

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.)