may, without notice, remedy the breach and bill the tenant as provided in subsection (a) of this section; immediately terminate the rental agreement upon notice to the tenant and bring an action for summary possession; or do both.

(c) Upon notice to tenant, the landlord may bring an action or proceeding for waste or for breach of contract for damages suffered by the tenant's wilful or negligent failure to comply with tenant's responsibilities under the preceding section. The landlord may request a forthwith summons.

(70 Del. Laws, c. 513, § 3.)

§ 5514 Security deposit.

(a)(1) A landlord may require the payment of security deposit.

(2) No landlord may require a security deposit in excess of 1 month's rent where the rental agreement is for 1 year or more.

(3) No landlord may require a security deposit in excess of 1 month's rent (with the exception of federally-assisted housing regulations), for primary residential tenancies of undefined terms or month to month where the tenancy has lasted 1 year or more. After the expiration of 1 year, the landlord shall immediately return, as a credit to the tenant, any security deposit amount in excess of 1 month's rent, including such amount which when combined with the amount of any surety bond is in excess of 1 month's rent.

(4) The security deposit limits set forth above shall not apply to furnished rental units.

(b) Each security deposit shall be placed by the landlord in an escrow bank account in a federally-insured banking institution with an office that accepts deposits within the State. Such account shall be designated as a security deposits account and shall not be used in the operation of any business by the landlord. The landlord shall disclose to the tenant the location of the security deposit account. The security deposit principal shall be held and administered for the benefit of the tenant, and the tenant's claim to such money shall be prior to that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(c) The purpose of the security deposit shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(d) Where a tenant is required to pay a fee to determine the tenant's credit worthiness, such fee is an application fee. A landlord may charge an application fee, not to exceed the greater of either 10 percent of the monthly rent for the rental unit or $50, to determine a tenant's credit worthiness. The landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the tenant for the full amount paid by the tenant, and shall maintain for a period of at least 2 years, complete records of all application fees charged and amounts received for each such fee. Where the landlord unlawfully demands more than the allowable application fee, the tenant shall be entitled to damages equal to double the amount charged as an application fee by the landlord.

(e) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of the expiration or termination of the rental agreement.

(f) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the damages as specified by the landlord, unless the tenant, within 10 days of the tenant's receipt of such tender of payment, objects in writing to the amount withheld by the landlord.

(g) *Penalties.* —

(1) Failure to remit the security deposit or the difference between the security deposit and the amount set forth in the list of damages within 20 days from the expiration or termination of the rental agreement shall entitle the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by the landlord to deposit the security deposit in a federally-insured financial institution with an office that accepts deposits within the State, shall constitute forfeiture of the security deposit by the landlord to the tenant. Failure by the landlord to return the full security deposit to the tenant within 20 days from the effective date of forfeiture shall entitle the tenant to double the amount of the security deposit.

(h) All communications and notices, including the return of any security deposit under this section, shall be directed to the landlord at the address specified in the rental agreement and to the tenant at an address specified in the rental agreement or to a forwarding address, if provided in writing by the tenant at or prior to the termination of the rental agreement. Failure by the tenant to provide such address shall relieve the landlord of landlord's responsibility to give notice herein and landlord's liability for double the amount of the security deposit as provided herein, but the landlord shall continue to be liable to the tenant for any unused portion of the security deposit; provided, that the tenant shall make a claim in writing to the landlord within 1 year from the termination or expiration of the rental agreement.

(i) *Pet deposits.* —

(1) A landlord may require a pet deposit. Damage to the rental unit caused by an animal shall first be deducted from the pet deposit. Where the pet deposit is insufficient, such damages may be deducted from the security deposit. A pet deposit is subject to subsections (b), (e), (f), (g) and (h) of this section.

(2) No landlord may require a pet deposit in excess of 1 month's rent, regardless of the duration of the rental agreement.

(3) A landlord may require an additional deposit from a tenant with a pet, but shall not require any pet deposit from a tenant if the pet is a duly certified and trained support animal for a disabled person who is a resident of the rental unit.

(j) If the rental agreement so specifies, a landlord may increase the security deposit commensurate with the rent. If the increase of the security deposit will exceed 10 percent of the monthly rent, payment of the increased security deposit shall be prorated over the term of the rental agreement, except in the case of month-to-month tenancy, in which case payment of the increase shall be prorated over a period of 4 months.

(70 Del. Laws, c. 513, § 3; 79 Del. Laws, c. 57, § 4.)

§ 5514A Surety bond.

(a) Instead of paying all or part of a security deposit to a landlord under § 5514 of this title, a tenant may purchase a surety bond, the purpose of which shall be:

(1) To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning; and/or

(2) To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and/or

(3) To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(b) A landlord may not require a tenant to purchase a surety bond instead of paying a security deposit and a landlord is not required to accept the tenant's purchase of a surety bond instead of paying a security deposit.

(c) A surety shall refund to a tenant any premium or other charge paid by the tenant in connection with a surety bond if, after the tenant purchases a surety bond, the landlord refuses to accept the surety bond or the tenant does not enter into a lease with the landlord.

(d) The amount of a surety bond purchased instead of a security deposit may not exceed 1 month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3) of this title). If a tenant purchases a surety bond and provides a security deposit in accordance with this section, the aggregate amount of both the surety bond and security deposit may not exceed 1 month's rent per dwelling unit (except as otherwise permitted under § 5514(a)(3) of this title).

(e) Before a tenant purchases a surety bond instead of paying all or part of a security deposit, a surety shall disclose in writing to the tenant that:

(1) Except under the circumstances outlined in subsection (c) of this section, payment for a surety bond is nonrefundable;

(2) The surety bond is not insurance for the tenant;

(3) The surety bond is being purchased to protect the landlord against loss due to nonpayment of rent, breach of lease, or damages caused by the tenant;

(4) The tenant may be required to reimburse the surety for amounts the surety paid to the landlord for any claim made by the landlord against the surety bond;

(5) Even after a tenant purchases a surety bond, the tenant remains responsible for the following:

a. To reimburse the landlord for actual damages caused to the premises by the tenant which exceed normal wear and tear, or which cannot be corrected by painting and ordinary cleaning;

b. To pay the landlord for all rental arrearage due under the rental agreement, including late charges and rental due for premature termination or abandonment of the rental agreement by the tenant; and

c. To reimburse the landlord for all reasonable expenses incurred in renovating and rerenting the premises caused by the premature termination of the rental agreement by the tenants, which includes termination pursuant to § 5314 of this title, providing that reimbursement caused by termination pursuant to § 5314 of this title shall not exceed 1 month's rent.

(6) Nothing in this section shall be construed to require the tenant to pay, as between the landlord and the surety, more than the total amount owed to the landlord under subsection (a) of this section.

(f) Notwithstanding the issuance of a surety bond by the tenant to the landlord, the tenant has the right to pay the amount due under subsection (a) of this section directly to the landlord or to require the landlord to use the tenant's security deposit, if any, before the landlord makes a claim against the surety bond.

(g) If the surety fails to comply with the requirements of this section, the surety forfeits the right to make any claim against the tenant under the surety bond.

(h) Within 20 days after the termination or expiration of any rental agreement, the landlord shall provide the tenant with an itemized list of damages to the premises and the estimated costs of repair for each. Failure to do so shall constitute an acknowledgment by the landlord that no payment for damages is due. Tenant's failure to object to the itemized list of damages within 10 days of the tenant's receipt of the list shall constitute the tenant's agreement on the damages specified by the landlord.

(i) The surety or landlord shall deliver to a tenant a copy of the rental agreement and bond form signed by the tenant at the time of the tenant's purchase of the surety bond.

(j) If a landlord's interest in the leased premises is sold or transferred, the new landlord shall accept the tenant's surety bond and may not require:

(1) During the current lease term, an additional security deposit from the tenant; or

(2) At any lease renewal, a surety bond or a security deposit from the tenant that, in addition to any existing surety bond or security deposit, is in an aggregate amount in excess of 1 months' rent per dwelling unit.

(k) A surety bond issued under this section may only be issued by an admitted carrier licensed by the Delaware Department of Insurance.

(79 Del. Laws, c. 57, § 5.)

§ 5515 Landlord's remedies relating to holdover tenants.

(a) Except as is otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease.

(b) Whenever the term of the rental agreement expires, as provided herein or by the exercise by the landlord of a right to terminate given the landlord under any section of this Code, if the tenant continues in possession of the premises after the date of termination without the landlord's consent, such tenant shall pay to the landlord a sum not to exceed double the monthly rental under the previous agreement, computed and pro-rated on a daily basis, for each day the tenant remains in possession for any period. In addition, the holdover tenant shall be responsible for any further losses incurred by the landlord as determined by a proceeding before any court of competent jurisdiction.

(70 Del. Laws, c. 513, § 3.)

§ 5516 Retaliatory acts prohibited.

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempt on the part of the landlord to: pursue an action for summary possession or otherwise cause the tenant to quit the rental unit involuntarily; demand an increase in rent from the tenant; or decrease services to which the tenant is entitled after:

(1) The tenant has complained in good faith of a condition in or affecting the rental unit which constitutes a violation of a building, housing, sanitary or other code or ordinance to the landlord or to an authority charged with the enforcement of such code or ordinance; or

(2) A state or local government authority has filed a notice or complaint of such violation of a building, housing, sanitary or other code or ordinance; or

(3) The tenant has organized or is an officer of a tenant's organization; or

(4) The tenant has pursued or is pursuing any legal right or remedy arising from the tenancy.

(c) If the tenant proves that the landlord has instituted any of the actions set forth in subsection (b) of this section within 90 days of any complaints or act as enumerated above, such conduct shall be presumed to be a retaliatory act.

(d) It shall be a defense to a claim that the landlord has committed a retaliatory act if:

(1) The landlord has given appropriate notice under a section of this part which allows a landlord to terminate early;

(2) The landlord seeks in good faith to recover possession of the rental unit for immediate use as landlord's own residence;

(3) The landlord seeks in good faith to recover possession of the rental unit for the purpose of substantially altering, remodeling or demolishing the premises;

(4) The landlord seeks in good faith to recover possession of the rental unit for the purpose of immediately terminating, for at least 6 months, use of the premises as a rental unit;

(5) The complaint or request of the landlord relates to a condition or conditions caused by the lack of ordinary care by the tenant or other person in the household, or on the premises with the tenant's consent;

(6) The rental was, on the date of filing of tenant's complaint or request or on the date of appropriate notice prior to the end of the rental term, in full compliance with all codes, statutes and ordinances;

(7) The landlord has in good faith contracted to sell the property and the contract of sale contains a representation by the purchaser conforming to paragraph (d)(2), (3) or (4) of this section;

(8) The landlord is seeking to recover possession of the rental unit on the basis of a notice to terminate a periodic tenancy, which notice was given to the tenant prior to the complaint or request;

(9) The condition complained of was impossible to remedy prior to the end of the cure period;

(10) The landlord has become liable for a substantial increase in property taxes or a substantial increase in other maintenance or operating costs not associated with the landlord complying with the complaint or request, and such liability occurred not less than 4 months prior to the demand for the increase in rent, and the increase in rent does not exceed the pro-rata portion of the net increase in taxes or cost;

(11) The landlord has completed a substantial capital improvement of the rental unit or the property of which it is a part, not less than 4 months prior to the demand for increased rent, and such increase in rent does not exceed the amount which may be claimed for federal income tax purposes as a straight-line depreciation of the improvement, pro-rated among the rental units benefited by the improvement; or

(12) The landlord can establish, by competent evidence, that the rent now demanded of the tenant does not exceed the rent charged other tenants of similar rental units in the same complex, or the landlord can establish that the increase in rent is not directed at the particular tenant as a result of any retaliatory acts.

(e) Any tenant from whom possession of the rental unit has been sought, or who the landlord has otherwise attempted to involuntarily dispossess, in violation of this section, shall be entitled to recover 3 months' rent or treble the damages sustained by tenant, whichever is greater, together with the cost of the suit but excluding attorneys' fees.

(70 Del. Laws, c. 513, § 3.)

§ 5517 Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

(25 Del. C. 1953, § 6501; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 8.)

§ 5518 [Reserved.]

Part III
Residential Landlord-Tenant Code

Chapter 57
SUMMARY POSSESSION

§ 5701 Jurisdiction and venue.

An action for summary possession in accordance with § 5702 of this title shall be maintained in the Justice of the Peace Court which hears civil cases in the county in which the premises or commercial rental unit is located. In the event that more than 1 Justice of the Peace Court in a county hears civil cases, then an action shall be maintained in the Justice of the Peace Court that possesses territorial jurisdiction over the area in which the premises or commercial unit is located. For purposes of this chapter, the term "rental agreement" shall include a lease for a commercial rental unit.

(70 Del. Laws, c. 513, § 4; 76 Del. Laws, c. 250, § 1.)

§ 5701A Establishing territorial jurisdiction.

In any county in which more than 1 Justice of the Peace Court location has been designated to hear civil cases, each court location shall have a geographical area assigned to it for the purpose of establishing jurisdiction over actions for summary possession. Each court location shall be located within its given territory. Pursuant to § 5701 of this title, any action for summary possession involving a residential or commercial unit within a given territory shall be maintained at the Justice of the Peace Court which has jurisdiction over the given territory. Designation of the boundaries between territories shall be accomplished by court rule. In so doing, the Court may take into account the resources of each Justice of the Peace Court location; how these resources may be utilized best in serving the public good; convenience to the public; and population and demographic information, both current and projected.

(76 Del. Laws, c. 250, § 2.)

§ 5702 Grounds for summary proceeding.

Unless otherwise agreed in a written rental agreement, an action for summary possession may be maintained under this chapter because:

(1) The tenant unlawfully continues in possession of any part of the premises after the expiration of the rental agreement without the permission of the landlord or, where a new tenant is entitled to possession, without the permission of the new tenant;

(2) The tenant has wrongfully failed to pay the agreed rent;

(3) The tenant has wrongfully deducted money from the agreed rent;

(4) The tenant has breached a lawful obligation relating to the tenant's use of the premises;

(5) The tenant, employee, servant or agent of the landlord holds over for more than 15 days after dismissal when the housing is supplied by the landlord as part of the compensation for labor or services;

(6) The tenant holds over for more than 5 days after the property has been duly sold upon the foreclosure of a mortgage and the title has been duly perfected;

(7) The rightful tenant of the rental unit has been wrongfully ousted;

(8) The tenant refuses to yield possession of the rental unit rendered partially or wholly unusable by fire or casualty, and the landlord requires possession for the purpose of effecting repairs of the damage;

(9) The tenant is convicted of a class A misdemeanor or any felony during the term of tenancy which caused or threatened to cause irreparable harm to any person or property;

(10) A rental agreement for a commercial rental unit provides grounds for an action for summary possession to be maintained;

(11) Or, if, and only if, it pertains to manufactured home lots, for any of the grounds set forth in the Manufactured Home Owners and Community Owners Act, as amended; or

(12) The tenant who is the sole tenant under the rental agreement has died and become the deceased sole tenant under the residential rental agreement.

(70 Del. Laws, c. 513, § 4; 74 Del. Laws, c. 35, § 3; 79 Del. Laws, c. 65, § 3.)

§ 5703 Who may maintain proceeding.

The proceeding may be initiated by:

(1) The landlord;

(2) The owner;

(3) The tenant who has been wrongfully put out or kept out;

(4) The next tenant of the premises, whose term has begun; or

(5) The tenant.

(70 Del. Laws, c. 513, § 4.)

§ 5704 Commencement of action and notice of complaint.

(a) The proceeding shall be commenced by filing a complaint for possession with the court.

(b) Upon commencement of an action, the court shall issue the process specified in the praecipe and shall cause service of the complaint on the defendant, together with a notice stating the time and place of the hearing. The notice shall further state that if the defendant shall fail at such time to appear and defend against the complaint, defendant may be precluded from afterwards raising any defense or a claim based on such defense in any other proceeding or action.

(c) The party requesting the issuance of process may file a motion for the appointment of a special process server, consistent with Justice of the Peace Court Civil Rules. The party requesting the appointment of a special process server may prepare a form of order for signature by the clerk of court under the seal of the court. Blank forms for a motion for the appointment of a special process server and for an order appointing such a special process server shall be provided by the clerk of the court on request of the party.

(70 Del. Laws, c. 513, § 4.)

§ 5705 Service and filing of notice.

(a) The notice of hearing and the complaint shall be served at least 5 days and not more than 30 days before the time at which the complaint is to be heard.

(b) The notice and complaint, together with proof of service thereof, shall be filed with the court before which the complaint is to be heard prior to the hearing, and in no event later than 5 days after service. If service has been made by certified or registered mail, the return receipt, signed, refused or unclaimed, shall be proof of service.

(c) Service of the notice and complaint may be made in any manner consistent with either § 5704 or § 5706 of this title.

(70 Del. Laws, c. 513, § 4.)

§ 5706 Manner of service.

(a) Service of the notice of hearing and complaint shall be made in the same manner as personal service of a summons in an action.

(b) If service cannot be made in such manner, it shall be made by leaving a copy of the notice and complaint personally with a person of suitable age and discretion who resides or is employed in the rental unit.

(c) If no such person can be found after a reasonable effort, service may be made:

(1) Upon a natural person by affixing a copy of the notice and complaint upon a conspicuous part of the rental unit within 1 day thereafter, and by sending by either certified mail or first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, an additional copy of each document to the rental unit and to any other address known to the person seeking possession as reasonably chosen to give actual notice to the defendant; or

(2) If defendant is an artificial entity, pursuant to Supreme Court Rule 57, by sending by certified mail or by sending by first class mail with certificate of mailing, using United States Postal Service Form 3817 or its successor, within 1 day after affixation, additional copies of each document to the rental unit and to the principal place of business of such defendant, if known, or to any other place known to the party seeking possession as reasonably chosen to effect actual notice.

(d) Service pursuant to this section shall be considered actual or statutory notice.

(70 Del. Laws, c. 513, § 4.)

§ 5707 Contents of complaint generally.

The complaint shall:

(1) State the interest of the plaintiff in the rental unit from which removal is sought;

(2) State the defendant's interest in the rental unit and defendant's relationship to the petitioner with regard thereto;

(3) Describe the rental unit from which removal is sought;

(4) State the facts upon which the proceeding is based and attach a copy of any written notice of the basis of the claim as an exhibit to the complaint; and

(5) State the relief sought which may include a judgment for rent due if the notice of complaint contains a conspicuous notice that such demand has been made.

(70 Del. Laws, c. 513, § 4.)

§ 5708 Additional contents of certain complaints.

If possession of the rental unit is sought on the grounds that the tenant has violated or failed to observe a lawful obligation in relation to tenant's use and enjoyment of the rental unit, the complaint shall, in addition to the requirements of the foregoing section:

(1) Set forth the rule or provision of the rental agreement allegedly breached, together with the date the rule was made known to the tenant and a copy of the rule or provision as initially provided to the tenant and the manner in which such rule or provision was made known to the tenant;

(2) Allege with specificity the facts constituting a breach of the rule or provision of the rental agreement and that notice or warning as required by law was given to the tenant;

(3) Set forth the facts constituting a continued or recurrent violation of the rule or provision of the rental agreement;

(4) Set forth the purpose served by the rule or provision of the rental agreement allegedly breached; and

(5) Allege that where the rule is not a part of the rental agreement or any other agreement of the landlord and tenant at the time of the formation of the rental agreement, that it does not work a substantial modification of the tenant's bargain or, if it does, that the tenant consented knowingly in writing to the rule.

(70 Del. Laws, c. 513, § 4.)

§ 5709 Answer.

At the time when the petition is to be heard, the defendant or any person in possession or claiming possession of the rental unit may answer orally or in writing. If the answer is oral, the substance thereof shall be endorsed on the complaint. The answer may contain any legal or equitable defense or counter-claim, not to exceed the jurisdiction of the court.

(70 Del. Laws, c. 513, § 4.)

§ 5710 Trial.

Where triable issues of fact are raised, they shall be tried by the court. At the time when an issue is joined, the court, at the application of either party and upon proof to its satisfaction by affidavit or orally that an adjournment is necessary to enable the applicant to procure necessary witnesses or evidence or by consent of all the parties who appear, may adjourn the trial, but not more than 10 days, except by consent of all parties.

(70 Del. Laws, c. 513, § 4.)

§ 5711 Judgment.

(a) The court shall enter a final judgment determining the rights of the parties. The judgment shall award to the successful party the costs of the proceeding.

(b) The judgment shall not bar an action, proceeding or counterclaim commenced or interposed within 60 days of entry of judgment for affirmative equitable relief which was not sought by counterclaim in the proceeding because of the limited jurisdiction of the court.

(c) If the proceeding is founded upon an allegation of forcible entry or forcible holding out, the court may award to the successful party a fixed sum as damages, in addition to the costs.

(70 Del. Laws, c. 513, § 4.)

§ 5712 Default judgment.

(a) No judgment for the plaintiff shall be entered unless the court is satisfied, upon competent proof, that the defendant has received actual notice of the proceeding or, having abandoned the rental unit, cannot be found within the jurisdiction of the court after the exercise of reasonable diligence. Posting and first-class mail, as evidenced by a certificate of mailing, is acceptable as actual notice for the purposes of a default judgment.

(b) A party may, within 10 days of the entry of a default judgment or a nonsuit, file a motion with the court to vacate the judgment and if, after a hearing on the motion, the court finds that the party has satisfied the requirements of Justices of the Peace Civil Rule 60(b), it shall grant the motion and permit the parties to elect a trial before a single judge or a jury trial.

(70 Del. Laws, c. 513, § 4.)

§ 5713 Jury trials.

(a) In any civil action commenced pursuant to this chapter, the plaintiff may demand a trial by jury at the time the action is commenced and the defendant may demand a trial by jury within 10 days after being served. Upon receiving a timely demand, the justice shall appoint 6 impartial persons of the county in which the action was commenced to try the cause. In making such appointments, the justice shall appoint such persons from the jury list being used at time of appointment by the Superior Court in the county where the action was commenced.

(b) The jury shall be sworn or affirmed that they will "faithfully and impartially try the cause pending between the said ..... plaintiff and ..... defendant and make a true and just report thereupon according to the evidence" and shall hear the allegations of the parties and their proofs. If either party fails to appear before the jury, they may proceed in that party's absence. When the jury or any 4 of them agree, they shall make a report under their hands and return the same to the justice who shall give judgment according to the report.

(c) If any juror appointed fails to appear or serve throughout the trial the justice may supply a replacement by appointing and qualifying another, but there shall be no trial by jury if the defendant has not appeared.

(d) In all other cases, the justice shall hear the case and give judgment according to the right of the matter and the law of the land.

(e) A Chief Magistrate shall have the authority to designate courts in each county which can accommodate a jury trial.

(70 Del. Laws, c. 513, § 4.)

§ 5714 Compelling attendance of jurors.

(a) In a proceeding under this chapter, the justice may require the attendance of the jurors the justice appoints, and may issue a summons under hand and seal to a constable for summoning them to appear before the court.

(b) If any juror duly summoned fails to appear as required, or to be qualified and serve throughout the trial, the juror shall, unless the juror shows to the justice a sufficient excuse, be guilty of contempt and shall be fined $50 which shall be levied with costs by distress and sale of the juror's goods and chattels by virtue of a warrant by the justice.

(c) The warrant shall be directed to a constable in the following manner:

..... County, ss. The State of Delaware.

To any constable, greeting:

Whereas, ... of ..... has been adjudged by ....., 1 of our justices of the peace, to be guilty of a contempt in making default after due summons as a juror in a case pending before said justice and has been ordered to pay a fine of $50 in pursuance of the act of assembly in such case provided, and

Whereas, the said ..... has neglected to pay the said sum, we therefore command you to levy the said sum of $50 with ..... costs and your costs hereon by distress and sale of the goods and chattels of the said ..... upon due notice given as upon other execution process.

Witness the hand and seal of the said justice the ..... day of 20 .....

(70 Del. Laws, c. 513, § 4.)

§ 5715 Execution of judgment; writ of possession.

(a) Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(b) The officer to whom the writ of possession is directed and delivered shall give at least 24 hours' notice to the person or persons to be removed and shall execute it between the hours of sunrise and sunset.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot, to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from the storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(c) The plaintiff has the obligation to notify the constable to take the steps necessary to put the plaintiff in full possession.

(d) The issuance of a writ of possession for the removal of a tenant cancels the agreement under which the person removed held the premises and annuls the relationship of landlord and tenant. Plaintiff may recover, by an action for summary possession, any sum of money which was payable at the time when the action for summary possession was commenced and the reasonable value of the use and occupation to the time when a writ of possession was issued and for any period of time with respect to which the agreement does not make any provision for payment of rent, including the time between the issuance of the writ and the landlord's actual recovery of the premises.

(e) If, at the time of the execution of the writ of possession, the tenant fails to remove tenant's property, the landlord shall have the right to and may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant. Nothing in this subsection shall be construed to prevent the landlord from suing for both rent and possession at the same hearing.

(1) If there is no appeal from the judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove tenant's property, then the landlord may immediately remove and store such property for a period of 7 days, at tenant's expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession where no appeal has been filed must contain the following language:

NOTICE WHERE NO APPEAL FILED

If you do not remove your property from the premises within 24 hours, then the landlord may immediately remove and store your property for a period of 7 days at your expense, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the first 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(f) If, at the time of the execution of the writ of possession, an appeal of the judgment of possession has been filed:

(1) If there has been an appeal filed from a judgment of summary possession at the time of the execution of the writ of possession and the tenant has failed to remove property within 24 hours, then the landlord may immediately remove and store such property, at the tenant's expense, for a period of 7 days after the resolution of the appeal, unless the property is a manufactured home and the rental agreement is subject to Chapter 70 of this title, in which case the manufactured home must be stored for a period of 30 days.

(2) If, at the end of such period, the tenant has failed to claim said property and to reimburse the landlord for the expense of removal and storage in a reasonable amount, such property and possessions shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to the tenant.

(3) All writs of possession, where an appeal has been filed, must contain the following language:

NOTICE WHERE APPEAL HAS BEEN FILED

If you do not remove your property from the premises with 24 hours, then the landlord may immediately remove and store your property until 7 days after your appeal has been decided, at your expense. If you fail to claim your property and reimburse the landlord prior to the expiration of the 7-day period, then the landlord may dispose of your property without any further legal action.

MANUFACTURED HOME. If the writ of possession being posted relates to the possession of a rented lot for manufactured housing, under Chapter 70 of this title, and, on or before the date the writ of possession is posted, the tenant has prepaid a per diem storage fee in an amount equivalent to 7 days' rent, then the court, through its officers, may extend the notice period for the removal of the home from the lot to a maximum period of 7 calendar days from the date of posting. In no event may the tenant inhabit the home after the 1st 24 hours of the notice period. If the per diem charge above described has been prepaid and the time for removal has been extended, then 7 calendar days after the posting of the writ, the manufactured home may be removed by the landlord. If the period for removal of the home has not been extended by a prepayment of the per diem amount for storage, then 24 hours after the posting of the writ, the home may be removed from the lot by the landlord. In either event, after removal, the home must be stored at the tenant's expense for a period of 30 days before it can be disposed of through further legal action. The tenant may not remove the home from storage location until the landlord has been reimbursed for any judgment amount and the reasonable cost of removal and storage of the manufactured home.

(g) Nothing in subsection (d) of this section shall prevent the landlord from making a claim for rent due from the tenant under the provisions of the lease. The landlord shall have the duty of exercising diligence in landlord's efforts to re-rent the premises. The landlord shall have the burden of showing the exercise of such diligence. The landlord shall have the right to sue for both rent and possession at the same hearing.

(h) Whenever the plaintiff is put into full possession under this chapter it shall be the duty of the plaintiff, at the time actual repossession occurs, to have the locks to the premises changed if said premises are to be further leased out. Any plaintiff who fails to comply with this subsection shall be liable to any new tenant whose person or property is injured as a result of entry to the premises gained by the dispossessed tenant by use of a key still in their possession which fit the lock to the premises at the time of this tenancy.

(70 Del. Laws, c. 513, § 4.)

§ 5716 Stay of proceedings by tenant; good faith dispute.

When a final judgment is rendered in favor of the plaintiff in a proceeding brought against a tenant for failure to pay rent and the default arose out of a good faith dispute, the tenant may stay all proceedings on such judgment by paying all rent due at the date of the judgment and the costs of the proceeding or by filing with the court an undertaking to the plaintiff, with such assurances as the court shall require, to the effect that defendant will pay such rent and costs within 10 days of the final judgment being rendered for the plaintiff. At the expiration of said period, the court shall issue a warrant of possession unless satisfactory proof of payment is produced by the tenant.

(70 Del. Laws, c. 513, § 4.)

§ 5717 Stay of proceedings on appeal.

(a) *Nonjury trials.* — With regard to nonjury trials, a party aggrieved by the judgment rendered in such proceeding may request in writing, within 5 days after judgment, a trial de novo before a special court comprised of 3 justices of the peace other than the justice of the peace who presided at the trial, as appointed by the chief magistrate or a designee, which shall render final judgment, by majority vote, on the original complaint within 15 days after such request for a trial de novo. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(b) An appeal taken pursuant to subsection (a) of this section may also include claims and counter-claims not raised in the initial proceeding; provided, that within 5 days of the filing of the appeal, the claimant also files a bill of particulars identifying any new issues which claimant intends to raise at the hearing which were not raised in the initial proceeding.

(c) *Jury trials.* — With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial, as appointed by the chief magistrate or a designee. This review shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level. The decision on the record shall be by majority vote. No such request shall stay proceedings on such judgment unless the aggrieved party, at the time of making such request, shall execute and file with the Court an undertaking to the successful party, with such bond or other assurances as may be required by the Court, to the effect that the aggrieved party will pay all costs of such proceedings which may be awarded against that party and abide the order of the Court therein and pay all damages, including rent, justly accruing during the pendency of such proceedings. All further proceedings in execution of the judgment shall thereupon be stayed.

(d) The Court shall not issue the writ of possession during the 5-day appeal period. After the 5-day appeal period has ended, the Court may issue the writ of possession at the plaintiff's request if the defendant has filed an appeal, but not filed a bond or other assurance or an in forma pauperis request to stay the issuance of the writ of possession. If the plaintiff executes on the writ of possession prior to a determination of the appeal and the appealing party is ultimately successful, then the plaintiff shall be responsible for reasonable cover damages (including, but not limited to, the cost of substitute housing or relocation) for the period of the dispossession as a result of the execution of the writ of possession, plus court costs and fees.

(e) An aggrieved party may appeal in forma pauperis if the Court grants an application for such status. In that event, the Court may waive the filing fee and bond for a trial de novo, a trial on the record or a request to stay the writ of possession.

(f) An appeal taken pursuant to this section may include any issue on which judgment was rendered at the trial court level, including the issue of back rent due, any other statute to the contrary notwithstanding.

(70 Del. Laws, c. 513, § 4.)

§ 5718 Proceedings in forma pauperis.

Upon application of a party claiming to be indigent, the Court may authorize the commencement, prosecution or defense of any civil action or civil appeal without prepayment of fees and costs or security therefor by a person who makes an affidavit that such person is unable to pay the costs or give security therefore. Such affidavit shall state the nature of the action or defense and the affiant's belief that the affiant is entitled to redress, and shall state sufficient facts from which the Court may make an objective determination of the petitioner's alleged indigence.

The Court may, in its discretion, conduct a hearing on the question of indigence. In any action in which a claim for damages is asserted by a party seeking the benefit of this rule, the prothonotary shall, before entering a dismissal of the claim or satisfaction of any judgment entered therein, require payment of accrued court costs from any party for whose benefit this rule has been applied if said party has recovered a judgment in said proceedings or received any funds in settlement thereof. A party and such party's attorney of record shall file appropriate affidavits in the event a claim is sought to be dismissed without settlement or recovery.

(70 Del. Laws, c. 513, § 4.)

§ 5719 Landlord regaining possession of residential rental unit upon the death of a deceased sole tenant.

(a) Possession of a residential rental unit upon the death of a sole tenant shall be returned to the landlord without an action for summary possession if:

(1) An affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, in which case the landlord shall allow the affiant or personal representative access to the residential rental unit of the deceased sole tenant to remove the deceased sole tenant's belongings; and

(2) An affiant or personal representative informs the landlord that further access to the deceased sole tenant's residential rental unit is not needed by the affiant or personal representative and/or their agents or 30 days have elapsed since the death of the deceased sole tenant and the affiant or personal representative has not provided the landlord written notice that access to the deceased sole tenant's residential rental unit is still needed by the affiant or personal representative and/or their agents.

(b) If an affiant or personal representative of the deceased sole tenant's estate presents the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord still retains the right to initiate at any time an action for summary possession and/or moneys due, in which case the landlord shall bring the action against the estate of the deceased sole tenant and serve the complaint upon the affiant or personal representative at the address provided by the affiant or personal representative and, if no such good address is provided, then to serve the complaint upon the register of wills in the county in which the residential rental unit is located. If an affiant or personal representative of the deceased sole tenant's estate does not present the landlord with valid documentation issued by the register of wills evidencing such representation pursuant to Title 12, the landlord must serve the register of wills in the county in which the residential unit is located in order to bring an action for summary possession to obtain possession of the residential rental unit and moneys due, if any. Anytime the register of wills is to be served as a registered agent for an estate, prior to initiating the action, the landlord must place a notice of such action in a paper that is circulated in the county in which the residential rental unit is located. The notice must identify: the name of the landlord; the name of the deceased sole tenant; the residential rental unit address; the type of action to be brought; the court in which such action will be brought; and the amount of the claim, if any.

(c) If at the time of the execution of the writ of possession there is still property inside the deceased sole tenant's residential rental unit that does not belong to the landlord then the landlord shall have the right to immediately remove and store such property for a period of 7 days, at the expense of the estate of the deceased sole tenant. If at the end of such period, a representative of the estate, who has valid documentation of such representation issued by the register of wills pursuant to Title 12, has failed to claim said property and reimburse the landlord for the reasonable expenses of removal and storage, such property shall be deemed abandoned and may be disposed of by the landlord without further notice or obligation to any party. Upon rendering a final judgment for plaintiff, but in no case prior to the expiration of the time for the filing of an appeal or motion to vacate or open the judgment, the court shall issue a writ of possession directed to the constable or the sheriff of the county in which the property is located, describing the property and commanding the officer to remove all persons and put the plaintiff into full possession.

(d) If the landlord is not entitled to all or any portion of the security deposit, the landlord shall remit the security deposit within 20 days of receiving possession of the residential rental unit (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended) to a representative of the estate of the deceased sole tenant, if any, who has valid documentation of such representation issued by the register of wills pursuant to Title 12. Within 20 days after receiving possession of the residential rental unit of the deceased sole tenant (or, if storage of property that was inside the deceased sole tenant's residential rental unit is required, then within 20 days after the storage of said property has ended), the landlord shall provide the representative of the estate of the deceased sole tenant, if any, with an itemized list of damages to the premises and the estimated costs of repair for each and shall tender payment for the difference between any rental amount due and owing, the security deposit and such costs of repair of damage to the premises. Failure to do so shall constitute an acknowledgment by the landlord that no payment is due. The representative's acceptance of a payment submitted with an itemized list of damages shall constitute agreement on the rental amount due, if any, and damages as specified by the landlord, unless the representative of the estate, within 10 days of the representative's receipt of such tender of payment, objects in writing to the amount withheld by the landlord. Failure for a representative of the estate to present the landlord with valid documentation of such representation issued by the register of wills or failure of the representative to provide the landlord with a good address shall relieve the landlord of responsibility to give notice of any damages and potential liability for double the amount of the security deposit, but the landlord shall continue to be liable to the representative of the estate for any unused portion of the security deposit; provided, that the representative of the estate shall make a claim in writing to the landlord within 1 year from the landlord receiving possession of the residential rental unit of the deceased sole tenant.

