

REAL ESTATE USA

USA - Delaware



Real Estate USA

Quick reference guide enabling side-by-side comparison of local insights into real estate law and investment across the United States, including rights and registration; sale and purchase; brokerage; leases; taxes; finance and security; investment climate and structures; land use, including zoning, planning permission, historical / cultural preservation, and government expropriation; environmental issues, including certifications, disclosure obligations, and clean-up, energy efficiency and emission reduction considerations; and recent trends.

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RIGHTS AND REGISTRATION

Rights

What types of holding right over real estate are acknowledged by law in your state?

Delaware acknowledges the following land estates: (i) fee simple absolute, (ii) fee simple determinable, (iii) fee simple with condition subsequent and (iv) life estate. The estate of fee tail, while still acknowledged in Delaware, was effectively ended by statute. 25 Del. C. § 302.

Law stated - 24 March 2022

Are rights to land and buildings on the land legally separable?

Delaware law does not acknowledge specifically the ability of a property owner to separate the title to the land and a building on the land. However, Delaware law does contain an existing framework for the separate treatment of title to land and buildings.

For example, in the context of a materialman's lien for the construction of a building on land, the Delaware Code provides that a judgment of such lien becomes a lien upon both the structure and the land itself. 25 Del. C. § 2718. Further, the Delaware Code does consider circumstances where a tenant constructs a building upon land and obtains title to the building rather than the land itself. 51 Del. C. § 5102(5).

Law stated - 24 March 2022

Which parties may hold and exercise rights over real estate? Do any special rules, restrictions or requirements apply to foreign owners of property in your state?

In Delaware, both natural persons and legal entities may hold and exercise rights over real estate. The most common forms of entities that are used in Delaware are limited liability companies, limited partnerships and corporations.

There are no stand-alone requirements under Delaware law for out-of-state domestic investors specific to the acquisition, ownership or disposition of real property. Notwithstanding the foregoing, there are certain filing requirements for out-of-state domestic entity owners of real property, such as the Delaware RICO statute. 11 Del. C. § 1510. Under this statute, each foreign corporation desiring to acquire real property shall maintain a registered office and agent in Delaware and shall file with the Delaware Secretary of State a sworn report on prescribed forms. Failure to comply with such statutes may result in material consequences for such entities, including the loss of the ability to sue or defend in Delaware courts.

Law stated - 24 March 2022

Registration

Which real estate rights, interests and transactions are subject to registration in your state? What information is recorded in the relevant state and local registers?

In Delaware, there are no registration requirements specific to the acquisition, ownership or disposition of real property. However, foreign entities should be mindful of registration requirements with the Delaware Secretary of State.

Law stated - 24 March 2022

What are the procedural and documentary requirements for entry into state and local registers?
What are the legal effects of registration?

Out-of-state domestic entities may register with the Delaware Secretary of State through electronic filing and may file required reports and taxes online. The effects of such registration include the preservation of the ability to sue or defend in Delaware courts. 11 Del. C. § 1510(c).

Law stated - 24 March 2022

SALE AND PURCHASE

Due diligence

Are there any particular due diligence considerations for real estate sale contracts concluded in your state?

In Delaware and under existing requirements promulgated by the Department of Natural Resources and Environmental Control (DNREC), sellers of real property should be particularly cautious of permitting invasive Phase II environmental testing. Under DNREC regulations and Delaware law, owners of real property may be required to make mandatory reporting of releases or discharges. 7 Del. C. § 6028; 7 Del. Admin. Code § 3.1.1.

Additionally, environmental firms engaged in testing real property may have their own professional requirements of mandatory reporting, so owners of real property should not assume that a firewall of that information could avoid triggering mandatory reporting requirements.

Law stated - 24 March 2022

Contracts

Are sale contracts in your state subject to any formal or substantive requirements?

Under Delaware law, contracts for the sale of unimproved real estate in Delaware must contain a disclaimer that such land is unimproved in the language prescribed in 25 Del. C. § 313. Further, contracts for the sale of real estate in which the seller agrees to provide seller-financing must be in compliance with 25 Del. C. § 314, including an amortization schedule and other technical requirements.

While not a requirement of Delaware law, parties to contracts involving Delaware real estate should be aware that documents executed under seal by the contracting parties have a presumption of payment after 20 years, which effectively operates as a 20-year statute of limitations. *Whittington v. Dragon Group, L.L.C.*, 991 A.2d 1, 10 (Del. 2009). In general, actions to recover a debt not evidenced by a record or by an instrument under seal have a three-year statute of limitation. 10 Del. C. § 8106(a).

