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CONDOMINIUM: ITS ECONOMIC FUNCTIONS

JOHN W. WALBRAN*

I. INTRODUCTION

In the last several years, many states have enacted condominium enabling legislation,¹ stimulated largely by the 1961 authorization of FHA mortgage insurance for condominium housing.² This legislation has been described as "the first innovation that has come along in the real estate field in a good many years"³

This article reviews the intended economic function and the social purposes of the condominium concept and analyzes the present legislation.

II. BACKGROUND OF THE CONDOMINIUM

Rapid development in the law pertaining to housing in multi-family undertakings on an occupant-ownership basis should not be surprising. A housing shortage developed during World War II and rapid urbanization and an exploding population followed, rent control, which in some places continued long after the war, made private investment in rental housing less attractive than other opportunities.⁴ At the same time, the disappearance of construction sites, generally increasing costs, and increasingly prohibitive commuting distances, made the cost and inconvenience of the traditional house and lot so high that the housing gap could not be closed.⁵ Nevertheless, the drive for individual home

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1. Citations of present condominium statutes appear in the Appendix.

Ed. note: Several of these statutes have been enacted since this article was written and therefore are not included in Mr. Walbran's discussion. Such statutes are marked * in the Appendix.

2. National Housing Act § 234, 75 Stat. 160, 12 U.S.C. § 1715(y) (Supp. 1962).

3. Smith, *Condominium in Pennsylvania*, PITT. L.J., Jan. 1964, p. 3.

4. Leyser, *The Ownership of Flats—A Comparative Study*, 7 INT. & COMP. L.Q. 31, 32 (1958).

5. One significantly increased cost is the state and local real property tax. See Haviland, *Total Tax Collections in 1961*, TAX POLICY, Oct. 1962, p. 2, at 8: "Local tax collections from all sources except motor vehicle taxes increased in 1961. Property tax collections increased \$1,572 million, or 10.0 per cent."

ownership survived.⁶ These economic and social pressures provided the impetus to search for a legal form incorporating the social and psychological advantages of individual ownership and the economic advantages of apartment living.⁷

Earlier efforts had produced the stock cooperative, which uses the corporate form of organization.⁸ The individual as a shareholder in the corporation which itself holds title to the property is entitled to occupancy of an apartment under a proprietary lease.⁹

Each tenant-shareholder agrees to pay his proportionate share of the mortgage indebtedness, real estate taxes, and other corporate expenses. But the corporation's capacity to service its obligations depends on every individual meeting his periodic assessments.¹⁰ Thus the shareholders are financially interdependent. The failure of one individual to pay his share results in a default that must be cured by the others, if at all;¹¹ the solvent cooperator must choose between losing his own apartment and assuming the assessments of insolvent cooperators.¹² This feature makes the stock cooperative form objectionable.

In the depression of the thirties, the pyramiding of arrearages caused a wave of defaults.¹³ Approximately 75 per cent of the cooperatives

6. Cribbet, *Condominium—Home Ownership for Megalopolis?* 61 MICH. L. REV. 1207, 1208 (1963).

7. Kenin, *Condominium: A Survey of Legal Problems and Proposed Legislation*, 17 U. MIAMI L. REV. 145, 148 (1962).

8. FHA, *CONDOMINIUM HOUSING INSURANCE AND SERVICING HANDBOOK*, App. V-1, § 1.1 (1962).

9. Smith, *supra* note 3, at 5.

10. Comment, *Federal Assistance in Financing Middle-Income Cooperative Apartments*, 68 YALE L.J. 542, 548 (1959).

11. Comment, *Community Apartments: Condominiums or Stock Cooperatives?* 50 CALIF. L. REV. 298, 300 (1962).

12. Comment, *Federal Assistance in Financing Middle-Income Cooperative Apartments*, *supra* note 10, at 597.

The exact nature of the choice to which the solvent cooperator is put varies with the liability defaulted by the corporation and the provisions of his proprietary lease. Obviously, if the liability is secured by a lien prior to the lease, then the corporation's default will cause the cooperator to lose his apartment. Otherwise, it would be possible for the corporation to lose title to the building, with the cooperator retaining possession for the remainder of the term of his leasehold, if any. Again, if the lease is literally proprietary, it would be terminated by the corporation's loss of the building, insolvency, and probable termination.

Furthermore, it may well be erroneous to assume that the cooperator could look only to "natural economics" in determining whether or not to attempt to protect his equity; it might be difficult for a man to turn his back on his home. *Id.* at 599.

13. *Ibid.* Successive defaults resulting from financial interdependence are hereafter described as the stack-of-cards defect.

failed; in contrast, the residential mortgage foreclosure rate infrequently exceeded 20 per cent.¹⁴

Recent efforts have been devoted to the development of a legal form permitting a more separate ownership of the units in a multi-family dwelling.¹⁵ Ideally, a unit owner should be able to deal with his unit in the same manner that a householder in the suburbs can deal with his house and lot.¹⁶ Such individual treatment would eliminate the stack-of-cards defect of the stock cooperative. On the other hand, the owner's freedom must be conditioned in order to preserve the economy of multi-family living and to allow the reasonable regulation requisite to group living.

There were at least two clear avenues along which this more separate ownership could be developed. "On the one hand, we know that in the Middle Ages ownership of floors of houses, and even rooms, on the land of different persons was common in various parts of Europe."¹⁷ That is, several persons owned discrete parts of a single building.

The other approach is suggested by *Coke on Littleton*:

There are exceptions to the general rule that the land includes everything above and below the surface. Thus a man may have an *inheritance* in an upper chamber, though the lower buildings and the soil be in another, and it will pass by livery. (Emphasis added.)¹⁸

The concept was one of aerial subdivision, the creation of estates in airspace. Under the common law it was clear that airspace was owned

14. Comment, *Community Apartments: Condominium or Stock Cooperative?*, *supra* note 11 at 324.

15. Comment, *Federal Assistance in Financing Middle-Income Cooperative Apartments*, *supra* note 10, at 605, proposed FHA cooperative assessment insurance as an antidote to the stack-of-cards defect. It should be noted that, in contrast to condominium mortgage insurance, this would certainly require continuing FHA participation in every insured cooperative as well as continuing FHA liability.

16. Smith, *supra* note 3, at 4.

17. Leyser, *supra* note 4, at 33.

At 35, Leyser observes that the CODE NAPOLEON, art. 664 (1804), "treated this type of ownership in line with established customary law, as a special kind of co-ownership of an immovable." But it remained for later French legislation in 1938, 1939 and 1943 to provide definitive treatment of the rights and obligations of the owners of flats.