(79 Del. Laws, c. 65, § 4.)

Part III
Residential Landlord-Tenant Code

Chapter 59
TENANT'S RECEIVERSHIP

§ 5901 Petition for receivership; grounds, notice and jurisdiction.

Any tenant or group of tenants may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord:

(1) If the rental agreement, or any state or local statute, code, regulation or ordinance, places a duty upon the landlord to so provide, a lack of heat, or of running water, or of light, or of electricity, or of adequate sewage facilities;

(2) Any other conditions imminently dangerous to the life, health or safety of the tenant.

(25 Del. C. 1953, § 5901; 58 Del. Laws, c. 472, § 1.)

§ 5902 Necessary parties defendant.

(a) Petitioners shall join as defendants:

(1) All parties duly disclosed to any of them in accordance with § 5105 of this title; and

(2) All parties whose interest in the property is:

a. A matter of public record; and

b. Capable of being protected in this proceeding.

(b) Petitioner shall not be prejudiced by a failure to join any other interested parties.

(25 Del. C. 1953, § 5902; 58 Del. Laws, c. 472, § 1.)

§ 5903 Defenses.

It shall be sufficient defense to this proceeding, if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of trial; or

(2) The condition or conditions alleged in the petition have been caused by the wilful or grossly negligent acts of 1 or more of the petitioning tenants or members of his or their families or by other persons on the premises with his or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.

(25 Del. C. 1953, § 5903; 58 Del. Laws, c. 472, § 1.)

§ 5904 Stay of judgment by defendant.

(a) If, after a trial, the Court shall determine that the petition should be granted, the Court shall immediately enter judgment thereon and appoint a receiver as authorized herein; provided, however, prior to the entry to judgment and appointment of a receiver, the owner or any mortgagee or lienor of record or other person having an interest in the property may apply to the Court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the Court, then the Court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the Court and requiring such person to report to the Court periodically on the progress of the work. The Court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under the foregoing provision but before the time fixed in such order for the completion of the work prescribed therein, there is reason to believe that the work will not be completed pursuant to the court's order or that the person permitted to do the same is not proceeding with due diligence, the Court or the petitioners, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in the following subsection.

(c)(1) If, upon a hearing authorized in the preceding subsection, the Court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the Court shall appoint a receiver as authorized herein.

(2) Such judgment shall direct the receiver to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such judgment shall direct the receiver to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such judgment shall direct the receiver to return the excess to the person posting the security.

(25 Del. C. 1953, § 5904; 58 Del. Laws, c. 472, § 1.)

§ 5905 Receivership procedures.

The receiver shall be the Division of Consumer Protection of the State or its successor agency.

(1) Upon its appointment, the receiver must make within 15 days an independent finding whether there is proper cause shown for the need for rent to be paid to it and for the employment of a private contractor to correct the condition complained of in § 5901 of this title and found by the Court to exist.

(2) If the receiver shall make such a finding, it shall file a copy of the finding with the recorder of deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment of the contractor, the receiver shall file a certification of such with the recorder of deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The receiver shall forthwith give notice to all lienholders of record.

(5) If the receiver shall make a finding at such time or any other time that for any reason the appointment of a receiver is not appropriate, it shall be discharged upon notification of the Court and all interested parties and shall make legal distribution of any funds in its possession.

(25 Del. C. 1953, § 5905; 58 Del. Laws, c. 472, § 1; 69 Del. Laws, c. 291, § 98(c).)

§ 5906 Powers and duties of the receiver.

The receiver shall have all the powers and duties accorded a receiver foreclosing a mortgage on real property and all other powers and duties deemed necessary by the Court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

(1) Correcting the condition or conditions alleged in the petition;

(2) Materially complying with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and surrounding grounds;

(3) Paying all expenses reasonably necessary to the proper operation and management of the property including insurance, mortgage payments, taxes and assessments and fees for the services of the receiver and any agent he should hire;

(4) Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and

(5) Paying the costs of the receivership proceeding.

(25 Del. C. 1953, § 5906; 58 Del. Laws, c. 472, § 1.)

§ 5907 Discharge of the receiver.

(a) In addition to those situations described in § 5905 of this title, the receiver may also be discharged when:

(1) The condition or conditions alleged in the petition have been remedied;

(2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the building and the surrounding grounds;

(3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and

(4) The surplus money, if any, has been paid over to the owner.

(b) Upon paragraphs (a)(1) and (2) of this section being satisfied, the owner, mortgagee or any lienor may apply for the discharge of the receiver after paying to the latter all moneys expended by him and all other costs which have not been paid or reimbursed from the rent and profits of the property.

(c) If the Court determines that future profits of the property will not cover the costs of satisfying paragraphs (a)(1) and (2) of this section, the Court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement and ordering the vacation of the building within a specified time. In no case shall the Court permit repairs which cannot be paid out of the future profits of the property.

(25 Del. C. 1953, § 5907; 58 Del. Laws, c. 472, § 1.)

Part IV
Commercial Leases
Chapter 61
COMMERCIAL LEASES

§ 6101 Metering and charges for utility services.

Whenever any landlord or other person:

(1) Purchases utility service from a public utility and redistributes the same to a tenant in a commercial unit and/or in connection with the operation of that commercial unit (e.g., the operation of the common area); and

(2) Continuously meters the tenant's use in that commercial unit to which it redistributes the utility service and continually meters the common area;

Such landlord or other person may charge and collect from such tenant, by way of rent or otherwise, an amount not to exceed the amount the tenants would be billed by the public utility for such utility service if the same was directly metered by such public utility.

(70 Del. Laws, c. 513, § 15.)

§ 6102 Definitions.

The following words, terms and phrases, when used in this part, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Commercial unit" shall mean any lot, structure or portion thereof which is occupied or rented for commercial or industrial purposes.

(2) "Landlord" shall mean:

a. The owner, lessor or sublessor of the rental unit or the property of which it is a part and, in addition, shall mean any person authorized to exercise any aspect of the management of the premises, including any person who, directly or indirectly, receives rents or any part thereof other than as a bona fide purchaser and who has no obligation to deliver the whole of such receipts to another person;

b. Any person held out by any landlord as the appropriate party to accept performance, whether such person is a landlord or not;

c. Any person with whom the tenant normally deals as a landlord; or

d. Any person to whom the person specified in paragraphs (2)b. and c. of this section is directly or ultimately responsible.

(3) "Owner" shall mean 1 or more persons, jointly or severally, in whom is vested:

a. All or part of the legal title to property; or

b. All or part of the beneficial ownership, usufruct and a right to present use and enjoyment of the premises.

(4) "Person" shall include an individual, corporation, government or governmental agency, statutory trust, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common trust or any other legal or commercial entity.

(5) "Premises" shall mean the rental unit and the structure of which it is a part, and the facilities and appurtenances therein, and ground, areas and facilities held out for the use of tenants generally or whose use by the tenant is promised by the landlord.

(6) "Rental agreement" shall mean and include all agreements, written or oral, which establish or modify the terms, conditions, rules, regulations or other provisions concerning the use and occupancy of a rental unit.

(7) "Rental unit" shall mean a commercial unit.

(8) "Tenant" shall mean a person entitled under a rental agreement to occupy a rental unit to the exclusion of others.

(70 Del. Laws, c. 513, § 15; 73 Del. Laws, c. 329, § 71.)

§ 6103 Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear, or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord, if residing in the county, and if not, to any known agent of the landlord in the county.

(25 Del. C. 1953, § 6501; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 9.)

§ 6104 Confession of judgment.

A provision of a written rental agreement authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable.

(25 Del. C. 1953, § 6104; 58 Del. Laws, c. 472, § 1.)

§ 6105 Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

(25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 10.)

Part IV
Commercial Leases
Chapter 63
DISTRESS FOR RENT

§ 6301 Action at law; jurisdiction; case in which distress lies.

(a) Distress for rent is hereby abolished except pursuant to a rental agreement for a commercial unit and in that event it shall be an action at law which shall be brought as provided herein.

(b) The several courts of the justices of the peace shall have original jurisdiction in all cases of distress for unpaid rent regardless of the amount of rent notwithstanding any other law to the contrary.

(c) A distress shall lie for any unpaid rent due either in money or in a quantity of any tangible items, goods or produce pursuant to any rental agreement of a commercial unit.

(25 Del. C. 1953, § 6301; 58 Del. Laws, c. 472, § 1.)

§ 6302 Form of claim; contents; costs.

(a) The claim for distress shall name the tenant as defendant and shall set forth the name and address of the landlord, the name and address of the tenant and the facts as to any assignment of the rental agreement, the premises leased, the date of the rental agreement, the term of the rental agreement, the rent required to be paid by the tenant, the amount of rent in arrears and the plaintiff's statement that there is reason to believe the levied property would be disposed of absent the issuance of the levy. The claim for distress shall also set forth facts supporting the plaintiff's reasonable belief that the goods on the leased premises to be levied upon would be disposed of absent the issuance of the writ. The claim for distress shall be made under oath or affirmation by the plaintiff.

(b) The claim shall be filed in a Court of the Justice of the Peace located in the county wherein the commercial unit or a portion thereof is situated.

(c) The costs in the action shall include the cost of the sale.

(25 Del. C. 1953, § 6302; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 16.)

§ 6303 Order of distress; service of claim and order; levy; inventory; return; duration of levy.

(a) Upon the filing of an action of distress, a justice of the peace shall make a determination as to the claim's compliance with the provisions of this chapter, and upon a determination of compliance, the Court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the Court shall determine and an order to a constable or sheriff of that county directing that all goods on the leased premises be levied upon, once plaintiff has filed said bond. A copy of the claim of distress and order of levy shall be served upon each tenant on the leased premises, as provided herein. The order shall also set forth the time and place where the defendant may appear and make answer to the allegations in the claim.

(b) The levy may be made within the hours of 8:00 a.m. to 8:00 p.m.

(c) The officer making the levy shall then proceed to make an inventory of each article of goods distrained upon and shall deliver to each tenant found on the premises, or if not so found, leave affixed to the premises, a copy of the inventory as provided herein.

(d) The officer serving the order shall make a return of his action to the court, including the date and time thereof.

(e) A levy for distress shall not remain in force for more than 60 days and if the goods distrained are not sold within that period they shall be discharged from the levy.

(25 Del. C. 1953, § 6303; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 17.)

§ 6304 Levied goods in custody of Court; removal and sale; plaintiff's interest.

(a) Except as hereinafter provided, goods levied upon by the constable or sheriff shall remain on the leased premises in the custody of the Court unless released as hereinafter provided.

(b) Upon application to the Court by either party, the Court may allow the removal, sale, or both, in whole or in part, of the levied goods, upon such terms and conditions as the Court deems necessary for the protection of the parties and to avoid irreparable harm, including the posting of a bond by the tenant for the fair market value of the goods or other protective measures, including the appointment of a receiver, or the depositing of sale proceeds with the court or a specified depository.

(c) Unless otherwise provided in accordance with subsection (b) of this section or § 6307 of this title, the plaintiff in an action of distress shall have a special property interest in the goods distrained until they are returned to the defendant or sold by the Court, so that the plaintiff may take the goods wherever found and recover damages for carrying away or injuring them.

(25 Del. C. 1953, § 6304; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6305 Protective measures upon a showing that a tenant may abscond.

Upon petition of the plaintiff in distress and upon a showing under oath or affirmation of a need for protective measures because the tenant may abscond or remove and conceal that tenant's goods, the Court may take any or all of the following protective measures:

(1) The constable or sheriff shall be directed to make the levy forthwith and at any time;

(2) The constable or sheriff can take actual possession of the goods levied upon and remove same from the leased premises to such place as the Court may direct pending the release or sale of the goods. Removal of the goods may, if the Court deems it necessary, be conditioned on the filing of a bond by the plaintiff in such amount and in such form as the Court may determine but in an amount not less than the fair market value of the goods removed. The expense of removal of any goods from the leased premises to any other place for storage pending sale shall be included as part of the costs of distress;

(3) The Court may order the levying officer to enter the premises forcibly if entry cannot otherwise be gained.

(25 Del. C. 1953, § 6305; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6306 Procedure in the event of a forcible entry.

Where entry is gained forcibly and if no tenant is found on the premises, a copy of the claim and order shall be affixed on a prominent place on the interior of the leased premises. The constable or sheriff shall then proceed to make an inventory of each article of goods distrained and leave affixed to the premises a copy of the inventory and shall attempt to contact the tenant if his whereabouts are known and leave the premises locked and as safe and secure as possible. The constable or sheriff serving the order shall make a return of the constable's or sheriff's action to the Court including the date, time and manner of the forcible entry.

(25 Del. C. 1953, § 6306; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6307 Release of distrained property upon filing of bond.

Upon the filing of a bond with surety with the Court where the distress action is pending, the Court may release from the levy and return, or release from the levy or return, the property to the tenant. The bond shall be in an amount not exceeding the fair market value of the goods levied as determined by the Court or the amount of rent in arrears plus 2 months' rent, whichever is less.

(25 Del. C. 1953, § 6307; 58 Del. Laws, c. 472, § 1.)

§ 6308 Answer to claim; hearing; final order of sale.

(a) The defendant in an action of distress may file an answer to the action, setting forth any defenses defendant may have to the action. The court shall schedule the hearing to be held promptly after the levy, but not later than 5 days after the levy. At the hearing, the Court may determine and decide all issues raised, may issue an order for the sale of the goods and may make such orders in connection therewith as may be required.

(b) In any final order for the sale of goods distrained, the Court shall have power to increase the amount of rent claimed to an amount equal to the sum of the plaintiff's original claim plus rent accruing after the filing of the claim for distress up to the day of sale on which rent may fall due.

(c) If the tenant named as defendant in an action for distress shall fail to file an answer to the petition for distress and/or appear at the time and place set for the hearing, the Court may upon motion of the plaintiff issue an order for the sale of the goods distrained.

(25 Del. C. 1953, § 6308; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 513, § 18.)

§ 6309 Public sale of property distrained; notice of sale.

After the expiration of 10 days from the day of the issuance of a final order of sale by the Court, the officer may sell the property, or so much thereof as is necessary to satisfy the rent and all costs, at public vendue, to the highest and best bidder, or bidders, first giving at least 6 days notice of the sale by advertisement posted in at least 5 public places in the county. All goods neither sold nor retained by the landlord shall be returned to the defendant.

(25 Del. C. 1953, § 6309; 58 Del. Laws, c. 472, § 1.)

§ 6310 Liability of officer.

Any constable, sheriff or other officer of the Court acting in good faith pursuant to an order of the Court as provided herein shall not incur civil or criminal liability for that constable's or sheriff's or other officer's actions in carrying out said order except for any damage incurred as a result of that constable's or sheriff's or other officer's gross negligence or wilful misconduct.

(25 Del. C. 1953, § 6310; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1.)

Part IV
Commercial Leases

Chapter 65
MISCELLANEOUS PROVISIONS

§§ 6501 , 6502. Preference of rent in cases of execution; taxes paid by tenant; setoff against rent; recovery from owner.

Transferred.

§§ 6503 , 6504. Discrimination in renting; refusal to rent because of children in family; increase of rent; penalty; reservation of rental units for use by senior citizens; tenant may obtain summary of Landlord-Tenant Code; ignorance of law as defense.

Repealed by 70 Del. Laws, c. 513, § 19, eff. July 17, 1996.

Part V
Agricultural Leases
Chapter 67
AGRICULTURAL LEASES
Subchapter I
Rights and Duties of Landlords and Tenants

§ 6701 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Agricultural land," "farmland" or "rural land" shall mean any parcel, 10 acres or more, not within the limits of any city or municipality, which is capable of being farmed;

(2) "Cropper" or "sharecropper" shall mean one who cultivates the farmland of another, in return for a share of the crop produced.

(3) "Demise" shall be synonymous with the term "lease";

(60 Del. Laws, c. 175, § 1.)

§ 6702 Term of verbal lease and term of lease in which no term expressed; notice to terminate; continuance of lease; leases of tenant houses located on poultry farms.

(a) Every verbal lease of agricultural land and every written lease of agricultural land in which no term is expressed shall be deemed and construed to be a lease having a term of 1 year, terminating on December 31 next occurring unless the lease is entered into after September 1, in which case the lease shall terminate on the second December 31 next occurring.

(b) In every verbal lease of agricultural land and every written lease of agricultural land in which no term is expressed, the lease shall terminate at the end of 1 year, terminating on December 31 next occurring unless the lease is entered into after September 1, in which case the lease shall terminate on the second December 31 next occurring; provided, however, the landlord or tenant gives the other party notice in writing at least 4 months in advance of the expiration date thereof that the landlord or tenant, as the case may be, intends to terminate the lease at the expiration date thereof. If no such notice is given by either party the lease shall become a year to year lease renewing itself yearly under the same terms and conditions until the hereinmentioned notice requirement is met by either party desiring to terminate said lease.

(c) Notice, as provided for herein, shall not be required if all parties to a lease of agricultural land specify in writing that said lease shall terminate on the expiration date thereof without notice of such termination.

(d) In every verbal lease of a tenant house located on a poultry farm and every written lease of a tenant house located on a poultry farm in which no term is expressed, the landlord or tenant, as the case may be, shall have 14 days to notify the landlord/or tenant, as the case may be, that the lease of the tenant house is terminated, except that this subsection shall not apply to a tenant who is not involved with the management or supervision of poultry.

(60 Del. Laws, c. 175, § 1; 61 Del. Laws, c. 242, § 1; 62 Del. Laws, c. 302, § 1; 69 Del. Laws, c. 339, §§ 1, 2.)

§ 6703 Lease in which term expressed; notice to terminate; continuation of lease.

(a) In every written lease of agricultural land, which by its terms is for a definite period, the lease shall terminate on the expiration date thereof; provided, however, the landlord or tenant gives the other party notice in writing at least 4 months in advance of the expiration date thereof that the landlord or tenant, as the case may be, intends to terminate the lease at the expiration date thereof. If no such notice is given by either party the lease shall become a year to year lease renewing itself yearly under the same terms and conditions until the hereinmentioned notice requirement is met by either party desiring to terminate said lease.

(b) Notice, as provided for herein, shall not be required if all parties to a lease of agricultural land specify in writing that said lease shall terminate on the expiration date thereof without notice of such termination.

(60 Del. Laws, c. 175, § 1; 61 Del. Laws, c. 242, § 2.)

§ 6704 Remedy of agricultural landlord.

Grantees of reversions and remainders in any lands, tenements or hereditaments let to lease, and their heirs, executors, administrators or assigns, shall have the same remedies, by entry or action, or otherwise, against the lessees, their executors, administrators or assigns, for any waste done, or for the nonperformance of any condition, covenant or contract contained in the lease or demise, as the grantors could have.

(60 Del. Laws, c. 175, § 1.)

§ 6705 Distress on agricultural leases.

(a) Distress will lie for any rent due and owing on agricultural lands, and distraint may be effected on any personalty including a quantity or share of crops being grown by the tenant on the land of the landlord.

(b) A distress may be of the grain, orchard produce or other crops found upon the premises out of which the rent issues, or upon which it is charged, whether growing, severed, in sheaves, stacks or otherwise, as well as upon horses, cattle and other goods and chattels of the tenant being upon the premises; provided, however, goods and chattels not the property of the tenant, but being in his possession or upon the premises, are not subject to distraint. Also excepted from this section are any animals, not the property of the tenant, which have escaped into the premises of the landlord through a defect in the fences which the tenant was bound to repair. Goods and chattels which have been sold or leased to the tenant under the terms of a conditional sales contract or lease, properly recorded in accordance with law, are not subject to the process of the agricultural landlord's distress.

(60 Del. Laws, c. 175, § 1.)

§ 6706 Preference of rent in cases of execution.

(a)(1) If grain or other produce, growing or being upon premises held by a tenant, for which rent to be paid is a quantity or share of grain or other produce, is seized by virtue of any process of execution, attachment or sequestration, such agricultural produce shall be first applied to the payment of the year's rent before it is applied to the payment of other debts of the tenant.

(2) Any agricultural produce remaining after the payment of the year's rent shall be applied to other debts of the tenant before process is issued against other personalty.

(3) If the rent is to be paid by a particular crop, whatever amount of that particular crop is found upon the premises shall be first taken as payment or part payment of that rent.

(4) If the crops are still planted or growing, the person executing upon such crops shall be responsible for the proper cultivation and care of the crops.

(5) No person shall remove the grain or produce of an agricultural tenant who is in arrears for rent without either paying the rent proper to be rendered from such property, or giving, or tendering to the landlord or other person entitled to the rent, good security for payment of the same.

(b) In the case of a removal of agricultural produce in violation of this section, the landlord or other person entitled to the rent may immediately follow and distrain upon the produce removed, and may proceed in the same manner as if the rent had been in arrears at the time of removal.

(60 Del. Laws, c. 175, § 1.)

§ 6707 Removal by tenant of hay.

Whenever a tenant at the beginning of that tenant's tenancy has moved or carried upon the demised premises any hay, the tenant shall at the expiration of that tenant's tenancy be authorized to remove from the premises, without the consent of the owner, a like quantity of hay. In any dispute concerning the quantity of hay removed or carried upon such demised premises by the tenant at the beginning of his tenancy, the burden of proof shall be upon the tenant.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6708 Obstruction by tenant; protection afforded tenant's crops.

In the absence of a written contract to the contrary, no tenant of a farm shall obstruct or interfere with the cultivation and care of fruit trees, the seeding of wheat and other grains where by custom or by contract such seeding is to be done by the incoming tenant or the setting of plants necessary for future crops, by the landlord or that landlord's incoming tenant, their agents and employees, but no injury may be done to growing crops of the tenant, and such tenant shall remove or carry over such crops as is the custom in the community at a reasonable time to permit the seeding or setting of plants.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6709 Duties of outgoing tenants with respect to corn.

Any agricultural tenant who grew corn or who is growing corn the year the tenant surrenders possession of the premises shall harvest all corn which the tenant leaves on the premises at the time of that tenant's removal. In the event the outgoing tenant, or the tenant giving up possession does not harvest the corn on the farm, then the incoming tenant may be privileged to enter upon the farm and harvest the corn and charge the expenses to the crop.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6710 Rent payable with portion of grain or produce.

In all cases where land shall be rendered in consideration of the rendering of a portion of the crops raised upon the same, or for a specific amount of grain or other produce, and the tenant shall fail to render such grain or produce according to the terms of the contract, the landlord may levy a distress for the same.

(60 Del. Laws, c. 175, § 1.)

§ 6711 Distress of agricultural produce; appraisal.

Where the distress is for grain or produce, the person authorized to levy such distress shall summon and cause to be sworn 2 disinterested persons, whose duty it shall be to estimate under oath the money value of the specific amount or quantity of grain, or other produce or proportion of the crops agreed upon as rent, and thereupon to proceed to levy the said distress.

(60 Del. Laws, c. 175, § 1.)

§ 6712 Delivery of grain or other produce, or payment of estimated value.

The tenant whose goods are distrained in accordance with this chapter shall have that tenant's election at any time before the goods, chattels and property distrained shall be sold under such distress to deliver the rent of grain or other produce or proportion of crops to the landlord, or to pay the landlord the estimated value, together in both cases with the expense of said distress; whereupon all proceedings in the said distress shall cease. But nothing herein contained shall limit the tenant from any action to recover goods unlawfully taken or to take any action to contest the fairness of such valuation.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6713 Number and compensation of appraisers.

No sheriff, constable or other person making distress for rent shall summon more than 2 appraisers of property, and the compensation of the appraisers shall be $5.00 each, to be recovered and paid as other costs in such cases. In distress for money rent on agricultural leases, the appraisers shall not be summoned.

(60 Del. Laws, c. 175, § 1.)

§ 6714 Crops reserved as rent.

In all cases of renting lands wherein a share of the growing crop or crops shall be reserved as rent, said rent reserved shall be a lien upon such crop or crops, and such crop or crops shall not be seized in bankruptcy or insolvency, or by process of law issued against the tenant.

(60 Del. Laws, c. 175, § 1.)

§ 6715 Lien on crops.

In all cases of renting land wherein a share of the growing crop or crops shall be reserved as rent, or wherein advances are made by the landlord upon the faith of the crops to be grown, said rent reserved and such advances made shall be a lien on such crop or crops, which shall not be divested by any sale by any administrator of a deceased tenant, or by the assignment of the tenant in insolvency, or by process of law issued against the tenant; provided, however, that at the time of the said renting the contract under and by which the said advances are made shall be reduced to writing, duly attested by the said landlord and tenant. Before such advances shall be made a lien, however, the contract under which such advances are made shall be recorded as other liens are recorded in the county wherein the land lies.

(60 Del. Laws, c. 175, § 1.)

§ 6716 Preference of rent in cases of execution.

Liability of goods levied upon for 1 year's rent:

(1) If goods, chattels or crops of a tenant being upon premises held by the tenant by demise under a rent of money are seized by virtue of any process of execution, attachment or sequestration, the goods and chattels shall be liable for 1 year's rent of the premises in arrear or growing due, at the time of the seizure, in preference to such process; accordingly the landlord shall be paid such rent, not exceeding 1 year's rent, out of the proceeds of the sale of such goods and chattels, before anything shall be applicable to such process.

(2) The sheriff, or other officer, who sells the goods and chattels of a tenant upon process of execution, attachment or sequestration shall at least 10 days before such sale give written notice of the time and place thereof to the landlord if residing in the county, and if not, to any known agent of the landlord in the county.

(25 Del. C. 1953, § 6501; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 12.)

§ 6717 Taxes paid by tenant; setoff against rent; recovery from owner.

Any tax laid upon lands or tenements according to law which is paid by or levied from the tenant of such lands or tenements, or a person occupying and having charge of same, shall be a setoff against the rent or other demand of the owner for the use, or profits, of such premises. If there is no rent or other demand sufficient to cover the sum so paid or levied, the tenant or other person may demand and recover the same from the owner, with costs. This provision shall not affect any contract between the landlord and tenant.

(25 Del. C. 1953, § 6502; 58 Del. Laws, c. 472, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 513, § 13.)

§ 6718 Jurisdiction; service of process.

An action for possession involving an agricultural lease shall be heard by the Justice of the Peace Court which hears civil cases in the county in which the property is located. In the event that the property involved in the litigation is situated in more than 1 county, jurisdiction shall lie in the county in which the majority of the property sits. The provisions of Chapter 57 of this title shall apply to any such action. Service of process shall be delivered by personal service as prescribed in Justice of the Peace Court Civil Rules or certified mail, return receipt requested; there shall be no requirement that the property be posted to effect service of process, unless other means of service have first failed.

(79 Del. Laws, c. 255, § 1.)

Subchapter II
Miscellaneous

§ 6721 Disposition of manure.

(a)(1) In the absence of an express agreement between the parties, an agricultural tenant, whether a tenant at will or for a term of years, shall have no right to remove, or sell for removal, any manure made in the ordinary course of that tenant's husbandry on the farm

occupied by such tenant and consisting of the collections from any stable or barnyard, or of composts formed by an admixture of these with soil or other substances.

(2) If an agreement between the landlord and the tenant grants to the tenant the right to remove the manure made on the premises, the tenant shall do no act which will do unnecessary injury to the soil, and may not remove soil with the manure.

(3) During the term of the lease, however, the tenant of a farm lease is entitled to the possession of the manure made thereon in the ordinary course of husbandry, for the purpose of using it on the farm but shall have no right to sell it. If the tenant sells the manure, the landlord shall have the choice of receiving the money paid, or he may maintain an action against the purchaser for the true value of the manure if the amount paid was less than the true value.

(b) A tenant who uses the demised premises as a corral for cattle and feeds such cattle with supplies procured from sources foreign to the demised land may remove all manure made by them which is not commingled with the soil, provided such tenant uses reasonable care and skill when removing the manure from the land so as to prevent injury thereto.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6722 Improper tillage and cutting of timber.

The cutting of timber by the tenant on leased agricultural land, without the consent of the landlord in writing, is waste. Improper tillage and the cutting of timber may be enjoined by the landlord, who may also bring an action for double the damage done to the land, loss of value of the land and loss of value of the crop or timber.

(60 Del. Laws, c. 175, § 1.)

§ 6723 Assignment of farm leases.

A lease of land on shares, including the use of buildings, farm implements, stock and other personal property, is a personal contract and is not assignable without the consent of the lessor; provided, however, where the original lease runs "to the lessee and that lessee's assigns," or where the crop has been harvested and marketed, the lease shall be assignable.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6724 Delivery of crop rent.

In the absence of any agreement between a landlord and that landlord's tenant fixing the place at which crop rent shall be delivered, it shall be delivered upon the leased premises.

(60 Del. Laws, c. 175, § 1; 70 Del. Laws, c. 186, § 1.)

Part VI
Manufactured Home Communities
Chapter 70
MANUFACTURED HOMES AND MANUFACTURED HOME COMMUNITIES
Subchapter I
Manufactured Home Owners and Community Owners Act

§ 7001 Purposes and policies; enforceability.

(a) This subchapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) To clarify and establish the law governing the rental of lots for manufactured homes as well as the rights and obligations of manufactured home community owners (landlords), manufactured home owners (tenants) and residents of manufactured home communities; and

(2) To encourage manufactured home community owners and manufactured home owners and residents to maintain and improve the quality of life in manufactured home communities.

(b) This subchapter applies to all rental agreements for manufactured home lots and regulates and determines the legal rights, remedies and obligations of all parties to a rental agreement, wherever executed, for a lot for a manufactured home in a manufactured home community within this State. A provision of a rental agreement which conflicts with a provision of this subchapter and is not expressly authorized herein is unenforceable. The unenforceability of a provision does not affect the enforceability of other provisions of a rental agreement which can be given effect without the unenforceable provision.

(25 Del. C. 1953, § 7001; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7001A The Delaware Manufactured Housing Alternative Dispute Resolution Act.

(75 Del. Laws, c. 382, § 1; 70 Del. Laws, c. 186, § 1; repealed by 80 Del. Laws, c. 53 § 1, eff. June 26, 2015.)

§ 7002 Jurisdiction.

(a) Any person, whether or not a citizen or resident of this State, who owns, holds an ownership or beneficial interest in, uses, manages or possesses real estate situated in this State submits to the jurisdiction of the courts of this State as to any action or proceeding for the enforcement of an obligation or right arising under this subchapter.

(b) A summary proceeding to recover the possession of a rented lot, pursuant to Chapter 57 of this title, may be maintained in the Justice of the Peace Court in the county where the property is located.

(c) In the absence of a provision in this subchapter governing the relationship between a manufactured home owner (tenant) and a manufactured home community owner (landlord), the Residential Landlord-Tenant Code set forth in Part III of this title governs the relationship. The Residential Landlord-Tenant Code also governs the rental of manufactured homes. In the event of conflict between the provisions of this subchapter and those of the Residential Landlord-Tenant Code, this subchapter governs issues pertaining to the rental of lots in manufactured home communities.

(25 Del. C. 1953, § 7002; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 64 Del. Laws, c. 95, § 1; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7003 Definitions.

Unless otherwise expressly stated, if a word or term is not defined under this section, it has its ordinarily accepted meaning or means what the context implies. In this subchapter, the following definitions apply.

(1) "Agreement" means a written rental agreement.

(2) "Authority" means the Delaware Manufactured Home Relocation Authority.

(3) "Common area" means shared land or facilities within a manufactured home community over which the landlord retains control.

(4) "Community owner" or "landlord" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(5) "Guest" or "visitor" means a person who is not a tenant or resident of a manufactured home community and who is on the premises of the manufactured home community with the express or implied permission of a tenant or resident of the community.

(6) "Hold over" means to retain possession of a rented lot in a manufactured home community after the termination, nonrenewal, or expiration of a rental agreement governing the rented lot.

(7) "Holdover" means an act of retaining or a tenant who retains possession of a rented lot in a manufactured home community after the termination, nonrenewal, or expiration of a rental agreement governing the rented lot.

(8) "Home owner" or "tenant" means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(9) "Landlord" or "community owner" means the owner of 2 or more manufactured home lots offered for rent. It includes a lessor, sublessor, park owner or receiver of 2 or more manufactured home lots offered for rent, as well as any person, other than a lender not in possession, who directly or indirectly receives rents for 2 or more manufactured home lots offered for rent and who has no obligation to deliver such rents to another person.

(10) "Lease" or "rental agreement" means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(11) "Manufactured home" means a factory-built, single-family dwelling:

a. Transportable in 1 or more sections, which is either 8 body feet or more in width and 40 body feet or more in length, or, when erected on site, has more than 400 square feet in living area; and

b. With or without a permanent foundation and designed to be used as a year-round dwelling when connected to the required utilities; and

c. If manufactured since June 15, 1976, built in accordance with manufactured home construction requirements promulgated by the federal Department of Housing and Urban Development (HUD) or by other applicable codes. "Manufactured home" is synonymous with "mobile home", "trailer", and similar terms used elsewhere in this title.

(12) "Manufactured home community" means a parcel of land where 2 or more lots are rented or offered for rent for the placement of manufactured homes. Manufactured home community is synonymous with "mobile home park", "trailer park", and "trailer court".

(13) "Notice" means a written announcement, warning or other communication delivered to or served upon a person, as designated in statute.

(14) "Premises" means the rented lots in a manufactured home community, the structures upon them, and the facilities and appurtenances thereon, as well as the grounds, common areas and facilities held out for the use of the tenants and/r residents generally or whose use is contracted for between landlord and tenant.

(15) "Quiet enjoyment" includes the peaceful possession of the premises in a manufactured home community without unwarranted disturbance.

(16) "Recreational vehicle" means a travel trailer, camping trailer, park trailer, camper, camper motor home or similar accommodation which is primarily designed as temporary living quarters for recreational camping or for seasonal or travel use and which either has its own motor power or is mounted on or drawn by another vehicle.

(17) "Rent" means money paid by a tenant to a landlord for the possession, use and enjoyment of a rented lot and other parts of the premises in a manufactured home community pursuant to a rental agreement. For purposes of summary possession, rent includes late fees for rent, other fees and charges, including utility charges, and the tenant's share of the Delaware Manufactured Home Relocation Trust Fund assessment.

(18) "Rental agreement" or "lease" means a written contract between a landlord and a tenant establishing the terms and conditions whereby a manufactured home is placed upon or is allowed to remain upon a rented or leased lot in a manufactured home community.

(19) "Resident" means a person who resides in a manufactured home located in a manufactured home community. A resident may or may not be a tenant.

(20) "Seasonal property" means a parcel of land operated as a vacation resort on which 2 or more lots are rented or offered for rent for the placement of manufactured homes or other dwellings used less than 8 months of the year. A seasonal property is characterized by a lack of availability of year-round utilities and by the fact that its tenants have primary residences elsewhere.

(21) "Tenant" or "home owner" means an owner of a manufactured home who has a tenancy of a lot in a manufactured home community; a lessee.

(22) "Tree" for the purpose of this chapter means a woody, perennial plant at least 25 feet in height or with a main stem a minimum of 6 inches in diameter.

(23) "Trust Fund" means the Delaware Manufactured Home Relocation Trust Fund.

(24) "Utility charge" means a charge by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television or trash.

(25) "Utility service" means a service provided by a landlord or others to a tenant for a commodity such as water, sewer, electricity, fuel, propane, cable television or trash.

(25 Del. C. 1953, § 7003; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 1; 77 Del. Laws, c. 258, § 1.)

§ 7004 Exemptions.

(a) The rental of ground upon which a recreational vehicle is placed, including any facilities or utilities thereon, is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating or governing the legal rights of parties to any lease or rental agreement for the ground on which a recreational vehicle is situated.

(b) The rental of ground within the category of seasonal property is exempt from the requirements of this subchapter, and nothing in this subchapter may be construed as determining, regulating, or governing the legal rights of parties to any lease or rental agreement for the rental of ground within the category of seasonal property.