On 14 July 2000, the Delaware state legislature adopted a version of the Uniform Electronic Transactions Act, 6 Del. C. § 12A-101 et seq. As a result, no record or signature may be denied legal effect or enforceability solely because it is in electronic form.

Law stated - 24 March 2022

Obligations and liabilities

What are the seller's disclosure obligations and other liabilities, and what are the consequences of breach?

Under Delaware law, the seller of residential real property is generally required to provide written disclosure to the buyer, agent and subagent of all material defects of the property known when the property is listed for sale and made known prior to final settlement. 25 Del. C. § 2572. Failure to provide such notice will provide the buyer with a cause of action against the seller. 25 Del. C. § 2575.

Generally speaking, however, for a commercial sale, the underlying agreement of sale will govern the disclosure requirements and how a breach of any reporting requirement is to be addressed.

Law stated - 24 March 2022

Are there any other obligations on the buyer, aside from paying the purchase price?

Under Delaware law, every person who executes, delivers, accepts or presents for recording any document transferring ownership in real property is required to present a Form RTT-Tax affidavit of transfer tax and pay the transfer tax associated therewith to the state. 30 Del. C. § 5402(a). A similar transfer tax affidavit is also to be presented to the Office of the Recorder of Deeds in the form prescribed by the statute of the applicable county or municipality in which the property lies. Additional obligations may also be imposed by the terms of any agreement of sale.

If the buyer of Delaware real property is a non-Delaware entity (whether incorporated in another state or foreign jurisdiction), there are additional operating and filing requirements. For example, the Delaware Racketeer Influenced and Corrupt Organizations (RICO) statute requires that non-Delaware entities desiring to obtain real property shall maintain a registered office and registered agent in Delaware, and file an annual report with the Delaware Secretary of State. 11 Del. C. § 1510.

Law stated - 24 March 2022

Special considerations

Are there any other special considerations for real estate sale and purchase transactions in your state?

The Delaware Supreme Court has held that the handling of a real estate closing and the distribution of funds is considered to be the practice of law. Therefore, the closing of the purchase and sale of real property in Delaware must be handled by a Delaware-licensed lawyer. Delaware lawyers must handle the real estate closing and distribution of funds through the lawyer's IOLTA escrow account. In the Matter of Mid-Atlantic Settlement Services, Inc., UPL No. 95-15 (Bd. on the Unauthorized Practice of Law) (8 March 2000), approved 755 A.2d 389 (Table) (Del. 2000).

Law stated - 24 March 2022

BROKERAGE

Registration

What are the registration requirements for real estate brokers in your state?

In Delaware, all real estate brokers must be licensed and, as a condition of such licensure, must register with the Delaware Real Estate Commission. 24 Del. C. § 2901, 2010; Title 4 Del. Admin. Code 2900-1.0. Other age, educational and professional requirements to obtain broker licensure are contained in 24 Del. C. § 2907.

Law stated - 24 March 2022

Regulation

How are the activities of real estate brokers regulated in your state?

In Delaware, a buyer, tenant, seller or landlord need not pay compensation to a broker or broker organization without first entering into a written brokerage agreement that specifies compensation terms. 24 Del. C. § 2930(a). This brokerage agreement will provide terms regarding if a commission may be earned without a closing, if there is a tail period to the broker's representation, and other material business terms. A written confirmation of the broker's agency relationship must be included in an agreement for the sale of Delaware real estate, regardless of whether the relationship is a statutory agency or common law agency. Title 4 Del. Admin. Code 2900-10.3.

Law stated - 24 March 2022

LEASES

Lease agreements

Are lease agreements in your state subject to any formal requirements?

Residential lease agreements must be in writing to be effective for a term longer than one year, and landlords must provide a copy of such written agreement to the tenant. If the lease agreement is oral, the landlord shall, on demand, furnish the tenant with a written lease agreement disclosing the name and business addresses of all persons who are owners of the rental property or deemed to be a landlord of the unit. 25 Del. C. §§ 5105, 5106.

