

Land Use Law Update

Delaware Uniform Common Interest Ownership Act



by
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On October 31, 2008, former Governor Minner signed into law the Delaware Uniform Common Interest Ownership Act (“DUCIOA”). DUCIOA was modeled in large part after the Uniform Common Interest Ownership Act that was originally promulgated in 1982 by the National Council of Commissioners on Uniform State Laws, as subsequently modified and amended in 1994. DUCIOA reflects a major overhaul of Delaware’s long standing Unit Property Act, which has largely remained unchanged since its enactment in 1964. While primarily aimed at condominium regimes, DUCIOA also impacts other forms of property ownership where the community has common areas, such as cooperatives and subdivisions.

Although DUCIOA became effective on October 31, 2008, various technical amendments were introduced and adopted by the Delaware General Assembly in January of this year. Governor Markell subsequently signed House Bill 45 into law on February 4, 2009, which among other things, extended the effective date of DUCIOA until July 1, 2009. In June of this year, additional revisions and modifications to DUCIOA were adopted and the current DUCIOA statute appears in Chapter 81 of Title 25 of the Delaware Code and becomes effective September 30, 2009.

DUCIOA will apply to and govern new condominium developments. It will also govern so called “common interest” communities (i.e., those having “common elements” which include open spaces or other shared amenities) that are established after September 30, 2009. However, portions of DUCIOA will also affect existing condominium communities and other residential communities that contain common areas, such as subdivisions governed by maintenance associations. One of the laudable objectives of DUCIOA is to provide consumer-related protections for buyers by requiring, among other things, sellers and their associations to provide certain mandatory information regarding their common interest community and its finances.

Although time and space constraints prohibit an exhaustive (and very boring) analysis and summary of DUCIOA, I have selected several provisions that may be of interest.

Reserve Studies

Under Section 81-315 of DUCIOA, which will apply to existing common interest communities on September 30, 2009, the governing body of a community will be required to have a reserve

study performed or updated every five (5) years by a qualified third party in order to establish the remaining useful life and estimated cost to replace the various common elements within the community. This information is intended to guide the governing body of the community in determining the appropriate annual amounts to be assessed to the unit owners to fully fund the communities’ applicable repair and replacement reserve. The extent of the required repair or replacement reserve will depend on the nature and scope of the components and systems that make up the common elements, such as the number of hallways, stairwells, administrative offices, roofs, windows, exterior walls, elevators, HVAC systems, amenities, parking facilities, bulkheads and docks. Different minimum percentages are set forth in this Section, depending on the number of the above-referenced systems or components. Although this may create initial headaches for the governing bodies of communities (and costs to unit owners), the objective is to avoid and hopefully minimize the unexpected and generally costly special assessments for necessary capital repairs and replacements that have plagued some older condominium projects. In addition, non-residential condominiums may elect to be exempt from these reserve requirements under the recently adopted Section 2246 of the Unit Property Act.

Liens For Assessments

In addition, under Section 81-316, associations now have a statutory lien for any assessment levied against a unit. Under this Section, the association’s lien for unpaid assessments shall have priority over any first or second mortgages for an amount not to exceed six (6) months of the monthly assessment. This lien priority, however, requires the association to record in the office of the Recorder of Deeds in the applicable county where the community is located, the address, contract, phone number, email address, and website address of the association. In addition, the association is required to record at least thirty (30) days prior to any Sheriff’s Sale of the unit, a statement of the lien which must include the amount due. Any such lien recorded in accordance with this Section shall be valid for five (5) years following the first day of the month after the statement is recorded.

This article is intended to merely provide a small sampling of the provisions of DUCIOA. If you have the stomach for it, I strongly encourage you print out all four (4) subchapters of Chapter 81 of Title 25 from the State of Delaware’s website at www.delaware.gov. Key in DUCIOA in the search field and select Chapter 81 and make sure there is plenty of paper in the paper tray.