(25 Del. C. 1953, § 7005; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 2.)

§ 7005 Requisites for rental of a manufactured home lot.

A landlord shall not rent a lot in a manufactured home community without first delivering to the prospective tenant a copy of the proposed rental agreement, a copy of the rules, standards and fee schedule of the manufactured home community, a copy of this subchapter, and a summary of this subchapter written by the Office of the Attorney General and made available to all landlords prior to January 1, 2012, all of which shall be delivered to the prospective tenant at the time the prospective tenant obtains from the landlord an application for tenancy in the community. The prospective tenant shall acknowledge such delivery by signing a receipt.

(74 Del. Laws, c. 35, § 2; 78 Del. Laws, c. 20, § 1; 79 Del. Laws, c. 412, § 1.)

§ 7006 Provisions of a rental agreement.

(a) All new and renewing rental agreements, including those rental agreements whose original term has expired, for a lot in a manufactured home community must contain:

(1) Specific identification and location of the rented lot within the manufactured home community;

(2) A stipulation of the total amount of annual rent for the lot;

(3)a. A stipulation of the term of the rental agreement and the terms of payment of rent, which shall be in monthly increments, unless the parties agree otherwise as noted below. In addition, rental payments shall be paid by the tenant to the owner/landlord in equal dollar amounts, or as close thereto as possible, and shall be extended equally, pro rata on a monthly basis, over a calendar year. Any provision in a rental agreement or otherwise which requires rental payments or rental increases to be paid in one lump sum shall be null and void. Nothing herein shall preclude a tenant from requesting, and the owner/landlord from agreeing thereto, that rental payment be made in a 1-time lump sum payment by the tenant.

b. The provisions of this section shall be prospective in nature.

c. The monthly rental amount, as aggregated, must not exceed the annual rental amount and such monthly rental amount shall be determined by dividing the total annual rental amount, as set forth in the rental agreement, into 12 equal payments, to be made on a monthly rental schedule.

(4) The amount of rent due for each term of payment and the date on which each payment of rent is due;

(5) The amount of any late-payment fee for rent and the conditions under which the fee may be imposed;

(6) A listing of each other fee or charge in a manner that identifies the service to be provided for the fee or charge in accordance with the provisions of § 7008 of this title;

(7) The name and address of the landlord or the person authorized to receive notices and accept service on the landlord's behalf;

(8) The name and location of the federally insured financial institution where the landlord's security-deposits account is located;

(9) A services rider which contains a description of each utility, facility and service provided by the landlord and available to the tenant, clearly indicating the financial responsibility of the tenant and the landlord for installation and maintenance, and for the related fees or charges that may be imposed upon the tenant by the landlord;

(10) A rental agreement summary which must contain a brief description of the manufactured home, the rented lot, rental amount, term, landlord's mailing address, tenant's mailing address, fees, security deposit, information regarding rent adjustment, community status and method of notice; in addition, the summary must include the amount of rent charged for the lot for the 3 most recent past years. If the amounts are unknown after a diligent search or if the lot was not rented, a statement to that effect must be included. The rent history provided pursuant to this paragraph may not be used as a predictor of future rent increases, nor may it be used against the community owner/landlord in any way;

(11) The grounds for termination, as described in this subchapter;

(12) A specific reference to this subchapter as the law governing the relationship between the landlord and the tenant regarding the lot rental;

(13) Provisions requiring the landlord to:

a. Maintain and regrade the lot area where necessary and in good faith, as permitted by law, to prevent the accumulation of standing water thereon and to prevent the detrimental effects of moving water if such efforts shall not cause the creation of any new accumulations of standing water or detrimental effects of moving water on another lot area. "Standing water" shall be understood to mean motionless water, not flowing in a stream, tide or current, that has not dissipated within 48 hours after cessation of precipitation. Areas defined by local, state, or federal regulations as wetlands, flood plains, tidal areas, water recharge areas, or recorded drainage systems are exempt from this provision.

b. Maintain the manufactured home community in such a manner as will protect the health and safety of residents, visitors and guests;

c. Identify each lot area in the community in such a way that each tenant can readily identify that tenant's own area of responsibility;

d. Maintain the community, including common areas and rental lots not under rent, keeping it free of species of weeds or plant growth which are noxious or detrimental to the health of the residents;

e. Make a good faith effort to exterminate insects, rodents, vermin or other pests which are dangerous to the health of the residents when an infestation exists in the common areas of the community;

f. Maintain all water, electrical, plumbing, gas, sewer, septic and other utilities and services provided by the landlord in good working order, repairing these utilities and services within the earlier of 48 hours after written notification of a utility or service problem, or as soon thereafter as is practicable if a repair within 48 hours is not practicable;

g. When applicable, specify whether septic systems are to be maintained by the landlord or by the tenant;

h. Respect the privacy of residents and agree not to enter into, under or on the manufactured home without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property. However, the landlord may, with 72 hours' notice, inspect any utility connections owned by the landlord or for which the landlord is responsible;

i. Maintain all roads within the community in good condition;

j. Comply with all federal, State and local building codes;

k. Allow the tenant freedom of choice in the purchase of goods and services other than utilities and related services subject to the limitations in paragraph (b)(13) of this section;

l. Maintain, care for and remove, if necessary, trees on any lot, including common areas, if the tree is at least 25 feet in height or has a main stem/trunk larger than 6 inches in diameter. Such maintenance, care and removal means those steps required to maintain a live and healthy tree condition per standard horticultural practices in accordance with the standards as set forth by the American Association of Nurserymen.

1. Nothing contained in this subsection shall require the landlord to remove leaves, needles, pine cones, sap, pods, seed containers, or any such material normally produced by the tree as part of its life cycle.

2. The landlord must respect the privacy of the tenant and not enter the rented lot to maintain, care for, and/or remove trees without the permission of the tenant or an adult resident unless emergency circumstances exist and entry is required to prevent injury to person or damage to property.

(14) Provisions requiring the tenant to:

a. Keep the exterior of the manufactured home and the rented lot in a clean and sanitary condition;

b. Refrain from storing outside on the lot occupied by the tenant's manufactured home building materials, furniture or similar items usually not stored outside a home by a property owner in a residential area;

c. Dispose of all rubbish, garbage and other waste materials in a clean and sanitary manner;

d. Abide by all reasonable written rules concerning use, occupation and maintenance of the premises, and amendments thereto, as provided for in § 7019 of this title;

e. Abide by all reasonable written manufactured home standards, and amendments thereto, as provided for in § 7020 of this title.

(b) A rental agreement for a lot in a manufactured home community may not contain:

(1) A provision whereby the tenant authorizes a person to confess judgment on a claim arising out of the rental agreement;

(2) A provision whereby the tenant agrees to waive or to forego any right or remedy provided by law;

(3) A provision whereby the tenant waives the right to a jury trial;

(4) A provision which permits the landlord to take possession of the rented lot or the tenant's personal property without the benefit of formal legal process;

(5) A provision which permits the landlord to collect a fee for late payment of rent without allowing the tenant to remit the rent in full a minimum of 5 days beyond the date the rent is due;

(6) A provision which permits the landlord to impose for late payment of rent, based on a monthly payment, a fee in excess of the greater of $25 or 5% of the rental payment specified in the rental agreement;

(7) A provision which permits the landlord to charge an amount in excess of 1 month's rent for a security deposit, unless mutually agreed to, or to retain the security deposit upon termination of the rental agreement even though the tenant has paid the rent and any fees or charges in full as of the date of termination and has caused no damage to the landlord's property;

(8) A provision which permits the landlord to collect a deposit in excess of 1 normal billing period for any governmental mandated charge which is the responsibility of the tenant and would ultimately become the responsibility of the landlord if not paid by the tenant, or to retain the deposit upon termination of the lease if the tenant has paid the mandated charge;

(9) A provision which prohibits the tenant from terminating the rental agreement upon a minimum of 30 days notice when a change in the location of the tenant's current employment causes the tenant to commute 30 miles farther from the manufactured home community than the tenant's current commuting distance from the community, or a provision which prohibits a tenant who is a member of the armed forces of the United States from terminating a rental agreement with less than 30 days notice to the landlord if the tenant receives reassignment orders which do not allow at least 30 days notice;

(10) A provision for a waiver of any cause of action against, or indemnification for the benefit of, the landlord by the tenant for any injury or harm caused to the tenant or to residents, guests or visitors or to the property of the tenant, residents, guests or visitors

resulting from any negligence of the landlord or of a person acting for the landlord in the performance of the landlord's obligations under the rental agreement;

(11) A provision which denies to the tenant the right to treat a continuing, substantial violation by the landlord of any agreement or duty protecting the health, welfare or safety of the tenant or residents as a constructive or actual eviction which would otherwise permit the tenant to terminate the rental agreement and to immediately cease payments thereunder; provided, that the landlord fails to correct the condition giving rise to the violation or fails to cease the violation within a reasonable time after written notice is given to the landlord by the tenant;

(12) A provision which prohibits displaying a for-sale sign that advertises the sale of a manufactured home in a manufactured home community; however, the landlord may establish reasonable limitations as to the number of signs and the size and placement of signs;

(13) A provision which unreasonably limits freedom of choice in the tenant's purchase of goods and services, provided however, that:

a. The landlord is not required to allow service vehicles to have access to the manufactured home community in such numbers or with such frequency that a danger is created or that damage beyond ordinary wear and tear is likely to occur to the infrastructure of the community;

b. The landlord may restrict trash collection to a single provider; and

c. The landlord may select shared utilities;

(14) A provision which permits the recovery of attorneys' fees by either party in a suit, action or proceeding arising from the tenancy;

(15) A provision which violates any federal, state or local law;

(16) A provision which requires the tenant to:

a. Sell or transfer a manufactured home to the landlord; or

b. Buy a manufactured home from the landlord; or

c. Sell a manufactured home through the services of the landlord;

(17) A provision which requires the tenant to provide the landlord with a key to the tenant's manufactured home or any appurtenances thereto;

(18) A provision which regulates the use of satellite dishes or television antennas that conflicts with federal law or FCC regulations;

(19) A provision which requires the tenant to accept automatic deduction of rent payments from the tenant's checking or other account;

(20) A provision which grants the landlord an option or right of first refusal to purchase the tenant's manufactured home; and

(21) A provision which limits to a liquidated sum the recovery to which the tenant otherwise would be entitled in an action to recover damages for a breach by the landlord in the performance of the landlord's obligations under the rental agreement.

(c) If a court of competent jurisdiction finds that a tenant's rental agreement contains a provision in violation of subsection (b) of this section:

(1) The landlord shall remove the provision and provide all affected tenants by regular first-class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and

(2) The landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.

(d) If a court of competent jurisdiction finds that a landlord has wilfully included in the rental agreement a provision in violation of subsection (b) of this section, the tenant is entitled to recover 3 months' rent in addition to an award under subsection (c) of this section.

(e) A rental agreement must be executed before a tenant occupies a lot.

(f) A landlord may not offer a lot for rent in a manufactured home community unless the lot conforms to the applicable state, county or municipal statutes, ordinances or regulations under which the manufactured home community was created, or under which the manufactured home community currently and lawfully exists.

(g) A violation of subsection (f) of this section is punishable by a fine of not more than $1,000.

(h) If a court of competent jurisdiction finds that a tenant's rental agreement fails to contain a provision required by subsection (a) of this section:

(1) The landlord shall include the provision and provide all affected tenants by regular first class mail with proof of mailing or by certified mail, return receipt requested, at the address of the tenants' rented lots, with either an amended rental agreement or corrective addendum to the rental agreement within 30 days of the exhaustion of all appeals, if any are taken; and

(2) The landlord is liable to the tenant for actual damages suffered by the tenant as a result of the violation, plus court costs, if any.

(i) If a court of competent jurisdiction finds that a landlord has wilfully failed to include in the rental agreement a provision required by subsection (a) of this section, the tenant is entitled to recover 3 months' rent in addition to an award under subsection (h) of this section.

(j) Both the landlord and tenant shall comply with the provisions of the rental agreement. The remedies available to a landlord or a tenant set forth in this chapter are in addition to those remedies available to a landlord or a tenant in a court of competent jurisdiction for the failure by the landlord or the tenant to comply with any provision of a rental agreement.

(25 Del. C. 1953, §§ 7004, 7006; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2; 75 Del. Laws, c. 375, § 1; 75 Del. Laws, c. 382, §§ 3-5; 77 Del. Laws, c. 53, § 1; 77 Del. Laws, c. 258, §§ 2, 3; 77 Del. Laws, c. 259, § 1.)

§ 7007 Term of rental agreement; renewal of rental agreement [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) The term of a rental agreement for a lot in a manufactured home community must be:

(1) One year; or

(2) A shorter or longer term that is mutually agreed upon by the parties and is designated in writing within the rental agreement.

(b) Upon the expiration of the term of a rental agreement, the rental agreement must be automatically renewed by the landlord for the same term and with the same provisions as the original agreement, with the exception that modified provisions relating to the amount and payment of rent are permitted, and, with the mutual agreement of all parties to the rental agreement, other modifications not prohibited by law, unless:

(1) The tenant notifies the landlord in writing, a minimum of 60 days prior to the expiration of the rental agreement, that the tenant does not intend to renew it, or a shorter or longer period of time as is mutually agreed upon by the parties; or

(2) The landlord notifies the tenant in writing, a minimum of 90 days prior to the expiration of the rental agreement, that the agreement will not be renewed for due cause, as described in § 7010(a) of this title.

(25 Del. C. 1953, § 7009; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 79 Del. Laws, c. 63, § 4.)

§ 7008 Fees; services; utility rates.

(a) A "fee" or "charge" is a monetary obligation, other than lot rent, designated in a fee schedule pursuant to subsection (b) of this section and assessed by a landlord to a tenant for a service furnished to the tenant, or for an expense incurred as a direct result of the tenant's use of the premises or of the tenant's acts or omissions. A fee or charge may be considered as rent for purposes of termination of a rental agreement, summary possession proceedings or for other purposes if specified in this title.

(b) A landlord must clearly disclose all fees in a fee schedule attached to each rental agreement.

(c) A landlord may assess a fee if the fee relates to a service furnished to a tenant or to an expense incurred as a direct result of the tenant's use of the premises. However, a fee that is assessed due to the tenant's failure to perform a duty arising under the rental agreement may be assessed only after the landlord notifies the tenant of the failure and allows the tenant 5 days after notification to remedy or correct the failure to perform. A tenant's failure to pay the fee within .5 days of notification is a basis for termination of the rental agreement pursuant to § 7010A of this title.

(d) A prospective tenant in a manufactured home community may be required to pay an application fee to be used by the landlord to determine the prospective tenant's credit worthiness. A landlord may not charge an application fee that exceeds the greater of 10% of the monthly lot rent or $50. A landlord shall, upon receipt of any money paid as an application fee, furnish a receipt to the prospective tenant for the full amount paid by the prospective tenant, and shall maintain for a period of at least 2 years complete records of all application fees charged and the amount received for each fee. If a landlord unlawfully demands or charges more than the allowable application fee, the prospective tenant is entitled to damages equal to double the amount demanded or charged as an application fee by the landlord.

(e) If a landlord pays a tenant's utility charge to a third party due to the tenant's failure to do so, the charge is considered a pass-through utility charge. In addition to any late charge paid by the landlord to the third party, the landlord may assess a third-party-payment fee not to exceed the greater of 5% of the total payment by the landlord to the third party or $25.

(f) A landlord may assess a late-payment fee for the late payment of rent if:

(1) The rent is not paid within 5 days after the due date specified in the rental agreement; and

(2) The rental agreement provides for a late-payment fee.

(g) A landlord may assess an optional-user fee for the use of designated facilities or services. Failure of a tenant to pay an optional-user fee for requested use of a facility or service may not be the basis for termination of the rental agreement. However, continued use of the requested facility or service without paying the optional-user fee may result in termination of the rental agreement pursuant to § 7010A of this title. Optional-user fees include, but are not limited to, fees for the use of a swimming pool, marine facilities and tennis courts.

(h) The amount of an optional-user fee must be reasonably related to the cost of providing the facility or service upon which the fee is based.

(i) A fee may not be increased more than once during any 12-month period. A utility rate may be adjusted as provided in subsection (j) of this section. A landlord shall notify a tenant in writing of any fee increase or additional fee at least 60 days prior to the effective date of the increase or addition. A fee increase or an additional fee is unenforceable unless proper written notice has been given to the tenant.

(j) A landlord may charge a tenant for utilities provided by the landlord to the tenant if specified in the rental agreement. The rate charged by a landlord for a utility may not exceed the utility's retail consumer rate, and the rate charged by the landlord may be adjusted without notice on a monthly basis.

(k) A landlord may not assess an entrance or exit fee. An entrance fee is any fee assessed by a landlord to a tenant prior to the tenant's occupancy of a rented lot, except for an application fee or a security deposit, or for those fees or charges for utilities, for direct services actually rendered, or for the use of facilities, all of which must be identified and described in the rental agreement or in a separate notice pursuant to § 7006 of this title. An exit fee is a fee assessed by a landlord to a tenant immediately prior to or after the tenant's final departure from the rented lot, except for those fees or charges for direct services actually rendered by the landlord which would not otherwise be provided without charge in the normal course of business.

(l) If a utility, facility or service previously provided pursuant to the rental agreement is discontinued, the landlord shall adjust the tenant's rent, charge or fee payment by deducting the landlord's direct operating costs of providing the discontinued utility, facility or service. An adjustment is determined as follows:

(1) No less than 60 days prior to the discontinuance of the utility, facility or service, the landlord shall notify all affected tenants of the discontinuance, and include in the notification an explanation of the discontinuance and the reduction in the direct operating cost, if any, associated with the discontinuance.

(2) Within 10 days after the landlord's notice pursuant to paragraph (l)(1) of this section, the tenants may form a committee not to exceed 5 members. The committee and the landlord shall meet together at a mutually convenient time and place to discuss the discontinuance of the utility, facility or service.

(3) At the meeting, the landlord shall disclose and explain all material factors for the proposed discontinuation of the utility, facility or service, together with supporting documentation. The reduction in the direct operating cost of the utility, facility or service, as determined by an independent public accountant or certified public accountant paid for by the landlord, is binding upon both the landlord and the tenants.

(m) Notwithstanding any other provision in this chapter, where there exists a community center available for use by community tenants, the owner/landlord shall not refuse to make such community center available to a tenant's association or to a group of tenants, whose purpose of such use is to address matters affecting or relating to such tenants' rights, obligations and/or privileges in, about, and/or relating to the manufactured home community. The use of the community center for such meetings shall be at no additional charge to the tenants as imposed for ordinary use by tenants and the landlord shall honor the request for use of the community center by the tenants' association or group of tenants within 14 days after a request to the landlord has been made. The tenants shall abide by all existing rules and/or regulations established for the community center.

(65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 77 Del. Laws, c. 390, § 1.)

§ 7009 Termination of rental agreement by tenant during first month of occupancy; during first 18 months of occupancy.

(a) If a landlord fails to substantially comply with the provisions of a rental agreement, or if there is a material noncompliance with this subchapter or any statute, ordinance or regulation governing the landlord's maintenance or operation of the manufactured home community, a tenant may, upon written notice to the landlord, terminate the rental agreement and vacate the rented lot by removing that tenant's manufactured home and all personal possessions at any time during the first month of occupancy. The tenant has no further obligation to pay rent after the date of vacating the lot. A tenant retains the right to terminate a rental agreement beyond the first month of occupancy if the tenant remains in possession of the lot in reliance on the written promise by the landlord to correct the condition or conditions which would justify termination of the agreement by the tenant during the first month of occupancy.

(b) If a condition exists which deprives a tenant of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement, the tenant may notify the landlord in writing of the condition, and, if the landlord does not remedy the condition within 15 days from the date of mailing, the tenant may terminate the rental agreement and vacate the rented lot by removing the tenant's own manufactured home and all personal possessions. The tenant has no further obligation to pay rent after the date of vacating the lot. Notice pursuant to this subsection need not be given if the condition renders the premises uninhabitable or poses an imminent threat to the health, safety or welfare of the tenant or a resident of the tenant's manufactured home.

(c) A tenant may not terminate a rental agreement pursuant to this section for a condition caused by lack of due care by the tenant, a resident of the tenant's manufactured home, or any other person on the premises with the tenant's or resident's consent.

(d) If a condition referred to in subsection (a) or (b) of this section was caused by the landlord, the tenant may recover any damages sustained as a result of the condition, including, but not limited to, reasonable expenditures necessary to obtain adequate substitute housing while the manufactured home is uninhabitable or while an imminent threat to health, safety or welfare exists, or while the tenant is deprived of a substantial part of the benefit and enjoyment of the bargain pursuant to the rental agreement prior to the termination of the rental agreement by the tenant, and for a reasonable length of time following the termination of the rental agreement.

(e) If a landlord or the landlord's authorized representative intentionally misrepresents a material fact regarding a manufactured home community, the scope or extent of services provided by the landlord, or a provision of a rental agreement in a brochure, newspaper, radio or television advertisement, or other document or advertisement, for the purpose of inducing a tenant to enter into a rental agreement, and the tenant reasonably relies upon the misrepresentation to the tenant's detriment when entering into the rental agreement, the tenant has the right to terminate the rental agreement within 18 months of execution of the rental agreement.

(25 Del. C. 1953, § 7010; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7010 Termination or nonrenewal of rental agreement by landlord; due cause; change in land use.

(a) A landlord may terminate a rental agreement for a lot in a manufactured home community before it expires or may refuse to renew an agreement only for due cause. "Due cause" means:

(1) An intended change in the use of the land of a manufactured home community as specified in subsection (b) of this section; or

(2) The grounds for termination pursuant to § 7010A of this title.

(b) If a change is intended in good faith in the use of land on which a manufactured home community or a portion of a manufactured home community is located and the landlord intends to terminate or not renew a rental agreement, the landlord shall:

(1) Provide all tenants affected with at least a 1-year termination or nonrenewal notice, which informs the tenants of the intended change of use and of their need to secure another location for their manufactured homes. The landlord may not increase the lot rental amount of an affected tenant after giving notice of a change in use;

(2) Give all notice required by this section in writing. All notice must be posted on the affected tenant's manufactured home and sent to the affected tenant by certified mail, return receipt requested, addressed to the tenant at an address specified in the rental agreement or at the tenant's last known address if an address is not specified in the rental agreement;

(3) Provide, along with the 1-year notice required by paragraph (b)(1) of this section, a relocation plan (Plan) to each affected tenant of the manufactured home community. The Plan must be written in a straightforward and easily comprehendible manner and include the following:

a. The location, telephone number and contact person of other manufactured home communities, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;

b. The location, telephone number and contact person of housing for tenants with disabilities and for older tenants, known to the landlord after reasonable effort, within a 25-mile radius of the manufactured home community where the change of land use is intended;

c. A listing, known to the landlord after reasonable effort, of government and community agencies available to assist tenants with disabilities and older tenants;

d. A basic description of relocation and abandonment procedures and requirements;

e. A preliminary indication of whether a tenant's manufactured home can or cannot be relocated;

f. A copy of this section of the Code;

(4) Submit the Plan to the Delaware Manufactured Home Relocation Authority at the same time that the Plan is submitted to the affected tenants;

(5) Update the Plan and distribute the updated Plan every 3 months. If the landlord fails to provide a quarterly update to each affected tenant and to the Authority, the date of termination of the tenant's rental agreement will be extended by 1 month for each omitted quarterly update;

(6) During the relocation process observe and comply with all federal, state and local laws relating to older tenants and tenants with disabilities.

(c) If a manufactured home community owner does not in good faith intend to change the land use of the community, yet provides a homeowner or tenant with a termination or nonrenewal notice pursuant to subsection (b) of this section, the community owner has committed the act of misrepresentation with intent to deceive the homeowner or tenant.

(1) A violation of this subsection is subject to the following civil penalties:

a. A cease and desist order;

b. Payment of a monetary penalty of not more than $250 for each violation;

c. Restitution;

d. Such other relief as is reasonable and appropriate; and

e. Double the monetary penalty if the homeowner or tenant is over 65 years old.

(2) Prima facie evidence that a community owner did not intend in good faith to change land use includes, but is not limited to, evidence that the community owner reused the land for lot rentals for manufactured homes within 7 years of providing a tenant with a termination or nonrenewal notice, and did not make a material and bonafide effort to change the subdivision plan or zoning designation, or both.

(3) A court may award attorneys' fees and costs to a homeowner if it determines that the community owner violated this section.

(d) If a landlord has given the required notice to a tenant and has fulfilled all other requirements of this subchapter, the failure of the Authority to perform its duties or authorize payments does not prevent the landlord from completing the change in use of land.

(25 Del. C. 1953, § 7011; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2; 75 Del. Laws, c. 375, §§ 2, 3.)

§ 7010A Termination or nonrenewal of rental agreement by landlord; due cause: noncompliance.

(a) A landlord may terminate a rental agreement with a tenant immediately upon written notice if the tenant does not comply with the terms of the rental agreement or the requirements of this subchapter and the noncompliance is the result of:

(1) Clear and convincing evidence that conduct of the tenant or of a resident of the tenant's manufactured home caused, is causing, or threatens to cause, immediate and irreparable harm to any person or property in the manufactured home community;

(2) Conviction of a crime or adjudication of delinquency committed by a tenant or by a resident of the tenant's manufactured home, the nature of which at the time of the crime or act of delinquency caused immediate and irreparable harm to any person or property in the manufactured home community;

(3) Clear and convincing evidence of a material misrepresentation on the tenant's application to rent a lot in the manufactured home community which, if the truth were known, would have resulted in the denial of the application;

(4) The failure of the tenant to provide proper notification to the landlord prior to selling or transferring to a buyer or transferee title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community, pursuant to § 7022(c) of this title; or

(5) The failure of a tenant to bring his or her manufactured home into compliance with written standards pursuant to § 7020(b) or § 7022(e) of this title.

(b) A landlord may terminate a rental agreement with a tenant by providing prior written notice as follows:

(1) If the tenant's noncompliance with the terms of the rental agreement or the requirements of this subchapter involves conduct of the tenant, of a resident of the tenant's manufactured home, or of a guest or visitor of the tenant or resident which results in the disruption of the rights of others entitled to the quiet enjoyment of the premises, the landlord shall notify the tenant in writing to immediately cause the conduct to cease and not allow its repetition. The notice must specify the conduct which formed the basis for the notice and notify the tenant that if substantially the same conduct recurs within 6 months, whether or not the 6-month period falls within 1 lease period or overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(2) If the noncompliance is based upon a condition on or of the premises of the manufactured home community, the landlord shall notify the tenant in writing, specifying the condition constituting the noncompliance and allowing the tenant 12 days from the date of mailing or personal service to remedy the noncompliance. If the tenant remains in noncompliance at the expiration of the 12-day period, whether or not the 12-day period falls within 1 lease period or overlaps 2 lease periods, the landlord may immediately terminate the rental agreement and bring an action for summary possession; or

(3) If rent, which includes late fees for rent, other fees and charges, including utility charges, and the Trust Funds assessment, is not received by the landlord by the 5th day after the due date or during the grace period stated in the rental agreement, whichever is longer, the landlord shall notify the tenant in writing, demanding payment and stating that unless the required payment is made within 7 days from the date of mailing or personal service, the rental agreement will be terminated. If the tenant remains in default after the 7-day period, whether or not the 7-day period falls within 1 lease period or overlaps 2 lease periods, the landlord may terminate the rental agreement and bring an action to recover the rent due and for summary possession.

(c) Whether or not repeated instances of noncompliance fall within 1 lease period or overlap 2 or more lease periods, if there are repeated instances of noncompliance by the tenant with a provision of the rental agreement, with any rule or regulation material to the rental agreement, or with a provision of this subchapter, even when corrected by the tenant, a landlord may immediately terminate the rental agreement and bring an action for summary possession and any moneys due, or may refuse to renew the agreement pursuant to § 7007 of this title. "Repeated instances of noncompliance" include:

(1) Failure of the tenant on 4 separate occasions within 12 consecutive payment periods, to make a rent payment by the fifth day after the due date or during the grace period stated in the rental agreement, whichever is longer, resulting in notice being sent to the tenant pursuant to paragraph (b)(3) of this section;

(2) Failure of the tenant on 2 separate occasions within 12 consecutive payment periods to reimburse a landlord within 7 days of notice from the landlord to the tenant that the landlord paid the tenant's utility charge;

(3) Tender by the tenant on 2 separate occasions within 12 consecutive payment periods of a bank draft or check which is dishonored by a financial institution for any reason, except for a mistake by the financial institution;

(4) Four separate incidents of noncompliance as described in paragraph (b)(1) or (2) of this section within a 12-month period; or

(5) Any combination of four separate incidents of noncompliance as described in any subdivision of this subsection within a 12-month period.

(d) A landlord may not terminate a rental agreement or refuse to renew a rental agreement pursuant to paragraph (c)(1) of this section unless the landlord notifies the tenant after the third separate occasion within 12 consecutive payment periods that a subsequent incident of noncompliance described in paragraph (c)(1) of this section may result in either the immediate termination of the rental agreement or the nonrenewal of the rental agreement at its expiration.

(e) In an action for summary possession based on nonpayment of rent, the tenant is entitled to raise by defense or counterclaim any claim against the landlord that is related to the rental of the lot.

(f) A notice sent to a tenant advising the tenant that the rental agreement is terminated or will be terminated or will not be renewed must specify the reasons for such action in sufficient detail so that the dates, places and circumstances concerning the termination are clear. Mere reference to or recital of the language of this section is not sufficient.

(g) A landlord's right to terminate a rental agreement prior to the expiration of the agreement or right to refuse to renew at the expiration of the agreement does not arise until the landlord has complied with the applicable notice provision upon which the landlord is relying for the termination or non-renewal of the agreement.

(74 Del. Laws, c. 35, § 2.)

§ 7011 Delaware Manufactured Home Relocation Authority [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) The Authority shall be administered by a board of directors (Board) made up of the following 5 voting members: 1 member who is appointed by the Governor from a list of at least 2 nominees submitted by the largest not-for-profit association representing manufactured home owners in the State; 1 member who is appointed by the Governor from a list of at least 2 nominees submitted by the largest not-

for-profit association representing the manufactured home industry in this State; 1 member who is appointed by the Governor from the public-at-large; 1 member who is appointed by the Speaker of the House of Representatives; and, 1 member who is appointed by the President Pro Tempore of the Senate. One nonvoting member shall be appointed by the Attorney General, as a representative of the Consumer Protection Unit of the Justice Department, but none of the last 3 members listed above shall be a landlord, community owner, home owner, or tenant. All Board members shall be residents of the State, and such members shall serve at the pleasure of the authority that appointed such member. The terms of the members shall be staggered so that no more than 2 members' terms end at the same time. The first 2 appointees shall serve for a term of 1 year, the next 2 appointees shall serve for a term of 2 years, and the remaining 1 appointee shall serve for a term of 3 years. Thereafter, all appointees shall serve for a term of 2 years; provided, however, that a member may be appointed for a term of less than 2 years to ensure that the Board members' terms expire on a staggered basis. The term for any member of the Board may subsequently be renewed for an additional term or additional terms. The Governor shall designate 1 member of the Board as the chairperson of the Board.

(b)(1) The board of directors of the Authority may employ or retain such persons as are reasonable and necessary to perform the administrative and financial transactions and responsibilities of the Authority and to perform other necessary and proper functions not prohibited by law. The Authority is responsible for all direct and indirect costs for its operations, including, but not limited to, receipts and disbursements, personnel, rental of facilities and reimbursement to other State agencies for services provided and, therefore, must be fiscally revenue-neutral.

(2) Members of the board of directors of the Authority may be reimbursed from moneys of the Authority for actual and necessary expenses incurred by them as members, but may not otherwise be compensated for their services.

(3) There is no civil liability on the part of, and no civil cause of action of any nature against, the Authority, an agent or employee of the Authority, the board of directors of the Authority, or a member of the board of directors of the Authority for any act or omission in the performance of powers and duties under this subchapter unless the act or omission complained of was done in bad faith or with gross or wanton negligence.

(4) Meetings of the board of directors of the Authority are subject to the provisions of the Freedom of Information Act, Chapter 100 of Title 29. All meetings must be conducted at a central location in the State, unless agreed to for a given meeting by at least 3 of the 5 board members.

(c) The Authority's board of directors shall:

(1) Adopt a plan of operation and articles, bylaws and operating rules;

(2) Establish procedures under which applicants for payments from the Authority may be approved;

(3) Authorize payments and adjust, eliminate or reinstate the Trust Fund assessment established in § 7012 of this title only if at least 3 of the 5 members of the board of directors approve the payments or assessments;

(4) Facilitate the initial meeting between the home owners and landowner and select an arbitrator pursuant to § 7043 of this title.

(d) The Authority and its board of directors may:

(1) Sue or be sued;

(2) Borrow from private finance sources and issue notes or vouchers in order to meet the objectives of the Authority and those of the Trust Fund established in § 7012 of this title.

(74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 3, 4; 78 Del. Laws, c. 132, §§ 1-3; 79 Del. Laws, c. 63, § 5.)

§ 7012 Delaware Manufactured Home Relocation Trust Fund [Terminates effective July 1, 2019]

(a) The Delaware Manufactured Home Relocation Trust Fund (Trust Fund) is established in the Division of Revenue of the Department of Finance for exclusive use by the Delaware Manufactured Home Relocation Authority to fund the Authority's administration and operations. All interest earned from the investment or deposit of moneys in the Trust Fund must be deposited into the Trust Fund.

(b) Moneys in the Trust Fund may be expended only:

(1) To pay the administrative costs of the Authority;

(2) To carry out the objectives of the Authority by assisting manufactured home owners who are tenants in a manufactured home community where the community owner intends to change the use of all or part of the land on which the community is located or where the community owner intends to convert the manufactured home community to a manufactured home condominium community or to a manufactured home cooperative community pursuant to Chapter 71 of this title, and by assisting manufactured home community owners with the removal and/or disposal of nonrelocatable or abandoned manufactured homes; and

(3) After notifying the manufactured home owners who are tenants in a community owner's manufactured home community that the community owner intends to change the land use or to convert the community pursuant to paragraph (b)(2) of this section, if the community owner does not change the land use or convert the community within 3 years of notification, or if the Authority finds there is prima facie evidence under § 7010(c)(2) of this title that the owner did not intend in good faith to change land use, the community owner shall within 30 days of the date the Authority provides written notice to the community owner, reimburse the Authority for whatever moneys the Authority has expended from the Trust Fund with respect to that manufactured home community, along with double the legal interest rate. The date of the mailing of notice by the Authority is deemed the date that a community owner is notified about reimbursing the Authority. However, if the community owner, with due diligence, has not been able to complete the change-in-use process within 3 years, the Authority may grant a reasonable extension to the community owner to complete the process.

(c) The Trust Fund terminates on July 1, 2019, unless terminated sooner or extended by the General Assembly.

(d) The cap on the Trust Fund is $15 million. The cap may be adjusted, eliminated or reinstated by the board of directors of the Authority at any time, subject to the voting requirements of § 7011(c)(3) of this title.

(e) If the Trust Fund ceases to exist, the funds held at the time of dissolution must be liquidated as follows:

(1) Fifty percent of the total funds, on a per capita basis, to tenants of rented lots in manufactured home communities in Delaware who have occupied the lots for at least the 12 months immediately prior to the time of the dissolution; and

(2) Fifty percent of the total funds to landlords owning rented lots at the time of dissolution, prorated on the number of lots actually rented by the landlords for at least the 12 months immediately prior to the time of dissolution.

(f)(1) The board of directors of the Authority shall set a $3.00 monthly assessment for deposit in the Trust Fund for each rented lot in a manufactured home community. The board may adjust, eliminate or reinstate the assessment, and shall notify landlords and tenants of each adjustment, elimination or reinstatement pursuant to board regulations.