Commercial leases can be in writing or oral, and will establish the terms, regulations, conditions, rules and other provisions concerning the use and occupancy of the commercial rental unit. 25 Del. C. § 6102(6). When the landlord purchases utility services, redistributes the utility to tenants, and continuously meters the tenants' use in the commercial unit, the landlord may charge and collect from the tenants, by way of rent or otherwise, an amount not to exceed what the tenants would be billed by the public utility for the utility service. 25 Del. C. § 6101.

Law stated - 24 March 2022

Do state or local laws set out any mandatory or prohibited provisions in lease agreements?

A residential lease agreement must state the name and business addresses of all persons who are owners of the rental property or their resident agent, and all persons who are deemed to be a landlord of the unit. 25 Del. C. § 5105. A residential lease agreement shall not include provisions where the tenant agrees to waive or forego rights or remedies under the Delaware Code, authorizes any person to confess judgment on a claim arising out of the rental agreement, or agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith. Such provisions appearing in a lease agreement are unenforceable, and the tenant may bring an action and recover if the landlord attempts to enforce such provisions. 25 Del. C. § 5301.

A commercial written lease provision authorizing a person other than the tenant to confess judgment against the tenant is void and unenforceable. 25 Del. C. § 6104.

Law stated - 24 March 2022

What are the standard forms of lease agreement used in your state?

There are no standard forms of lease agreement in Delaware; however, the Commercial-Industrial Real Estate Council in Delaware has promulgated a form commercial lease.

Law stated - 24 March 2022

Length of term

Are there any state or local laws regulating the terms of leases? Are long-term tenants accorded any special rights as to extension or renewal of leases?

In a residential lease, a landlord must provide 60 days' notice to the tenant prior to expiration of the rental agreement to renew the rental agreement subject to amended or modified provisions. 25 Del. C. § 5107. A permanent leasehold estate, renewable forever, is considered a fee simple estate. 25 Del. C. § 5304. Residential leases with a term longer than one year must be in writing. 25 Del. C. § 106.

Any lessee of any lands or premises situate in Delaware for a term of 10 years or more may mortgage the lessee's lease or term in the demised premises. 25 Del. C. § 2501. The mortgage of the term of the lessee shall be in like manner acknowledged, recorded in the proper county, and indexed in the same manner as required by law for freehold interests and titles. *Id.* Such mortgage shall not interfere with the landlord's rights, priority or remedy for rent. *Id.*

Law stated - 24 March 2022

Rent and security deposits

Are there any state or local laws regulating rent increases?

In a residential lease, a landlord must provide 60 days' notice to the tenant before expiration of the rental agreement that the agreement shall be renewed subject to amended or modified provisions, including amount of security deposit or rent. If the tenant wishes to terminate the existing lease agreement, the tenant must notify the landlord a minimum of 45 days prior to the last day of term. 25 Del. C. § 5107.

Law stated - 24 March 2022

Are there any state or local laws governing rent security deposits?

Delaware statutory law addresses security deposits for residential leases and provides that security deposits must be held in an escrow account in a federally insured banking institution with an office in Delaware. 25 Del. C. § 5514. The security deposit shall not exceed one month's rent where the rental agreement is for one year or more or for primary residential tenancies of undefined terms, or month-to-month where the tenancy has lasted one year or more. *Id.*

Delaware case law does not restrict the amount that a commercial landlord can require as a security deposit, and there are no regulations or requirements governing the return of the security deposit. Commercial leases can provide for the tenant to post a letter of credit as the form of security deposit. Letters of credit are governed by article 5 of the

Delaware Uniform Commercial Code (UCC). A letter of credit is generally enforceable according to its terms and is only revocable if it so provides. A letter of credit with no explicit expiration date or other indication of duration expires one year after issuance, and five years after issuance if the letter of credit states it is perpetual.

Law stated - 24 March 2022

Can the tenant withhold rent payments on any legal grounds?

In Delaware, a commercial tenant has no statutory right to withhold rent, and a commercial tenant's right to withhold rent will be governed by applicable contract law principles and the terms of the lease. While Delaware recognizes the doctrine of constructive eviction and permits a tenant to quit the premises and terminate the lease if, by the landlord's acts, the tenant is deprived of the use and beneficial enjoyment of the premises and is for that reason forced to abandon the premises, the lease terms can preclude a tenant from being able to bring a claim for constructive eviction. *Tandy Corp. v. Fusco Properties, L.P.*, 1996 WL 280774 (Del. Super. Ct. 10 April 1996).

