

Delaware Real Estate Law Update

February 18, 2009

Delaware Common Interest Ownership Act Deferred

On October 31, 2008, Governor Minner signed into law the Delaware Uniform Common Interest Ownership Act. The Act, which was effective October 31, 2008, affects both new and existing communities, including certain maintenance associations.

When the General Assembly returned in January, legislation was introduced to make certain technical amendments, including deferring the effective date of the Act to July 1, 2009. The legislation, introduced as HB 45, passed both houses and was signed by the governor on February 4, 2009.

The amendments serve, among other things, to clarify the exemption from the Act of existing projects, including those that were approved and underway but for which an association had not yet been legally formed. The amendments are also intended to sanction actions that had been, or continue to be, undertaken pursuant to the Act after it was signed by the governor on October 31, 2008, and to excuse the failure to have taken actions required by the Act after its original effective date and until the new effective date.

In addition, the amendments clarify that the Act is not a land use law but a title and governance law. There had been questions concerning whether the New Castle County Unified Development Code's requirements for a county subdivision's maintenance association would control over the Act. The amendments make clear that the Unified Development Code controls.

