

GENERAL INFORMATION CONCERNING COMMON INTEREST COMMUNITIES

What is a “Common Interest Community?”

A “Common Interest Community” is residential real estate in:

- planned communities and subdivisions,
- condominium communities, and
- cooperative communities.

Common interest communities have certain features in common:

- They all have some form of deed restriction that is binding on every person who purchases a residence in the community, because the restrictions come as part of the ownership of the real estate. The restrictions often appear in a “declaration” of covenants, conditions and restrictions or “CC&Rs.”
- These binding restrictions require all owners to pay a share of the real estate taxes, insurance premiums, maintenance, or improvements of or services or other expenses for common areas of the community, such as parks, play grounds, open space, and areas such as pools and club houses, and other facilities that are available to all members of the community.
- The restrictions require every owner to be a member of the homeowners’ association that has an executive board to act for the association.
- The restrictions often include limitations on the owners use of the owner’s property, including:
 - the behavior of those living in the community, and
 - the appearance of the homes in the community.

The documents that owners sign to purchase a home in a Common Interest Community, include the agreement to be bound by the restrictions contained in the Community’s “governing documents.”

What Are a Community’s Governing Documents?

Governing documents are typically prepared by a developer before the first property is sold to a homeowner. These documents usually include:

- A Certificate of incorporation. This document creates the corporation that will eventually become the homeowners association. Often the certificate contains a list of restrictions on the use of property in general terms that are later refined by other binding documents. They often recite the broad powers of the association's executive board and the developer, who will be the first to run the Association's executive board.
- A "declaration" of the deed restrictions must be recorded as a public record in the Recorder of Deeds Office. Recording is public notice of the deed restrictions. The declaration contains the deed restrictions that apply to every property sold in the community. These restrictions are often called "CC&Rs" or "Covenants, Conditions and Restrictions." By purchasing in a common interest community a homeowner has already agreed to be bound by all of the CC&Rs. Homeowners and purchasers cannot pick and choose which rules they will follow. Because they are included in the deed restrictions, the rules and regulations are said to "run with the land" which means that anyone who buys the house in the future is bound by the rules that are in effect at that time. These are rules that govern the use of the real estate that the homeowners association enforces. Typically, they allow the homeowners association executive board to enforce the rules by suing homeowners who refuse to pay annual assessments, and imposing fines against homeowners who violate the rules. The executive board of the association can collect by suing a homeowner personally, or recording a lien against the home, or both. In certain cases the executive board can foreclose on a home, and sell it to collect the sums owed by the homeowner. In addition to agreeing to these rules and the collection powers, purchasers also agree to pay the costs of the lawsuits and liens, and the homeowner's associations' attorneys' fees.
- The "bylaws" of most common interest communities must be recorded with the Recorder of Deeds. The bylaws give additional details about the community. They typically spell out the title, powers and duties of the officers of the executive board of your homeowner's association, and the rights and responsibilities of the developer until the community "transitions" to full operation under the control of an executive board elected by the homeowners association.
- The "rules" of the Community give the greatest level of detail regulating the operation of the community. They often contain standards, restrictions and requirements on the use and appearance of one's home, what vehicles can be kept on the property, keeping up the condition of each home, noise standards and restrictions and the like. The intention of all these standards and restrictions

is to keep up the value of the community, and the lifestyle of the people who agree to live in the community.

It is very important to read and carefully consider the declarations, bylaws, and rules of the community before you decide to purchase a home in that community. They are unlikely to be changed.

If you live in a common interest community, you already contracted with the developer and all your neighbors to follow all of the standards and rules set out in the governing documents. So have all the other residents of the community, your neighbors.

Purchasers should get a copy of these documents, and carefully read them before contracting to purchase a home in a common interest community. You may also request a copy of these documents from your homeowners association. If the Delaware Uniform Common Interest Ownership Act (the DUCIOA) applies to your community, you have 15 days after first receiving the governing documents and a “public offering statement” to cancel the purchase.

Experience shows that many purchasers and many homeowner association board members have not read or do not follow their governing documents. Many disputes can be resolved when the executive board and its homeowners read and discuss the governing documents and what the laws governing common interest communities require.

The Delaware Uniform Common Interest Ownership Act (the DUCIOA)

The Delaware Uniform Common Interest Ownership Act, or DUCIOA authorizes and governs many requirements and options for common interest communities. (Although commonly pronounced to rhyme with “sequoia,” many real estate professionals, pronounce it so that it sounds like “Duke-lowa.”) It contains detailed requirements, rights and responsibilities of the developer, the community’s owners’ association, and the homeowners and residents. Since September 30, 2009 the DUCIOA governs common interest communities unless they have fewer than 20 units, or the declaration says the annual assessment cannot exceed \$500 (increased by 3% per year thereafter).

Some Common interest Communities formed **before** September 30, 2009, must comply with 21 of the DUCIOA’s sections for conditions or actions taken **after** September 30, 2009. Section 81-119 of the DUCIOA details those sections. They include requirements for executive boards, bylaws and rules if authorized by the governing documents. Most communities with fewer than 20 units, or an average annual

assessment of \$500 (increased by 3% per year after July 2010) or less are exempt from all but 2 or 3 sections of the DUCIOA, unless they changed their bylaws to require compliance with the DUCIOA.

This website contains an indexed, word searchable copy of the DUCIOA.

The Unit Property Act

The Unit Property Act and a community's governing documents control communities created prior to September 30, 2009. Certain condominiums may continue to be governed by the Unit Property Act if they choose to comply strictly with procedures in their pre-2009 governing documents. However, if the governing documents and the Unit Property Act do not address a condition or an action, then the DUCIOA may control that issue.

This website contains an indexed, word searchable copy of the Unit Property Act.

The Community's Governing Documents

The DUCIOA and the Unit Property Act permit, but do not require, many declarations, bylaws, rules, standards and restrictions. These governing documents must also be reviewed in order to answer particular questions.