(2) One-half of the monthly assessment set pursuant to paragraph (f)(1) of this section is the obligation of the tenant of the rented lot, and 1/2 of the assessment is the obligation of the landlord. The landlord shall collect the tenant's portion of the assessment on a monthly basis as additional rent. The landlord shall remit to the Trust Fund both its portion and the tenant's portion of the assessment on a quarterly basis. The landlord is responsible for safeguarding all assessments it collects. Failure by a tenant to pay to the landlord the tenant's portion of the assessment as additional rent is grounds for termination of the rental agreement pursuant to § 7010A of this title. An assessment is not due or collectable for a vacant lot.

(3) If a lot is rented for any portion of a month, the full monthly assessment must be paid to the Trust Fund.

(4) If a rental agreement contains a capping provision which limits the amount by which rent may be increased, the Trust Fund assessment is deemed not to be rent for purposes of rent increases.

(5)a. If within 30 days of the quarterly due date a landlord fails to remit to the Trust Fund both its portion and the tenant's portion of the assessment, the Authority may, but shall not be required to, notify the landlord in writing, demanding payment and stating that, unless the required payment is made within 7 days from the date of mailing, legal action may be initiated in a court of competent jurisdiction to collect any assessment, interest, at the rate of 1% per month until paid in full, or other sums due and owing. Any written notice must comply with § 7024 of this title. If the Authority is awarded a judgment in its favor, the Authority may request and the court shall award reasonable attorney's fees, costs, and expenses. Failure by the Authority to provide such notice described herein shall not be prejudicial to the Authority's right to pursue such cause of action.

b. A landlord may assert as an affirmative defense to legal action initiated pursuant to paragraph (f)(5)a. of this section above that a tenant has failed to pay its portion of the assessment; there shall be a rebuttable presumption that the tenant has paid its required assessment amount, in full.

(g) The Authority may not for any reason, including age, income level or geography, exempt any landlord or tenant from paying the Trust Fund assessment.

(h) The Trust Fund must be audited annually. If the State Auditor's Office performs the audit, the Authority shall pay to the State from the Trust Fund the cost of the audit. The completed audit must be made available to the public by placing it on a website, by offering it as a hard copy for a fee which reflects reasonable reproduction cost, or in some other manner determined by the Authority.

(i) In addition to providing for an annual audit pursuant to subsection (h) of this section, the Authority shall make available to the public, at least on a quarterly basis, the amount of the payment made to each tenant and landlord, along with a description of the property related to the payment and the reason for the payment.

(74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 6, 7; 75 Del. Laws, c. 375, § 4; 78 Del. Laws, c. 238, §§ 1, 2; 79 Del. Laws, c. 151, § 1; 79 Del. Laws, c. 205, § 1.)

§ 7013 Relocation expenses; payments for nonrelocatable homes.

(a) If a tenant is required to relocate due to a change in use or conversion of the land in a manufactured home community as set forth in § 7010(b) of this title and complies with the requirements of this section, the tenant is entitled to payment from the Trust Fund of the lesser of:

(1) The actual, reasonable expenses of moving the manufactured home and existing appurtenances to a new location within a 25-mile radius of the vacated manufactured home community including, but not limited to, the cost of taking down, moving and setting up the home in a new location; or

(2) The maximum relocation payment, which must be established by the Authority's board of directors. The determination by the board of the amount of a relocation payment is final and may not be appealed.

(b) A tenant is not entitled to compensation for relocation under subsection (a) of this section if:

(1) The landlord moves the tenant's manufactured home by mutual consent to another lot in the manufactured home community or to another manufactured home community at the landlord's expense;

(2) The tenant is vacating the manufactured home community and so informed the landlord before notice of the change in use was given;

(3) The tenant abandons the manufactured home as set forth in subsection (f) of this section; or

(4) The tenant has failed to pay the tenant's share of the Trust Fund assessment during the course of the tenancy.

(c) Compensation for nonrelocatable homes.

(1) A tenant is entitled to compensation from the Trust Fund for the tenant's manufactured home if the home, which is on a lot subject to a change in use of land, cannot be relocated. The board of directors of the Authority shall establish criteria for determining whether a home can or cannot be relocated. The criteria must include:

a. Availability of a replacement home site; and

b. Feasibility of physical relocation.

(2) If the board determines that a manufactured home cannot be relocated pursuant to paragraph (c)(1) of this section, the board shall provide compensation to the tenant. The amount of compensation, as determined by a board-approved, certified manufactured home appraiser, is the fair market value of the home as sited and any existing appurtenances, but excludes the value of the underlying land. However, the amount of compensation may not exceed an amount set by the board and which may be adjusted from time to time by the Board, to be paid in exchange for the title of the nonrelocatable manufactured home. Prior to receiving payment for a nonrelocatable home, the tenant must deliver to the board the current title to the home duly endorsed by the owner or owners of record, valid releases of all liens shown on the title, and a tax release. The board shall then relinquish the title to the landlord to facilitate the removal and/or disposal of the home from the manufactured home community. For the purpose of compensation to the landlord pursuant to § 7014 of this title, a home that cannot be relocated is deemed abandoned. The determination of the board as to the amount of compensation is final and may not be appealed.

(d) Except as provided for abandonment in subsection (f) of this section, in order to obtain payment from the Trust Fund for the relocation of a manufactured home, a tenant must submit to the Authority, with a copy to the landlord, an application for payment which includes:

(1) A copy of the notice of termination or nonrenewal of the rental agreement due to change in use of land, as required by § 7010(b)(1) of this title; and

(2) A contract with a licensed moving or towing contractor for the moving expenses for the manufactured home.

(e) The Authority shall approve or reject payment to a moving or towing contractor within 30 days after receipt of the information required by this section, and forward a copy of the approval or rejection to the tenant, with a voucher for payment if payment is approved.

(f) In lieu of the procedure in subsection (a) of this section, a tenant may abandon the manufactured home in the manufactured home community. A tenant shall receive a payment from the Trust Fund for the abandoned manufactured home. Before collecting a payment, a tenant shall deliver to the Authority a current State of Delaware title to the manufactured home duly endorsed by the owner of record, a valid release of all liens shown on the title, and a tax release. The amount of the payment shall be set by the Authority. The Authority's determination of the amount of the payment is final and may not be appealed.

(74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 8; 79 Del. Laws, c. 151, § 2.)

§ 7014 Payment of funds to landlord for removal and/or disposal of abandoned homes.

(a) A landlord is entitled to receive from the Trust Fund payment in an amount determined by the Board to be sufficient to remove and/or dispose of a non-relocatable or abandoned manufactured home pursuant to § 7013(c) and (f) of this title.

(b) Payment for removal and/or disposal of a manufactured home pursuant to subsection (a) of this section must be authorized by the Authority and made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the landlord.

(c) If the Trust Fund does not have sufficient moneys to make a payment to a landlord pursuant to this section, the Authority shall issue a written promissory note to the landlord for funds due and owing. Promissory notes may be redeemed in order of issuance of the notes as additional moneys come into the Trust Fund.

(d) If a landlord realizes a profit from the removal and/or disposal of a manufactured home, the landlord shall reimburse the Trust Fund for any profit gained by the landlord pertaining to that home.

(e) A landlord may not receive payment from the Trust Fund if the landlord has failed to pay the landlord's share of the total Trust Fund assessment during the course of tenancies or has failed to remit the tenants' share as required by § 7012(f)(2) of this title.

(f) It is a class A misdemeanor for a landlord or a landlord's agent to file any notice, statement or other document required under this section which is false or contains a material misstatement of fact.

(74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 9.)

§ 7015 Payment of funds to homeowners.

(a) When a payment to a tenant is authorized by the Authority, payment must be made in the form of a voucher issued to the Division of Revenue of the Department of Finance, directing the Division to issue a check in a designated amount to the named tenant.

(b) If the Trust Fund does not have sufficient moneys to make a payment to a tenant pursuant to this section, the Authority shall issue a written promissory note to the tenant for funds due and owing. A promissory note may be redeemed in order of issuance of the notes as additional moneys come into the Trust Fund.

(c) It is a class A misdemeanor for a tenant or a tenant's agent to file any notice, statement or other document required under this section which is false or contains a material misstatement of fact.

(74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, §§ 5, 9.)

§ 7015A Rent — Prohibited lump sum payments.

Rental payments shall be paid by the tenant to the owner/landlord in equal dollar amounts, or as close thereto as possible, and shall be extended equally, pro rata, over a calendar year. Any provision in a rental agreement or otherwise which requires rental payments or rental increases to be paid in 1 lump sum shall be null and void. Nothing herein shall preclude a tenant from requesting, and the owner/landlord from agreeing thereto, that rental payment be made in a 1-time lump sum, semi-annual, or quarterly payment made by the tenant; nor does anything herein prevent a landowner from offering discounts as incentives to homeowners to pay annually, semi-annually or quarterly provided it is made clear that the homeowners are under no obligation to pay in any way except monthly.

(77 Del. Laws, c. 53, § 2.)

§ 7016 Holdover remedies after rental agreement terminates, expires or is not renewed.

Following a determination by a court of competent jurisdiction that a landlord is entitled to possession of a rented lot in a manufactured home community, if the tenant continued in and/or continues in possession of the lot after the date of termination, expiration or nonrenewal of the rental agreement without the consent of the landlord, the tenant is liable for, and the landlord is entitled to receive, a payment of double the periodic rent under the terminated, expired or nonrenewed rental agreement, but only if the tenant held over and/or holds over in bad faith. Double-rent is computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired or was not renewed. If a holdover is determined to be in good faith, the landlord is entitled to a payment of the periodic rent under the rental agreement, computed and prorated for each day the tenant remained in and/or remains in possession of the lot after the date on which the rental agreement terminated, expired or was not renewed.

(25 Del. C. 1953, § 7012; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7017 Effect of unsigned rental agreement.

(a) If the landlord does not sign a written rental agreement which has been signed and tendered to the landlord by the tenant, acceptance of rent from the tenant without reservation by the landlord gives to the rental agreement the same effect as if it had been signed by the landlord.

(b) If the tenant does not sign a rental agreement which has been signed and tendered to the tenant by the landlord, acceptance of possession of the rented lot and payment of rent without reservation give to the rental agreement the same effect as if it had been signed by the tenant.

(c) Even if a rental agreement which is given effect by the operation of this section provides for a term longer than 1 year, it operates to create only a 1-year term.

(25 Del. C. 1953, § 7008; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 10.)

§ 7018 Security deposits; pet security deposits.

(a)(1) A landlord may require a tenant to pay a security deposit if provided for in the rental agreement.

(2) A landlord may not require a tenant to pay a security deposit in an amount in excess of 1 month's rent unless the tenant agrees to do so and the full amount is specified in the rental agreement.

(b)(1) Every security deposit paid to a landlord must be placed by the landlord in an escrow bank account in a federally-insured financial institution with an office that accepts deposits within the State. The account must be designated as a security-deposits account and may not be used by the landlord for any purposes other than those described in subsection (c) of this section. The landlord shall disclose in the rental agreement the location of the security deposit account. If the landlord changes the location of the security deposit account, the landlord shall notify each tenant of the new location within 30 days of the change. Security deposit principal must be held and administered for the benefit of the tenant, and the tenant's claim to such money has priority over that of any creditor of the landlord, including, but not limited to, a trustee in bankruptcy, even if such money is commingled.

(2) A security deposit paid pursuant to a new rental agreement signed on or after August 25, 2003, must be immediately escrowed pursuant to paragraph (b)(1) of this section. A security deposit paid as provided for in an existing rental agreement signed prior to August 25, 2003, must be escrowed pursuant to paragraph (b)(1) of this section on or before June 30, 2005.

(c) The purposes of a security deposit are:

(1) To reimburse a landlord for actual damages which exceed normal wear and tear to the landlord's property and which were caused by the tenant;

(2) To pay a landlord for all rent, rent arrearage, fees, charges, Trust Fund assessments and other moneys due and owed to the landlord by the tenant;

(3) To reimburse a landlord for all reasonable expenses incurred in renovating and re-renting the landlord's property caused by the premature termination of the rental agreement by the tenant, except for termination pursuant to § 7009 of this title.

(d) Within 20 days after the expiration or termination of a rental agreement, the landlord shall provide the tenant with an itemized list of damages, if any, to the landlord's property and the estimated cost of repair for each item. The landlord shall tender payment for the difference between the security deposit and the cost for repair of damage to the landlord's property. Failure to do so constitutes an acknowledgment by the landlord that no payment for repair of damage is due. A tenant's acceptance of a payment submitted with an

itemized list of damages constitutes agreement on the damages as specified by the landlord, unless the tenant objects in writing within 10 days of receipt of the landlord's tender of payment to the amount withheld by the landlord.

(e) If a landlord is not entitled to all or any portion of a security deposit, the landlord shall remit to the tenant within 20 days of the expiration or termination of the rental agreement the portion of the security deposit to which the landlord is not entitled.

(f) *Penalties.* —

(1) Failure by a landlord to remit to a tenant the security deposit or the difference between the security deposit and the cost for repair of damage within 20 days from the expiration or termination of the rental agreement entitles the tenant to double the amount wrongfully withheld.

(2) Failure by a landlord to disclose the location of the security deposit account within 20 days of a written request by a tenant or failure by a landlord to deposit a security deposit in a federally-insured financial institution with an office that accepts deposits within the State results in forfeiture of the security deposit by the landlord to the tenant. Failure by a landlord to return the full security deposit to a tenant pursuant to this paragraph within 20 days from the effective date of forfeiture entitles the tenant to double the amount of the security deposit.

(g) All communications and notices required under this section must be directed to a landlord at the address specified in the rental agreement and to a tenant at an address specified in the rental agreement or at a forwarding address, if a forwarding address was provided to the landlord in writing by the tenant. Failure by a tenant to provide a forwarding address relieves the landlord of the responsibility to give notice pursuant to this section and removes the landlord's liability for double the amount of the security deposit. However, the landlord continues to be liable to the tenant for any unused portion of the security deposit if, within 1 year from the expiration or termination of the rental agreement, the tenant makes a claim in writing to the landlord.

(h) *Pet deposits.* —

(1) A landlord may require a tenant to pay a pet security deposit for each pet if provided for in the rental agreement. Damage to a landlord's property caused by a tenant's pet must first be deducted from the pet security deposit. If the pet deposit is insufficient, pet damages may be deducted from the tenant's nonpet security deposit.

(2) If a nonpet security deposit is insufficient to cover nonpet damages described in subsection (c) of this section, damages may be deducted from the pet security deposit even if such damages were not caused by a pet. A pet security deposit is a type of security deposit and is subject to subsections (b), (d), (e), (f) and (g) of this section.

(3) A landlord may not require a tenant to pay a pet security deposit in an amount in excess of 1 month's rent, unless the tenant agrees to do so and the full amount is specified in the rental agreement.

(4) A landlord may not require a pet security deposit from a tenant if the pet is a certified and trained support animal for a person with a disability who is a resident of a manufactured home on a rented lot.

(5) Notwithstanding legal ownership of a pet, for purposes of this subchapter, a pet that resides in a manufactured home, and/or on the lot where the home is located in a manufactured home community, is deemed owned and controlled by a tenant who resides in the manufactured home.

(i) If a rental agreement so specifies, a landlord may increase a security deposit commensurate with an increase in rent. If an increase of the security deposit exceeds 10 percent of the monthly rent, the tenant may choose to pay the increase in the security deposit prorated over the term of the rental agreement but not to exceed 12 months, except in the case of a month-to-month tenancy, in which case payment of the increase may not be prorated over a period in excess of 4 months unless mutually agreed to by the landlord and tenant.

(25 Del. C. 1953, § 7013; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2; 74 Del. Laws, c. 147, § 11.)

§ 7019 Rules.

(a) A landlord may promulgate reasonable written rules concerning the occupancy and use of the premises and the use of the landlord's property, and concerning the behavior of manufactured home community tenants, residents, guests and visitors, provided that the rules further any of the following purposes:

(1) Promoting the health, safety, or welfare of tenants, residents, guests or visitors;

(2) Promoting the residents' quiet enjoyment;

(3) Preserving the property values of tenants and/or landlords;

(4) Promoting the orderly and efficient operation of the manufactured home community;

(5) Preserving the tenants' and/or landlords' property from abuse.

(b) A landlord may not arbitrarily or capriciously enforce a rule. A landlord may choose not to enforce a rule based upon the documented special needs or hardship of a tenant or resident without waiving the right to the later enforcement of the rule as to that tenant or resident or any other tenant or resident.

(c) A landlord may amend an existing rule at any time, but the amended rule is not effective until the date specified in the amended rule or 60 days after the landlord delivers to the tenant written notice of the amended rule, whichever is later.

(1) Within 10 days of the landlord's notice of an amended rule, a committee, not to exceed 5 members, may be chosen by any method agreed to by the tenants of the manufactured home community.

(2) The committee shall meet with the landlord at a mutually convenient time and place to discuss the amended rule.

(3) At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the amended rule.

(65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7020 Manufactured home standards.

(a) *Standards for manufactured homes of new tenants.* —

(1) A landlord shall adopt reasonable written standards regarding the size, age, quality, appearance, construction, materials and safety features for a manufactured home entering the landlord's manufactured home community.

(2) A landlord may refuse to allow the placement of a manufactured home on a lot in the manufactured home community if the manufactured home does not comply with the reasonable written standards adopted pursuant to paragraph (a)(1) of this section.

(b) *Standards for manufactured homes not for sale.* — A tenant who is residing in a manufactured home community at the time a standard is promulgated must bring the tenant's own manufactured home into compliance with the standard within 9 years of the promulgation of the standard or be subject to a summary possession proceeding pursuant to Chapter 57 of this title. However, if a change in a manufactured home is necessary to protect life or for other safety reason, the landlord may require that the change be made in less than 9 years. Once work begins on the manufactured home, the necessary change must be completed within a reasonable time.

(c) *Standards for manufactured homes for resale or transfer of title and retention in the manufactured home community.* —

(1) A landlord shall adopt reasonable written standards regarding the resale or transfer of title of a manufactured home intended for retention in the landlord's manufactured home community. The standards must relate only to appearance, maintenance, safety and compliance with state and local housing, building or health codes, and the 1976 HUD Code. A landlord may not issue standards in which the age of a manufactured home is the exclusive or dominant criterion prohibiting the home from being sold and retained in the community after the sale is consummated.

(2) If a manufactured home does not meet a landlord's written standards for resale or transfer of title and retention in the manufactured home community, a tenant may attempt to bring the home into compliance with the standards. The landlord shall, within 10 days of a written request from the tenant, reevaluate the home in a reasonable and fair manner.

(d) A standard promulgated pursuant to subsection (a), (b) or (c) of this section may not be arbitrarily or capriciously enforced. A landlord may choose not to enforce a standard based upon the documented special needs or hardship of a tenant without waiving the right to the later enforcement of the standard as to that tenant or any other tenant.

(e) A landlord may at any time establish or amend a standard promulgated pursuant to subsection (a), (b) or (c) of this section, but an established or amended standard promulgated pursuant to subsection (b) or (c) of this section is not effective until the date specified in the established or amended standard or 60 days after the landlord delivers to the tenant written notice of the established or amended standard, whichever is later.

(1) Within 10 days of the landlord's notice of the established or amended standard, a committee, not to exceed 5 members, may be chosen by any method agreed to by the tenants of the manufactured home community.

(2) The committee shall meet with the landlord at a mutually convenient time and place to discuss the established or amended standard.

(3) At the meeting, the landlord shall disclose and explain all material factors and present any supporting documentation for the established or amended standard.

(74 Del. Laws, c. 35, § 2.)

§ 7021 Rent increases.

A landlord may not increase a tenant's lot rent more than once during any 12-month period, regardless of the term of the tenancy or the term of the rental agreement. A landlord shall give written notice of a lot rent increase to a tenant a minimum of 60 days prior to the effective date of the rent increase.

(65 Del. Laws, c. 446, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7021A Lot Rental Assistance Program [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) A homeowner or tenant in a manufactured home community who is eligible for Social Security Disability (SSD) or Supplemental Security Income (SSI) benefits or who is 62 years of age or older is eligible for lot rental assistance from the manufactured home community owner if the following criteria are met:

(1) The homeowner or tenant must have owned his or her manufactured home and/or resided in the home in the manufactured home community prior to July 1, 2006.

(2) The homeowner or tenant must reside full time and exclusively in the manufactured home in the manufactured home community, and the manufactured home must be the homeowner or tenant's only residence.

(3) The lot rent, excluding utility charges and other charges, fees, and assessments that are part of the services rider required under § 7006(a)(9) of this title, must exceed 30% of the income definition, as stated in the Delaware State Housing Authority Fact Book (DSHA Fact Book), or its successor document, for the United States Department of Housing and Urban Development (HUD) for the county median income limits based upon 40% of the county's median income for the number of residents in the home. For purposes of this section, "income" includes the income of all occupants of the manufactured home, whether or not an occupant is a tenant, and of all tenants of the manufactured home, whether or not a tenant is an occupant.

(4) The total liquid assets, including but not limited to bank accounts, stocks, and bonds of the homeowner or homeowners, tenant or tenants, and other residents, may not exceed $50,000.

(5) The homeowner, tenant, and other residents must provide to the community owner all documentation necessary to determine eligibility for lot rental assistance, such as bank records, eligibility letters, tax returns, and brokerage statements.

(6) The homeowner, tenant, and other residents and the manufactured home must be in substantial compliance with all manufactured home community rules, regulations, and standards.

(b) The homeowner, tenant, and other residents may not be recipients of any other rental assistance funding.

(c) Lot rental assistance or rent credit received by a homeowner or tenant pursuant to this section is not transferable upon the sale of the manufactured home and/or the transfer of the rental agreement to a third-party purchaser.

(d) A homeowner or tenant who qualifies for lot rental assistance based on the criteria in subsection (a) of this section is entitled to lot rental assistance for a term of 1 year. Lot rental assistance for a qualified homeowner or tenant is a credit which is computed as the difference between the then-current lot rent and 30% of the income definition for the county median income, as stated in the DSHA Fact Book for the number of residents in the home; provided, however, that the lot rent for an eligible homeowner or tenant after application of a lot rental assistance credit may not exceed 30% of the income definition for the county median income, as stated in the DSHA Fact Book for the number of residents in the home.

(e) The homeowner or tenant has the responsibility to reestablish annually eligibility for lot rental assistance if that homeowner or tenant believes that the homeowner or tenant remains eligible for lot rental assistance. The homeowner or tenant must reestablish eligibility within 45 days immediately before the anniversary date of the prior determination of eligibility.

(f)(1) A community owner who is required to participate in the lot rental assistance program shall provide notice of the program to all homeowners and tenants in the community, and shall provide, pursuant to paragraph (f)(2)a. or (f)(2)b. of this section, renewal notices to all program participants at least 45 days before a participant's term of assistance expires. If the community owner does not provide a renewal notice, the lot rental assistance credit remains in effect until 45 days after the community owner provides notice. Upon receiving notice, a homeowner or tenant has 45 days in which to reestablish program eligibility by providing necessary documents and information to the community owner. If the homeowner or tenant fails to reestablish eligibility within 45 days of notice, the community owner may terminate the lot rental assistance credit.

(2)a. Unless otherwise specified, renewal notice required by this subsection may be served personally upon a homeowner or tenant of a manufactured home community by leaving a copy of the notice at the homeowner's or tenant's dwelling place with an adult person who resides therein.

b. In lieu of personal service, renewal notice required by this subsection may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the homeowner or tenant at the address of the homeowner or tenant's rented lot, or at an alternative address which the homeowner or tenant provided in writing to the community owner.

(g) During the period of any lot rental assistance, a homeowner or tenant must remain current with payment of rent after the application of the lot rental assistance credit, as well as with payment of utility fees and other charges and assessments. If the homeowner or tenant does not pay all lot rent after the application of the lot rental assistance credit, as well as pay utility fees and other charges and assessments on or before the due date or during the grace period provided under the law or otherwise, then the lot rental assistance credit may be immediately terminated upon notice, and the homeowner or tenant will not be eligible for further lot rental assistance.

(h) A homeowner or tenant receiving lot rental assistance credit must notify the community owner immediately of any substantial change in that homeowner's or tenant's financial situation or in the composition of the household.

(i) Any intentional misrepresentation by an applicant of that applicant's financial situation or living arrangements which, if the truth were known, would have resulted in the denial of lot rental assistance shall result in the immediate termination of all lot rental assistance, and an immediate obligation to reimburse all credits received under the lot rental assistance program to the point of the initial misrepresentation. A community owner may treat the amounts due and owing as a rent delinquency.

(j) A community owner shall treat all documents and information submitted for the lot rental assistance program as confidential and may not disclose the documents or information publicly or use them in any manner other than to determine eligibility under the lot rental assistance program. Any intentional public dissemination of confidential information provided pursuant to the lot rental assistance program is subject to civil relief which is reasonable and appropriate under Delaware law.

(k) Nothing in this section prohibits the owner of a manufactured home community from offering a lot rental assistance program that provides benefits over and above the benefits set forth in this section, or that extends eligibility for participation in the program.

(l) The provisions of this section do not apply to a manufactured home community with 25 or fewer manufactured home lots; provided, however, that an owner of such a manufactured home community may voluntarily offer a lot rental assistance program to the homeowners and tenants of the community.

(m) For the purpose of benefiting persons aged 62 and older, this section establishes a narrow exception to the prohibition against housing discrimination on the basis of "age" as set forth in Chapter 46 of Title 6, otherwise known as Delaware's Fair Housing Act [§ 4600 et seq. of Title 6].

(75 Del. Laws, c. 382, § 7; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 63, § 2.)

§ 7022 Manufactured home transfer; rented lot transfer.

(a) This section governs the sale, conveyance, or transfer of title of a manufactured home which the buyer or transferee intends to retain in the manufactured home community. This section further extends to the landlord the right to purchase any manufactured home in the community for 1% higher than the contract price at which the tenant has agreed to sell the home to a third party.

(b) A rental agreement for a lot in a manufactured home community is not transferable from the tenant who owns the manufactured home on the lot to the buyer or transferee to whom the tenant intends to sell or transfer title to the home, unless the home qualifies for retention in the manufactured home community according to written standards promulgated pursuant to § 7020 of this title, and unless the landlord accepts the buyer or transferee as a tenant. Acceptance or rejection of a buyer or transferee under this subsection must be on the same basis by which the landlord accepts or rejects any prospective tenant. A landlord who rejects a prospective tenant must give the rejected prospective tenant a written statement that explains the cause for the rejection.

(c) A tenant who owns a manufactured home in a manufactured home community, and plans to sell, convey, or transfer title to the home to a buyer or transferee who intends to retain the home in the manufactured home community, must notify the landlord in writing 3 weeks prior to the scheduled sale, conveyance, or transfer of title of the manufactured home and the transfer of the lot rental agreement, giving the name and address of the prospective buyer or transferee, along with a written statement or a proposed bill of sale clearly indicating the agreed sale price and terms. Failure on the part of a tenant to so notify the landlord is grounds for termination by the landlord of the tenant and landlord's rental agreement.

(1) The landlord has the right to purchase the home at a price of 1% higher than the contract price and under the same terms at which the tenant has agreed to sell the home to a third party.

(2) If the landlord wishes to purchase the home at 1% higher than the contract price and under the same terms at which the tenant has agreed to sell the home to a third party, the tenant must sell the home to the landlord.

(3) Upon receipt of the name and address of the prospective buyer or transferee and the agreed sale price and terms, the landlord shall notify the tenant in writing within 5 business days that the landlord is exercising the right to purchase the home. If the landlord does not notify the tenant in writing pursuant to § 7024 of this title within 5 business days that the landlord is exercising the right to purchase the home, the right of the landlord to purchase the home expires.

(4) The landlord's notice must be sent to the tenant pursuant to § 7024 of this title. The notice must clearly state that the price and terms are acceptable, and must set a settlement date within 14 days.

(5) The right of the landlord to purchase a tenant's home does not extend to the following circumstances:

a. A bank, mortgage company, or any other mortgagee has foreclosed on the home;

b. The sale, transfer, or conveyance of the home is to a family member of the home owner or to a trust, the beneficiaries of which are family members of the home owner on the modified Table of Consanguinity; or the sale, transfer, or conveyance is to a family member of the home owner on the modified Table of Consanguinity who is included within the line of intestate succession if the home owner dies intestate;

c. The sale, transfer, or conveyance of the home is between joint tenants or tenants-in-common;

d. The transfer or conveyance is by gift, devise, or operation of law.

(6) A landlord may not engage in any act or activity with the intention of placing undue influence or undue pressure on a tenant to sell the tenant's home to the landlord.

a. A tenant may file an action in a court of competent jurisdiction for actual damages sustained when the tenant reasonably believes that the landlord wilfully:

1. Exerted undue influence or undue pressure on the tenant to sell the tenant's home to the landlord; or

2. Exerted undue influence or undue pressure on a former tenant which resulted in the sale of the former tenant's home to the landlord; or

3. Did not evaluate the home in a reasonable and fair manner when applying written standards for resale or transfer of the manufactured home in the community, pursuant to § 7020(c) of this title.

b. It is an affirmative defense to a claim that a landlord engaged in an act or activity with the intention of placing undue influence or undue pressure on a tenant or former tenant by initiating a rent increase, if the landlord provides proof that the increased rent is within the range of market lot rents.

c. If a court of competent jurisdiction finds that a landlord has wilfully engaged in any of the acts enumerated in paragraph (c)(6)a. of this section, the landlord is liable to the tenant or former tenant for 3 times the actual damages sustained as a result of the landlord's acts and reasonable court costs.

d. If a court of competent jurisdiction finds that a landlord has wilfully engaged in an act or activity with the intention of placing undue influence or undue pressure on a current or former tenant in order to purchase the current or former tenant's home, the landlord may not exercise that landlord's own right to buy any tenant's home for 365 days. Each offense is subject to a 365-day penalty.

(d) If a landlord accepts a prospective tenant, the transfer of an existing rental agreement must be completed using one of the following 2 methods. The selection of the method is at the exclusive discretion of the tenant/seller of the manufactured home, and the buyer is bound by that selection.

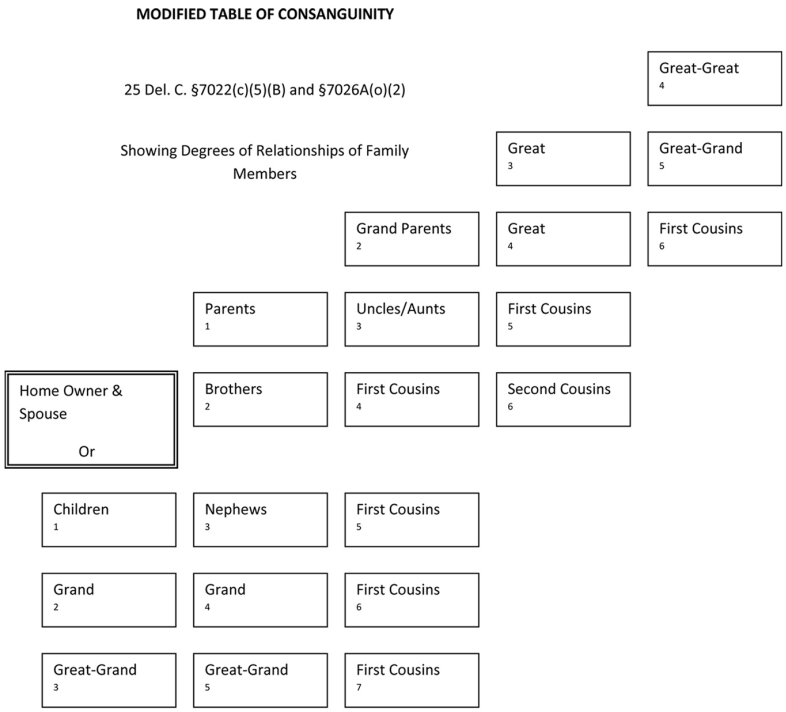
(1) The tenant/seller agrees to an assignment of the lease to the buyer, with all of the existing obligations and benefits, including but not limited to the rental amount under the existing rental agreement, for the remaining term of the agreement.

If this option is elected, the existing rental agreement between the tenant/seller and the landlord is simultaneously assigned by the tenant-seller and assumed by the buyer and the buyer becomes the new tenant. Upon the sale, assignment, and assumption, the landlord will amend the existing rental agreement and list the buyer as the new tenant.

(2) The tenant-seller chooses to terminate the existing rental agreement. The buyer may then negotiate the terms of and enter into a new rental agreement for a full term at a rental amount set by the landlord. If this option is elected, the existing rental agreement is terminated upon the execution of the new rental agreement.

(e) Notwithstanding the provisions of this section and of § 7020 of this title, written standards which were in effect on January 1, 2003, relating to the sale or transfer of title of a manufactured home for retention in a manufactured home community will apply for a sale or transfer of title during 2003. For a sale or transfer on January 1, 2004, and thereafter, standards promulgated pursuant to § 7020 of this title apply. In addition, a buyer or transferee who becomes a tenant in a manufactured home community has 3 years from the date of the resale or transfer to complete changes to the buyer or transferee's manufactured home required under the written standards of the manufactured home community. However, if the changes are necessary to protect life or for other safety reasons, the landlord may require that changes be made in less than 3 years. Further, if a seller-tenant does not make necessary changes to meet the standards prior to sale, the buyer or transferee shall deposit 120% of the estimated cost of the changes necessary to meet the standards into an account jointly controlled by the landlord and the buyer or transferee. Once work begins on the manufactured home, the necessary changes must be completed within a reasonable time.

(f) A buyer or transferee who does not complete required changes pursuant to subsection (e) of this section is subject to a summary possession proceeding pursuant to Chapter 57 of this title.



(25 Del. C. 1953, § 7009; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2; 76 Del. Laws, c. 336, §§ 3, 4.)

§ 7023 Retaliatory acts prohibited.

(a) Retaliatory acts are prohibited.

(b) A retaliatory act is an attempted or completed act on the part of a landlord to pursue an action against a tenant for summary possession, to terminate a tenant's rental agreement, to cause a tenant to move involuntarily from a rented lot in the manufactured home community, or to decrease services to which a tenant is entitled under a rental agreement, after:

(1) The tenant has complained in good faith to either the landlord or to an enforcement authority about a condition affecting the premises of the manufactured home community which constitutes a violation of this subchapter or a violation of a housing, health, building, sanitation or other applicable statute or regulation;

(2) An enforcement authority has instituted an enforcement action based on a complaint by the tenant for a violation of this subchapter or a violation of a housing, health, building, sanitation or other applicable statute or regulation with respect to the premises;

(3) The tenant has formed or participated in a manufactured home tenants' organization or association; or

(4) The tenant has filed a legal action against the landlord or the landlord's agent for any reason.

(c) If a tenant proves that a landlord attempted to commit or committed an act pursuant to subsection (b) of this section within 90 days of the tenant's action under paragraph (b)(1)-(4) of this section, the landlord's act is presumed to be a retaliatory act.

(d) Affirmative defenses to a claim that a landlord attempted to commit or committed a retaliatory act include proof by a preponderance of the evidence that:

(1) The landlord had due cause for termination of the rental agreement pursuant to this subchapter and gave the required notice to the tenant;

(2) The tenant's legal action against the landlord relates to a condition caused by the lack of ordinary care by the tenant or by a resident of the tenant's manufactured home or by a guest or visitor on the premises with the tenant's or resident's consent;

(3) The rented lot was in substantial compliance with all applicable statutes and regulations on the date of the filing of the tenant's legal action against the landlord; or

(4) The landlord could not have reasonably remedied the condition complained of by the tenant by the date of the filing of the tenant's legal action against the landlord.