18. COKE, COKE ON LITTLETON, § 48b (1628), quoted in Comment, *The Creation of Estates in Airspace*, 25 ROCKY MT. L. REV. 354, 355 (1953).

BUCKLAND & McNAIR, ROMAN LAW AND COMMON LAW 78 (1936) state: "[T]he thing exists in various places, notably on the south side of New Square, Lincoln's Inn."

by the individual holding title to the underlying soil. In a legal system that early recognized the severance of estates beneath the soil, the severance of estates above the soil was a logical development.¹⁹

Both approaches, without more, presented difficulties in the maintenance and government of buildings. Widespread utilization of separate ownership techniques awaited structuring legislation.²⁰

In most of the new statutes, it is not possible to determine along which of these paths the condominium concept has evolved. Most, as the widely followed FHA Model Statute for Creation of Apartment Ownership, attempt, without further elucidation, to provide specifically for all contingencies in which the underlying theory might be relevant.²¹ For example, assume that a building submitted to a condominium act is destroyed. If the interest owned by the occupant were an interest in the building alone, then upon its destruction, it might well be contended that there was no interest left—other than an insurance claim, if any, and an interest in the ground, if any. On the other hand, destruction of a building should have no effect on an estate in air space. Because neither result is entirely acceptable, because it seems there should be a continuing interest and that a mechanism for rebuilding should be provided ahead of time, and because it seems undesirable to allow a hodgepodge of aerial estates to survive their usefulness, most acts provide specifically for the destruction contingency. Thus, the Model Statute provides in Section 26 that the Association of Apartment Owners shall determine whether or not to rebuild, and that, if the determination is not to rebuild, the remaining property “shall be deemed to be owned in common by the apartment owners.”²²

It is difficult to generalize about the property interest which the condominium purchaser acquires. First, a semantic difficulty is created by the fact that slightly less than half of the acts authorize the submission of leased land or a leased building, or both, to a condominium act, with the consequence that the relevant portion of each condominium

19. Comment, *Community Apartments: Condominium or Stock Cooperative?*, *supra* note 11, at 302-03.

20. Leyser, *supra* note 4, at 33 comments: “It appears that excessive splitting up of the ownership of houses in this way, as well as the lack of clear rules covering the repair and maintenance of the building were [*sic*] the cause of the many disputes.”

21. FHA, MODEL STATUTE FOR CREATION OF APARTMENT OWNERSHIP (1962) [hereinafter cited as FHA MODEL STATUTE].

22. FHA MODEL STATUTE § 26.

unit is truly leased.²³ Probably the easiest evasive tactic here is that taken by several of the acts: regardless of the nature of the property interest submitted to the condominium act, the condominium purchaser is said to own his unit.²⁴ Beyond this, there is the generally unresolved issue, set forth previously, of whether the condominium apartment is both an interest in a building and an aerial estate, or exclusively one or the other.

Nevertheless, there are several constants which can be regarded as the definitional qualities of the owned condominium unit. The unit consists of two elements which are inseparable for the duration of the condominium project. The first element is the apartment. " 'Apartment' means a part of the property intended for . . . independent use, including one or more rooms or enclosed spaces . . . in a building. . . ." ²⁵ The second element is an undivided interest, an interest in common with other unit owners, in the common areas and facilities of the condominium project. These include the land, the supporting structures, installations for central services, and such other community facilities as are provided.²⁶ The percentage of the undivided interest included in each unit is specified in the declaration, which is the document by which property is submitted to the act. The percentage is sometimes based on the relative values of the apartments and sometimes set by the developer's arbitrary stipulation. It may or may not be subject to change, but is usually amendable by agreement among all the unit owners.

The provisions in the several condominium acts for the maintenance and government of the project are for the most part beyond the scope of this article. As observed above, however, these are necessary provisions, and a brief outline of the devices employed will be useful later in the economic analysis of the condominium.

Regulation of the project, supplementing specific statutory requirements, is achieved with two basic devices: covenants and by-laws. The former are set forth either in the recorded declaration or in the deed of the individual unit; the latter are usually set forth initially in the

23. *E.g.*, WASH. REV. CODE ANN. § 64.32.010(2), .030 (Supp. 1964), which authorizes the submission to a condominium project of land and buildings "owned, leased or possessed . . ." in any manner permitted by state law.

24. *E.g.*, TEX. REV. CIV. STAT. ANN. art. 1301a § 2(d) (Supp. 1964): " 'Condominium' means the separate *ownership* of single units . . . in a multiple unit structure . . . with common elements." (Emphasis added.); § 1(1) includes in general common elements the land, whether leased or in fee simple.

25. FHA MODEL STATUTE § 2(a).

26. *Id.* at § 2(f).

declaration, subject to amendment by the association of apartment owners. Most covenants will be typical restrictive covenants. One exception is notable: positive covenants—that is, covenants to do as opposed to covenants to refrain from doing—are almost always either explicitly or implicitly authorized. Probably the best example is the covenant to pay assessments for the common expenses involved in maintenance and common services, where this payment is not required by statute.²⁷ The organization of the owners' association is included in the by-laws. The association is usually authorized by statute to hire a professional manager.

At this point, two facts should be clear: first, that the conceptual structure of the condominium unit permits a far more separate form of ownership than the stock cooperative; and second, that the condominium legislation provides a mechanism that rivals the cooperative corporation in efficiency and surpasses it in owner participation. It remains to be seen whether or not the condominium unit can approach more closely than the cooperative the economic independence of the single family dwelling.

III. SEPARATE FINANCING

A. Opportunity for Unit Economic Independence

The standard against which the economic independence of the condominium unit must be tested is the single family dwelling. Conversely, private-house thinking provides the guidelines for the realization of the fullest possible unit individuality.

“Two of the most attractive features which condominium seems to offer the unit buyer involve separate taxation and separate financing of each ownership.”²⁸ Mortgage indebtedness is likely to be the largest single liability of the project, and of most of the individual owners as well.²⁹ As a result, the most important single step condominium legislation

27. While few of the other acts are as specific in this regard as California, it seems likely that the judicial enforcement will be subject to some sort of reasonableness test. California achieves this result with the statutory provision that the restrictions are “enforceable equitable servitudes where reasonable.” CAL. CIV. CODE § 1355.

