

CHAPTER 92
FORMERLY
HOUSE BILL NO. 183
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 25 OF THE DELAWARE CODE
RELATING TO THE UNIT PROPERTY ACT.

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

Section 1. Amend § 2201, Title 25 of the Delaware Code by adding the following words to the end of the last sentence thereof: “, as provided in § 81-119 of that Chapter.”.

Section 2. § 2202(18), Title 25 of the Delaware Code is deleted in its entirety and the following is substituted:

“(18) ‘Reserve study’ means an analysis, performed or updated within the last 5 years by one 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.”.

Section 3. A new § 2202(19), Title 25 of the Delaware Code is added as follows:

“(19) ‘Fully funded,’ or any variation thereof, with respect to the repair and replacement reserve, means a repair and replacement reserve which (i) 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 (18) of this section, 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.”.

Section 4. A new § 2202(20), Title 25 of the Delaware Code is added as follows:

“(20) ‘Nonresidential condominium’ means a condominium in which all units are restricted exclusively to nonresidential purposes.”.

Section 5. A new § 2202(21), Title 25 of the Delaware Code is added as follows:

“(21) ‘Nonresidential purposes’ means use for a purpose other than use for a dwelling and appurtenant recreational purposes, or both.”.

Section 6. Amend § 2211(1), Title 25 of the Delaware Code by deleting the words “and the maintenance of a repair and replacement reserve as defined in § 2202(17), funded as recommended by a reserve study as defined in § 2202 (18) of this title;” and substituting therefor the following:

“and the maintenance of a repair and replacement reserve as defined in § 2202 (17) of this title, fully funded as defined in § 2202(19) of this title, subject to the provisions of § 2245 of this title, as applicable;”.

Section 7. § 2211(2), Title 25 of the Delaware Code is deleted in its entirety and the following substituted therefor:

“(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;”.

Section 8. § 2219(5), Title 25 of the Delaware Code is deleted in its entirety and the following is substituted therefor:

“(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 one 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.”.

Section 9. A new § 2244, Title 25 of the Delaware Code is added as follows:

“§ 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: (i) one or more hallways, (ii) one or more stairwells, (iii) one or more management or administrative offices, (iv) one or more roofs, (v) one or more windows, (vi) one or more exterior walls, (vii) one or more elevators, (viii) one or more HVAC systems, (ix) one or more swimming pools, (x) one or more exercise facilities, (xi) one or more clubhouses, (xii) one or more parking garages (but not including surface parking lots), (xiii) one or more masonry bridges used by motor vehicles, (xiv) one or more bulkheads, and (xv) 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 (19) of this chapter, the council shall treat the excess as a common profit subject to distribution pursuant to § 2216 of this chapter. 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 paragraph (a)(2) of this section.”.

Section 10. A new § 2245, Title 25 of the Delaware Code is added as follows:

“§ 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, (i) constitutes less than 25% of the level of funding required for a fully funded reserve as defined in § 2202(19) of this chapter, then the council shall have three years to make the repair and replacement reserve fully funded (as defined in § 2202(19) of this chapter); (ii) constitutes 25% or more, but less than 50%, of the level defined as fully funded, then the

council shall have two years to make the repair and replacement reserve fully funded (as defined in § 2202(19) of this chapter); or (iii) constitutes 50% or more, but less than 70%, of the level defined as fully funded, then the council shall have one year to make the repair and replacement reserve fully funded (as defined in § 2202 (19) of this chapter).”.

Section 11. A new § 2246, Title 25 of the Delaware Code is added as follows:

“§ 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 chapter 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.”.

Section 12. This Act shall become effective 90 days after enactment.

Approved July 02, 2009