(e) A tenant subjected to a retaliatory act set forth in subsection (b) of this section is entitled to recover the greater of 3 months' rent, or 3 times the damages sustained by the resident, in addition to the court costs of the legal action.

(25 Del. C. 1953, § 7009; 58 Del. Laws, c. 286; 58 Del. Laws, c. 472, § 4; 65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 69 Del. Laws, c. 291, § 98(c); 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7024 Delivery of written notice.

(a) Unless otherwise specified, notice required by this subchapter may be served personally upon a tenant of a manufactured home community by leaving a copy of the notice at the tenant's dwelling place with an adult person who resides therein. Notice required by this subchapter may be served personally upon a landlord or upon any other person in the employ of the landlord whose responsibility is to accept such service. If a landlord is a corporation, firm, unincorporated association or other artificial entity, service of the notice may be made by leaving a copy of the notice at its office or place of business with an agent authorized to accept such notice or authorized by law to receive service of process. Service of notice or process may be obtained through personal service by a special process-server appointed by the court.

(b) In lieu of personal service, notice required by this subchapter may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the tenant at the address of the tenant's rented lot, or at an alternative address which the tenant provided in writing to the landlord. Notice required by this subchapter may be sent by regular first class mail with proof of mailing or by certified mail, return receipt requested, to the landlord at the landlord's last known dwelling place or at the landlord's last known office or place of business. Proof of mailing regular first class mail on U.S. Postal Service Form 3817 or its successor, or a return receipt, signed or unsigned, for certified mail constitutes valid service of any notice required under this subchapter.

(65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 74 Del. Laws, c. 35, § 2.)

§ 7025 Enforcement.

(a) It is the duty and obligation of the Consumer Protection Unit, or its successor, of the Attorney General's Office to enforce the provisions of this subchapter. A violation of any provision of this subchapter by a landlord is within the scope of enforcement duties and powers of the Consumer Protection Unit, or its successor, of the Attorney General's Office.

(b) Whenever the Consumer Protection Unit, or its successor, of the Attorney General's Office has reasonable cause to believe that any landlord is engaged in a pattern or practice of violating or failing to comply with the terms of any provision of a rental agreement covered by this chapter, the Attorney General may commence a civil action in any court of competent jurisdiction and seek such relief as the Attorney General's Office deems necessary to enforce and to ensure the compliance with the terms of such agreement.

(65 Del. Laws, c. 446, § 1; 66 Del. Laws, c. 268, § 1; 69 Del. Laws, c. 291, §§ 98(b), (c); 74 Del. Laws, c. 35, § 2; 75 Del. Laws, c. 382, § 6.)

§ 7026 Right of first offer; notice required before sale of manufactured home community.

(a) Upon reaching a decision to sell, transfer, or convey all or part of a manufactured home community, the manufactured home community's owner shall provide notice of the home owner association's right of first offer to purchase all or part of the community to the community's home owner association if one exists, to the Delaware Manufactured Home Owners Association (DMHOA) or its successor, and to the Delaware Manufactured Home Relocation Authority (Authority).

(1) The Authority shall send, pursuant to § 7024 of this title, an annual notice to all registered community owners, stating that the community owner is required to comply with the requirements of this section if the community owner decides to sell, transfer, or convey all or part of the community. In addition, the notice must state that every manufactured home community must be registered with the Delaware Manufactured Home Relocation Authority, and that all fund assessments must be paid to date prior to the sale, transfer, or conveyance of the community.

(2) The Authority shall notify the manufactured home community's owner if a home owner association for that community has been registered with the Authority.

(b)(1) If a home owner association wishes to use its right of first offer pursuant to subsection (a) of this section, either directly through a community owner or its designated agent, or indirectly through DMHOA or its successor or through the Authority, that home owner association must register with the Authority as prescribed by the Authority.

(2)a. There can be only 1 home owner association per community eligible to participate in the process of this section. That home owner association must register with the Delaware Manufactured Home Relocation Authority as prescribed by the Authority. The first association to register in compliance with the requirements of this section will be the official home owner association eligible to participate in the process. In order to be eligible for registration with the Authority, the home owner association must adopt bylaws.

b. In order to be eligible for registration with the Authority, the home owner association must comply with the following requirements:

1. The home owner association must be incorporated in the State and under the laws of the State;

2. The home owner association must have written bylaws. The bylaws must provide that each home owner of each home site is automatically entitled to vote as a special member of the association concerning matters related to the purchase of all or part of the community after a notice of right of first offer has been extended to the home owner association by the community owner. Special members under this paragraph may not be required to meet other preconditions of general membership including the payment of dues.

c. A home owner who is a community owner, or an employee, agent, or servant of, or who has any business relationship with, the community owner may not directly or indirectly participate in the process, except that the home owner may vote. Nothing herein prevents a home owner association, after a vote of the members present, from excluding a community owner, or an employee, agent, or servant of the community owner from a meeting where confidential information relating to the home owner association's strategies in connection with the purchase will be discussed.

(c) The following model bylaws comply with the requisites of this section and may be used by a home owner association. The model bylaws below are intended as a model and home owner associations are not required to adopt the model bylaws. However, to comply with this section, the bylaws of the home owner association must address the substantive topics included as articles in the model bylaws (such as: name and location, corporate seal, members, etc.):

MODEL BYLAWS

OF

[INSERT COMMUNITY NAME] HOME OWNERS ASSOCIATION

ARTICLE I NAME AND LOCATION

The name of the corporation is "[INSERT COMMUNITY NAME] HOME OWNERS ASSOCIATION", hereinafter referred to as the "Association".

The principal office of the Association is located at the home of the acting President of the Association, but meetings of members and directors may be held at places designated by the Board of Directors within the State of Delaware, [NAME OF COUNTY] County, where the manufactured home community is located.

The name and address of the Association's registered agent in the State of Delaware is as set forth in the Certificate of Incorporation.

ARTICLE II CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the Association and the year of its incorporation.

ARTICLE III MEMBERS

Section 1. General Membership. The owner or owners of each home in the community are entitled to membership in the home owners association. In order to become a member in good standing the home owner must pay the annual dues set by the board of directors. Members in good standing are entitled to cast a vote or votes as provided by the Certificate of Incorporation for the Association and these bylaws. The owner or owners of each home are collectively entitled to one vote in all matters.

Section 2. Special Membership for Exercising Right of First Offer. Each home owner of each home site, as defined in the record plan of the community on tax parcel maps, for as long as the owner is and remains as such, is automatically a special member of the Association. At all meetings of the Association concerning the exercise of the right of first offer by the Association, the owner or owners of each home are entitled collectively to cast the vote or votes provided for by the Certificate of Incorporation for the Association and in these bylaws. The vote or votes may be cast in person or by proxy. The owner or owners of each home are collectively entitled to one vote on all matters. If more than one person holds an interest in a home, all persons holding an interest are members of the Association, and the vote for the home is to be exercised as they among themselves determine; but in no event may more than one (1) total vote be cast with respect to the home.

ARTICLE IV MEETING OF MEMBERS

Section 1. First Meeting of the Members. The first meeting of the Members shall be called by the initial Board of Directors for the purpose of nominating and electing a Board of Directors consisting of the owners of the community's homes. The initial Board of Directors shall send each home owner notice of the meeting at least [INSERT NUMBER] days before the meeting. The notice shall specify the place, day, and hour of the meeting and shall state that the purpose of the meeting is to nominate and elect a new Board of Directors. Nominations shall be accepted by the initial Board of Directors in any form up and until the time of the election. A list of nominations,

including the offices in which the nominee is interested, shall be prepared by the initial Board of Directors. Elections shall be by ballot, by plurality vote. Notwithstanding any contrary provision in the governing documents, quorum requirements for nomination and election of the first Board of Directors consisting of home owners are satisfied if the meeting is properly noticed in conformance with this section.

Section 2. Annual Meeting of the Members. The members of the Association shall meet at least once each year, which means a period of 12 consecutive months, at a time and place established by the Directors, for the purpose of nominating and electing a Board of Directors, or replacements thereto, and conducting other business that may come before the meeting. Members of the Board of Directors must be members of the Association. Nominations may be by proxy received by the Board of Directors prior to the election of the Directors, and may also be made at the meeting. A list of nominations, including the offices in which the nominee is interested, shall be prepared by the Board of Directors. The Board of Directors shall oversee the election. A Director shall remain in office until his or her replacement is elected. Elections shall be by ballot, by plurality vote.

Section 3. Special meetings. Special meetings of the members may be called at any time by the President, and must be called upon a request in writing or by the vote of the majority of the Directors, or at the request in writing of six (6) or more members of the Association.

Section 4. Notice of meetings. Written notice of each meeting of the members of the Association must be given by, or at the direction of, the secretary or the person authorized to call the meeting. Notice must be mailed, postage prepaid, or delivered by hand at least [INSERT NUMBER] days before the meeting to each member entitled to vote at the meeting, addressed to the member's address last appearing on the books of the Association, or supplied by the member to the Association for the purpose of notice. The notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No change in the time or place of a meeting for the election of Directors, as fixed by these Bylaws, may be made within the [INSERT NUMBER] days immediately before the day on which the election is to be held. In case of any change in the time or place for an election of Directors, notice must be given in person to each member entitled to vote, or be mailed to the member's last known post office address, at least [INSERT NUMBER] days before the election is held.

Section 5. List of members. The Secretary shall prepare a complete alphabetical list of members entitled to vote. The list must be open for examination by any member at the principal office of the Association and the place of election for [INSERT NUMBER] days prior to the election.

Section 6. Proxies. Each member entitled to vote is, at every meeting of the members, entitled to vote in person or by proxy, in writing and signed by the member; but no proxy may be voted after one (1) year from its date, unless it specifically provides for a longer period. A proxy is revocable at any time, and shall automatically cease upon conveyance of the home. The right to vote by proxy is subject to the right of the Board of Directors to close the transfer books or to fix a record date for voting members as hereinafter provided; and, if the Directors do not exercise this right, no vote may be cast at an election for Directors by anyone who has become a member of the Association within [INSERT NUMBER] days of the election. Only one (1) vote may be cast with respect to each home in the Community. If joint owners are unable to agree among themselves about how to vote on any given matter, they lose their right to vote on the matter, in accordance with Article II, Section 2 of these Bylaws.

Section 7. Quorum. At a noticed meeting of members entitled to cast votes, or of proxies entitled to cast votes, 33% of the total votes constitute a quorum for any action, except as otherwise provided in the Certificate of Incorporation or in these Bylaws. If, however, a quorum is not present at a meeting, the members entitled to vote have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum is present.

ARTICLE V BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

Section 1. Number. The property and business of the Association shall be managed and controlled by its Board of Directors, consisting of three (3) or more Directors, not to exceed [INSERT NUMBER]. Except for the initial Board of Directors, Directors must be members of the Association.

Section 2. Election. At the first meeting of the members, as set forth above, the members shall elect the Directors for a one (1) year term. The Directors shall hold office until the next annual election and until their successors are elected and qualify.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Association. In the event of the death, resignation, or removal of a Director, a successor shall be selected by the remaining members of the Board, though less than a quorum, by majority vote, and shall serve for the remainder of the unexpired term of the Director's predecessor.

Section 4. Compensation. A Director may not receive compensation for any service rendered to the Association. However, a Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 5. Action taken without a meeting. Directors have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved has the same effect as though taken at a meeting of the Directors.

ARTICLE VI MEETING OF DIRECTORS

Section 1. Regular meetings. After each annual election of Directors, the newly elected Directors shall meet for the purpose of organization, the election of officers, and the transaction of other business, at a place and time fixed by the members at the annual meeting. If a majority of the Directors are present at that place and time, no prior notice of the meeting is required to be given to the Directors. The place and time of the meeting may also be fixed by written consent of the Directors.

Section 2. Special meetings. Meetings of the Directors may be called by the President on [INSERT NUMBER] days notice in writing or on [INSERT NUMBER] days notice by telephone to each Director, and shall be called by the President in like manner on the written request of two (2) Directors. A majority of the Directors shall constitute a quorum, but a smaller number may adjourn from time to time, without further notice, until a quorum is secured.

ARTICLE VII POWERS AND DUTIES OF THE BOARD

Section 1. Powers. The Board of Directors has the power to:

(a) Exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws or the Certificate of Incorporation;

(b) Declare the office of a member of the Board of Directors to be vacant if the member is absent from three (3) consecutive regular meetings of the Board of Directors;

(c) Employ a manager, an independent contractor, or other employees as the Board considers necessary, and to prescribe their duties;

(d) Close the membership rolls of the Association for a period not exceeding [INSERT NUMBER] days preceding the date of any meeting of members; and

(e) Negotiate the purchase of the community on behalf of the homeowners when authorized by a vote of the special membership.

Section 2. Duties. The Board of Directors has the duty to:

(a) Cause to be kept a complete record of all of its acts and corporate affairs, and to present a statement of its acts and corporate affairs to the members at the annual meeting of the members or at any special meeting when the statement is requested in writing by five (5) or more members of the Association;

(b) Supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

(c) Procure and maintain adequate liability and other insurance considered necessary or desirable in connection with the services to be performed by the Association under these Bylaws;

(d) Cause all officers, employees, or independent contractors having fiscal responsibilities to be bonded, as the Board considers appropriate; and

(e) Perform other duties as provided in these Bylaws.

ARTICLE VIII COMMITTEES

The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, designate committees that the Board considers necessary or desirable. Each committee shall consist of one (1) or more of the Directors of the Board of Directors and other member(s) of the Association as designated by the Board of Directors in the resolution. Committees shall meet at stated times or on notice to all by any of their own number. They shall adopt their own rules of procedure. A majority of committee members constitutes a quorum; the affirmative vote of a majority of the whole committee is necessary in every case. A committee has and may exercise the powers of the Board of Directors to the extent provided in the resolution that establishes it.

ARTICLE IX OFFICERS OF THE ASSOCIATION

The officers of the Association are a president, one or more vice-presidents, a secretary, a treasurer, and other officers that may, from time to time, be chosen by the Board of Directors. The president and vice-presidents must be chosen from among the Directors. The officers of the Association hold office until their successors are chosen and qualify in their stead. An officer chosen or appointed by the Board of Directors may be removed with or without cause at any time by the affirmative vote of a majority of the whole Board of Directors. If the office of an officer becomes vacant for any reason, the vacancy must be filled by the affirmative vote of a majority of the whole Board of Directors.

Section 1. Duties of the President. The President is the chief executive officer of the Association. The President has the duty to preside at all meetings of the members and Directors; to have general and active management of the business of the Association; to see that all orders and resolutions of the Board of Directors are carried into effect; to execute all agreements and other instruments in the name of the Association and to affix the corporate seal thereto when authorized by the Board of Directors.

The President oversees the general supervision and direction of the other officers of the Association to ensure that their duties are properly performed.

The President shall submit a report of the operations of the Association for the year to the Directors at their meeting next preceding the annual meeting of the members, and to the members at their annual meeting.

The President is an ex-officio member of all committees and has the general duties and powers of supervision and management usually vested in the office of the president of a corporation.

Section 2. Vice-President. The Vice-President or Vice-Presidents, in the order designated by the Board of Directors, are vested with all the powers and are required to perform all the duties of the President in the President's absence or disability, and shall perform other duties that may be prescribed by the Board of Directors.

Section 3. President Pro Tempore. In the absence or disability of the President and the Vice-Presidents, the Board may appoint from their own number a president pro tempore.

Section 4. Secretary. The Secretary or a designee shall attend all meetings of the Association, the Board of Directors, and all committee meetings. The Secretary acts as clerk of these meetings and shall record all of the proceedings of the meetings in a book kept for that

purpose. The Secretary shall give proper notice of meetings of members and Directors, and shall perform other duties that are assigned to the Secretary by the President or the Board of Directors.

Section 5. Treasurer. The Treasurer has custody of the funds and securities of the Association, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association. The Treasurer shall deposit all monies and other valuable effects in the name and to the credit of the Association in the depositories designated by the Board of Directors.

The Treasurer shall disburse the funds of the Association as may be ordered by the Board or President, taking proper vouchers for these disbursements, and shall render to the President and Directors, whenever they may require it, an account of all the Treasurer's transactions as Treasurer and of the financial condition of the Association; and at the regular meeting of the Board next preceding the annual members' meeting, a like report for the preceding year.

The Treasurer shall keep an account of the members of record in the manner and subject to whatever regulations that the Board of Directors may prescribe.

The Treasurer shall give the Association a bond, if required in writing by the Board of Directors, in sum and in form and with corporate security satisfactory to the Board for the faithful performance of the duties of the Treasurer's office and for the restoration to the Association, in case of the Treasurer's death, resignation, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the Treasurer's possession and belonging to the Association. The bond and security must, if required, be provided at the Association's expense. The Treasurer shall perform other duties that the Board of Directors may from time to time prescribe or require.

Section 6. Delegation of duties. In case of the absence or disability of any officer of the Association or for any other reason considered sufficient by the majority of the Board of Directors, the Board may temporarily delegate the officer's powers or duties to any other officer or to any Director.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Association are subject to inspection by any member. The Certificate of Incorporation and the Bylaws of the Association are available for inspection by any member at the principal office of the Association. Copies may be purchased at a reasonable cost, to be determined by the Board of Directors, to defray copying and administrative costs, but not to exceed five dollars ($5.00) for both documents.

ARTICLE XI ASSOCIATION PAYMENTS

All checks, drafts, or orders for the payment of money must be signed by the President and the Treasurer, or by such other officer or officers as the members of the Association may approve.

ARTICLE XII MEMBERS OF RECORD

The Association is entitled to treat the title holder or holders of record of any home as members in fact of the Association, and accordingly are not bound to recognize any equitable or other claim to or interest in such home or memberships on the part of any other person, whether or not it has express or other notice thereof, save as expressly provided by the laws of Delaware.

ARTICLE XIII FISCAL YEAR

The fiscal year of the Association begins on the first day of January of each year.

ARTICLE XIV AMENDMENT

Section 1. Amendment. These Bylaws may be amended, altered, repealed, or added to at any regular meeting of the members or at any special meeting called for that purpose, by affirmative vote of the majority of the members of the Association.

ARTICLE XV INCORPORATED BY REFERENCE

All of the terms, conditions, matters, and information contained and more fully set forth in the Certificate of Incorporation and the Bylaws are incorporated by reference.

ARTICLE XVI MISCELLANEOUS

All reference herein to the masculine is deemed to include the feminine or neuter genders, and vice versa, as appropriate. All reference herein to the singular is deemed to include the plural, and vice versa, as appropriate.

IN WITNESS WHEREOF, the undersigned, being all of the Directors of the Association, have hereunto set their hands this _____ day of _____, 20__ .

Witness:

_____ _____

_____, Director

_____ _____

_____, Director

_____ _____

_____, Director

CERTIFICATION

I, the undersigned, do hereby certify that I am the elected and acting secretary of the [COMMUNITY] Home Owners Association, a Delaware corporation, and that the foregoing Bylaws constitute the original Bylaws of the Association, as adopted at a meeting of the Board of Directors thereof, held on the _____ day of _____, 20__ .

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the Association this _____ day of _____, 20__ .

_____

_____, Secretary.

(d)(1) If the Authority has informed the community owner that a registered home owner association exists in the community, the community owner shall send the right of first offer directly to the home owner association. The right of first offer shall be sent by overnight service with signature receipt.

b. The right of first offer also shall be sent indirectly to the home owner association through DMHOA, or its successor, through the Consumer Protection Unit of the Office of the Attorney General of the State and through the Authority. The right of first offer shall be sent to the Authority, the Consumer Protection Unit of the Office of the Attorney General of the State or DMHOA, or its successor, by overnight service with signature receipt.

(2) If the Authority has not informed the community owner that a registered home owner association exists in the community, the community owner must send the right of first offer directly to the Authority. The right of first offer must be sent by overnight service with signature receipt. The right of first offer to the Authority shall include a list of the known names and mailing addresses of all home owners in the community.

(3) The Authority shall then, within 5 business days of receipt of the community owner's right of first offer, send a summary notice to all home owners on the list.

a. The summary notice shall inform the homeowners that the community is for sale and they should contact their home owners association to secure further information. If no home owners association exists then the homeowner will need to organize a home owners association meeting the requirements of subsection (b) of this section in order to pursue the right of first offer.

b. The right of first offer shall be extended indirectly to the home owners through DMHOA or its successor and the consumer protection unit of the office of the attorney general of the state. The right of first offer shall be sent to DMHOA and the Consumer Protection Unit of the Office of the Attorney General of the State by the community owner by overnight service with signature receipt.

(4) The right of first offer shall include:

a. A statement that the community owner has decided to sell, transfer, or convey all or part of the community. The statement must indicate the real property and fixtures to be included in the sale of the community;

b. The price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community;

c. A form confidentiality statement indicating that all significant and material information, including operating expenses and other relevant operating and capital expenditure costs related to the community, shall remain confidential and cannot be released to any individual not a signer to the confidentiality statement. The statement may include reasonable penalties for breach of confidentiality;

d. A statement that the confidentiality statement must be signed by any individual of the home owners association seeking to utilize the confidential information and sent by overnight service with signature receipt to the community owner;

e. A statement that once the confidentiality statement is received by the community owner, the community owner will send by overnight service with signature receipt the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community and all significant and material information, including operating expenses and other relevant operating and capital expenditure costs related to the community;

f. A statement that the home owner association has 30 calendar days from the date of mailing of the right of first offer to respond to the offer.

(e)(1)a. A home owner association must respond in writing to the notice of a right of first offer and send the response by overnight service with signature receipt to the community owner or the community owner's agent or attorney within 30 calendar days from the date of the mailing of the notice sent by the community owner to the association or to the Authority. The response must clearly indicate that:

1. The members of the association intend to accept the purchase price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community, as described in the notice of right of first offer; or,

2. The members of the association do not accept the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community, as described in the notice of right of first offer, but that they intend to offer to purchase the community at an alternative price; or,

3. The members of the association have no interest in purchasing the community and that they do not intend to proceed any further in the transaction, or, if the members of the association do not respond, they shall be deemed to have notified the community owner that they have no interest in purchasing the community.

b. If the home owners association does not respond in material compliance with this section, such failure to respond shall be deemed to serve as notice to the community owner that the home owners association does not wish to purchase the community.

(2) An alternative offer of price for the sale, transfer, or conveyance of the community from the home owner association remains valid for 6 months, unless withdrawn by the home owner association in writing and sent to the community owner by overnight service with signature receipt. If the community is still for sale at the expiration of the initial 6-month alternative offer period, the home owners association shall have the right to refresh their alternative offer within 7 days of its expiration upon written notice to the community owner. The refreshed offer will be valid for 6 months. The home owners association shall have the right to refresh their offer every 6

months until the property is sold or 18 months has elapsed from the time notice was provided pursuant to subsection (a) of this section, whichever comes first. The alternative offer and any refreshed alternative offer may be amended at any time upon written notice to the community owner. In the event a community owner decides they no longer want to sell a community after having provided the home owners association with the notice of first offer, any outstanding alternative offer shall be void. The community owner shall promptly notify the home owners association of their decision to remove the community from the market.

a. A notice to withdraw an alternative offer must be approved by the members of the home owners association. The approval percentage must be stated in the notice to the community owner.

b. The community owner may not sell the community to a third party at or less than the price offered in the alternative offer from the home owner association unless:

1. The offer is withdrawn as described in paragraph (e)(2)a. of this section; or

2. The home owner association is given 30 calendar days to match the lower price and all of the material terms and conditions of the lower offer.

i. The notice of the right to match the lower third-party offer shall be sent to the home owner association by overnight service with signature receipt. The notice must state the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community.

ii. Upon written demand from the home owner association, the community owner must provide the home owner association with tangible evidence of the lower offer received within 3 business days of receipt of the written request from the home owner association by overnight service with signature receipt.

iii. If the home owner association matches the offer within 30 calendar days of receipt of the notice, the community owner is obligated to move to the next step of the negotiation with the home owner association pursuant to subsection (g) of this section.

c. The community owner may accept an offer from a third party higher than the alternative price, if any, offered by the home owner association without further obligation to the home owner association unless there are significant and/or material changes in terms and conditions. However, the home owner association must be given 7 business days to match the higher offer under the following circumstances:

1. If the higher offer is less than $40 million and the home owner association's alternate price is within 6% of the offer; or

2. If the higher offer is $40 million or greater and the home owner association's alternate price is within 4.5% of the offer.

d. The notice of the right to match the higher offer pursuant to paragraph (e)(2)c.1. or (e)(2)c.2. of this section above must be sent to the home owner association by overnight service with signature receipt. The notice must state the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community. Upon written demand from the home owner association, the community owner must provide the home owner association with tangible evidence of the higher offer received within 3 business days of receipt of the written request from the home owner association by overnight service with signature receipt.

e. If the home owner association matches the offer within 7 business days of receipt pursuant to paragraph (e)(2)c.1. or (e)(2)c.2. of this section above, the community owner is obligated to move to the next step of the negotiation with the home owner association pursuant to subsection (g) of this section below. The community owner shall not accept or entertain a higher offer from a third party after the home owners association matches the offer.

f. If the community owner accepts an offer from a third party that is greater than the alternative price offered by the home owners association, such that the provisions of either paragraph (e)(2)c.1. or (e)(2)c.2. of this section are not triggered, the community owner shall certify this fact in writing to both the home owner association and the Consumer Protection Unit within 7 business days of acceptance of the third-party offer. Such written certification shall also indicate whether the accepted third-party offer contained any significant and/or material changes in terms or conditions.

(3) If the home owner association responds that it has no interest in purchasing the community, or fails to respond within the 30-day response period pursuant to paragraph (e)(1) of this section, or fails to respond within 7 business days pursuant to paragraph (e)(2)c. of this section, the community owner shall file an affidavit of compliance, pursuant to subsection (m) of this section, at the Office of the Recorder of Deeds in the appropriate county.

(4) Failure of the home owner association to accept the price and any special conditions material to the transaction for the sale, transfer, or conveyance of the community as stated in the notice of right of first offer, or failure to state an alternative price pursuant to paragraph (e)(1)b. of this section within the 30-day response period, or failure to respond within 7 business days pursuant to paragraph (e)(2)c. of this section eliminates the right of the home owner association to purchase the community during the remainder of the 12-month period that commenced on the date of the community owner's notice of intention to sell, transfer, or convey all or part of the community.

(f) If a community owner has decided to sell, transfer, or convey all or part of the community, the community owner and the home owner association shall negotiate in good faith for the sale, transfer, or conveyance of the community to the home owner association. If a party fails to negotiate in good faith, the court shall award reasonable attorneys' fees to the prevailing party.

(g) If a home owner association responds to the notice of right of first offer pursuant to paragraph (e)(1) of this section, or if the community owner agrees to sell the community to the home owner association pursuant to paragraph (e)(2) of this section, the home

owner association has an additional 30 days to formalize the agreed price, terms, and conditions into a contract of sale. This 30-day period may not be used to renegotiate the price, terms, or conditions agreed to during the first 30-calendar-day period unless mutually agreed to in writing. Time is of the essence. Failure of the home owner association to formalize a contract of sale during the 30-day period following an agreement of price, terms, and conditions eliminates any right of the home owner association to purchase the community during the remainder of the 12-month period that commenced on the date of the community owner's notice of intention to sell, transfer, or convey all or part of the community.

(h)(1) Upon a formalized contract of sale being signed by both parties, the change of ownership of the community must be completed within 90 days. Time is of the essence.

(2) The completion date may be extended beyond the 90-day period if both parties agree to an extension. However, neither party is obligated to agree to an extension. An agreement to extend the settlement date must be in writing and signed by both parties to the transaction. However, if the parties did not fully exhaust the 30-day periods provided in subsections (e) and (g) of this section, any unused days may be added to the 90-day period in paragraph (h)(1) of this section by either party by providing written notification to all other parties within 5 business days prior to the end of the 90-day period. The time period for calculation of unused days is from the dates of mailing of the notices required by each section.

(3) If, for any reason except default by the community owner, the home owner association and the community owner do not complete the sale within the 90-day period as specified by paragraph (h)(1) of this section before the expiration of the extension period agreed to by the parties under paragraph (h)(2) of this section, the right-of-first-offer obligations of the community owner to the home owner association are terminated, and the community owner may sell, transfer, or convey all or part of the community to any third party at the price offered in the right of first offer, or at a higher price or lower price, for the remainder of the 12-month period that commences on the date of the community owner's notice of intention to sell, transfer, or convey all or part of the community.

(i)(1) If the Authority has sent the required annual notice to a community owner and the community owner then decides to sell, transfer, or convey all or part of the manufactured home community at auction, the community owner shall notify the home owner association directly of its intention if the Authority has informed the community owner of a registered home owner association in that community. The community owner's notice must also be sent to DMHOA or its successor, to the Authority. A copy must be sent pursuant to § 7024 of this title to each home owner in the affected community. A copy must be sent pursuant to § 7024 of this title to each home owner in the affected community. If the Authority has not informed the community owner that a registered home owner association exists in the community, the community owner must send the notice of the intent to convey the community at auction directly to the Authority. The notice shall include a list of the known names and mailing addresses of all home owners in the community. The Authority shall, within 5 business days of the receipt of the notice from the community owner, send the notice to all home owners on the list.

(2) The notice of a community owner's intention to sell, transfer, or convey all or part of the manufactured home community at auction must be sent within 10 days after a date for the auction has been established and at least 60 days prior to the date of the auction. The notice must be sent by overnight service with signature receipt. The notice must state:

a. The intention to sell the community at auction;

b. The date, time, and place of the auction; and

c. The terms of the auction, which must be similar to other auction practices and standards in the area.

(3) At least 60 days prior to a scheduled auction, the community owner shall provide all pertinent information directly to the home owner association if the Authority has informed the community owner of a registered home owner association in the community. Copies of the pertinent information must also be sent to DMHOA or its successor, to the Authority. Pertinent information, to be provided by third-party professionals, includes, but is not limited to, descriptions of topography, soils (including but not limited to a Phase I environmental soil study and a Phase II study, if required), flood plain study, wetlands study, water system, water quality, distribution system, sanitary survey, wastewater disposal, access, egress, and interior community roads, storm water drainage, electrical, telephone, and cable utility services, boundary survey, and home lot plan if available, along with a USGS plan, aerial photo, tax map, flood zone map, soils map, site photographs, and a future repair and capital improvement analysis. A community owner may not be held liable for misinformation provided by a third-party professional.

(4) Within 30 days of receiving the notice of the auction, a home owner association in the affected community may make an offer to purchase the community. If the home owner association makes an offer, and the community owner accepts the offer, the parties shall negotiate in good faith for the sale, transfer, or conveyance of the community to the home owner association. If the community owner accepts the offer, a contract shall be formalized and ownership shall be transferred as provided in subsections (g) and (h) of this section.

(5) If the home owner association makes an offer to purchase the community within 30 days after receiving the notice of the auction sale, but the community owner does not accept the offer, the community owner may proceed to auction the community. The home owner association's offer must be the minimum bid at the auction and the community owner may not accept a bid of less than the home owner association's offer.

(6) If a home owner association participates in the auction process by providing deposit moneys, if required, the home owner association has the right to purchase the community within 7 days after the date of the auction for 1% higher than the winning bid with the same terms and conditions. If a home owner association decides to purchase the community for 1% higher than the winning bid

under the same terms and conditions, a contract of sale must be formalized within 20 calendar days, and the change of ownership must be completed within 90 days. However, if the home owner association does not participate in the auction process, or if the home owner association fails to respond within 7 business days and to formalize a contract within 20 calendar days, or to complete the change of ownership within 90 calendar days, the community owner has no further obligation to the home owner association.

(7) If the winning bidder does not complete the transaction, and if the association still does not have the next highest bid, and if the community owner still intends to sell the community to the next highest bidder, the community owner must repeat the procedure set forth in paragraph (i)(6) of this section.

(8) A community owner has the right to accept or reject any auction bids.

(j) If a community owner intends to offer more than one community for sale in a single transaction, a simple majority of members of the respective home owner associations in Delaware must vote in the affirmative to support their letter of response to the community owner. If a community owner offers a Delaware community for sale, along with 1 or more communities not located in the State, the community owner must afford the residents of the Delaware community a right of first offer as prescribed by this section for their community, separate and apart from the community or communities not located in the State.

(k) A home owner association may transfer or assign a right of first offer only to an organization formed or controlled by the home owners to assist only in the purchase and operation of the community. Therefore, other than the preceding condition in this subsection, a right of first offer is neither transferable nor assignable.

(l) If a community owner or a home owner association fails to comply with any provision of this section, either party has standing to seek equitable relief, including declaratory relief, injunctive relief, and the appointment of a receiver. The offending party is liable for actual damages. If a court of competent jurisdiction finds that the offending party wilfully and intentionally failed to comply with the requirements of this section, it is a per se violation of the Consumer Fraud Statute, § 2511 et seq. of Title 6, and the aggrieved party may be entitled to recover treble damages. In any action under this section, the court may award reasonable attorneys' fees and costs.

(m) Affidavit of compliance with the requirements of this section.

(1) A community owner may, if appropriate under the circumstances, record in the Registry of Deeds of the county in which the community is located an affidavit in which the community owner certifies that:

a. The manufactured home community owner has complied with the requirements of this section, and has included a copy of the notice sent to the residents of the community; or

b. The sale, transfer, or conveyance of the community is exempt from this section, pursuant to subsection (n) of this section.

(2) A party acquiring an interest in a manufactured home community, and title insurance companies and attorneys preparing, furnishing, or examining any evidence of title, have the right to rely on the truth and accuracy of all statements appearing in an affidavit recorded pursuant to paragraph (m)(1) of this section, and are under no obligation to inquire further as to any matter or fact relating to the community owner's compliance with the provisions of this section.

(n) Chapter 71 of this title does not apply to the sale, transfer, or conveyance of manufactured home communities under this section.

(o) *Right of first offer; exceptions to notice required before the sale of a manufactured home community.* — Notwithstanding any provision to the contrary, a manufactured home community owner is not required to give notice of or extend a right of first offer to a home owner association, to DMHOA or its successor, or to the Authority under the following circumstances:

(1) A bank, mortgage company, or any other mortgagee has foreclosed on the community and the mortgagee is selling the community at a foreclosure sale, or is selling the community after having purchased the community at a foreclosure sale;

(2) The sale, transfer, or conveyance of the community is to a family member of the community owner on the modified Table of Consanguinity or to a trust, the beneficiaries of which are family members of the owner on the modified Table of Consanguinity; or the sale, transfer, or conveyance is to a family member on the modified Table of Consanguinity who is included within the line of intestate succession if the community owner dies intestate;

(3) The sale, transfer, or conveyance is by a partnership to 1 or more of its partners;

(4) The sale, transfer, or conveyance is between joint tenants or tenants-in-common;

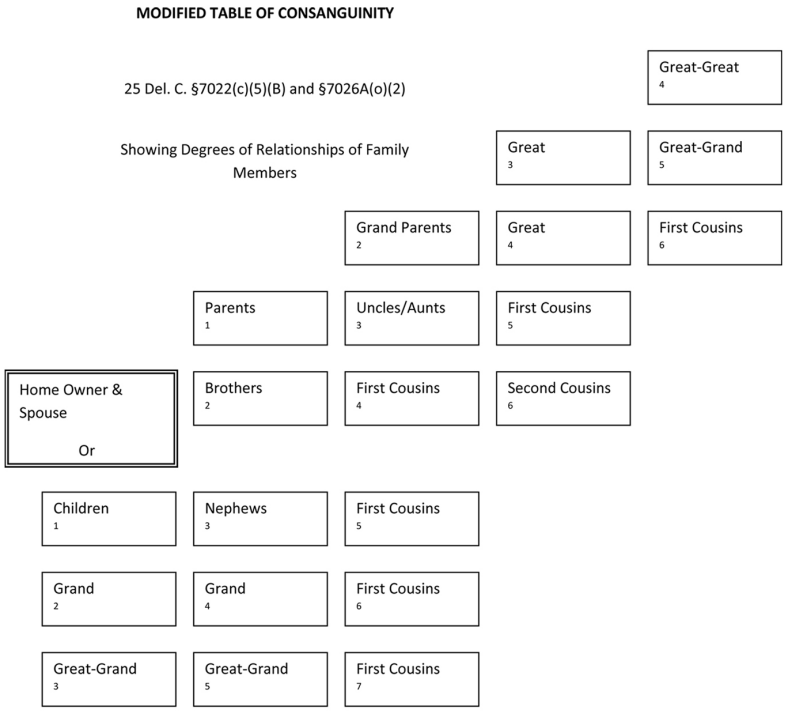
(5) The sale, transfer, or conveyance is by gift, devise, or operation of law;

(6) The sale, transfer, or conveyance is pursuant to eminent domain;

(7) The sale, transfer, or conveyance is to an affiliate: An "affiliate" means any individual, corporation, limited partnership, unincorporated association, or entity which holds any direct or indirect ownership interest in the community; provided, however, that the notice and extension of the right of first offer provided for herein must be granted to a home owner association where the majority interest in the ownership of the community or the power, directly or indirectly, to direct or cause the direction of the management and policies over the community, whether through ownership of voting stock, by contract, or otherwise, is sold, transferred, or conveyed to any individual, corporation, limited partnership, unincorporated association, or other entity which has not held such a direct or indirect ownership interest in the community for 3 or more years;

(8) The sale, transfer, or conveyance is an exchange of the manufactured housing community for all, or substantially all, of other real property under § 1031 of the Internal Revenue Code [26 U.S.C. § 1031] or any other provision of the Internal Revenue Code that allows for exchanges or tax-free exchanges, regardless of whether the exchange also involves the payment of cash or other consideration.