If the landlord fails to keep the rental unit in habitable condition, the tenant has a right to withhold rent until repairs are made. The tenant also has the right to make repairs to the rental unit and then deduct those costs from the rent. 25 Del. C. §§ 5307, 5308. Delaware recognizes the doctrine of constructive eviction and codifies this protection for residential tenants, and the tenant may seek damages, including a rent deduction, if constructively evicted. 25 Del. C. § 5302; *Leech v. Husbands*, 152 A. 729, 733-34 (Del. Super. Ct. 1930).

Law stated - 24 March 2022

Sub-letting

Under what circumstances is sub-letting allowed?

Delaware statutes do not regulate whether a tenant of a commercial lease may assign the lease. A commercial lease, like any other contract, is generally assignable unless the lease restricts assignments. Likewise, a tenant under a commercial lease can generally sublet unless the lease expressly limits subleasing. Case law is not clear on whether a reasonableness standard would be implied when the lease is silent on whether a landlord must be reasonable when granting its consent. *Lola Cars Intern. Ltd. v. Krohn Racing, LLC*, 2009 WL 4052681 (Del. Ch. 2009).

For residential leases, the tenant may assign the lease or sublease the premises without the landlord's consent, unless the landlord and the tenant agree otherwise in writing. Even when otherwise agreed on, a landlord may not unreasonably withhold consent for a sublease. 25 Del. C. § 5508.

Law stated - 24 March 2022

Obligations and liabilities

What are the general obligations and liabilities of the landlord in respect of the property and what are the consequences of breach?

The landlord to a residential lease must deliver possession of the rental unit, and if the landlord fails to do so, the tenant may terminate the rental agreement or recover expenditures necessary to secure equivalent substitute housing for up to one month. A residential landlord shall also have the obligations listed under 25 Del. C. § 5304 at all times during the tenancy. A landlord must keep the rental unit in reasonable repair and fit for human habitation, including the maintenance of all electrical, plumbing and heating systems. If the landlord commits a breach that deprives the tenant of a substantial part of the benefit or enjoyment of the tenant's bargain, the tenant may notify the landlord in writing of

the condition, and if the landlord does not remedy the condition within 15 days following receipt of notice, the tenant may terminate the rental agreement.

The landlord to a commercial lease is subject to the obligations agreed to in the lease agreement, and the Delaware courts have not found a commercial landlord or lease agreement to have an implied warranty for habitability, covenant of quiet enjoyment, or duty to make repairs. The consequences of a landlord's breach are established by the contract.

Law stated - 24 March 2022

What are the general obligations and liabilities of the tenant in respect of the property and what are the consequences of breach?

A residential tenant must pay rent when due and comply with the obligations set out in 25 Del. C. § 5503.

The tenant to a commercial lease is subject to the obligations agreed to in the lease agreement, and the consequences of the tenant's breach are established by the contract. Taxes paid or levied from the tenant shall be set off against the rent or other demand of the owner for use or profits to the premises. 25 Del. C. § 6105. A distress for rent action exists for commercial leases and allows for the landlord to file an action in the Justice of the Peace Court. 25 Del. C. §§ 6302, 6303. Upon a determination of distress for rent, the court shall promptly issue an order requiring plaintiff to file a cash bond or a bond with surety in such amount and in such form as the court shall determine, and an order to a constable or sheriff of that county directing that all goods on the leased premises be levied upon once plaintiff has filed the bond. Property of the tenant may be released from the levy upon the filing of a bond with surety with the court. 25 Del. C. § 6307.

Law stated - 24 March 2022

Insurance

Are the landlord and tenant bound by any insurance requirements?

There are no statutory requirements for insurance to be obtained for a commercial or residential lease. Parties to a commercial lease can agree that the tenant will obtain property and liability insurance or such other insurance as may be needed, and for the parties to agree that the landlord will be listed as an additional named insured.

Parties to a residential lease can agree that the tenant will obtain an insurance policy to insure the tenant's personal property. In such instances residential tenants can be considered implied insureds under the landlord's insurance policies for the landlord's realty. *Lexington Ins. Co. v. Raboin*, 712 A.2d 1011, 1015 (Del. Super. Ct.), *aff'd*, 723 A.2d 397 (Del. 1998).

Law stated - 24 March 2022

Termination and eviction

What rules and procedures govern termination of the lease by the landlord and the tenant's eviction from the property?