28. MacEllvan & Eagen, *Condominium—A Symposium*, 41 TITLE NEWS 38 (Dec. 1962).

29. Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 1019 (1963), recognizes that debt service is the largest single expense of the newly constructed cooperative, followed by real property taxes (with which he is primarily concerned at this point). There is no basis for anticipating a different experience with the condominium.

can take to assure unit independence—and therefore owner security³⁰—is to provide for separate unit financing.³¹

Implementation of separate financing is not difficult. The condominium unit should be declared to be real property.³² A brief statement should follow this declaration of status indicating the intent to give to the unit owner the rights and obligations of every real property owner except as those rights and obligations are modified by the condominium legislation itself. The rights can be further defined to include the right to convey, to mortgage, and to lease the unit.³³

Separate financing is not free. "Adequate servicing of these loans will be relatively high in cost . . . ," perhaps, more expensive than servicing the single family dwelling, and certainly more expensive than servicing the cooperative.³⁴ For instance, appraisal of the condominium unit will certainly be more complex than appraisal of a single house; and the sheer multiplicity of borrowers will raise condominium financing costs above those of the cooperative. In addition, from the bank's point of view, there are new risks in the condominium loan. "Among the foremost of these risks . . . will be the quality of . . . [owner] . . . management."³⁵ And, if a mortgage must be foreclosed, the lender will not be able to board up the unit and eliminate most of the maintenance costs, as he could with a single family house. The common expenses of the condominium project will continue.³⁶ Finally, as compared with the cooperative, there is no collective responsibility. After a certain number of individual defaults, the default rate within the cooperative is inevitably accelerated; thus the lender also may profit from the added stability of the condominium project as a whole. At any rate, separate financing as opposed to cooperative financing seems to be worth the extra servicing and appraisal costs—an interest rate approximating that on loans on individual houses.³⁷

30. It should be noted that this owner security is accompanied by an apparent increase in owner responsibility, but this increase is apparent only. Even in the stock cooperative the owner was liable, although there to the corporation, for his share of the housing expenses. The owner's failure to discharge this obligation resulted in loss of ownership and apartment. Thus, from the individual owner's outlook, the cooperative operated collectively only on the "down side."

31. Comment, *Community Apartments: Condominium or Stock Cooperative?* *supra* note 11, at 328 (1962).

32. Cf. FHA MODEL STATUTE § 4.

33. Cf. ARK. STAT. ANN. § 50-1004 (Supp. 1963).

34. O'Keefe, *Financial Aspects of the Condominium*, 30 APPRAISAL J. 465, 469 (1962).

35. *Id.* at 468.

36. *Ibid.*

37. 24 C.F.R. §§ 203.20, 234.29 (1965) specify the same maximum interest

While not bearing directly on owner security, the financing flexibility permitted by condominium separate financing should be noted. "[T]he individual can pay cash for his unit, obtain a conventional loan or an FHA insured loan."³⁸ This is different from the cooperative purchaser's situation, where a mortgage loan is not possible because stock and not real estate is being purchased. "[I]nstitutional lenders do not like to finance the purchase of stock and some are strictly regulated on stock loans."³⁹ Finally, since no stock is to be sold, the condominium project should not be subject to SEC or state "Blue Sky" law regulation. The financing possibilities presented by the condominium concept have been described as "Utopian."⁴⁰ They are certainly desirable.

This treatment of the separate financing feature of the condominium unit assumes that a solution is found to the problem presented by any existing blanket mortgages and liens affecting the entire project. Three alternatives are available. First, the existing lien could be allowed to remain effective against the entire project. This approach is undesirable. If it does not render the condominium units unmarketable or grossly hinder the financing of their purchase, it certainly subjects the unit purchaser to an unwise dependency on the solvency and reliability of his seller. Second, the existing lien could be apportioned among the several units in the same percentages as the ownership of the common elements, but otherwise remain unaffected. Thus, the purchaser's possible loss would be limited, but his ultimate dependence on the solvency and reliability of his seller to the extent of the proportionate share of the existing lien would remain. This, as the prior solution, could be a trap for the unwary purchaser. This solution also gives to an initially financing bank an undue economic advantage over its competitors. It virtually guarantees that every informed buyer will insist on a purchase agreement to which the lending agency is a party and in which a novation is effected. (The individual unit would be removed from the blanket lien. The purchaser would assume direct liability for his portion of the debt secured by the

rate of 5¼% for insured loans on single family dwellings and on condominium units. Current construction signifies market acceptance of this treatment in parity.

38. FHA, CONDOMINIUM HOUSING INSURANCE AND SERVICING HANDBOOK, App. V-1, § 1.1 (1962).

39. Smith, *supra* note 3, at 6.

TEX. REV. CIV. STAT. ANN. art. 1301a, § 10 (Supp. 1964), specifically makes loans on condominium units eligible investments for state lending institutions.

40. Vogel, *A New Look in Loans, the Condominium*, 22 MORTGAGE BANKER 26, 26 (1961).

blanket lien.) Another factor would be the buyer's probable inability to find another lending agency interested in lending on what would effectively be a second mortgage. Inevitably, the initial lending agency is placed in a position to secure the financing business in the transaction, if any, of the purchaser. Conceivably it could insist on acquiring this business as a condition of the novation.

A better solution is one that may have been adopted by the FHA Model Statute, although in large part *sub silentio*. Section 14 of the statute provides:

At the time of the first conveyance of each apartment, every mortgage and other lien affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, *shall* be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities *shall* be released therefrom by partial release recorded. (Emphasis added.)

This section obligates the seller either to pay any existing lien against a unit sold or to obtain a release of the unit. This duty could certainly be enforced against a solvent seller.

The section also can, and should, be read to create a duty on the part of pre-sale lienors to release each unit as it is conveyed. This interpretation of the statute would insure the marketability of the condominium unit, in terms of both buyer and lender acceptance. It would remove the trap for the unwary purchaser that is concealed in the other alternatives, and make possible competition for the financing of condominium sales.⁴¹ This interpretation would, however, require pre-sale lienors to protect themselves both contractually and by such policing of the sales of the condominium units as they deem necessary—knowing the borrower and his economic situation.

