

**OTHER LAWS THAT AFFECT COMMON INTEREST COMMUNITIES:**

- FEES FOR UNBUILT AMENITIES;
- DISCLOSURE OF FINANCIAL OBLIGATIONS IN CHAIN OF TITLE FOR NEW HOMES;
- RESTRICTIVE COVENANTS PREVENTING ROOFTOP SOLAR SYSTEMS

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**The following laws are not part of the DUCIOA but affect the Common Interest Community. All of these laws are in Title 25 of the Delaware Code:**

**§ 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](#). Approved June 10, 2010.

**§ 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.](#) This Act became effective January 1, 2011.

### **§ 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](#).