A landlord may not engage in self-help measures for a residential lease. Delaware requires a landlord to file a 15-day notice to vacate action to evict a tenant. Landlords may evict tenants for unpaid rent, breach of lease agreements, tenant's actions affecting the health and safety of other tenants on the premises, and tenant's actions causing physical damage to the premises.

Delaware does not permit self-help evictions; instead, landlords, including commercial landlords, must bring a summary proceeding through the Justice of the Peace Court. *Affordable Autos, Inc. v. Dietert*, 2016 Del. Super. LEXIS 134 (Del. Super. Ct. 24 March 2016).

Law stated - 24 March 2022

TAXES

Real estate transfer tax

What taxes are payable on the sale and purchase of real estate? Are any exemptions available?

In Delaware, a transfer tax of 4% is owed on the sale of commercial and residential property. The customary practice is to split the tax equally between buyer and seller, each paying 2%. The transfer tax is split 2.5% to the State of Delaware and 1.5% to the county where the property is located.

Law stated - 24 March 2022

Property tax

Briefly describe the property tax regime in your state.

Delaware law requires all real property subject to assessment to be assessed at the property's true value in money. 9 Del. C. § 8306(a). The Delaware Supreme Court has held that a property's true value in money is the same as its fair market value. *In re Delaware Public Schools Litigation*, 239 A.3d 451, 477 (Del. Ch. 2020). Owing to recent litigation, each of Delaware's three counties is conducting general reassessments of all real property.

Law stated - 24 March 2022

Rental and other taxes

Are any taxes payable on rental income? Are any other tax regimes pertinent to the real estate sector?

Commercial lessors must pay gross receipts taxes on rental income at the rate of 0.3983%. However, the first \$100,000 of commissions and fees received per month are exempt from the gross receipts tax, and there is no limit on a landlord's ability to pass the gross receipts tax on to tenants.

Transfer tax is owed for commercial leases purporting to transfer a title or possessory interest for a term of more than five years in a condominium unit or any unit properties subject to the Delaware Unit Property Act. For a commercial lessor who has paid the transfer tax owed for applicable condominium or unit property leases, the lessor's rental income shall not be included as gross receipts received by the lessor.

Law stated - 24 March 2022

FINANCE AND SECURITY

Finance providers

What are the typical sources of real estate financing in your state? Are there any restrictions on who may provide financing?

The sources of real estate financing in Delaware vary depending on the project and include, but are not limited to, commercial banks, real estate investment trusts (REITS), credit unions, finance companies, Federal National Mortgage Association (FNMA or Fannie Mae), debt fund providers and mezzanine lenders.

There are no permissions, approvals or licenses specifically with respect to making loans secured by real property that are required for foreign lenders that are not required for a Delaware lender. As a general rule, a lender that is a foreign entity and is not otherwise regulated under state law need not qualify to do business in Delaware merely because it is making a loan secured by real estate collateral located in the state; the loan is not a consumer credit transaction. The rules can become more complex if the lender becomes an operator or owner of the collateral through foreclosure or other remedies.

To transact any business in Delaware, a bank or trust company must obtain from the State Bank Commissioner a certificate authorizing it to transact business in the state. 5 Del. C. § 902. Any person or organization, other than a banking organization, that makes more than five loans in Delaware in any 12-month period must also obtain a license from the State Bank Commissioner. 5 Del. C. § 2202(a). In addition, under Delaware entity law, an organization that is not authorized in Delaware cannot maintain any action or suit unless and until it has been authorized to do business in the state and has paid all fees, penalties and franchise taxes for the years or parts thereof during which it did business in Delaware without authority. 6 Del. C. §§ 15-1103(a), 17-907(a), 18-907(a); 8 Del. C. § 383. A lender must also transact business lawfully. Under Delaware's organized crime and racketeering statutes, a corporate lender may not acquire real property, such as by means of foreclosure, without a Delaware registered office and agent. 11 Del. C. § 1510.

Law stated - 24 March 2022

Security interests

What types of security interest are recognized by law in your state? Is your state a lien theory or title theory state?

Delaware is a lien theory state. A mortgage is recorded in the office of the recorder of deeds in and for the county in which the property is located, and acts as a lien against the property until the debt is paid off.

Law stated - 24 March 2022

What rules and procedures govern the creation and perfection of real estate security interests in your state?