(9) A change in use of the manufactured home community by the existing community owner.



(74 Del. Laws, c. 35, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 336, § 1; 77 Del. Laws, c. 238, §§ 2-20; 79 Del. Laws, c. 330, § 1.)

§ 7027 Change of use; conversion.

This subchapter governs a change in use of a manufactured home community, as described in § 7010(b) of this title, to any use other than a conversion of the community to a manufactured home cooperative or condominium community, which is governed by Chapter 71 of this title.

(74 Del. Laws, c. 35, § 2.)

Subchapter II
Tenant's Receivership

§ 7031 Petition for receivership.

Any tenant or group of tenants may petition for the establishment of a receivership in a Justice of the Peace Court upon the grounds that there has existed for 5 days or more after notice to the landlord:

(1) If the rental agreement or any state or local statute, code, regulation or ordinance places a duty upon the landlord to so provide, a lack of heat, or of running water, or of light, or of electricity or of adequate sewage facilities; or

(2) Any other conditions imminently dangerous to the life, health or safety of the tenant.

(66 Del. Laws, c. 268, § 2.)

§ 7032 Necessary parties defendant.

(a) Petitioners shall join as defendants:

(1) All parties duly disclosed to any of them in accordance with § 7036 of this title; and

(2) All parties whose interest in the property is a matter of public record, and whose interest in the property is capable of being protected in this proceeding.

(b) Petitioners shall not be prejudiced by a failure to join any other interested parties.

(66 Del. Laws, c. 268, § 2.)

§ 7033 Defenses.

It shall be a sufficient defense to this proceeding if any defendant of record establishes that:

(1) The condition or conditions described in the petition do not exist at the time of trial;

(2) The condition or conditions alleged in the petition have been caused by the wilful or grossly negligent acts of 1 or more of the petitioning tenants or members of his or their families, or by persons on the premises with his or their consent; or

(3) Such condition or conditions would have been corrected, were it not for the refusal by any petitioner to allow reasonable access.

(66 Del. Laws, c. 268, § 2.)

§ 7034 Stay of judgment by defendant.

(a) If, after a trial, the court shall determine that the petition should be granted, the court shall immediately enter judgment thereon and appoint a receiver as authorized herein; provided however, prior to the entry of judgment and appointment of a receiver, the owner or any mortgagee or the lienor of record or other person having an interest in the property may apply to the court to be permitted to remove or remedy the conditions specified in the petition. If such person demonstrates the ability to perform promptly the necessary work and posts security for the performance thereof within the time, and in the amount and manner, deemed necessary by the court, then the court may stay judgment and issue an order permitting such person to perform the work within a time fixed by the court and requiring such person to report to the court periodically on the progress of the work. The court shall retain jurisdiction over the matter until the work is completed.

(b) If, after the issuance of an order under subsection (a) of this section, but before the time fixed in such order for the completion of the work prescribed therein, there is reason to believe that the work will not be completed pursuant to the court's order or that the person permitted to do the same is not proceeding with due diligence, the court or the petitioners, upon notice to all parties to the proceeding, may move that a hearing be held to determine whether judgment should be rendered immediately as provided in subsection (c) of this section.

(c)(1) If, upon a hearing authorized in subsection (b) of this section, the court shall determine that such party is not proceeding with due diligence, or upon the actual failure of such person to complete the work in accordance with the provisions of the order, the court shall appoint a receiver as authorized herein.

(2) Such judgment shall direct the receiver to apply the security posted to executing the powers and duties as described herein.

(3) In the event that the amount of such security should be insufficient to accomplish the above objectives, such judgment shall direct the receiver to collect the rents, profits and issues to the extent of the deficiency. In the event that the security should exceed the amount necessary to accomplish the above objectives, such judgment shall direct the receiver to return the excess to the person posting the security.

(66 Del. Laws, c. 268, § 2.)

§ 7035 Receivership procedures.

(a) The receiver shall be the Division of Consumer Protection of this State, or its successor agency.

(b)(1) Upon its appointment, the receiver shall make within 15 days an independent finding whether or not there is proper cause shown for the need for rent to be paid to it, and for the employment of a private contractor to correct the condition complained of in § 7031 of this title and found by the court to exist.

(2) If the receiver shall make such a finding, it shall file a copy of the finding with the Recorder of Deeds of the county where the property lies and it shall be a lien on that property where the violation complained of exists.

(3) Upon completion of the aforesaid contractual work and full payment to the contractor, the receiver shall file a certification of such with the Recorder of Deeds of the appropriate county, and this filing shall release the aforesaid lien.

(4) The receiver shall forthwith give notice to all lienholders of record.

(5) If the receiver shall make a finding at such time or any other time that for any reason the appointment of the receiver is not appropriate, it shall be discharged upon notification to the court and all interested parties, and shall make legal distribution of any funds in its possession.

(66 Del. Laws, c. 268, § 2; 69 Del. Laws, c. 291, § 98(c).)

§ 7036 Powers and duties of receiver.

The receiver shall have all the powers and duties accorded a receiver foreclosing a mortgage on real property, and all other powers and duties deemed necessary by the court. Such powers and duties shall include, but are not necessarily limited to, collecting and using all rents and profits of the property, prior to and despite any assignment of rent, for the purposes of:

(1) Correcting the condition or conditions alleged in the petition;

(2) Materially complying with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) Paying all expenses reasonably necessary for the proper operation and management of the property including insurance, mortgage payments, taxes and assessments, and fees for the services of the receiver and any agent the receiver should hire;

(4) Compensating the tenants for whatever deprivation of their rental agreement rights resulted from the condition or conditions alleged in the petition; and

(5) Paying the costs of the receivership proceeding.

(66 Del. Laws, c. 268, § 2; 70 Del. Laws, c. 186, § 1.)

§ 7037 Discharge of receiver; costs.

(a) In addition to those situations described in § 7035 of this title, the receiver may also be discharged when:

(1) The condition or conditions alleged in the petition have been remedied;

(2) The property materially complies with all applicable provisions of any state or local statute, code, regulation or ordinance governing the maintenance, construction, use or appearance of the surrounding grounds;

(3) The costs of the above work and any other costs as authorized herein have been paid or reimbursed from the rents and profits of the property; and

(4) The surplus money, if any, has been paid over to the owner.

(b) Upon subsections (a)(1) and (a)(2) of this section being satisfied, the owner, mortgagee or any lienor may apply for the discharge of the receiver after paying to the latter all moneys expended by that receiver and all other costs which have not been paid or reimbursed from the rents and profits of the property.

(c) If the court determines that future profits of the property will not cover the cost of satisfying subsections (a)(1) and (a)(2) of this section, the court may discharge the receiver and order such action as would be appropriate in the situation, including but not limited to terminating the rental agreement; and may order the vacation of the mobile home park within a specified time. In no case shall the court permit repairs which cannot be paid out of the future profits of the property.

(66 Del. Laws, c. 268, § 2; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Affordable Manufactured Housing [For application of this subchapter, see 79 Del. Laws, c. 304, § 7]

§ 7040 Purpose [For application of this section, see 79 Del. Laws, c. 304, § 7]

Manufactured housing has become a vital source of affordable housing in Delaware, particularly as a homeownership opportunity for low-income households who otherwise would likely not be able to move into homeownership. In recent years Delaware has experienced a difficult economic climate which has resulted in a crisis in affordable housing availability. Additionally, manufactured home owners make substantial and sizeable investments in their manufactured homes. Once a manufactured home is situated on a manufactured housing community site, the difficulty and cost of moving the home gives the community owner disproportionate power in establishing rental rates. The continuing possibility of unreasonable space rental increases in manufactured home communities threatens to diminish the value of manufactured home owners' investments. Through this subchapter, the General Assembly seeks to protect the substantial investment made by manufactured home owners, and enable the State to benefit from the availability of affordable housing for lower-income citizens, without the need for additional state funding. The General Assembly also recognizes the property and other rights of manufactured home community owners, and seeks to provide manufactured home community owners with a fair return on their investment. Therefore, the purpose of this subchapter is to accommodate the conflicting interests of protecting manufactured home owners, residents and tenants from unreasonable and burdensome space rental increases while simultaneously providing for the need of manufactured home community owners to receive a just, reasonable and fair return on their property.

(79 Del. Laws, c. 63, § 1.)

§ 7041 Definitions [For application of this section, see 79 Del. Laws, c. 304, § 7]

The definitions contained in § 7003 of this title shall apply to this subchapter. Unless otherwise expressly stated, if a word or term is not defined under § 7003 of this title, it has its ordinarily accepted meaning or means what the context implies.

(79 Del. Laws, c. 63, § 1.)

§ 7042 Rent justification [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) A community owner may raise a home owner's rent for any and all 12-month periods governed by the rental agreement in an amount greater than the average annual increase of the Consumer Price Index For All Urban Consumers in the Philadelphia-Wilmington-Atlantic City area ("CPI-U") for the most recently available preceding 36-month period provided the community owner can demonstrate the increase is justified for the following conditions:

(1) The community owner, during the preceding 12-month period, has not been found in violation of any provision of this chapter that threatens the health or safety of the residents, visitors or guests that persists for more than 15 days, beginning from the day the community owner received notice of such violation; and

(2) The proposed rent increase is directly related to operating, maintaining or improving the manufactured home community, and justified by 1 or more factors listed under subsection (c) of this section.

(b) The Delaware State Housing Authority shall monitor the CPI-U and report to the Authority findings and recommendations relevant to the cost of rent in manufactured home communities in Delaware.

(c) One or more of the following factors may justify the increase of rent in an amount greater than the CPI-U:

(1) The completion and cost of any capital improvements or rehabilitation work in the manufactured home community, as distinguished from ordinary repair, replacement and maintenance;

(2) Changes in property taxes or other taxes within the manufactured home community;

(3) Changes in utility charges within the manufactured home community;

(4) Changes in insurance costs and financing associated with the manufactured home community;

(5) Changes in reasonable operating and maintenance expenses relating to the manufactured home community including, but not limited to: costs for water service; sewer service; septic service; water disposal; trash collection; and employees;

(6) The need for repairs caused by circumstances other than ordinary wear and tear in the manufactured home community.

(7) *Market rent.* — For purposes of this section, "market rent" means that rent which would result from market forces absent an unequal bargaining position between the community owner and the home owners. In determining market rent relevant considerations include rents charged to recent new home owners entering the subject manufactured home community and/or by comparable manufactured home communities. To be comparable, a manufactured home community must be within the competitive area and must offer similar facilities, services, amenities and management.

(8) The amount of rental assistance provided by the community owner to the home owners under § 7021A of this title.

A community owner shall not incorporate the cost of a civil penalty, criminal fine, or litigation-related costs for rent-related proceedings into rent charged under any circumstance. A community owner also shall not utilize as justification for any future rental increase the cost of capital improvements or rehabilitation work, once that cost has been fully recovered by rental increases that were incorporated into a prior rental increase in excess of CPI-U, where the prior rental increase was properly implemented under this subchapter.

(79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, §§ 1, 6.)

§ 7043 Rent increase dispute resolution [For application of this section, see 79 Del. Laws, c. 304, § 7 and 80 Del. Laws, c. 229, § 3]

(a) A community owner shall give written notice to each affected home owner and to the home owners' association, if one exists, and to the Delaware Manufactured Home Relocation Authority (the Authority), at least 90 days prior to any increase in rent. The notice shall identify all affected home owners by lot number, name, group or phase. If the affected home owners are not identified by name, the community owner shall make the names and addresses available to any affected home owner, home owners' association and the Authority, upon request.

(b) If the proposed rent increase exceeds the CPI-U, the Authority shall schedule a final meeting between the parties at a mutually-convenient time and place to be held within 30 days from the mailing of the notice of the rent increase, to discuss the reasons for the increase. At the community owner's election, the Authority shall also schedule 1 or more optional informal meetings prior to the final meeting. The community owner proposing the rent increase shall recommend to the Authority a date, time and place of the final meeting and of any preceding informal meetings, and the Authority shall affirm that recommendation with the community owner, if it finds the date, time and place to be reasonable. At or before the final meeting the community owner shall, in good faith, disclose in writing all of the material factors resulting in the decision to increase the rent. When market rent is a factor used by the community owner, the community owner shall provide a range of rental rates from low to high, and when relevant the mean and median; this disclosure shall include:

(1) Whether comparable rents were determined at arm's length, each case in which the community owner or related party has an ownership interest in the comparable lot/community; and

(2) The time relevance of the data.

For purposes of this subsection, "related party" means any of a person's parents, spouse, children (natural or adopted) and siblings of the whole and half-blood. The community owner shall disclose financial and other pertinent documents and information supporting the reasons for the rent increase.

The parties may agree in a writing signed by the community owner and at least 1 affected homeowner or the home owners' association to extend or continue any meetings required by this section to a date specified in the writing and approved by the Authority as reasonable. Within 2 business days of signing the agreement to continue or extend, the community owner shall notify the Authority of the agreement by forwarding the signed agreement to the Authority.

(c) After the final meeting, any affected home owner who has not already accepted the proposed increase, or the home owners' association on the behalf of 1 or more affected home owners who have not already accepted the proposed increase may, within 30 days from the conclusion of the final meeting, petition the Authority to appoint a qualified arbitrator to conduct nonbinding arbitration proceedings. If the thirtieth day is a Saturday, Sunday, legal holiday, or other day on which the office of the Authority is closed, the 30-day period shall run until the end of the next day on which the office of the Authority is open. Only if a petition is timely filed, the Authority shall select an arbitrator who is a member of the Delaware Bar with appropriate training in alternative dispute resolution. The Authority may select an arbitrator from the list of arbitrators maintained by the Superior Court of the State, or by soliciting applicants for a list maintained by the Authority, or through another method which the Authority, in its discretion, has determined will be sufficient to result in the selection of an appropriate arbitrator. The tenants and the landlord must each pay $250 to the Delaware Manufactured Home Relocation Trust Fund to be applied to the arbitrator's fee. The Authority shall pay all direct arbitration costs in excess of the $500 collected from the home owners and community owner. All other costs shall be the responsibility of the respective parties. The arbitration must be held within 60 days from the date of the petition.

(d) The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing.

(e) Unless waived by all parties, testimony will be under oath or affirmation, administered by the arbitrator.

(f) Testimony shall be transcribed and shall be considered a written record.

(g) The arbitrator will render a decision employing the standards set forth in § 7042 of this title.

(h) The arbitrator will render a written decision within 15 days of the conclusion of the arbitration hearing.

(i) The home owners will be subject to the rent increase as notified; however, if the rent increase is not approved through the process provided in this section, the community owners shall rebate the increase.

(79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, §§ 2-4; 80 Del. Laws, c. 229, § 1.)

§ 7044 Appeal [For application of this section, see 79 Del. Laws, c. 304, § 7 and 80 Del. Laws, c. 229, § 3]

The community owner, the home owners' association, or any affected home owner may appeal the decision of the arbitrator within 30 days of the date of issuance of the arbitrator's decision. The appeal shall be to the Superior Court in the county of the affected community. The appeal shall be on the record and the Court shall address written and/or oral arguments of the parties as to whether the record created in the arbitration is sufficient justification for the arbitrator's decisions and whether those decisions are free from legal error.

(79 Del. Laws, c. 63, § 1; 79 Del. Laws, c. 304, § 5; 80 Del. Laws, c. 229, § 2.)

§ 7045 Penalties [For application of this section, see 79 Del. Laws, c. 304, § 7]

A community owner who raises a home owner's rent more than the annual average increase of the CPI-U for the preceding 36-month period without having obtained approval of the Authority shall be required to immediately reduce the rent to the amount in effect before the unauthorized increase and rebate the unauthorized rent collected to the home owners with interest. The Department of Justice shall have authority over this section.

(79 Del. Laws, c. 63, § 1.)

§ 7046 Exemption [For application of this section, see 79 Del. Laws, c. 304, § 7]

(a) Resident-owned communities shall be exempt from the provisions of this subchapter.

(b) Any deed subject to lease community shall be exempt from the provisions of this subchapter. A deed subject to lease community is a community wherein each homeowner has a deed subject to lease recorded with the recorder of deeds, has a long-term lease of at least 40 years' duration where the lease includes specific rent increases, and wherein each home is of modular construction.

(79 Del. Laws, c. 63, § 1.)

Part VI
Manufactured Home Communities

Chapter 71
CONVERSION OF MANUFACTURED HOME COMMUNITIES TO MANUFACTURED HOME CONDOMINIUM OR COOPERATIVE COMMUNITIES

§ 7101 Purpose of chapter.

This chapter provides a procedure for the orderly transition of a manufactured home community from single-unit rental to multiple-unit usage as a manufactured home condominium or cooperative community.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 6.)

§ 7102 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Affected local community" shall mean the municipality or county in which the largest portion of the real property which has been proposed as a conversion project is situated. An "affected local government" shall mean the elected council or other governing body of an affected local community;

(2) "Comparable housing" shall mean a dwelling place or manufactured home community site which is:

a. Decent, safe, sanitary and in compliance with all local and state housing codes;

b. Open to all persons regardless of race, creed, national origin, ancestry, marital status or sex;

c. Provided with facilities equivalent to that provided by the owner in the manufactured home community site which is undergoing conversion, and is equivalent to such manufactured home community in each of the following categories:

1. Apartment size or manufactured home size, or community rental space which can accommodate a manufactured home equal in size to that in which the displaced resident was formerly residing (including substantially equivalent yard space and automobile parking space);

2. Rent range;

3. Special facilities necessary for a person with a disability or impairment if the displaced resident has a disability or is impaired;

d. Located in an area not less desirable than that of the manufactured home community being converted, in regard to each of the following:

1. Accessibility to the tenant's place of employment;

2. Accessibility of community and commercial facilities;

3. Environmental quality and conditions; and

e. In accordance with additional reasonable criteria which the tenant has requested in writing at the time of making any requests under this chapter, as determined by the Attorney General;

(3) "Conversion project" shall mean the area which comprises or formerly comprised a manufactured home community which has been converted to, or which will be converted to or include a condominium, cooperative or other form of multiple-unit housing (and which includes peripheral areas used for landscaping or recreation);

(4) "Long-term vacancies" shall mean dwelling units in the manufactured home community which were not leased, or not occupied by bona fide tenants for more than 5 months prior to the preliminary notice;

(5) "Manufactured home community" shall mean any manufactured home or trailer community designed to house manufactured homes which are served by utilities on a year-round basis. This chapter shall not apply to a community or camp devoted to recreational vehicles which move to the site under their own power or can be towed to the site by an automobile;

(6) "Multiple-unit usage" means use as a manufactured home condominium or cooperative community.

(7) "Nonpurchasing tenant" shall mean a tenant who has elected not to purchase a unit or units in the proposed conversion project. A "purchasing tenant" shall mean a tenant who has agreed to purchase a unit or units in the proposed conversion project;

(8) "Owner" shall mean the legal entity (including a natural person or group of persons) which owns the real estate on which a manufactured home is located. The word "owners" refers to instances where a manufactured home community is located on 2 or more separate parcels where the owners, or the legal status or character of the owners, differ. The word "owner" shall also include "owners" unless the context indicates otherwise, and shall include any developer or other person acting in concert with, or with the consent of the owner;

(9) "Relocation assistance plan" shall mean a proposed plan of assistance to tenants which is intended to enable such tenants to obtain comparable housing with a minimum of difficulty and expense;

(10) "Tenant" shall mean a person, 18 years of age or older, who has at least a leasehold interest in a manufactured home community and who, for rent or by written or oral contract or other good consideration, is leasing or is purchasing or has purchased a manufactured home or manufactured home site within the community. For purposes of §§ 7103(c) and 7105 of this title a tenant shall mean an individual who rents a manufactured home site or the head of household where a family rents a site. An owner of a manufactured home community owning manufactured homes or sites within the community is not a "tenant" under this chapter;

(11) "Tenant association" or "tenants' association" shall mean a group of tenants comprising at least half of those tenants residing within a manufactured home community.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, §§ 7, 8; 78 Del. Laws, c. 179, §§ 271, 272.)

§ 7103 Requisites for conversion.

(a) The conversion to multiple-unit usage of any real property on which a manufactured home community is situated shall be permitted only where the vacancy rate of manufactured home sites in the affected local community constitutes 5 percent or more of all manufactured home sites available; or the ratio of multiple-unit manufactured home housing is 25 percent or less of all manufactured home sites available in the affected community all as established according to the records of the appropriate municipal board of assessment and planning and zoning commission or county board of assessment and planning and zoning commission, as the case may be.

(b) No real property on which a manufactured home is located shall be converted into multiple-unit usage unless at least 35 percent of the tenants at the date the conversion plan is filed with the recorder of deeds have agreed to the proposed conversion; provided, however, that in the event of any vote or tally, there shall be only 1 vote for each manufactured home site.

(c) No real property on which a manufactured home community is located shall be converted into multiple-unit usage if the rent for any tenant has been raised during the 6-month period immediately prior to the preliminary notice.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7104 Conversion plan.

Where real property is being utilized as a manufactured community, such real property cannot be converted to multiple-unit usage until the owner of such property has filed a true copy of the conversion plan with the Attorney General; with the office of the Recorder of Deeds of the county or counties in which the land is situated; and has mailed or delivered a copy to the tenant's association, if 1 is in existence within the manufactured home community at that time. The conversion plan shall contain:

(1) Information for the affected local government including, but not limited to, the following:

a. A description of the boundaries of the real estate which is to be converted;

b. The name and business address of each corporate and noncorporate developer and owner of the property;

c. Where a developer or owner is a corporation, the name and address of each officer and member of the corporation's board of directors;

d. A listing of all stages of the proposed conversion process, including the proposed finishing date for each stage;

e. The developer's assessment of the impact of the proposed conversion on: The immediate surrounding area; local schools; traffic patterns and density; on-street parking; and on utilities and services furnished by the municipality or county;

f. The developer's assessment of the impact of the conversion on the number of available manufactured home rental spaces in the affected local community;

(2) Information needed by present lessees and others who must make a decision concerning whether or not to purchase units in the conversion project, including but not limited to:

a. A description of the rental structure and of each type of unit in the proposed conversion project, together with the specific initial fixed price for each unit, including any proposed fees or charges, and how such price was computed and in conjunction with the tenants' association right of first refusal described in §§ 7105(a)(2) and 7108(a) of this title an explanation as to how the specific fixed price for the entire community was calculated explaining in detail the profit to be made by the owner;

b. Information in summary form relating to mortgage financing; estimated down payment for each unit; alternative financing and down payments; monthly payments of principal, interest and real estate taxes; and estimated federal income tax benefits and liabilities;

c. Site plans, including drawings of the property as it would appear after conversion into multiple-unit housing;

d. A copy of each organizational document, including all proposed covenants, conditions and restrictions;

e. The number and location of any proposed off-street parking spaces, enclosed storage spaces, and recreational areas;

f. The extent to which the developer will provide any capital contribution for the maintenance or improvement of common areas;

g. Statement by the owner that he has received a certificate attesting that the proposed conversion project meets all zoning codes of the county and municipality in which the project will be located, or the conversion project is a valid preexisting nonconforming use;

(3) Information relating to nonpurchasing tenants including, but not limited to, a proposed relocation assistance plan; and a list of comparable housing in the area, including available manufactured home and nonmanufactured home housing. The relocation plan shall include information relating to all agencies and organizations which provide alternative housing relocation assistance;

(4) A listing of all tenants of the manufactured home community at the time of the conversion plan, by name; and a listing of those tenants which have agreed to purchase units in the conversion project, together with the signatures of the purchasing tenants.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7105 Notice requirements.

(a) *Preliminary notice period.* — Any owner of real estate on which a manufactured home community is located who wishes to convert such property to multiple-unit usage shall provide a written preliminary notice to each tenant, and to the tenants' association, if 1 is in existence, of the owner's intention to convert the property. The preliminary notice shall not constitute, nor shall it include, a notice to the tenant to terminate his tenancy. Such preliminary notice shall also notify each tenant of the following:

(1) That there is a mandatory 3-year grace period prior to eviction;

(2) That the tenants' association has the exclusive option to purchase that portion of the community which the owner proposes to convert, and must, within 90 days from the date it receives the preliminary notice, and the separate writing described in § 7108(a) of this title, notify the owner of its intent to exercise its option;

(3) That if the tenants' association decides not to exercise its option, upon the expiration of the 90-day period, the option shall convert into a right of first refusal meaning that the property shall not be sold to any other purchaser, at any time, at any price or terms without first having been offered on the same terms to the tenants' association;

(4) That no tenant shall be evicted prior to the expiration of the 3-year grace period, except for the following causes:

a. Nonpayment of rent; or

b. Violation of a material provision of the lease.

(b) *Grace period.* — After the expiration of 90 days from the date of the preliminary notice or filing of the conversion plan with the Recorder of Deeds, whichever is later, the owner may give final notice to each tenant that the tenant must vacate the premises at the end of the 3-year period, unless the tenant comes within any of the exceptions set forth in this section and § 7111 of this title. From the time of the delivery of the final notice, each tenant shall have a 3-year grace period before the owner may institute legal action for eviction. In any instance where a tenant's lease is for a period of time which extends beyond the expiration date as set forth in the final notice, the grace period shall continue until expiration of such tenant's lease.

(c) *Final notice.* — The final notice shall contain a provision stating that each tenant in occupancy at the time of the preliminary notice shall have the exclusive right to purchase a unit in the proposed conversion project, and that such exclusive right to purchase shall continue through the first 90 days after the waiver or termination by the tenants' association of its option, and for such additional time thereafter as the owner shall permit. A copy of the final notice shall also be mailed or delivered to the tenants' association, if such association was in being at the time of the preliminary notice. The final notice shall contain a provision that any person who is a tenant of the manufactured home community, and who elects to purchase a unit in the conversion project, shall not be required to pay more for any unit than the price set forth in the conversion plan, nor more than any other person purchasing the same type of unit. The final notice shall not constitute, nor shall it include, a notice to the tenant to immediately terminate his tenancy.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7106 Approval by Attorney General.

No conversion of real property on which a manufactured home community is situated shall be lawful unless such conversion has received the approval of the Attorney General after a thorough review the conversion plan to determine compliance with this chapter. Where the Attorney General has not acted to approve, conditionally approve or disapprove a conversion plan or prospective conversion within 90 days after receipt of the conversion plan, the conversion plan or prospective conversion shall be deemed to have been approved; provided, however, that the provisions of § 7103 of this title are mandatory, and cannot be waived. The Attorney General may, by a writing addressed to the owner, suspend his decision for an additional 30 days. When the conversion plan is approved, no provision of the plan shall be changed without the written approval of the Attorney General.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7107 Extension and termination of leases.

(a) Any tenant at the time of the preliminary notice grace period shall be entitled to have his lease extended, on the same terms and conditions as the immediately preceding lease, until the expiration of the grace period. Nothing in this subsection shall prevent the owner from increasing rent pursuant to § 7110(d) of this title.

(b) After receipt of the final notice, and upon 30 days' written notice to the owner, a tenant may without penalty terminate his existing lease; provided, however, that the owner shall receive a full month's rent for any partial month of tenancy.

(64 Del. Laws, c. 14, § 2.)

§ 7108 Option to purchase; right of first refusal; rescission of contract to purchase; nonpurchasing tenant with children attending school.

(a) Where there is a tenants' association in existence at the time of the preliminary notice, the owners of the real property which is to be converted shall in a separate writing mailed to the association, upon approval of the plan by the Office of the Attorney General, grant

to the association the exclusive option to purchase the community for a period of 90 days at the price set forth in the plan. If the tenants' association should exercise its option, it shall have 120 days from the date of its exercise of its option to complete the purchase. If the tenants' association decides not to exercise its options, upon the expiration of the 90-day period, the option shall convert into a right of first refusal meaning that the property shall not be sold to any other purchaser, at any time, at any price or terms, without first having been offered on the same terms to the tenants' association.

(b) Should the tenants' association fail to exercise its option to purchase within the 90-day period, the owner shall grant to the tenant the exclusive option to purchase the unit for a period of 90 days thereafter at the price set forth in the plan. Upon the request of a tenant, the owner shall provide the tenant with a listing of the types of units within the conversion project, and the price for each type of unit. If the tenant should exercise that tenant's option, that tenant shall have 120 days from the date of the exercise of that tenant's option to complete the purchase. If the tenant decides not to exercise that tenant's option, upon the expiration of the 90-day period, the option shall convert into a right of first refusal, meaning that the property shall not be sold to any other purchaser at any time, at any price or terms without first having been offered on the same terms to the tenant.

(c) For a period of 60 days after a purchasing tenant has agreed in writing to purchase a unit within the conversion project, such tenant shall have the right to rescind such contract without the imposition of any penalty or fee. If the tenant rescinds, any renegotiation or new agreement signed by the owner and the purchasing tenant shall be valid and binding, if such renegotiation occurs between the time of rescission and the expiration of the 60-day period set forth in this subsection.

(d) Where the 3-year grace period has expired and a nonpurchasing tenant with children still attending school has failed to move, such tenant shall be permitted to remain until 1 week following the end of the school year; or if any of the children is about to graduate, 1 week after the graduation ceremony; whichever is later.

(64 Del. Laws, c. 14, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 8.)

§ 7109 Rights of nonpurchasing tenants.

(a) All manufactured home sites occupied by nonpurchasing tenants shall be managed by the same manager or agent who manages all other units in the manufactured home community. The owner shall provide to nonpurchasing tenants all services and facilities required by law on a nondiscriminatory basis. The owner shall guarantee such obligation of the manager or agent to provide all such services and facilities for each tenant until such time as the tenant no longer resides on the premises. This obligation will be the obligation of the tenants' association if it exercises its right of first refusal and purchases the community.

(b) Where an owner has given notice of that owner's intent to convert a manufactured home community, each tenant who has not purchased a unit in the proposed conversion project shall, during the remaining term of the rental agreement and any extension thereof, be entitled to the same rights, privileges and services that were enjoyed by tenants prior to the date of the preliminary notice together with those that are granted, offered or provided to purchasers or prospective purchasers of the conversion project.

(64 Del. Laws, c. 14, § 2; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 35, § 8.)

§ 7110 Rights of tenant during conversion.

(a) After the filing of a conversion plan, during the grace period, no owner may evict or fail to renew the lease of a tenant of a manufactured home community which is the site of a proposed conversion; provided, however, that eviction proceedings may be commenced for nonpayment of rent or a similar breach by a tenant of a contractual obligation to the owner.

(b) The prices, terms and conditions offered to tenants by the owner for the purchase of a unit within the conversion project shall be the same as, or more favorable than, those set forth in the conversion plan and those offered to the general public.

(c) Any tenant who has left the manufactured home community or is about to do so because the owner or his agents are substantially interfering with his comfort, peace or quiet contrary to the terms of this chapter may apply to the Attorney General for assistance. The Attorney General may act on such tenant's behalf to secure restraining actions to abate the disturbance and/or to prohibit the owner from engaging in any course of conduct (including, but not limited to, interruption or discontinuance of essential services) which would substantially interfere with such person's tenancy.

(d) Where the lease of a tenant expires after the conversion plan has been filed, and such tenant continues to rent a site within the manufactured home community, the owner shall not increase the rent on an annual basis more than the average or the prior year's annual increase in rent of the 3 geographically nearest manufactured home communities in the county in which the community is located. The average increase in rent will be determined as of the date on which the lease expires. There shall be no more than 1 rent increase imposed upon the tenant during any 1 calendar year.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7111 Tenants who are elderly or have disabilities.

In addition to the protection provided to tenants under this chapter, the following provisions shall apply on behalf of any tenant who has a disability or who is 65 years of age or older:

(1) The owner shall supply a list of at least 3 comparable rental units, including manufactured home communities, which have vacancies and which can accommodate such person if such exists, subject, however, to the terms of § 7112(c) of this title;

(2) The owner shall supply the address and telephone number of the nearest municipal, state or federal agency which can provide information and assistance to such tenant under the National Housing Act [12 U.S.C. § 1701 et seq.] and the Uniform Relocation Assistance Act [§ 9301 et seq. of Title 29];

(3) Where the tenant remains on the premises at the expiration of the 3-year period, and has in good faith attempted to obtain adequate housing, such tenant shall be permitted to stay on the premises until permanent housing is obtained. Any increase in rent shall be in conformity with the terms of § 7110(d) of this title.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8; 78 Del. Laws, c. 179, §§ 273, 274.)

§ 7112 Eviction; access to comparable housing.

(a) Where, at the conclusion of the grace period, a tenant is evicted by order of court solely as a result of the conversion, the owner shall pay for all expenses incurred by such tenant in moving into his new residence. If the new residence is in a manufactured home community, such expenses shall include all "setting up" expenses, including connections to all utilities.

(b) Within 18 full months after receiving final notice any tenant may request that the owner provide a list of available comparable housing or comparable manufactured home sites and a reasonable opportunity to examine and rent such comparable housing or manufactured home site.

(c) After the expiration of the 3-year period, the owner may institute an action in the Superior Court for the eviction of any tenant or tenants who still have manufactured homes within the community or who otherwise have continued to reside within the community; or a tenant, group of tenants or tenant association may apply to the Superior Court for a stay of any eviction proceedings. The Court may, in its discretion, authorize 1-year stays of eviction subject to such rent increases as authorized by § 7110(d) of this title until such time as the Court is satisfied that the tenant has been provided a list of comparable housing or comparable manufactured home sites and is satisfied that the tenant has been provided a reasonable opportunity to examine and rent such housing or manufactured home site. Except where the owner has failed to provide such a list of comparable housing or manufactured home sites, or has failed to provide a reasonable opportunity to examine and rent such housing or manufactured home site, the Court shall grant not more than 5 such eviction stays.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7113 Penalties; jurisdiction.

(a) *Civil penalties.* —

(1) Where an owner violates a provision of § 7105 of this title any action taken by the owner to convert the real property on which a manufactured home community is located into multiple-unit usage shall be invalid; provided, however, that the owner, by again giving the preliminary notice required under § 7105 of this title, may again begin the conversion process.