B. *Present Legislation*

The new legislation does make separate financing available to the unit purchaser. Most statutes, following the FHA Model Statute, begin

41. Cf. UNIFORM COMMERCIAL CODE § 9-308, which is designed to achieve the same effect, where it is applicable, as the provision contemplated in the text. It enables a secondary financier, for instance a local bank, to compete with an inventory financier such as, for example, in the automobile business, the General Motors Acceptance Corporation, for the financing of the ultimate sale at retail. The primary or inventory financier is protected by a security interest in the proceeds of the sale which arises at the same time that the secondary financier acquires a security interest in the chattel.

with a declaration to the effect that "each apartment, together with its undivided interest in the common areas and facilities, shall for all purposes constitute real property." (Emphasis added.)⁴² The Arkansas statute provides that each unit shall be treated "as if it were sole and entirely independent"⁴³ Others express this general declaration of status, specifically authorizing the owner to deal with his unit in certain ways, usually including the right to convey, to mortgage, and to lease it. Even without specific mention, however, there is no mistaking the intent to effect separate financing. Probably the strongest internal implication of this intention can be found in the liens provisions. For example, the FHA Model Statute provides that, while property is subject to the act,

During such period liens or encumbrances shall arise or be created only against each . . . [unit] . . . , in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership⁴⁴

Finally, the available legislative history reflected primarily in law review articles, clearly indicates an intent to authorize and facilitate separate financing.⁴⁵

Nevertheless, not one of the present statutes adequately insures the removal of blanket mortgages and liens covering the project at the time of the first conveyance of the condominium units. Most, again following the FHA Model Statute, declare that liens insofar as they affect any unit shall be paid or released at the time of its first conveyance.⁴⁶ None, however, indicates the consequences of non-compliance. Wisconsin is the most definite, requiring that blanket mortgages include a proviso for a "sum certain" payment to release a unit.⁴⁷ By implication, it would seem that a unit purchaser could clear his unit by tendering this sum directly to the lender and by refusing to purchase from the developer except as this tender is accepted and taken into consideration in determining the purchase price. Obviously, this procedure requires owner anticipation; however, the statute affords the owner no insurance of the developer's

42. FHA MODEL STATUTE § 4.

43. ARK. STAT. ANN. § 50-1004 (Supp. 1963).

44. FHA MODEL STATUTE § 9.

45. *E.g.*, Cribbet, *Condominium—Home Ownership for Megalopolis?*, 61 MICH. L. REV. 1207 (1963), written following the author's involvement in the drafting of the Ohio Condominium Property Act.

46. *E.g.*, FHA MODEL STATUTE § 14.

47. WIS. STAT. ANN. § 230.83 (Supp. 1965).

integrity or solvency where the owner purchases before his unit is released by the lienor. Amendment is necessary.

IV. SEPARATE TAXATION

A. *Opportunity for Unit Economic Independence*

The second most important feature of the condominium concept from the standpoint of unit economic independence and owner security is the opportunity that it presents for separate taxation. Drawing on cooperative information, the following statement succinctly displays the significance of this opportunity:

A real estate tax lien blanketing the entire project greatly increases the unit owner's risk of financial interdependence, since in unsubsidized, multi-family projects, the local property tax may reach *fifty per cent* of the operating budget excluding debt service. (Emphasis added.)⁴⁸

With separate financing, this means that provision for separate taxation may reduce the remaining owner interdependence as much as 50 per cent.⁴⁹

The adoption of FHA Regulation 234.26(d) adds further importance to the separate taxation of condominium units. It requires, as a prerequisite to mortgage insurance, that the mortgagee certify that "the family unit is assessed and subject to assessment for taxes pertaining only to that unit."⁵⁰ While the propriety of this regulation can hardly be questioned in the light of the preceding data and the owner security it is calculated to effect, the regulation appears to have been erroneously derived. The *FHA Condominium Housing Insurance and Servicing Handbook* reasons:

48. Berger, *supra* note 29, at 1019.

At n.193, Berger supports his argument with the following information: "See, e.g., Central Park Towers Co-op, Inc. (New York City), Offering Plan, March 1963, pp. 11-12 (est. at 54.9%); 297 East 79th Apartment Coop (New York City), Offering Plan, March 1963, p. 31 (est. at 50.3%)."

49. Cf. Schlitt, *History of Condominiums*, 30 APPRAISAL J. 453, 456 (1962): "We hope that under the new condominium statutes there will be a direction to the taxing authorities to tax each individual ownership as a separate parcel, so that the default in taxes by one owner will not be a burden on the others in the same building." Schlitt is Senior Vice President and Chief Counsel of the Home Title Guaranty Company of New York City.

50. 24 C.F.R. § 234.26(d)(3) (1965).

Real estate taxes must be assessed and be lienable only against the individual units. . . . [O]therwise a tax lien could amount to more than the value of any particular unit in the structure and thus present a situation which would be unsatisfactory from the mortgaging standpoint.⁵¹

Indeed, it would be most unsatisfactory to either the mortgagee or mortgagor if, when taxes were assessed and liened against the whole project, any one or more units within the project could be sold arbitrarily to satisfy the lien. But that would be a most unusual—and, until now, unheard of—result. Taxes assessed against the whole project would certainly be common expenses of the project and assessable to the several owners by the owners' association or its project manager. Failure to pay this assessment could result in a lien on the defaulting owner's unit.⁵² But this is a situation that, while not an appealing one to the non-defaulting owners (whose common expense burden will be increased to the extent that the default is not cured or the debt realized on a foreclosure sale), is perfectly analogous to that generally existing in the cooperative. Banks do lend to cooperatives and the FHA does insure these loans.⁵³

The power to tax units separately is generally available. The "power of a state to impose taxes is closely analogous to the general power of taxation possessed by any sovereign. . . ."⁵⁴ "Local political subdivisions . . . , unlike the state itself, have no inherent power of taxation."⁵⁵ In the absence of a special and unusual home rule provision in the state constitution, the local power to tax derives from statutory delegation.⁵⁶ "State legislatures, having power . . . to delegate the taxing power for local purposes to the authorities of local government, have the power to prescribe the limits to any tax they impose directly."⁵⁷

Most jurisdictions do not require the assessors to tax the different estates and interests that may exist in a single parcel of land to the respective

51. FHA, CONDOMINIUM HOUSING INSURANCE AND SERVICING HANDBOOK, App. V-1, § 1.8 (1962).

52. See text, *infra* at 27; Cf. FHA MODEL STATUTE §§ 2 (g), 23 (a).

53. See 52 Stat. 23, as amended, 12 U.S.C. 1715b, 1715e (1958).

Pike, *The Condominium as a Mortgage Investment*, 14 HASTINGS L.J. 282 (1963), falls into the same trap in his reasoning at 287.

54. 51 AM. JUR. *Taxation* § 53 (1944).

55. *Id.* at § 64.

56. See WORLD TAX SERIES, *TAXATION IN THE UNITED STATES* 163 (1963): "local tax ordinances are controlled nearly everywhere by state law."