In Delaware, a security instrument must be in writing and signed by the party to be charged or the party's agent lawfully authorized in writing. 6 Del. C. § 2714. The mortgage signing must also be witnessed and acknowledged. Delaware's statutory form of mortgage contains the date of the document. 25 Del. C. § 2101(a). However, a mortgage not made in the statutory form is not necessarily invalid. Any recorded instrument affecting real property must contain in a conspicuous place the tax parcel number of the property affected and the identity of the preparer. 9 Del. C. § 9605. Specific margins and headings, which vary by county, are required for recordation. While not required by statute, it is recommended to record the power of attorney used for a security instrument that is being executed by power of attorney.

Law stated - 24 March 2022

Enforcement of security

What rules and procedures govern the enforcement of real estate security interests in your state?

Judicial foreclosure is the only recognized statutory proceeding for foreclosure of real property after a breach of a mortgage. 10 Del. C. § 5061. A scire facias foreclosure proceeding may only be brought in a court of law if the mortgage was executed under seal. It is also possible, under certain circumstances, to pursue an equitable foreclosure in the Delaware Court of Chancery.

Law stated - 24 March 2022

What is the typical timeframe for the enforcement of security?

The timing and costs of these proceedings can vary greatly depending on which type of judicial proceeding is brought, whether the foreclosure is contested by the debtor, and other factors. Notably, there are additional requirements for the foreclosure of owner-occupied residential properties, including, but not limited to, Delaware's Automatic Residential Mortgage Foreclosure Mediation Program. 10 Del. C. § 5062C.

Law stated - 24 March 2022

INVESTMENT

Investment climate

What is the general climate of real estate investment in your state?

Commercial and residential real estate investment in Delaware is strong. Commercial real estate development is driven by high demand for life sciences, warehouses and industrial sites. Residential real estate investment and development is largely driven by single-family homes in Delaware's beach communities in Sussex County and multi-family and apartment dwellings in New Castle County.

Law stated - 24 March 2022

Investment structures

What legal structures are typically used to invest in real estate in your state and what are the advantages and disadvantages of each (including tax implications)? What rules and procedures govern their formation?

Parties typically use Delaware limited liability companies as single-purpose entities to commercial real estate transactions; less frequently, parties will use corporations, limited partnerships or Delaware statutory trusts. Use of Delaware LLCs for real estate investment provides the advantages of ease and speed of formation. Delaware allows single-member LLCs to be disregarded entities, which Delaware treats as sole proprietorships for tax purposes.

Law stated - 24 March 2022

LAND USE

Zoning and planning permission

Which authorities regulate real estate zoning in your state and what is the extent of their powers?

The Delaware legislature has the authority to regulate real estate zoning in Delaware, but generally delegates this authority to the counties or municipalities. Practically, most real estate zoning in Delaware is regulated by county-level municipal government departments or commissions, but some local municipalities (e.g., the City of Wilmington, the City of Newark and the Town of Middletown) regulate real estate zoning within their municipal limits. In New Castle County, the Department of Land Use, Planning Board and County Council have jurisdiction over zoning proceedings. In Kent County, the Department of Planning Services, Levy Court and Board of Adjustment have jurisdiction over zoning proceedings. In Sussex County, the Planning and Zoning Commission and County Council have jurisdiction over zoning proceedings.

Law stated - 24 March 2022

What are the eligibility, procedural and documentary requirements to obtain planning permission?

The eligibility, procedural and documentary requirements to obtain planning permission are established and enforced by each municipal government that regulates real estate zoning within its municipal boundaries. Accordingly, these requirements vary greatly from county to county and municipality to municipality. Some municipalities have very specific and detailed requirements, while others have more general requirements. For example, New Castle County has established the New Castle County Unified Development Code, which sets forth, in detail, all of the requirements for any property located within the municipal limits of New Castle County. New Castle Code Chapter 40. Accordingly, it is important for any potential developer to engage a Delaware attorney and a Delaware civil engineer early in the development process.

Law stated - 24 March 2022

What is the appeal procedure for planning decisions?

Since the requirements to obtain planning permission are established and enforced by each municipal government that regulates real estate zoning within its municipal boundaries, the procedure for an initial appeal of many planning decisions can also depend on the specific municipality. However, certain municipal planning decisions are subject to judicial appeal directly to the Delaware Superior Court, which appeal must be filed within 60 days from the date of publication in a newspaper of general circulation in Delaware of such action being appealed. 10 Del. C. § 8126.

Law stated - 24 March 2022

What are the consequences of failure to comply with planning decisions or regulations?