(2) Where the owner fails to give the tenants' association its option to purchase under § 7108 of this title, no subsequent sale or purchase of the real property or of any unit within the conversion project shall be valid. Where the owner fails to provide a tenant with an opportunity to purchase under § 7108 of this title, the tenant shall nevertheless be offered a unit in preference to any nontenant who has agreed to purchase a unit during or subsequent to the time of the tenant's right to purchase.

(3) Any binding agreement entered into by an owner which results in a violation of any provision of this chapter is:

a. Void, if a person residing in the manufactured home community at the time of the preliminary notice was an object of, or was adversely affected by, such violation; or

b. Voidable at the option of any party thereto.

(b) *Criminal penalties; jurisdiction.* —

(1) Any person who is convicted of a violation of a provision of this chapter shall be fined a sum not less than $100 nor more than $500 for each offense. Where the violation is ongoing and continuous, each day's continuation of such violation shall constitute a separate offense.

(2) The Superior Court shall have jurisdiction over all offenses under this section.

(64 Del. Laws, c. 14, § 2; 74 Del. Laws, c. 35, § 8.)

§ 7114 Modification or waiver of chapter.

(a) Except as otherwise provided in this section, any provision in a lease or other agreement which waives or modifies any provision of this chapter shall be void and unenforceable as against public policy. An owner and tenant may, however, agree to a modification or waiver of some or all of the protections afforded to the tenant pursuant to this chapter; provided, however:

(1) The modification or waiver is encompassed in a written contract which is separate from the lease;

(2) The modification or waiver is voluntarily entered into without duress;

(3) The modification or waiver is entered into with full understanding of this chapter, the terms of any contract to which the modification or waiver applies, and the modification or waiver itself;

(4) The modification or waiver is for adequate consideration.

(b) In any action involving a modification or waiver, the owner shall have the burden of proof to establish that the requirements of this chapter and of this section have been met.

(64 Del. Laws, c. 14, § 2.)

Part VII
Common Interests and Ownership of Real Estate

Chapter 81
DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT

Subchapter I
General Provisions

§ 81-101 Short title.

This chapter shall be known and may be cited as the "Delaware Uniform Common Interest Ownership Act" or "DUCIOA".

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

§ 81-102 Applicability.

Applicability of this chapter is governed by this subchapter I.

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

§ 81-103 Definitions.

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

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

(2) "Allocated interests" means the following interests allocated to each unit: (i) in a condominium, the undivided interest in the common elements, the common expense liability, and votes in the association; (ii) in a cooperative, the common expense liability and the ownership interest and votes in the association; and (iii) in a planned community, the common expense liability and votes in the association.

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

(4) "Assessment" or "common expense assessment" means the sums attributable to each unit and due to the association as a result of the common expense liability allocated to each unit in the manner described in § 81-315 of this title, including all ground lease rents due in a leasehold condominium.

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

(6) "Bylaws" mean the recorded document (and any recorded amendments thereto) that contains the procedures for conduct of the affairs of the association of a common interest community in accordance with § 81-306 of this title, regardless of the form of the association's legal entity or the name by which the document comprising the bylaws is identified.

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

(8) "Common elements" means: (i) in the case of (A) a condominium or cooperative, all portions of the common interest community other than the units; and (B) a planned community, any real estate within a planned community which is owned or leased by the

association, other than a unit; and (ii) in all common interest communities, any other interests in real estate for the benefit of unit owners which are subject to the declaration.

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

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

(11) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of that person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of or services or other expenses related to common elements, other units or other real estate described in that declaration. Common interest community does not include a campground which is subject to Chapter 28 of Title 6 or those arrangements described in § 81-224 of this title. "Ownership of a unit" does not include holding a leasehold interest in a unit of a stated term of less than 20 years in a unit, including renewal options.

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

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

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

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

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

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

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

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

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

(21) "Effective date" means September 30, 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(37) "Record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable format.

(38) "Recorded" means, with respect to the declaration or bylaws of a common interest community and any amendments thereto, to be placed of record at the office for the recorder of deeds in and for each county in which any portion of the common interest community is located.

(39) "Repair and replacement reserve" means a reserve fund maintained by the executive board of a condominium or cooperative solely for the repair and replacement of common elements, and for no other purpose, including operating budget shortfalls or other expenditures appropriately addressed by a contingency reserve.

(40) "Reserve study" means an analysis, by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, performed or updated within the last 5 years, of the remaining useful life and the estimated cost to replace each separate system and component of the common elements, the purpose of which analysis by 1 or more independent engineering, architectural, or construction contractors or other qualified persons, is to inform the executive board and the association of a condominium or cooperative of the amount which should be maintained from year to year in a fully funded repair and replacement reserve to minimize the need for special assessments.

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

(42) "Rule" or "rules" means any rule, procedure or regulation of the association, however denominated, that does not appear in the declaration or bylaws and that governs either the management of the association or the common interest community or the conduct of persons or property within the common interest community and adopted as provided in § 81-320 of this title.

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

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

(45) "Special declarant rights" means rights reserved for the benefit of a declarant to: (i) complete improvements indicated on plats and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement pursuant to § 81-403(a)(2) of this title; (ii) exercise any development right maintain sales offices, management offices, signs advertising the common interest community, and models; (iv) use easements through the common elements for the purpose of making improvements within the common interest community or within real estate which may be added to the common interest community; (v) make the common interest community subject to a master association; (vi) merge or consolidate a common interest community with another common interest community of the same form of ownership; (vii) appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control; (viii) control any construction, design review or aesthetic standards committee or process; (ix) attend meetings of the unit owners and, except during an executive session, the executive

board; (x) have access to the records of the association to the same extent as a unit owner; or (xi) other special declarant rights so identified in the declaration.

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

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

(48) "Unit" means a physical portion of or 3-dimensional space in the common interest community designated for separate ownership or occupancy, the boundaries of which are described pursuant to § 81-205(a)(5) of this title, and shall include all improvements contained within the space except those excluded in the declaration. A unit may include 2 or more noncontiguous spaces. If a unit in a cooperative is owned by a unit owner or is sold, conveyed, voluntarily or involuntarily encumbered, or otherwise transferred by a unit owner, the interest in that unit which is owned, sold, conveyed, encumbered, or otherwise transferred is the right to possession of that unit under a proprietary lease, coupled with the allocated interests of that unit, and the association's interest in that unit is not thereby affected.

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

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

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

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

§ 81-104 Variation by agreement.

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

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

§ 81-105 Separate titles and taxation.

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

(b) In a condominium or planned community:

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

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

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

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

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

§ 81-106 Applicability of local ordinances, regulations, and building codes.

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

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

(c) Except as provided in subsections (a) and (b) of this section, the provisions of this chapter do not invalidate any provision of any building code, zoning, subdivision, or other real estate use law, ordinance, rule, or regulation governing the use of real estate. Without limiting the generality of the foregoing, any preexisting common interest community or approved common interest community located in any political subdivision of this State shall continue to be governed by the building code, zoning, subdivision, or other real estate use law,

ordinance, rule, or regulation, including appendices of such political subdivision, which are applicable to a preexisting common interest community or approved common interest community, notwithstanding any contrary provision of this chapter.

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

§ 81-107 Eminent domain.

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

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

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

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

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

§ 81-108 Supplemental general principles of law applicable.

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

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

§ 81-109 Construction against implicit repeal.

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

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

§ 81-110 Uniformity of application and construction.

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

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

§ 81-111 Severability.

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

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

§ 81-112 Unconscionable agreement or term of contract.

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

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

(1) The commercial setting of the negotiations;

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

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

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

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

§ 81-113 Obligation of good faith.

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

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

§ 81-114 Remedies to be liberally administered.

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

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

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

§ 81-115 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003(b)).

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, §§ 5-7; 77 Del. Laws, c. 91, §§ 13, 82.)

§ 81-116 Applicability to new common interest communities; effective date.

(a) Except as provided in this subchapter, this chapter applies to all common interest communities created within this State after the effective date that are not excepted from this chapter by the provisions of this chapter. The provisions of the Unit Property Act (Chapter 22 of this title) do not apply to common interest communities created after the effective date except for those governed by §§ 81-117 and 81-118 of this title and those others that are otherwise excepted from this chapter by the provisions of this chapter. Amendments to this chapter apply to all common interest communities created after the effective date, or subjected to this chapter, regardless of when the amendment is adopted.

(b) The effective date of this chapter shall be September 30, 2009. All references in this Chapter 81 to the date of October 31, 2008, were deleted and replaced with the aforementioned effective date, except as provided in this section.

(c) Actions taken in reliance upon DUCIOA as effective on October 31, 2008, shall not be invalidated by the amendment of the effective date to September 30, 2009.

(d) Anything to the contrary in this chapter notwithstanding, compliance with DUCIOA was not intended to be required, and shall not be required, until September 30, 2009, subject to the provisions of subsection (c) of this section above.

(e) Any amendment or amendment and restatement of the declaration of a preexisting common interest community does not affect the status of that preexisting common interest community as excepted from some or all of this chapter as provided in this chapter.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 8; 77 Del. Laws, c. 91, §§ 14, 82; 77 Del. Laws, c. 364, §§ 1, 2.)

§ 81-117 Exception for small condominiums and cooperatives.

If a condominium or cooperative contains no more than 20 units and is not subject to any development rights expanding it to include more than 20 units, it is subject only to §§ 81-106 (Applicability of local ordinances, regulations, and building codes) and 81-107 of this title (Eminent domain), but to no other sections of this chapter unless the declaration provides that the entire chapter is applicable. The bylaws of any such condominium or cooperative, and any amendments thereto, shall be recorded.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 15, 82; 77 Del. Laws, c. 364, § 3.)

§ 81-118 Exception for small and limited expense liability planned communities.

(a) If a planned community:

(1) Contains no more than 20 units and is not subject to any developmental rights expanding it to include more than 20 units; or

(2) Provides, in its declaration, that during the period of declarant control the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $500, as adjusted pursuant to paragraph (b)(2) of this section,

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

(b) The exemption provided in paragraph (a)(2) of this section applies only if:

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

(2) The declaration provides that the assessment may not be increased during the period of declarant control without the consent of all unit owners; except that commencing with the July 1 next following the effective date of this chapter and each July 1 thereafter during the period of declarant control, the assessment specified in the declaration may be increased by an amount not in excess of 3 percent over the amount so calculated for the previous year.

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

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

Except as provided in § 81-120 (Exception for small preexisting cooperatives and planned communities), and § 81-124 and except as limited by § 81-122 of this title hereof, §§ 81-105, 81-106, 81-107, 81-127, 81-203, 81-204, 81-221, 81-301, 81-302(a)(1) through (6) and (11) through (17), 81-302(f), 81-302(g), 81-303, 81-307(a), 81-309(a), 81-311, 81-315, 81-316, 81-318, 81-321, 81-322 [repealed], 81-323, 81-324, 81-409, and 81-417 of this title, and § 81-103 of this title to the extent any definitions are necessary in construing any of the foregoing sections to the extent the definitions do not conflict with the declaration, apply to all common interest communities and approved common interest communities created in this State before the effective date; but those sections apply only with respect to events and circumstances occurring after the effective date, and do not invalidate existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans of those preexisting common interest communities and approved common interest communities that do not conflict with this chapter. With respect to condominiums and cooperatives, such existing provisions of those declarations, bylaws, codes of regulations, declaration plans, plats or plans, and subsequent amendments thereto adopted subsequent to the effective date of this chapter in strict accordance with those existing provisions, and not in conflict with the Unit Property Act (Chapter 22 of this title), shall be controlling in the event of any express conflict between those existing provisions (as duly amended) and the provisions of this chapter. In matters and as to issues where neither such existing provisions of the declaration, bylaws, code of regulations, declaration plan, or plats or plans (as duly amended) of preexisting common interest communities or approved common interest communities nor the Unit Property Act (Chapter 22 of this title) expressly addresses the matter or issue, the provisions of this chapter shall control. As to any such preexisting common interest community or approved common interest community prior to the effective date: (i) this chapter shall not operate to terminate or allow the termination of existing contractual obligations created prior to the effective date, including, but not limited to contracts for units for preexisting common interest communities or approved common interest community projects; (ii) this chapter shall not invalidate the declaration, code of regulations, bylaws, declaration plan, or plats or plans of such common interest community that do not conflict with this chapter; (iii) the Unit Property Act (Chapter 22 of this title), and not this chapter shall govern all obligations of a declarant created under the Unit Property Act (Chapter 22 of this title); (iv) unless the declarant or other person with the right to do so elects to conform the requirements of this chapter in exercising any development right or special declarant rights, this chapter is not applicable to the procedures for the exercise of any such development rights or special declarant rights; (v) this chapter does not require that the preexisting declaration, code of regulations, bylaws, declaration plans, or plats or plans or other governing documents, including, but not limited to certificates or articles of incorporation, formation or otherwise of any preexisting common interest community or approved common interest community be amended to, or otherwise to comply with, the requirements of this chapter; and (vi) except for §§ 81-409 and 81-417 of this title, subchapter IV of this chapter is not applicable to any such preexisting common interest community or approved common interest community. Without limiting the generality of any other provision of this chapter, and notwithstanding any other provision of this chapter, any condominium created under the Unit Property Act for which future expansions are provided under its declaration made pursuant to the Unit Property Act shall remain governed by the Unit Property Act and not this chapter with respect to all of such future sections, phases or other expansion rights.

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

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

§ 81-120 Exception for small preexisting cooperatives and planned communities.

If a cooperative or planned community created within this State before the effective date of this chapter, contains no more than 20 units and is not subject to any development rights expanding it to include more than 20 units, or the annual average common expense liability of

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

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

§ 81-121 Amendments to governing instruments.

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

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

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

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

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

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

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

(d) If the entire chapter applies to a nonresidential common interest community, the declaration may also require, subject to § 81-112 of this title (Unconscionable agreement or term of contract), that:

(1) Notwithstanding § 81-305 of this title (Termination of contracts and leases of declarant), any management contract, employment contract, lease of recreational or parking areas or facilities, and any other contract or lease between the association and a declarant or an affiliate of a declarant continues in force after the declarant turns over control of the association; and

(2) Notwithstanding § 81-104 of this title (Variation by agreement), purchasers of units must execute proxies, powers of attorney, or similar devices in favor of the declarant regarding particular matters enumerated in those instruments.

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

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

§ 81-123 Applicability to out-of-state common interest communities.

This chapter does not apply to common interest communities or units located outside this State, but the public offering statement provisions in subchapter IV of this chapter apply to all contracts for the disposition thereof signed in this State by any party unless exempt under § 81-401 of this title.

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

§ 81-124 Applicability to continuing care common interest communities.

Anything to the contrary in this chapter notwithstanding, this chapter does not apply to any condominium, cooperative or other common interest community created in this State before October 31, 2008, that is a continuing care facility governed by the Delaware Life-Care Registration Act (§ 4601 et seq. of Title 18) as of October 31, 2008. Such condominium, cooperative or other common interest community shall continue to be governed solely by the Unit Property Act [Chapter 22 of this title] or other statutes in effect prior to October 31, 2008, and applicable to such common interest community.

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

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

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

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

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

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

(77 Del. Laws, c. 4, § 11; 77 Del. Laws, c. 91, § 82.)

§ 81-127 Notice.

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

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

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

(77 Del. Laws, c. 91, § 21.)

Subchapter II

Creation, Alteration, and Termination of Common Interest

§ 81-201 Creation of common interest communities.

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

(b) In a condominium, a declaration, or an amendment to a declaration, adding units that are contained in or comprised by buildings may not be recorded unless the structural components and mechanical systems of any buildings containing or comprising any units thereby created, if any, are substantially completed in accordance with the plans, as evidenced by a record certification of completion executed by an independent registered engineer or architect, which may be incorporated in the recorded declaration or amendment or the recorded plat or otherwise, or by the issuance by the appropriate governmental authority of a certificate of occupancy, or its equivalent, for the applicable unit.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 22, 82.)

§ 81-202 Unit boundaries.

Except as provided by the declaration:

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

(b) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than 1 unit or any portion of the common elements is a part of the common elements.

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

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

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

§ 81-203 Construction and validity of declaration and bylaws.

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

(b) The rule against perpetuities does not apply to defeat any provision of the declaration, bylaws or rules.

(c) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails.

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 23, 24, 82.)

§ 81-204 Description of units.

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

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

§ 81-205 Contents of declaration.

(a) The declaration must contain:

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

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

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

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

(5) In a condominium, a description of the boundaries of each unit created by the declaration, including the unit's identifying number; or, in a cooperative, a description, which may be by plats or plans, of each unit created by the declaration, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than 1 unit;

(6) A description of any limited common elements, other than those specified in § 81-202(b) and (d) of this title, as provided in § 81-209(b)(10) of this title and, in a planned community, any real estate that is or must become common elements;

(7) A description of any real estate, except real estate subject to development rights, that may be allocated subsequently as limited common elements, other than limited common elements specified in § 81-202(b) and (d) of this title, together with a statement that they may be so allocated;

(8) A description of any development rights (§ 81-103(19) of this title) and other special declarant rights (§ 81-103(45) of this title) reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(9) If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with: (i) either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right or a statement that no assurances are made in those regards, and (ii) a statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;

(10) Any other conditions or limitations under which the rights described in paragraph (8) of this section may be exercised or will lapse;

(11) An allocation to each unit of the allocated interests in the manner described in § 81-207 of this title;

(12) Any restrictions: (i) on alienation of the units, including any restrictions on leasing which exceed the restrictions on leasing units which executive boards may impose pursuant to § 81-302(c)(2) of this title, and (ii) on the amount 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 to the unit or to the common interest community, or on termination of the common interest community;

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

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

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

(16) Any authorization pursuant to which the association may adopt rules to establish and enforce construction and design criteria and aesthetic standards in the manner provided in § 81-320 of this title; and

(17) All matters required by §§ 81-206, 81-207, 81-208, 81-209, 81-215, 81-216, and 81-303 of this title.

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 25, 26, 82.)

§ 81-206 Leasehold common interest communities.

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

(1) The recording data for the lease;

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

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

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

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

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

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

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

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 12; 77 Del. Laws, c. 91, § 82.)

§ 81-207 Allocation of allocated interests.

(a) The declaration must allocate to each unit:

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

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

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

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

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

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

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

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

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

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

§ 81-208 Limited common elements.

(a) Except for the limited common elements described in § 81-202(b) and (d) of this title, the declaration must specify to which unit or units each limited common element is allocated. An allocation may not be altered without the consent of the unit owners whose units are affected.

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

(c) A common element not previously allocated as a limited common element may be so allocated only pursuant to provisions in the declaration made in accordance with § 81-205(a)(7) of this title. The allocations must be made by amendments to the declaration.

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

§ 81-209 Plats and plans.

(a) Plats and plans are a part of the declaration, and are required for all condominiums and cooperatives. Each plat and plan must be clear and legible and contain a certification as required by subsection (g) of this section and by declarant that the plat or plan contains all information required by this section.

(b) Each plat must show or project:

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

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

(3) A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel, but plats and plans need not designate or label which development rights are applicable to each parcel if that information is clearly delineated in the declaration;

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

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

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

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

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

(9) The distance between noncontiguous parcels of real estate comprising the common interest community; and

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

(11) [Repealed.]

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

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

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

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

(3) The approximate location of any units in which the declarant has reserved the right to create additional units or common elements (§ 81-210(c) of this title), identified appropriately.

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

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

(g) Any certification of a plat or plan required by this section or § 81-201(b) of this title must be made by an independent architect, independent licensed professional land surveyor or independent engineer.

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

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

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 27-29, 82.)

§ 81-210 Exercise of development rights.

(a) To exercise any development right reserved under § 81-205(a)(8) of this title, the declarant shall prepare, execute, and record, without joinder of any other person required except as expressly provided in the declaration, an amendment to the declaration and in a

condominium or planned community comply with § 81-209 of this title. The declarant is the unit owner of any units thereby created. The amendment to the declaration must assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (b) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by § 81-208 of this title.

(b) Development rights may be reserved within any real estate added to the common interest community if the amendment adding that real estate includes all matters required by § 81-205 or § 81-206 of this title, as the case may be, and, in a condominium or planned community, the plats and plans include all matters required by § 81-209 of this title. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to § 81-205(a)(8) of this title.

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

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

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

(d) If the declaration provides, pursuant to § 81-205(a)(8) of this title, that all or a portion of the real estate is subject to a right of withdrawal:

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

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

(e) If the declaration for a pre-existing condominium provides for conversion of limited common elements to part of the unit to which such limited common elements are allocated, the same shall be a development right exercisable by the declarant by amendment to the declaration prepared, executed and recorded by the declarant, without the joinder of any other person required, and complying with § 81-209 of this title.

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

§ 81-211 Alterations of units.

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

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

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

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

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

§ 81-212 Relocation of unit boundaries.

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

(b) Subject to the provisions of the declaration and other provisions of law, boundaries between units and common elements may be relocated to incorporate common elements within a unit by an amendment to the declaration upon application to the association by the owner of the unit who proposes to relocate a boundary. Unless the declaration provides otherwise, the amendment may be approved only if persons entitled to cast at least 67 percent of the votes in the association, including 67 percent of the votes allocated to units not owned by the declarant, agree to the action. The amendment may describe any fees or charges payable by the owner of the affected unit in connection with the boundary relocation. The fees and charges shall be assets of the association. The amendment must be executed

by the unit owner of the unit whose boundary is being relocated and by the association, contain words of conveyance between them, and on recordation be indexed in the name of the unit owner and the association as grantor or grantee, as appropriate. All costs associated with the relocation or any attempted relocation which fails or is denied, including reasonable attorney's and engineer's fees, shall be paid by the owners seeking the change.

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

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

§ 81-213 Subdivision of units.

(a) In a condominium or cooperative if the declaration expressly so permits and approval as noted herein is obtained in writing, a unit may be subdivided into 2 or more units. Subject to the provisions of the declaration, payment of all expenses by the unit owner and other provisions of law other than this chapter, upon application of a unit owner to subdivide a unit in a condominium or cooperative, the association shall prepare, execute, and record an amendment to the declaration, including in a condominium or planned community the plats and plans, subdividing that unit.

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 30, 31, 82.)

§ 81-214 Variations in boundaries.

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

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

§ 81-215 Use for sales purposes.

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

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

§ 81-216 Easement rights.

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

(b) Subject to §§ 81-302(a)(6) and 81-312 of this title, the unit owners have an easement in the common elements for purposes of access to their units.

(c) Subject to the declaration and the rules, the unit owners have an easement to use the common elements and all real estate that must become common elements for the purposes for which they were intended.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 32, 82.)

§ 81-217 Amendment of declaration.

(a) Except in cases of amendments that may be executed by a declarant under § 81-209(f) or § 81-210 of this title, or by the association under § 81-107, § 81-206(d), § 81-208(c), § 81-212(a), or § 81-213 of this title, or by certain unit owners under § 81-208(b), § 81-212(a), § 81-213(b), or § 81-218(b) of this title, or by secured lenders pursuant to § 81-219 of this title, and except as limited by subsection (d) of this section or as otherwise provided in this § 81-217 of this title, the declaration, including any plats and plans, may be amended only by vote or agreement of unit owners of units to which at least 67 percent of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specific subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without the approval.

(b) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than 1 year after the amendment is recorded.

(c) Every amendment to the declaration must be recorded in every county in which any portion of the common interest community is located and is effective only upon recordation. An amendment, except an amendment pursuant to § 81-212(a) of this title, must be indexed in the grantee's index in the name of the common interest community and the association and in the grantor's index in the name of the parties executing the amendment.

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

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

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

(g) The time limits specified in the declaration pursuant to § 81-205(a)(8) of this title within which reserved development rights must be exercised may be extended, and additional development rights may be created, if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by the declarant, agree to that action. The agreement is effective 30 days after an amendment to the declaration reflecting the terms of the agreement is recorded unless all the persons holding the affected special declarant rights, or security interests in those rights, record a written objection within the 30-day period, in which case the amendment is void, or consent in writing at the time the amendment is recorded, in which case the amendment is effective when recorded.

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

(i) If any provision of this chapter or of the declaration of any common interest community subject to this chapter requires the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent shall be deemed granted if no written refusal to consent is received by the association within 45 days after the association delivers notice of the proposed amendment to the holder of the interest or mails the notice to the holder of the interest by certified mail, return receipt requested. The association may rely on the last recorded security interest of record in delivering or mailing notice to the holder of that interest. Notwithstanding this section, no amendment to the declaration that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest may be adopted without that holder's consent in a record if the declaration requires that consent as a condition to the effectiveness of the amendment.

(j) Unless the declaration or bylaws provide otherwise and subject to paragraphs (j)(ii) and (j)(iii) of this section:

(i) The executive board may execute and record an amendment to the declaration bylaws, or plat, to conform the declaration or bylaws to be consistent with the provisions of this chapter or to correct:

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

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

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

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

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

(A) The consent of the declarant; or

(B) An affidavit by the executive board that any declarant who has an interest in the condominium has been provided a copy of the amendment and a notice that the declarant may object in writing to the amendment within 30 days of receipt of the amendment and notice, that 30 days have passed since delivery of the amendment and notice, and that the declarant has made no written objection; and

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

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

(k) During the time that the declarant has an interest, the declaration, bylaws or plat may be amended by declarant in order to achieve compliance with the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, Veterans Administration or other governmental agency or their successors.

(l) During the time that the declarant has an interest, the declaration, bylaws or plat may be amended by declarant to conform the same to be consistent with the provisions required or allowed by this chapter.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 33-36, 82.)

§ 81-218 Termination of common interest community.

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

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

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

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

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

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

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

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

(i) In a cooperative, the declaration may provide that all creditors of the association have priority over any interests of unit owners and creditors of unit owners. In that event, following termination, creditors of the association holding liens on the cooperative which were recorded or judgments docketed before termination may enforce their liens in the same manner as any lien holder, and any other creditor of the association is to be treated as if the creditor had perfected a lien against the cooperative immediately before termination. Unless the declaration provides that all creditors of the association have that priority:

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

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

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

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

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

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

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

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

(k) In a condominium or planned community, except as provided in subsection (l) of this section, foreclosure or enforcement of a lien or encumbrance against the entire common interest community does not terminate, of itself, the common interest community, and foreclosure or enforcement of a lien or encumbrance against a portion of the common interest community, other than withdrawable real estate, does not withdraw that portion from the common interest community. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate, or against common elements that have been subjected to a security interest by the association under § 81-312 of this title, does not withdraw, of itself, that real estate from the common interest community, but the person taking title thereto may require from the association, upon request, an amendment excluding the real estate from the common interest community.

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

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

§ 81-219 Rights of secured lenders.

(a) The declaration may require that all or a specified number or percentage of the lenders who hold security interests encumbering the units or who have extended credit to the association approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to: (i) deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board, or (ii) prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or (iii) prevent any insurance trustee or the association from receiving and distributing any insurance proceeds except pursuant to § 81-313 of this title.

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

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

§ 81-220 Master associations.

(a) If the declaration provides that any of the powers described in § 81-302 of this title are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of one or more common interest communities or for the benefit of the unit owners of 1 or more common interest communities, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(b) Unless it is acting in the capacity of an association described in § 81-301 of this title, a master association may exercise the powers set forth in § 81-302(a)(2) of this title only to the extent expressly permitted in the declarations of common interest communities which are part of the master association or expressly described in the delegations of power from those common interest communities to the master association.

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

(d) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in §§ 81-303, 81-308, 81-309, 81-310, and 81-312 of this title apply in the conduct of the affairs of a master association only to persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(e) Even if a master association is also an association described in § 81-301 of this title, the certificate of incorporation or other instrument creating the master association and the declaration of each common interest community, the powers of which are assigned by the declaration or delegated to the master association, may provide that the executive board of the master association must be elected after the period of declarant control in any of the following ways:

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

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

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

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

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

§ 81-221 Merger or consolidation of common interest communities.

(a) Any 2 or more common interest communities of the same form of ownership, by agreement of the unit owners as provided in subsection (b) of this section, may be merged or consolidated into a single common interest community. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant common interest community is the legal successor, for all purposes, of all of the pre-existing common interest communities, and the operations and activities of all associations of the pre-existing common interest communities are merged or consolidated into a single association that holds all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(b) An agreement of 2 or more common interest communities to merge or consolidate pursuant to subsection (a) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting common interest communities following approval by owners of units to which are allocated the percentage of votes in each common interest community required to terminate that common interest community. The agreement must be recorded in every county in which a portion of the common interest community is located and is not effective until recorded.

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

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

§ 81-222 Addition of unspecified real estate.

In a planned community, if the right is originally reserved in the declaration, the declarant in addition to any other development right, may amend the declaration at any time during as many years as are specified in the declaration for adding additional real estate to the planned community without describing the location of that real estate in the original declaration; but, the amount of real estate added to the planned community pursuant to this section may not exceed 10 percent of the real estate described in § 81-205(a)(3) of this title and the declarant may not in any event increase the number of units in the planned community beyond the number stated in the original declaration pursuant to § 81-205(a)(5) of this title.

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

§ 81-223 Master planned communities.

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

(b) If the requirements of subsection (a) of this section are satisfied, the declaration for the master planned community need not state a maximum number of units and need not contain any of the information required by § 81-205(a)(3) through (14) of this title until the declaration is amended under subsection (c) of this section.

(c) When each unit in a master planned community is conveyed to a purchaser, the declaration must contain: (i) a sufficient legal description of the unit and all portions of the master planned community in which any other units have been conveyed to a purchaser; and (ii) all the information required by § 81-205(a)(3) through (14) of this title with respect to that real estate.

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

(e) If the public offering statement conspicuously identifies the fact that the community is a master planned community, the disclosure requirements contained in subchapter IV of this chapter apply only with respect to units that have been declared or are being offered for sale in connection with the public offering statement and to the real estate described pursuant to subsection (c) of this section.

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

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

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

§ 81-224 Other exempt real estate arrangements.

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

(b) An agreement between an association for a common interest community and the owner of real estate that is not part of that common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate or other activities specified in their agreement does not create a separate common interest community so long as the assessments against the units in the common interest community are included in the periodic budget for the common interest community and are subject to unit owner approval under § 81-324 of this title.

(c) An arrangement between 2 separately owned parcels of real estate for sharing costs associated with a common law party wall, shared driveway or shared well does not create a common interest community.

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

§ 81-225 Termination following catastrophe.

If substantially all the units in a common interest community have been destroyed or are uninhabitable and the available methods for giving notice for a meeting of unit owners to consider termination under § 81-218 of this title will not likely result in receipt of the notice, the executive board or any other interested person may commence an action in the Court of Chancery of the State of Delaware seeking to terminate the common interest community. During the pendency of the action, the Court may enter whatever orders it considers appropriate, including appointment of a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may enter into any other order the court considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

(77 Del. Laws, c. 91, § 37.)

Subchapter III

Management of the Common Interest Community

§ 81-301 Organization of unit owners' association.

A unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The association must have an executive board and the membership of the association at all times consists exclusively of all unit owners or, following termination of the common interest community, of all former unit owners entitled to distributions of proceeds under § 81-218 of this title or their heirs, successors, or assigns. The association may be organized as a profit or nonprofit unincorporated association, corporation, trust, limited liability company or other lawful form of legal entity authorized by the laws of this State.

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

§ 81-302 Powers of unit owners' association.

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

(1) Must adopt and may amend recorded bylaws consistent with § 81-306 of this title and may adopt rules consistent with § 81-320 of this title;

(2) Must adopt and may amend budgets pursuant to § 81-324 of this title and collect assessments for common expenses, including funds for the repair and replacement reserve, from unit owners and may invest any funds of the association;

(3) May hire and discharge managing agents and other employees, agents, and independent contractors;

(4) May institute, defend, or intervene in litigation, arbitration, mediation or administrative proceedings in its own name on behalf of itself or 2 or more unit owners on matters affecting the common interest community subject to, in the case of litigation involving the declarant, the provisions of § 81-321 of this title;

(5) May make contracts and incur liabilities;

(6) May regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) May cause additional improvements to be made as a part of the common elements;

(8) May acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but: (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to § 81-312 of this title and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to § 81-312 of this title;

(9) May grant easements, leases, licenses, and concessions through or over the common elements;

(10) May impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in § 81-202(b) and (d) of this title, and for services provided to unit owners;

(11) May suspend any privileges of unit owners, other than the right of a unit owner to vote on any matter submitted to a vote of unit owners, or services provided to unit owners by the association (other than those necessary for the habitability of the owner's unit) for non-payment of assessments; may impose charges for late payment of assessments; and, after notice and an opportunity to be heard, may levy reasonable fines for violations of the declaration, bylaws and rules of the association;

(12) May impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by § 81-409 of this title, or statements of unpaid assessments;

(13) May provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;

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

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

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

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

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

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

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

(2) Commence litigation, arbitration, mediation or administrative proceedings against any person, but: (A) the association must comply with § 81-321 of this title, if applicable, before commencing any proceeding against any person in connection with construction defects; and (B) the executive board shall promptly provide notice to the unit owners of any litigation filed by or against the association other than a proceeding involving enforcement of rules and claims for assessments.

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

(1) Exercise directly against the tenant the powers described in paragraph (a)(11) of this section;

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

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

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

(d) The rights referred to in paragraph (c)(3) of this section may only be exercised if the tenant or unit owner fails to cure the violation within 10 days after the association notifies the tenant and unit owner of that violation.

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

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

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

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

enforcement action. Whether the association's course of performance with respect to enforcement of any provision of the declaration, bylaws and rules constitutes a waiver or modification of that provision is not affected by this chapter.

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

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

§ 81-303 Executive board members and officers.

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

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

(c) Subject to subsection (d) of this section, the declaration may provide for a period of declarant control of the association, during which a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, and except as provided in § 81-223(g) of this title, a period of declarant control terminates no later than the earlier of: (i) except as to a nonresidential common interest community, 60 days after conveyance of 75 percent of the units that may be created to unit owners other than a declarant; (ii) as to units for residential purposes, 2 years after all declarants have ceased to offer units for residential purposes for sale in the ordinary course of business; (iii) as to units for residential purposes, 2 years after any right to add new units for residential purposes was last exercised; (iv) as to a common interest community other than a condominium or cooperative, at such time as may be required by other applicable laws; or (v) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after all declarants have ceased to offer nonresidential units for sale in the ordinary course of business; (vi) as to nonresidential units in a common interest community that is subject to this chapter, 7 years after any right to add new nonresidential units was last exercised; or (vii) the day the declarant, after giving written notice to unit owners, records an instrument voluntarily surrendering all rights to control activities of the association. A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(d) Not later than 60 days after conveyance of 25 percent of the units that may be created to unit owners other than a declarant, at least one member and not less than 25 percent of the members of the executive board must be elected by unit owners other than the declarant. Not later than 60 days after conveyance of 50 percent of the units that may be created to unit owners other than a declarant, not less than 33 1/3 percent of the members of the executive board must be elected by unit owners other than the declarant.

(e) Except as otherwise provided in §§ 81-220(e) and 81-303(f) of this title, not later than the termination of any period of declarant control, the unit owners must elect an executive board of at least 3 members, at least a majority of whom must be unit owners. Unless the declaration provides for the election of officers by the unit owners, the executive board shall appoint the officers. The executive board members and officers shall take office upon election or appointment.

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

(i) Shall not be appointed by the declarant or an affiliate of the declarant;

(ii) Shall not comprise more than 33 percent of the entire board; and

(iii) Have no greater authority than any other member of the executive board.

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

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

§ 81-304 Transfer of special declarant rights.