57. 51 AM. JUR. *Taxation* § 133 (1944).

owners.⁵⁸ A "practice of assessing the entire property as a unit to the owner of the remainder . . ." has developed.⁵⁹ In many states, case law has hardened this practice into a rule variable only by statute.⁶⁰ Single purpose exceptions to the rule have been enacted with apparently increasing frequency,⁶¹ but "the dominant theme of the real property tax statutes remains unitary assessment"⁶²

Statutory regulation begins in most states with the proposition that real property shall be taxed to its owner.⁶³ The next step is a definition of real property. Some thirteen states use the following wording: "'Real Property' includes the land itself . . . and all land or privileges belonging or appurtenant thereto."⁶⁴ "[T]hese statutes are broad enough to justify virtually any action taken by an assessor."⁶⁵ Thus, it is conceivable that there could be separate taxation of condominium units without specific legislation, for the unit purchaser is an owner⁶⁶ and the condominium unit is, at least, a privilege appurtenant to land. Thus the Attorney General of California has ruled that a California assessor may, but is not required to, assess condominium units separately.⁶⁷ But even if he did, he probably would not be estopped to change his position or be able to bind his successor.

While a developer might build a condominium project under these circumstances, and while purchasers could work out the allocation of the tax burden by contract, it seems most unlikely that the FHA would insure any mortgage. If separate taxation is as right as the analysis above would seem to indicate, the FHA has taken the correct position. There should be legislation compelling separate assessment and liening of condominium units.

Probably the best argument against the quick acceptance of sep-

58. *Id.* at § 689.

59. Keesling, *Property Taxation of Leases and Other Limited Interests*, 47 CALIF. L. REV. 470, 476 (1959).

60. 84 C.J.S. *Taxation* § 404(a) (1954). *E.g.*, Gowan v. Swain, 90 N.H. 383, 10 A.2d 249 (1939). Toothman v. Courtney, 62 W.Va. 167, 58 S.E. 915 (1907), is a classic case in this area.

61. See generally WORLD TAX SERIES, *op. cit. supra* note 58, at 168-69; Nichols, *Real Property Taxation of Divided Interests in Land*, 11 KAN. L. REV. 309, 311-20 (1963).

62. Nichols, *supra* note 63, at 309.

63. *Id.* at 310.

64. *Id.* at 310 and n.8.

65. *Id.* at 311.

66. See text, *supra* at 4.

67. 37 CAL. OPS. ATT'Y. GEN. 223, 228-29 (1961).

arate taxation for condominium units is the general need for reform. For the most part, parcel assessment operates with reasonable fairness.⁶⁸

There are, however, instances where the practice may result in substantial inequities. Generally speaking, such instances arise where the value of the remainder interest is relatively small in proportion to the total value of the property and the owner of such interest has no opportunity to work out an arrangement with the owner of the possessory interest . . . [or interests] . . . for the payment of a portion or all of the taxes.⁶⁹

In addition, there is a real need for a "taxing system which treats more equitably the holders of divided interests . . ." generally.⁷⁰ The present pattern is largely without reason; many of these interests are separately taxed, but others are not.⁷¹

Historical development is partly to blame for the resulting discrimination. For instance, it was probably easier for a common law court to require the separate taxation of the mineral estate than of any other, since the analogy between an underground and a surface parcel is easily drawn. Furthermore, the imposition of a large tax on the owner of a valueless surface estate overlying a rich mineral estate responsible for the size of the tax tended to emphasize the need for separate taxation as well as to produce, on occasion, substantial inequity when the surface owner was unable to obtain contribution from the owner of the mineral estate. But in larger part this pattern probably reflects past political efforts by owners of property interests susceptible of organization to obtain certain, convenient, and individual tax treatment.⁷² While undue advantage has probably not been taken in this area, it is now timely to extend the convenience and certainty of separate taxation to equally deserving divided interests in real property.⁷³

The classic argument against separate taxation can be briefly put:

68. See Keesling, *supra* note 61, at 476.

69. *Id.* at 477.

70. Nichols, *supra* note 63, at 321.

71. See generally Nichols, *supra* note 63, at 311-20.

72. EISENSTEIN, *THE IDEOLOGIES OF TAXATION* 11 (1961), reminds the lawyer that he must maintain a realistic attitude when he analyses tax law and its development: "Taxes . . . are a changing product of the earnest efforts to have others pay them."

73. Nichols, *supra* note 63, at 321-22, sets out criteria for "split assessment." The effort appears to have two purposes: First, to give uniform treatment to the classic divided interests, *e.g.* the mineral estate and separately owned buildings and improvements; and second, to extend this treatment to other substantial interests, *e.g.*, leases for a relatively long term.

"The fee cannot be carved to the disadvantage of the municipality."⁷⁴ Stated less cryptically, parcel assessment relieves taxing officials of the necessity of ascertaining the existence of less-than-fee interests and valuing and assessing them.⁷⁵ Thus, any "carving" of the parcel can be said to be the disadvantage of the taxing government.⁷⁶

The general acceptance of this reasoning can best be seen as a reflection of the theory of the property tax itself. It is neither a spending tax nor an income nor an earnings tax.⁷⁷ It is a popularly accepted and understood tax, easily predicted, and ordinarily a stable source of revenue that has been relatively simple to administer.⁷⁸ It seems fair to conclude that simplicity is basic to the real property tax.

If separate taxation of condominium units can be achieved, either as a part of a general reform or as another single purpose exception to the parcel assessment rule, without unduly complicating the property tax, then the security which separate taxation provides to unit owners should be reason enough for its adoption. There is, however, an expectation that separate taxation and separate financing together could confer added benefits on the taxing entity. "[I]t is believed, but not yet determinable, that the amenities of a condominium and the method of financing produce a market value 10 to 15 per cent higher than the cooperative"⁷⁹ That is, there is an expectation that this kind of condominium would produce a substantially higher tax base than a comparable cooperative, at least on a continuing basis, as original cost becomes over time a less reliable basis for the determination of value. Moreover, if the condominium avoids most of the stack-of-cards defect of the coop-

74. *Becker v. Little Ferry*, 126 N.J.L. 338, 19 A.2d 657, 659 (1941).

75. Keesling, *supra* note 61, at 476.

76. See Comment, *Community Apartments: Condominium or Stock Cooperative?*, 50 CALIF. L. REV. 298, 326 (1962): "The justification for refusing separate taxation . . . is that it would increase assessors' administrative burdens. More tax bills would be necessary and difficult valuation problems would arise."

