REAL ESTATE ALERT

DELAWARE UNIFORM COMMON INTEREST OWNERSHIP ACT

On October 31, 2008, Governor Minner signed into law the Delaware Uniform Common Interest Ownership Act. The Act, effective October 31, 2008, affects some existing communities in certain respects. In particular, most communities with maintenance associations are now subject to the Act. While not intended to supplant county planning and development requirements, the Act extends uniform protection to state residents who are participants in the planned community process.

When the General Assembly returns in January, the Act is likely to receive technical modifications, which may defer the effective date of the Act.

Where feasible, the Act incorporates the ongoing operations of existing common interest communities, but excludes any requirement that they change existing documents and does not impact fundamental rights under those documents. An existing community may elect to amend those documents to comply with the requirements of the Act; however, any amendments to the existing documents must comply with the new requirements as to threshold issues such as notice and recording. And many of the procedures for better governance of communities apply to all existing communities.

Highlights of the Act include:

- Maintenance associations are subject to the Act.

- Expandable condominium structures are now validated and enforceable.

- Limited common elements can be created.

- Condominiums can be created for air rights or other types of nontraditional property.

- An initial offering statement will be required for all new common interest communities.

- Associations will be obligated to maintain reserves for repairs and replacements.

- Disclosures about the community must be made by all sellers.

The Act is a groundbreaking effort to better deal with a number of important and complex issues that have arisen in condominiums, cooperatives and planned communities and will aid developers and homeowners alike in establishing and governing communities throughout the state.

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