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

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

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

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

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

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

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code [11 U.S.C. § 101 et seq.] or receivership proceedings, of any units owned by a declarant or real estate in a common interest community subject to development rights, a person acquiring title to all the property being foreclosed or sold, but only upon such person's request, succeeds to all special declarant rights related to that property held by that declarant, or only to any rights reserved in the declaration pursuant to § 81-215 of this title and held by that declarant to maintain models, sales offices, and signs. The judgment or instrument conveying title must provide for transfer of only the special declarant rights requested.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code [11 U.S.C. § 101 et seq.] or receivership proceedings, of all interests in a common interest community owned by a declarant:

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

(2) The period of declarant control (§ 81-303(d) of this title) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

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

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

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

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

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

(A) Misrepresentations by any previous declarant;

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

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

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

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

(4) A successor to all special declarant rights held by a transferor who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c) of this section, may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by that successor's transferor to control the executive board in accordance with § 81-303(d) of this title for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for that successor declarant's acts and omissions under § 81-303(d) of this title.

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

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

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

Except as provided in § 81-122 of this title, if entered into before the executive board elected by the unit owners pursuant to § 81-303(f) of this title takes office: (i) any management contract, employment contract, or lease of recreational or parking areas or facilities, (ii) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (iii) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing, may be terminated

without penalty by the association at any time after the executive board elected by the unit owners pursuant to § 81-303(f) of this title takes office upon not less than 90 days' notice to the other party. This section does not apply to: (i) any lease the termination of which would terminate the common interest community or reduce its size, unless the real estate subject to that lease was included in the common interest community for the purpose of avoiding the right of the association to terminate a lease under this section, or (ii) a proprietary lease.

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

§ 81-306 Bylaws.

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

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

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

(3) The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;

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

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

(6) For an association for a condominium or cooperative with more than 50 unit owners, an independent audit by a licensed certified public accounting firm of the financial records of the association to be performed no less frequently than once every 3 years and for each intervening year a review (instead of a full audit) by an independent accountant which need not be conducted by a certified public accounting firm, provided that where an association of fewer than 100 unit owners so decides by duly adopted resolution, the audit requirement may be satisfied by a review (instead of a full audit) by an independent accountant which need not be conducted by a certified public accounting firm;

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

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

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

(b)(1) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate unless the declaration or this chapter requires that those provisions appear in the declaration.

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

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

§ 81-307 Upkeep of common interest community.

(a) Except to the extent provided by the declaration, subsection (b) of this section, or § 81-313(h) of this title, the association, through its executive board, is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of the unit owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, as designated by the executive board, access through the unit owner's unit reasonably necessary for those purposes. If damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof. Each unit owner is likewise responsible for the costs, as determined by the association, associated with the maintenance, repair and replacement of limited common elements appurtenant to the unit owner's unit or for the prorated expense if the limited common element is associated with more than one unit. The executive board shall determine when and to what extent such maintenance, repair and replacement shall be required.

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

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

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

§ 81-308 Unit owner meetings.

A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having at least 20 percent, or any lower percentage specified in the bylaws, of the votes in the association. Except in cases of emergency meetings, which may be held without prior notice, not fewer than 10 nor more than 60 days in advance of any regular or special meeting of the unit owners, the secretary or other officer specified in the bylaws shall cause notice of that meeting to be delivered to each unit owner by any means described in § 81-127 of this title or sent prepaid by United

States mail to any mailing address designated in writing by the unit owner. The notice of any meeting must state the time and place of the meeting and the items on the agenda, or must state the website address where the agenda is located as provided in this section including: (i) a statement of the general nature of any proposed amendment to the declaration or bylaws; (ii) a statement that in the absence of objection from any unit owner present at the meeting, the president may add items to the agenda; (iii) any budget changes; and (iv) any proposal to remove an officer or member of the executive board. The agenda may be posted on the website of the association, in lieu of being included in the notice, provided that the association shall, by any means described in § 81-127 of this title, furnish to any unit owner who so requests a copy of the agenda prior to the meeting. Regardless of the agenda, unit owners shall be given a reasonable opportunity at any meeting to offer comments to the executive board regarding any matter affecting the common interest community. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners requested the secretary to do so, the requesting members may directly notify all the unit owners of that meeting. Only matters described in the meeting notice required by this section may be considered at a special meeting.

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

§ 81-308A Executive board meeting.

(a) A meeting of the executive board must be held at least quarterly. Special meetings of the executive board may be called by the president or a majority of the executive board. For purposes of this section, "meetings of the executive board" do not include incidental or other informal gatherings of 2 or more directors for social or other purposes or any meetings where no decisions are made or discussed regarding association business. The executive board and individual directors shall not use incidental or social gatherings of directors or other devices to evade the open meeting requirements of this section.

(b) Except when a schedule of meetings has been distributed to unit owners that identifies the meeting in question or in cases of emergency meetings that may be held without prior notice, the secretary or other officer specified in the bylaws shall cause notice of any regular or special executive board meeting to be delivered to each unit owner by any means described in § 81-127 of this title not fewer than 10 nor more than 60 days in advance of the meeting (but not later than the time notice of the meeting is sent to members of the executive board). The notice must state the time and place of the meeting and the items on the agenda, including an opportunity for unit owners to offer comments to the executive board regarding any matter affecting the common interest community.

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

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

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

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

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

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

(g) Notwithstanding compliance with this section, an action by the executive board is valid unless set aside by a court in an action brought pursuant to § 81-417 of this title. A challenge to the validity of an action of the executive board for failure to comply with this section may not be brought more than 60 days after the minutes of the executive board of the meeting at which the action was taken are approved or after the record of that action is distributed to unit owners. Actions taken at an executive board meeting in violation of this section are voidable by the court but a contract entered into with a third party who had no knowledge of that failure is not invalid solely because of the board's failure to give notice of the meeting at which the contract was approved.

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

§ 81-309 Quorums.

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

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

(2) Ballots solicited in accordance with § 81-310(f) of this title are delivered to the secretary in a timely manner by persons who, together with those persons present in person or by proxy or ballot at the beginning of the meeting, would comprise a quorum for that meeting.

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

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

§ 81-310 Voting; proxies.

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

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than 1 person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates 1 year after its date, unless it specifies a shorter term.

(c) If the declaration requires that votes on specified matters affecting the common interest community be cast by lessees rather than unit owners of leased units: (i) the provisions of subsections (a) and (b) of this section apply to lessees as if they were unit owners; (ii) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (iii) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in § 81-308 of this title, of all meetings at which lessees are entitled to vote.

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

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

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

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

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

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

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

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

§ 81-311 Tort and contract liability; tolling of limitation period.

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

(b) An action alleging a wrong done by the association, including an action arising out of the condition or use of the common elements, may be maintained only against the association and not against any unit owner. If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner for: (i) all tort losses not covered by insurance suffered

by the association or that unit owner, and (ii) all costs that the association would not have incurred but for a breach of contract or other wrongful act or omission. Whenever the declarant is liable to the association under this section, the declarant is also liable for all expenses of litigation, including reasonable attorney's fees, incurred by the association.

(c) Except as provided in § 81-416(d) of this title with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant under this chapter is tolled until the period of declarant control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because that person is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by § 81-317 of this title.

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

§ 81-312 Conveyance or encumbrance of common elements.

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

(b) Part of a cooperative may be conveyed and all or part of a cooperative may be subjected to a security interest by the association if persons entitled to cast at least 80 percent of the votes in the association, including 80 percent of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; but, if fewer than all of the units or limited common elements are to be conveyed or subjected to a security interest, then all unit owners of those units, or the units to which those limited common elements are allocated, must agree in order to convey those units or limited common elements or subject them to a security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association. Any purported conveyance or other voluntary transfer of an entire cooperative, unless made pursuant to § 81-218 of this title, is void.

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

(d) The association, on behalf of the unit owners, may contract to convey an interest in a common interest community pursuant to subsection (a) of this section, but the contract is not enforceable against the association until approved pursuant to subsections (a), (b), and (c) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

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

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

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

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

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

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

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

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

§ 81-313 Insurance.

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

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

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

(3) Fidelity insurance.

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

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

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

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

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

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

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

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

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

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

(h) Any portion of the common interest community for which insurance is required under this section which is damaged or destroyed must be repaired or replaced as soon as practicable by the association unless: (i) the common interest community is terminated, in which case § 81-218 of this title applies (ii) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety, or (iii) 80 percent of the unit owners, including every owner of a unit or assigned limited common element that will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If the entire common interest community is not repaired or replaced: (i) the insurance proceeds attributable to the damaged common elements must be used to restore the damaged area to a condition compatible with the remainder of the common interest community, and (ii) except to the extent that other persons will be distributees, (A) the insurance proceeds attributable to units and limited common elements that are not rebuilt must be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lien holders, as their interests may appear, and (B) the remainder of the proceeds must be distributed to all the unit owners or lien holders, as their interests may appear, as follows: (1) in a condominium, in proportion to the common element interests of all the units and (2) in a cooperative or planned community, in proportion to the common expense liabilities of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under § 81-107(a) of this title, and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations.

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

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

§ 81-314 Surplus funds.

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

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

§ 81-315 Assessments for common expenses.

(a)(1) Until the association is validly established pursuant to this chapter and makes a common expense assessment, the declarant shall pay all common expenses together, in the case of a condominium or cooperative, with all sums necessary to fully fund the repair and replacement reserve until the association makes its first assessment.

(2) After an assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association. In the case of a condominium or cooperative, the budget shall include as a line item a payment into the repair and replacement reserve sufficient to achieve the level of funding noted in the reserve study, or maintain said reserve at such level. The minimum percentage of the annual budget of a condominium or cooperative that must be assigned to the repair and replacement reserve will depend upon how many of the following components and systems are to be maintained, repaired and replaced by the executive board: (i) 1 or more hallways, (ii) 1 or more stairwells, (iii) 1 or more management or administrative offices, (iv) 1 or more roofs, (v) 1 or more windows, (vi) 1 or more exterior walls, (vii) 1 or more elevators, (viii) 1 or more HVAC systems, (ix) 1 or more swimming pools, (x) 1 or more exercise facilities, (xi) 1 or more clubhouses, (xii) 1 or more parking garages (but not including surface parking lots), (xiii) 1 or more masonry bridges used by motor vehicles, (xiv) 1 or more bulkheads, and (xv) 1 or more docks. In the event that the executive board is responsible for the maintenance, repair and replacement of 4 or more of the above-described systems or components, the minimum percentage of the annual budget that must be assigned to the repair and replacement reserve is 15%; if the responsibility extends to only 3 of the above-described systems and components, the minimum percentage is 10%; and if the responsibility extends to only 2 or fewer of the above-described systems and components, the minimum percentage is 5%. In the event that the association's accountant certifies that the funds in the repair and replacement reserve are in excess of the sum required to constitute a fully funded repair and replacement reserve, the executive board shall refund or credit the surplus of the excess sum to the unit owners. In the event that the association does not have a current reserve study as required by this chapter, the minimum percentages of the association's budget to be assigned to the repair and replacement reserve shall be the percentages prescribed in this paragraph (a)(2) of this section.

(b) Except for assessments under subsections (c), (d), and (e) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to § 81-207(a) and (b) of this title. Any past due common expense assessment or installment thereof bears interest at the rate established by the association not exceeding the lawful rate of interest.

(c) To the extent required by the declaration:

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

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

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

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

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

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

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

§ 81-316 Lien for assessments.

(a) The association has a statutory lien on a unit for any assessment levied against that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, fees, charges, late charges, fines, and interest charged pursuant to § 81-302(a)(10), (11), and (12) of this title, and any other sums due the association under the declaration, this chapter or as a result of an administrative or judicial decision, together with court costs and reasonable attorneys' fees incurred in attempting collection of the same, are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due. Unless the declaration provides for a different rate of interest, interest on unpaid assessments shall accrue at the rate of the lesser of 18% per annum or the highest rate permitted by law.

(b) Except as otherwise provided in the declaration, a lien under this section is prior to all other liens and encumbrances on a unit except (i) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which

the association creates, assumes, or takes subject to, (ii) a first or second security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first or second security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent, and (iii) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative. The lien shall have priority over the security interests described in paragraph (ii) above for an amount not to exceed the aggregate customary common expense assessment against such unit for 6 months as determined by the periodic budget adopted by the association pursuant to § 81-315(a) of this title; provided that for the lien to have priority over the security interests described in paragraph (ii) above, an association with assessments shall have recorded in the county or counties in which the common interest community is located a document which contains the name of the association, the address, a contact telephone number, a contact e-mail address and a web-site address, if any. In addition, the association shall have recorded at any time, but not less than 30 days prior to the sheriff's sale of a unit in its common interest community for which common expense assessments are due, a statement of lien which shall include a description of such unit, the name of the record owner, the amount due and the date due, the amount paid for recording the statement of lien and the amount required to be paid for filing a termination thereof upon payment, and the signature and notarized statement of an officer of the association that the amount described in the statement of lien is correct and due and owing. Upon payment of the amount due in paragraph (ii) above, the payer shall be entitled to a recordable termination of lien for the amount paid. The liens recorded pursuant to this subparagraph shall expire on the first day of the sixtieth month after recording. This subsection does not affect the priority of mechanics' or materialmen's liens, nor the priority of liens for other assessments made by the association. The lien under this subsection is not subject to the provisions of homestead or other exemptions.

(c) Unless the declaration otherwise provides, if 2 or more associations have liens for assessments created at any time on the same property, those liens have equal priority.

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

(e) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within 3 years after the full amount of the assessments becomes due; provided, that if an owner of a unit subject to a lien under this section files a petition for relief under the United States Bankruptcy Code [11 U.S.C. § 101 et seq.], the period of time for instituting proceedings to enforce the association's lien shall be tolled until 30 days after the automatic stay of proceedings under § 362 of the Bankruptcy Code [11 U.S.C. § 362] is lifted.

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

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

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

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

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

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

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

(3) In a cooperative whose unit owners' interests in the units are personal property, the association's lien must be foreclosed in like manner as a security interest under Article 9 of the Uniform Commercial Code [§ 9-101 et seq. of Title 6].

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

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

(1) The association, upon nonpayment of assessments and compliance with this subsection, may sell that unit at a public sale or by private negotiation, and at any time and place. Every aspect of the sale, including the method, advertising, time, place, and terms must be reasonable. The association shall give to the unit owner and any lessees of the unit owner reasonable written notice of the time and place of any public sale or, if a private sale is intended, or the intention of entering into a contract to sell and of the time after which a private disposition may be made. The same notice must also be sent to any other person who has a recorded interest in the unit which would be cut off by the sale, but only if the recorded interest was on record 7 weeks before the date specified in the notice as the date of any public sale or 7 weeks before the date specified in the notice as the date after which a private sale may be made. The notices required by this subsection may be sent to any address reasonable in the circumstances. Sale may not be held until 5 weeks after the sending of the notice. The association may buy at any public sale and, if the sale is conducted by a fiduciary or other person not related to the association, at a private sale.

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

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

(i) The reasonable expenses of sale;

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

(iii) Satisfaction of the association's lien;

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

(v) Remittance of any excess to the unit owner.

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

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

(l) In an action by an association to collect assessments or to foreclose a lien on a unit under this section, the court may appoint a receiver to collect all sums alleged to be due and owing to a unit owner before commencement or during pendency of the action. The court may order the receiver to pay any sums held by the receiver to the association during pendency of the action to the extent of the association's common expense assessments based on a periodic budget adopted by the association pursuant to § 81-315 of this title.

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

(1) No foreclosure action may be commenced unless: (A) the unit owner, at the time the action is commenced, owes a sum equal to at least 3 months of common expense assessments based on the periodic budget last adopted by the association pursuant to § 81-315(a) of this title; and (B) the executive board expressly votes to commence a foreclosure action against that specific unit.

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

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 51, 52, 82.)

§ 81-317 Other liens.

(a) In a condominium or planned community:

(1) Except as provided in paragraph (a)(2) of this section, a judgment for money against the association if recorded or docketed, is not a lien on the common elements, but is a lien in favor of the judgment lien holder only against all units owned by the association and other real property owned by the association. No property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to § 81-312 of this title, the holder of that security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the common interest community, if a lien, other than a deed of trust or mortgage (including a judgment lien or lien attributable to work performed or materials supplied before creation of the common interest community), becomes effective against 2 or more units, the unit owner of an affected unit may pay to the lien holder the amount of the lien attributable to the unit owner's unit, and the lien holder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

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

(b) In a cooperative:

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

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

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

§ 81-318 Association records.

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

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

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

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

(4) In addition, the association shall keep a copy of the following records at its principal office: (1) its original or restated certificate of incorporation and bylaws and all amendments to them currently in effect; (2) the minutes of all members' meetings and records of all action taken by members without a meeting for the past 3 years; (3) any financial statements and tax returns of the association prepared for the past 3 years, together with the report of the auditors of the financial records; (4) a list of the names and business addresses of its current directors and officers; (5) its most recent annual report delivered to the Secretary of the State; (6) in the case of a condominium or cooperative, the association's most recent reserve study; and (7) financial and other records sufficiently detailed to enable the association to comply with § 81-409 of this title.

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

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

(1) Personnel matters relating to specific persons or a person's medical records;

(2) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

(3) Pending or threatened litigation, arbitration, mediation or other administrative proceedings;

(4) Matters involving federal, state or local administrative or other formal proceedings before a government tribunal for enforcement of the declaration, bylaws or rules;

(5) Communications with legal counsel which are otherwise protected by the attorney-client privilege or the attorney work product doctrine;

(6) Disclosure of information in violation of law;

(7) Meeting minutes or other confidential records of an executive session of the executive board; or

(8) Individual unit owner files other than those of the requesting owner.

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

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

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

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

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

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

§ 81-319 Association as trustee.

With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding

or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee.

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

§ 81-320 Rules.

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

(b) If the right is reserved in the declaration pursuant to § 81-302(a)(16) of this title, the association may adopt rules to establish and enforce construction and design criteria and aesthetic standards. If it does so, the association must also adopt procedures for enforcement of those standards and for approval of applications, including a reasonable time within which the association must act after an application is submitted. The association's power under this section is subject to any reserved special declarant right to control any construction or design review process during the period of declarant control.

(c) A rule regulating display of the flag of the United States must be consistent with federal law and § 316 of this title, but the rule may not prohibit the right of a unit owner to display the flag of the United States, measuring up to 3 feet by 5 feet, on a pole located within the property's boundaries or attached to the exterior wall of that unit owner's unit or the limited common elements appurtenant to that unit. Unless the declaration otherwise provides, no rule may prohibit the display on a unit or on a limited common element adjoining a unit of a flag of this State, or signs regarding candidates for public office or ballot questions, but the association may adopt rules governing the time, place, size, number or manner of those displays. Unless the declaration provides otherwise during the first 2 years of the period of declarant control, no rule may prohibit the right of a unit owner to display a "For Sale" sign, measuring up to 12 inches by 18 inches (12" x 18"), on the exterior wall of the unit owner's unit or the limited common elements appurtenant to that unit. Unless the declaration provides otherwise, the "For Sale" sign shall be entitled "For Sale" and may contain such information as accurately describes the unit and any applicable names, addresses and phone numbers of the person or persons who are offering the unit for sale.

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

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

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

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

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

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

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

(g) The unit owner shall obtain from the executive board and deliver to or otherwise make available to each tenant of the unit owner's unit, at the time the lease is executed or, in the absence of a written lease when the tenancy begins, a current copy of the rules for the common interest community as furnished by the executive board and shall deliver to or otherwise make available to the tenant a copy of any additions or revisions to the rules as such additions or revisions are adopted and noticed to the unit owners by the executive board.

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

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

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

§ 81-321 Litigation involving declarant.

(a) An association's authority under § 81-302(a)(4) of this title to commence and pursue litigation involving the common interest community is subject to the following rules:

(1) Before the association commences litigation, arbitration or any administrative proceedings against a declarant or any person employed by or under contract with a declarant involving any alleged construction defect with respect to the common interest community, the association shall provide written notice of its claims to the declarant and those persons whom the association seeks to

hold responsible for the claimed defects (the "allegedly responsible persons"). The text of the notice may be in any form reasonably calculated to put the allegedly responsible persons on notice of the general nature of the association's claims including, without limitation, a list of the claimed defects. The notice may be delivered by any method of service and may be addressed to any person provided that the method of service and the person who is actually served either:(i) provides actual notice to the allegedly responsible persons named in the claim; or (ii) the method of service used would be sufficient under local law to confer personal jurisdiction over the person in connection with commencement of a lawsuit by the association against that person.

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

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

(4) If the association does receive 1 or more timely plans to repair or otherwise remedy the construction defects described in the notice, then the executive board shall promptly consider those plans and then notify the responsible persons of whether or not each such plan is acceptable as presented, acceptable with stated conditions, or not accepted.

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

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

(7) Except as provided in § 81-416(d) of this title with respect to warranty claims, any statute of limitation affecting the association's right of action against a declarant or other allegedly responsible person under this chapter is tolled during the 90-day period described in paragraph (a)(2) of this section above and during any extension of that time because the allegedly responsible person has commenced and is diligently pursuing the remediation plan.

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

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

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

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

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

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

§ 81-322 [Reserved.]

§ 81-323 Removal of members of executive board.

Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of all persons present, in person, by proxy or by ballot, and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, except that: (i) a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control, and (ii) a person appointed under § 81-303(h) of this title [sic] may only be removed by the person that appointed that member:

(a) The unit owners may consider the question of whether to remove a member of the executive board either: (1) at any duly called meeting of the unit owners at which a quorum is present if that subject was listed in the notice of the meeting, or (2) at a special meeting called for the purpose of removing a member of the executive board, whether or not a quorum is present, so long as the voting at the special meeting is conducted in the manner described in subsection (c) of this section.

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

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

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

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

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

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

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

§ 81-324 Adoption of budget.

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

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

(c) If the executive board determines by unanimous vote that the special assessment is necessary in order to respond to an emergency, then: (i) the special assessment shall become effective immediately in accordance with the terms of the vote; (ii) notice of the emergency assessment shall be promptly provided to all unit owners; and (iii) the executive board shall spend the funds paid on account of the emergency assessment solely for the purposes described in the vote.

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

§ 81-325 Service on associations and executive board.

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

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

§ 81-326 Delaware corporations.

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

(77 Del. Laws, c. 91, § 61.)

Subchapter IV

Protection of Purchasers

§ 81-401 Applicability; waiver.

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

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

(1) A gratuitous disposition of a unit;

(2) A disposition pursuant to court order;

(3) A disposition by a government or governmental agency;

(4) A disposition by foreclosure or deed in lieu of foreclosure;

(5) A disposition to a dealer;

(6) A disposition that may be canceled at any time and for any reason by the purchase without penalty;

(7) A disposition by operation of law upon the death of the unit owner;

(8) A disposition of a unit restricted to nonresidential purposes; or

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 13; 77 Del. Laws, c. 91, § 82.)

§ 81-402 Liability for public offering statement requirements.

(a) Except as provided in subsection (b) of this section, a declarant, before offering any interest in a unit to the public, shall prepare a public offering statement conforming to the requirements of §§ 81-403, 81-404, 81-405, and 81-406 of this title.

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

(c) Any declarant or dealer who offers a unit to a purchaser shall deliver a public offering statement in the manner prescribed in § 81-408(a) of this title. The person who prepared all or a part of the public offering statement is liable under §§ 81-408 and 81-417 of this title for any false or misleading statement set forth therein or for any omission of a material fact therefrom with respect to that portion of the public offering statement which the person prepared. If a declarant did not prepare any part of a public offering statement that the declarant delivers, the declarant is not liable for any false or misleading statement set forth therein or for any omission of a material fact therefrom unless the declarant had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the statement or omission.

(d) If a unit is part of a common interest community and is part of any other real estate regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this State, a single public offering statement conforming to the requirements of §§ 81-403, 81-404, 81-405, and 81-406 of this title as those requirements relate to each regime in which the unit is located, and to any other requirements imposed under the laws of this State, may be prepared and delivered in lieu of providing two or more public offering statements.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 14; 77 Del. Laws, c. 91, § 82.)

§ 81-403 Public offering statement; general provisions.

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

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

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

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

(4) Copies and a brief narrative description of the significant features of the declaration, other than any plats and plans, and any other recorded covenants, conditions, restrictions, and reservations affecting the common interest community; the bylaws, and any rules or regulations of the association; copies of any contracts and leases to be signed by purchasers at closing, and a brief narrative description of any contracts or leases that will or may be subject to cancellation by the association under § 81-305 of this title;

(5) Any current balance sheet and a projected budget for the association, either within or as an exhibit to the public offering statement, for 1 year after the date of the first conveyance to a purchaser, and thereafter the current budget of the association, a statement of who prepared the budget, and a statement of the budget's assumptions concerning occupancy and inflation factors. The budget must include, without limitation:

(i) A statement of the amount, or a statement that there is no amount, included in the budget for the repair and replacement reserve;

(ii) A statement of any other reserves;

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

(iv) The projected common expense assessment for each type of unit;

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

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

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

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

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

(11) [Repealed.]

(12) A statement of any unsatisfied judgments or pending suits against the association, and the status of any pending suits material to the common interest community of which a declarant has actual knowledge;

(13) A statement that any deposit made in connection with the purchase of a unit will be held in an escrow account until closing and will be returned to the purchaser if the purchaser cancels the contract pursuant to § 81-408 of this title, together with the name and address of the escrow agent;

(14) Any restraints on alienation of any portion of the common interest community and any restrictions: (i) 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 may be received by a unit owner on sale, condemnation, or casualty loss to the unit or to the common interest community, or on termination of the common interest community;

(15) A description of the insurance coverage provided for the benefit of unit owners;

(16) Any current or expected fees or charges to be paid by unit owners for the use of the common elements and other facilities related to the common interest community;

(17) The extent to which financial arrangements have been provided for completion of all improvements that the declarant is obligated to build pursuant to § 81-419 of this title; and

(18) [Reserved.]

(19) In a cooperative, a statement whether the unit owners will be entitled, for federal, state, and local income tax purposes, to a pass-through of deductions for payments made by the association for real estate taxes and interest paid the holder of a security interest encumbering the cooperative, and a statement as to the effect on every unit owner if the association fails to pay real estate taxes or payments due the holder of a security interest encumbering the cooperative.

(b) No public offering statement is required for any common interest community governed by §§ 81-117 and 81-118 of this title and those others that are otherwise excepted from this chapter by the provisions of this chapter.

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 62-66, 82; 77 Del. Laws, c. 364, § 7.)

§ 81-404 Common interest communities subject to development right.

If the declaration provides that a common interest community is subject to any development rights, the public offering statement must disclose, in addition to the information required by § 81-403 of this title:

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 81-405 Time shares.

(a) If the declaration provides that ownership or occupancy of any units, is or may be in time shares, the public offering statement shall disclose, in addition to the information required by § 81-403 of this title:

(1) The number and identity of units in which time shares may be created;

(2) The total number of time shares that may be created;

(3) The minimum duration of any time shares that may be created; and

(4) The extent to which the creation of time shares will or may affect the enforceability of the association's lien for assessments provided in § 81-316 of this title.

(b) Any common interest community that is in time shares shall also be governed by Chapter 28 of Title 6, to the extent applicable.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 67, 81.)

§ 81-406 Common interest communities containing conversion buildings.

(a) The public offering statement of a common interest community containing any conversion building must contain, in addition to the information required by § 81-403 of this title:

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

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

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

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

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

§ 81-407 Common interest community securities.

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

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

§ 81-408 Purchaser's right to cancel.

(a) A person required to deliver a public offering statement pursuant to § 81-402(c) of this title for a condominium or cooperative shall provide a purchaser with a copy of the public offering statement and all amendments thereto before conveyance of the unit, and not later than the date of any contract of sale. Unless such a purchaser is given the public offering statement before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 15 days after first receiving the public offering statement.

(b) If a purchaser elects to cancel a contract pursuant to subsection (a) of this section, the purchaser may do so by notice to the offeror. Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded promptly.

(c) Anything to the contrary in this chapter notwithstanding, any declarant, dealer, or unit owner who entered into a contract with a purchaser for a unit on or before the effective date shall not be subject to any of the provisions of this section and no such purchaser shall be entitled to exercise any of the rights and remedies against such declarant, dealer or unit owner under this section.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 4, § 15; 77 Del. Laws, c. 91, §§ 68-70, 82.)

§ 81-409 Resales of units.

(a) Except in the case of a sale in which delivery of a public offering statement is required, or unless exempt under § 81-401(b) of this title, a unit owner shall furnish to a purchaser not later than the time of the signing of the contract to purchase, a copy of the declaration (other than any plats and plans), all amendments to the declaration, the bylaws, and the rules of the association (including all amendments to the rules), and a certificate containing or attaching the following, to be correct to within 120 days prior to the date the certificate of the unit owner is furnished to the purchaser:

(1) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit held by the association;

(2) A statement setting forth the amount of the periodic common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;

(3) A statement of any other fees payable by the owner of the unit being sold;

(4) In a condominium or cooperative, a statement of the current number of unit owners delinquent in the payment of common expense assessments and the aggregate amount of such delinquency;

(5) In a condominium or cooperative, a statement of the current balance in the repair and replacement reserve;

(6) A statement of any capital expenditures approved by the association for the current and succeeding fiscal years, including a statement of the amount of such capital expenditures to be taken from the repair and replacement reserve;

(7) In a condominium or cooperative, a copy of the most recent reserve study;

(8) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;

(9) The most recent report of auditors (if required by § 81-306(a)(6) of this title) on the association balance sheet and income and expense statement or any accountant's report on any unaudited association balance sheet and income and expense statement;

(10) The current operating budget of the association;

(11) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(12) A statement describing any insurance coverage provided for the benefit of unit owners;

(13) In a condominium or cooperative, a statement as to whether the executive board has given or received written notice that any existing uses, occupancies, alterations, or improvements in or to the unit or to the limited common elements assigned thereto violate any provision of the declaration;

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

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

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

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

(18) A statement of any fees payable by the purchaser of the unit to the association at settlement; and

(19) Copies of the minutes for the executive board meeting for the preceding 6 months or, if none, for the most recent executive board meeting for which minutes are available.

(b) The association, within 10 days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. If the unit owner has requested the information from the association and the association fails to provide any portion of the requested information or if the unit owner, after reasonable investigation, has no information on any particular item to be included in the certificate, or if the requested information does not exist, the unit owner shall include a statement to that effect in the certificate from the unit owner. A unit owner providing a certificate pursuant to subsection (a) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate and is not liable to the purchaser under this section if the owner had, after reasonable investigation, reasonable grounds to believe, and did believe, at the time the information was provided to the purchaser, that the statements were true and there was no omission to state a material fact necessary to make the statements made not misleading, in light of the circumstances under which the statements were made. The association may require that such certificate and information be furnished in an electronic format. Except as provided in this subsection, the association may charge a fee for providing such certificate and related information. Such fee shall not exceed $200 for each certificate, except that if the association agrees to furnish a certificate and related information in a paper copy format, it may charge an additional cost not to exceed $50 for each such certificate. If the association fails to provide the requested certificate within the 10-day period, the association may not charge any fee for providing that certificate. Unless the purchaser is given the resale certificate before execution of a contract for the purchase of a unit, the purchaser, before conveyance, may cancel the contract within 5 days after first receiving the resale certificate.

(c) In the event that a unit for which a certificate is required pursuant to subsection (a) of this section is subject to more than one association, the unit owner must include in the certificate the information required by subsection (a) of this section for each association governing that unit, but the unit owner does not have to duplicate the information for any particular association if it is already included with respect to any one of the associations.

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

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 71-75, 82; 77 Del. Laws, c. 364, §§ 8-10.)

§ 81-410 Escrow of deposits.

Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to § 81-402(c) of this title must be placed in escrow and held either in this State or in an account designated solely for that purpose by an attorney or a licensed real estate broker or an institution whose accounts are insured by a governmental agency or instrumentality until: (i) delivered to the declarant at closing; (ii) delivered to the declarant because of the purchaser's default under a contract to purchase the unit; or (iii) refunded to the purchaser. An escrow agent acting in good faith and in accordance with the terms of the escrow shall have no liability for the disposition of the fund.

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

§ 81-411 Release of liens.

(a) In the case of a sale of a unit where delivery of a public offering statement is required pursuant to § 81-402(c) of this title, a seller

(1) Shall have the subject property released from all liens, except liens on real estate that a declarant has the right to withdraw from the common interest community, that the purchaser does not expressly agree to take subject to or assume and that encumber:

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

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

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

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

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

§ 81-412 Conversion buildings.

(a) A declarant of a common interest community containing conversion buildings, and any dealer who intends to offer units in such a common interest community, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than 120 days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and must be given as required in § 81-127 of this title. No tenant or subtenant may be required to vacate upon less than 120-days' notice, except by reason of nonpayment of rent, waste, or conduct that disturbs other tenants' peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during that period. Failure to give notice as required by this section is a defense to an action for possession. A conversion does not relieve either the landlord or tenant of their obligations pursuant to the Delaware Residential Landlord-Tenant Code [Part III of this title], if applicable.

(b) For 60 days after delivery or mailing of the notice described in subsection (a) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If 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 during the following 180 days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

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

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

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

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

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

§ 81-413 Express warranties of quality.

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

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

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

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

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

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

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

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

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

§ 81-414 Implied warranties of quality.

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

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

(1) Free from defective materials; and

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

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

(d) Warranties imposed by this section may be excluded or modified as specified in § 81-415 of this title.

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

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

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

(76 Del. Laws, c. 422, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 91, § 82.)

§ 81-415 Exclusion or modification of implied warranties of quality.

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

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

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

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

(c) The warranty provided in § 81-414(b) of this title on a unit for residential use commences with the earlier of the time of the conveyance or the delivery of possession and extends for a period of 1 year.

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

§ 81-416 Statute of limitations for warranties.

(a) Unless a period of limitation is tolled under § 81-311 of this title or affected by subsection (d) of this section, a judicial proceeding for breach of any obligation arising under § 81-413 or § 81-414 of this title must be commenced within the applicable periods of any applicable statute of limitations or statute of repose but in all events within 6 years after the cause of action accrues.

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

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

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

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

(d) During the period of declarant control, the association may authorize an independent committee of the executive board to evaluate and enforce by any lawful means warranty claims involving the common elements, and to compromise those claims. Only members of the executive board elected by unit owners other than the declarant and other persons appointed by those independent members may serve on the committee, and the committee's decision must be free of any control by the declarant or any member of the executive board or officer appointed by the declarant. All costs reasonably incurred by the committee, including attorneys' fees, are common expenses, and must be added to the budget annually adopted by the association under § 81-315 of this title. If the committee is so created, the period of limitation for claims for these warranties begins to run from the date of the first meeting of the committee, regardless of when the period of declarant control terminates.

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

§ 81-417 Effect of violations on rights of action; attorneys' fees.

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

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

(1) A declarant may agree with the association to do so only after the period of declarant control has expired unless the agreement is made with an independent committee of the executive board elected pursuant to § 81-416(d) of this title; and

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

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

§ 81-418 Labeling of promotional material.

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

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

§ 81-419 Declarant's obligation to complete and restore.

(a) Except for improvements labeled "NEED NOT BE BUILT," the declarant shall complete all improvements depicted on any site plan or other graphic representation, including any plats or plans prepared pursuant to § 81-209 of this title, whether or not that site plan or other graphic representation is contained in the public offering statement or in any promotional material distributed by or for the declarant.

(b) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the common interest community, of any portion of the common interest community affected by the exercise of rights reserved pursuant to or created by § 81-210, § 81-211, § 81-212, § 81-213, § 81-215, or § 81-216 of this title.

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

§ 81-420 Substantial completion of units.

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

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

§ 81-421 Amendment to public offering statement.

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

not required if the amendment is required by any governmental authority or public utility, or 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 executive board, or if the amendment is required by, or to achieve compliance with the requirements of Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Authority, Veterans Administration or other governmental agency or their successors.

(76 Del. Laws, c. 422, § 2; 77 Del. Laws, c. 91, §§ 78, 82.)