77. See GROVES, *FINANCING GOVERNMENT* 43 (1954), "[T]he general property tax is a tax on all wealth, tangible and intangible, which possesses exchange value. It is levied according to exchange value, at least, in theory, and at a common ratio for all property in the same district. It is thus a uniform and universal tax upon the value of goods owned." The real property tax, although imposed on an obviously narrower subject, is thus fairly characterized.

78. MICHIGAN TAX STUDY STAFF PAPERS 186 (1958):

"It has been frequently said that the property tax is more accurately viewed as a part of the institution of government than as a mere source of revenue." *Id.* at 185.

79. *Boston Globe*, Feb. 9, 1964, § A, p. 41, cols. 5-8, quoting Percy E. Wagner, past president of the Appraisal Institute, an affiliate of the National Association of Real Estate Boards.

erative, as it should, this will be a more stable tax base.⁸⁰ Other benefits can be imagined. It is possible that there will be less hesitancy to foreclose a lien imposed for tax delinquency where it will deprive only the responsible individual of his housing. Possibly individual unit owners will be less litigious than the corporate combination they replace.⁸¹

While it might be “. . . utterly impractical to require the separate valuation of the various interests in property . . . in all cases . . . ,”⁸² properly conditioned, separate taxation of the condominium unit should neither unduly burden the tax assessor nor impair actual tax collections. The assessor would have no discovery problem in the separate taxation of condominium units because ownership of the units will be a matter of public record just as the title ownership of other real property. Even the burden of record checking could be removed easily by placing a duty on the project developer to notify the local assessor at the time that property is submitted to the condominium act.⁸³ Although the failure to perform this duty conceivably could result in project taxation in the first year of a condominium’s existence, this reasonable condition should not preclude FHA insurance. The FHA simply can require the developer to notify the assessor before it insures any mortgage.⁸⁴

80. See text, *infra* at 27, where it is observed that the fact that there are common expenses arising from the operation of jointly used facilities does build a stack-of-cards potential into the condominium project, although one of far less danger than that built into the cooperative corporation.

81. Lippman, *Legal Problems of Condominiums*, 30 APPRAISAL J. 458, 461 (1962).

82. Keesling, *supra* note 61, at 478.

83. Both Nichols and Keesling, rejecting mandatory, across-the-board separate taxation of divided interests in real property, would place the burden of establishing the right to separate taxation, including, of course, notification to the assessor, on the presently taxed remainderman or title owner. Nichols, *supra* note 63, at 321-22; Keesling, *supra* note 61, at 478.

Where the tax burden can be satisfactorily redistributed privately, there is no need for the imposition of public procedures. On the other hand, except in those cases where the divided interests arise from contractual arrangements, it is unlikely that private negotiations will be effective—except perhaps where the duty of all owners to contribute to the payment of the tax is clearly established, and all interests are substantial.

The requirement of affirmative action for separate taxation, really the requirement of an information return, should prevent the concealment of property interests in the division process.

84. When property is committed to a condominium act after the date on which assessment for the tax year is made, a similar problem is presented. It is submitted that the solution to the problem posed in the text as well as the problem posed here is to treat the resulting lien for non-payment as if it arose after the commitment of the property to the condominium, and thus to allocate it proportionately to the several units, as soon as the procedural conditions have been met.

The satisfaction of two conditions should make separate taxation entirely acceptable. First, separate taxation should be available only to condominium projects to which property has been submitted either in fee simple or under a long-term lease. There may be legitimate reasons for authorizing, as California has done, the submission of property to a condominium for as short a period as one year,⁸⁵ but the tax assessor should not be required to undertake the massive readjustments of the tax rolls that short term conversions of a substantial project would entail.

It is difficult to establish the minimum period to which separate taxation should be accorded. On the one hand, it has been argued that a reformed property tax system, taxing separately all substantial less-than-fee interests, should accord separate treatment to all leases for longer than a three year period.⁸⁶ On the other hand, while such short-term interests might be marketable, they would not be marketable in the owned housing market at which the condominium was originally aimed. A three year condominium is merely a lease substitute. Thus, the FHA, in carrying out the mandate under Section 234 to increase "the supply of privately owned dwelling units . . .,"⁸⁷ has provided by regulation that "to be eligible, a leasehold interest shall be under a lease for not less than 99 years which is renewable, or under a lease with a period of not less than 50 years to run from the date the mortgage is executed."⁸⁸ In the absence of a general overhaul of the property tax, limiting separate taxation to fifty year condominiums would seem to achieve the desired encouragement to owned housing while avoiding an unreasoned distinction between leases and lease-equivalent short-term condominiums.

Second, separate taxation should be available to condominium units on an all-or-nothing basis only. Where the condominium project is composed, in whole or in part, of less-than-fee property, the value of the property could be allocated actuarially between the unit owners as a group and the remainderman. The taxing process would be simple enough:

85. CAL. CIV. CODE § 783.

86. Nichols, *supra* note 63, at 327 and n.122: "A guide to the suitable length of the term may perhaps be found in statutes which tax leases in exempt leaseholds only if they are longer than a three year term." *E.g.*, MINN. STAT. ANN. § 273.19 (Supp. 1964).

87. National Housing Act. § 234, 75 Stat. 160, 12 U.S.C. § 1715y (Supp. 1962).

88. 24 C.F.R. § 234.55 (1965).

According to FHA, CONDOMINIUM HOUSING INSURANCE AND SERVICING HANDBOOK, App. V-1, § 1.6 (1962), "a leasehold will normally be permitted only in localities where the use of leaseholds of this type is customary."

the present value of the remainder interest, actuarially determined, would be taxed to the remainderman, and the balance of the property value would be taxed to the unit owners in the same fashion that the whole would otherwise be taxed to them.⁸⁹ There are at least three reasons why this should not be done. First, because annual calculations and adjustments would be required, this procedure would add substantially to the assessor's work load. Customarily, tax revaluations are much less frequent. Second, leases are "usually . . . ignored—included in the value of the fee—and the lessor assessed as the owner of the property."⁹⁰ Thus, any separate taxation of the condominium founded on a leasehold is special treatment, which should be accorded only when necessary to achieve the goal of unit economic independence *vis-à-vis* other units.⁹¹ Finally, given the probable length of the condominium leasehold, and its likely renewal privilege, the remainder may well be small and, over time, its owner or owners hard to locate. While this would have no effect on the unit owner, it could make it virtually impossible for the taxing entity to realize anything on the value of the remainder—in effect, the parcel would be carved. Thus, the whole value of the condominium unit should be taxed as a parcel to the unit owner.