Failure to comply with a municipality's decisions or regulations could result in a fine of up to \$100 or imprisonment for not more than 10 days, or both. 9 Del. C. § 2609. In addition, each day the violation continues is deemed a separate offense and subject to the same potential penalties.

Law stated - 24 March 2022

Historical and cultural preservation

What state and local regimes govern the protection and development of historic and cultural buildings?

The Delaware Department of State is charged with the protection and preservation of the state's historic and cultural buildings. 29 Del. C. § 551. The State of Delaware Historic Preservation Office is charged with these duties and with administering Delaware's Historic Preservation Tax Credit Program. 30 Del. C. Ch. 18. On a local level, each municipal government that regulates real estate zoning within its municipal boundaries has the authority to impose additional protections or requirements for historic and cultural buildings.

Law stated - 24 March 2022

State and local government expropriation

What laws and regulations govern the expropriation of property by state and local authorities?

In Delaware, eminent domain is generally handled at the state level. 29 Del. C. Ch. 95. The state must satisfy the requirements of 10 Del. C. Ch. 61 in bringing a condemnation action.

Law stated - 24 March 2022

What is the required notice period for expropriation and how is compensation calculated?

The State of Delaware must issue a summons to all defendants named in the complaint. 10 Del. C. § 6106. If a defendant cannot be reached, the State of Delaware is required to publish public notice in a newspaper of general circulation in the county in which the property is located at least once per week for two successive weeks. The State of Delaware must provide just compensation for the property being taken, which is determined by an independent and impartial qualified appraiser. 29 Del. C. § 9505.

Law stated - 24 March 2022

ENVIRONMENTAL ISSUES

Certifications

What state and local environmental certifications are required for the development of real estate and how are they obtained?

The Delaware Department of Natural Resources and Environmental Control (DNREC), a state agency, administers the primary environmental permits in Delaware across areas such as air quality, water, waste and hazardous substances, and coastal zone development.

Law stated - 24 March 2022

Disclosure obligations

What environmental disclosures in relation to real estate sales are required under state and local laws?

In the commercial context, there are no disclosure requirements strictly related to commercial real estate sales. Under certain Delaware statutes, disclosures must be made to state agencies regarding releases of reportable quantities of listed substances or the presence of extremely hazardous materials above thresholds, regardless of the existence of a commercial transaction.

Law stated - 24 March 2022

Clean-up

What state and local rules and procedures govern environmental clean-up of property? Which parties are responsible for clean-up and what is the extent of their liability?

The Delaware Hazardous Substances Cleanup Act (HSCA) and related regulations govern the investigation and remediation of contaminated property, including the state's Brownfield program. Liability for a contaminated site under HSCA may attach to current and previous site owners and operators; any person who owned or possessed a hazardous substance and arranged for disposal or treatment of a hazardous substance at the site; any person who arranged with a transporter for transport, disposal or treatment of a hazardous substance to the site; any person who generated, disposed of or treated a hazardous substance at the site; and any person who accepted any hazardous substance for transport to the site when the transporter selected the site. Liability under HSCA is strict, joint and several, for all costs associated with a release from a site and for all natural resources damages resulting from the release.

Law stated - 24 March 2022

Are there any state or local regulations or incentive schemes in place to promote energy efficiency and emissions reductions in buildings?

The Delaware Department of Natural Resources and Environmental Control (DNREC) issues grants through its Energy Efficiency Industrial (E2I) program, which is designed to encourage non-standard energy efficiency upgrades for electric customers whose annual consumption is greater than 10,000 MWh and or 95,000 MMBtu.

Law stated - 24 March 2022

UPDATE AND TRENDS

Recent developments and trends






Have there been any notable recent legal or regulatory developments affecting the real estate market in your state? What are the current trends in and future prospects for the real estate market in your state?

Owing to a recent Delaware Court of Chancery decision and subsequent settlement, in the near future, all three of Delaware's counties will be conducting general reassessments of all real property. In re Del. Pub. Sch. Litigation, 239 A.3d 451, 464 (Del. Ch. 2020).

The current commercial real estate trends in Delaware see strong demand for warehouse space due to Delaware's ideal location along I-95 and proximity to major eastern seaboard cities such as Washington D.C., Baltimore, Philadelphia and New York. Delaware continues to grow its vibrant life sciences sector with strong support from the state government.

Law stated - 24 March 2022

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