Under these conditions, the separate taxation of condominium units should not be hard to effect. The analogy of the condominium unit to the ordinary real estate parcel will answer most questions. Nonetheless, a condominium statute should probably definitively state the actual assessment process.

Assuming that the unit owner is to be taxed on the unit's value, which is the value of the apartment and of the inseparable percentage of the common parts, that value must be found. Although the unit is the taxable entity, it seems valuation should begin with a valuation of the project or of the smallest integral division of a multi-building project. Division of ownership should not be allowed to depress the taxable

89. See Keesling, *supra* note 61, at 482-83, where this method of allocation is used to determine the value of a privately owned leasehold, for tax purposes, where the publicly owned remainder is tax exempt.

90. Nichols, *supra* note 63, at 315.

91. Even with a general reform that required actuarial allocation of property value between the holder of a substantial leasehold and a remainderman, there would be good reason to refuse such treatment to the condominium founded on a leasehold. This would require allocation at two levels: first, as between the owners of a unit and the project remainderman, and second, among the several owners of a condominium unit.

value of the project.⁹² “[T]otal value can . . . serve as a bench mark, against which the reasonableness of the value of the parts can be judged.”⁹³

This method should solve the valuation problem peculiar to the condominium—the valuation of the combination of an apartment and an undivided interest in common parts. On occasion, market values will be available for these units; then, the total value can serve its bench mark function without more. But market values will not always be available. And “greater uniformity and equality can be attained by consistent application of the cost approach to value.”⁹⁴ Whether done originally or later on a reproduction basis, separate costing of the several apartments and of the common parts would be not only most difficult, but also extremely arbitrary. On the other hand, overall costing, on a square or cubic foot basis can be quite reliably undertaken using available tables.⁹⁵ Thus the most reliable system of unit valuation would appear to be one directly based on overall project value.

At least two methods of direct valuation are available. The first applies the unit owner’s percentage of the common parts to the total value to arrive at the unit’s assessed valuation. The problem with this method is that many condominium acts authorize “limited common areas and facilities;” that is, limited common parts, which are “for the use of certain . . . apartments to the exclusion of other apartments.”⁹⁶ Even if it could be assumed that the owner’s percentage of the general common parts fairly represented his share of the total apartment value and of the general common parts, the likely uneven distribution of the limited parts—as, for instance, gardens for ground floor apartments only—would destroy that rough justice.

A better solution can be based on ratios derived from the original sales prices of the several units. Assuming that the original sales take place in a relatively brief period, these should fairly reflect the relative values of the units. The application of these ratios to the total value would produce unit valuations. While adjustments in the ratios would be necessary where there were significant changes in apartment values,

92. Cf. *Gale v. Tax Commission*, 17 App. Div. 2d 25, 233 N.Y.S.2d 501 (1962).

93. RING, *THE VALUATION OF REAL ESTATE* 262-63 (1963), where Ring is discussing lease appraisals.

94. Ring, *Assessment Methods for Urban Real Property*, 17 APPRAISAL J. 490, 493 (1949). See also Baker, *For Scientific Assessment of Residential Buildings*, *The American City*, May 1953, p. 138.

95. Ring, *Assessment Methods for Urban Real Property*, *supra* note 96, at 493.

96. FHA MODEL STATUTE § 2(j).

whether as a result of internal improvement or deterioration, such adjustments should not be frequent. It is unlikely that there will be many improvements out of line with the character of the project, and great deterioration should be forestalled by maintenance covenants. When necessary, changes in the ratios could be computed by working backwards from the latest unit valuations as altered.

It might, however, be contended that either of these methods violates state or federal constitutional provisions. The objection, in the absence of particular local limitations on the taxing power,⁹⁷ is that it is a violation of due process to derive unit value from project value where the unit is the taxable entity. The answer at the federal level is easy: "Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation;"⁹⁸ a reasonable method of valuation producing reasonable results is constitutional. State constitutions should present no greater obstacle. Validity could be insured by providing for review of the results at the insistence of either the unit owner or other owners in the project, and a showing of inequity in the pattern of assessments within the project should require appropriate adjustments.

With separate taxation established as a matter of principle, two minor matters remain in the area of taxation. The first is that the term "taxation," as it has been used here, is intended to encompass all taxes, special assessments, and charges assessed by state and local governments.

The other matter is that of homestead exemptions. Without attempting to pass on the merits of such exemptions, it seems clear that they are intended to encourage and to protect home ownership. Practically speaking, condominium ownership is home ownership in a new context; it deserves equal treatment. Of course, to the extent that homestead tax exemption reduces the tax liability of a unit owner and to the extent that homestead exemption law protects the unit from levy of execution, the security of the unit owner is augmented.

B. *Present Legislation*

All of the states adopting condominium legislation have provided that each condominium unit be separately assessed, taxed, and liened.

97. Cf. *Finney v. Johnson*, 242 Ind. 465, 179 N.E.2d 718 (1962).

98. *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509 (1937).

Unfortunately, no state has used the pressure for separate taxation of condominium units to achieve a general reform of assessment practices.

Most condominium acts declare that the unit shall be considered a parcel. Most extend separate treatment to all types of taxes and special assessments. The Massachusetts statute is exceptional in limiting separate treatment to real estate taxes;⁹⁹ all other assessments may be charged to the unit owners' organization.

All states adopting separate taxation, with the exception of California, *appear* to authorize entirely separate treatment for all condominium units, regardless of the nature of the property interest underlying the condominium holdings and its duration. California limits mandatory separate tax treatment to condominium units held in fee simple, but the assessor has authority to agree to treat other condominium units separately, and the assessor's agreement is binding upon his successor.¹⁰⁰

One difficulty with the present legislation is that condominiums of virtually any duration are authorized by several states. Arizona, Hawaii, Nevada, and Washington are examples.¹⁰¹ Massive short-term recompilations of tax rolls, realignments of liens, and revaluations of resulting parcels may be required in such states. A minimum time limit on condominiums to be separately taxed should be imposed, but separate treatment of long-term leasehold condominiums should be allowed.

All statutes authorizing separate taxation for less-than-fee condominiums, with the exception of Connecticut's, present another difficulty. Connecticut alone conditions separate taxation of the unit on the unit owner's assumption of liability for all taxes and assessments on the unit and its proportion of the underlying fee.¹⁰² In the other states, it is not clear whether an all-or-nothing principle has been adopted.

In these other states, a relatively difficult problem of statutory interpretation can be presented. There is the condominium statute, decreeing separate taxation, which *ex necessitate*, rewrites a substantial portion of the state's common and statutory law, in the tax area and elsewhere. There will be unit owner pressure to be relieved of tax on interests not owned,

99. MASS. GEN. LAWS ANN. ch. 183A, § 14 (Supp. 1964); where the unit owners' organization fails, however, to discharge such collective assessments, the resulting lien is distributed proportionately to the several units.

100. CAL. REV. & TAX. CODE. § 2188.3.

101. ARIZ. REV. STAT. ANN. § 33-551 (Supp. 1964); HAWAII REV. LAWS §§ 170A-2(e), (i) (Supp. 1963); NEV. REV. STAT. § 117.010 (1963); WASH. REV. CODE ANN. §§ 64.32.010(2), .030 (Supp. 1964).

102. CONN. GEN. STAT. REV. § 47-79 (Supp. 1963).

especially where they have purchased on the unstated assumption that they would not have to bear the full tax load. And, from a legal point of view, in virtually every state the unit owners can assert a right to contribution from other unassessed owners.¹⁰³

The owners' position is strengthened, and the task of interpreting the condominium statute even more complicated where other separate taxation legislation is encountered. In brief, the unit owner is arguing that the unit is to be separately taxed whenever the unit is to be taxed at all, since the condominium legislation has nothing to say about when the unit is to be taxed. This argument, which has a superficial appeal, certainly is aided by statutes that provide that leased property shall be taxed to the lessor unless it is listed by the lessee;¹⁰⁴ or that buildings on leased land shall be taxed to the lessee-owner as real property where the lease is for longer than three years.¹⁰⁵ Such statutes purport to divide the tax treatment of all the less-than-fee interests described. Where the description fairly characterizes an interest involved in the condominium situation, exclusion of the interest from the scope of the statute will turn on the intent to be ascribed to the usually later condominium statute, which more often than not will have no substantial statutory history.

Because the all-or-nothing principle forestalls undue carving of the fee, and because the present statutory ambiguity must be resolved, it is submitted that it is a desirable principle on which to base condominium separate taxation and it is recommended that this principle be expressly adopted in all states authorizing less-than-fee condominium interests. States which appear to have a particular problem in this regard are Arizona, Hawaii, Iowa, Maryland, Oklahoma and Tennessee. Each has one or more statutes which, taken at face value, conflict with the separate taxation provision of the local statute *if* the local statute was meant to embody the all-or-nothing principle.¹⁰⁶

Neither of these difficulties should, however, preclude FHA mortgage insurance in the affected states. The FHA appears to be concerned only

103. See generally Nichols, *supra* note 65.

104. *E.g.*, IOWA CODE ANN. § 428.1 (1949).

105. *E.g.*, IOWA CODE ANN. § 428.4 (1949); owned buildings and improvements on leased land are taxed to the owner as personalty where the lease is for a period of less than three years.

106. ARIZ. REV. STAT. ANN. §§ 42-203, 227, 44-224 (1956); HAWAII REV. LAWS §§ 128-4, 13, 14, 14.5 (Supp. 1963); IOWA CODE ANN. § 428.1, 4 (1949); MD. ANN. CODE art. 81, §§ 4 (1957), 8 (Supp. 1963); OKLA. STAT. ANN. tit. 68, § 15.3 (1951). TENN. CODE ANN. § 67-606(5) (Supp. 1964).

with avoiding a stack-of-cards defect that would result from project-wide taxation, and, perhaps, with preventing deception of unit purchasers. Thus, local legislation providing in effect for unit taxation whenever unit property is to be taxed should satisfy the FHA. So long as a separate tax imposed on an extra-condominium interest, such as a remainder in the land under the entire project, is neither a liability on unit owners nor a lien affecting their possession for the term of the property interest underlying the condominium, the FHA has no reason to object.

Except for a relatively frequent provision that the same percentage of the common parts ascribed to the unit owner in the declaration shall also be assigned to him for tax purposes, the statutes have nothing to say about the assessment process.

Homestead tax exemptions have received various treatments. Florida gives one exemption per project to be divided among the several units.¹⁰⁷ Oklahoma allows the exemption to each unit where the underlying property interest is a fee.¹⁰⁸ It would seem that the homestead exemption should be available to all fee and long-term condominium home units where it is available to all single family dwellings.¹⁰⁹

V. COMMON EXPENSES

A. *Opportunity For Unit Economic Independence*

With separate financing and separate taxation, the condominium unit approaches the economic independence of the single family dwelling. Only the common expenses of the project, the "expenses of administration, maintenance, repair or replacement of the common areas and facilities . . .,"¹¹⁰ and any other expenditures authorized by the statute, significantly fetter its independence.¹¹¹ These should amount to less than

107. FLA. STAT. ANN. § 711.19(3) (Supp. 1964).

108. OKLA. STAT. ANN. tit. 60, § 522 (Supp. 1964).

109. *E.g.*, MINN. STAT. ANN. § 515.04(2) (Supp. 1964). It should be noted, however, that Minnesota authorizes condominium erection on fee interests only.

110. FHA MODEL STATUTE § 2(g).

111. Two other factors that bear on the economic independence of the condominium unit, but that do not relate directly to the economic function of the condominium are treated briefly here. It is generally assumed that "the unit owner would have the tax advantages of any property owner to the extent he could take deductions for federal income tax purposes for amounts paid for realty transfer taxes, real estate taxes and interest on his mortgage and could also deduct the extent of any casualty loss which might be inflicted upon his unit. In addition, since the unit is real property, it could be traded for other real estate on a tax free

20 per cent of the monthly cost of housing to the unit owner.¹¹² To the extent of his own share of the costs, usually determined by his percentage ownership of the common parts, the condominium owner is less secure than his home owning counterpart. Except insofar as the owner, with a sufficient number of other owners, can control the decision of the owners' association and thus prevent the authorization of expenditure, he cannot postpone or avoid liability for any of the common expenses.¹¹³ The unit owner is likewise less secure than his home owning counterpart to the full extent of the common expenses of the project. If another owner defaults, and the default is not cured either by enforcement of payment or by the liquidation of a security interest, usually the defaulting owner's interest in his unit, the unit owner is liable for the resulting additional common expense.¹¹⁴ Therefore a limited stack-of-cards defect *is* built into the condominium project.

The FHA has taken one step to limit the potential of this defect. "Commitments for insurance issued under Section 234 are conditioned upon . . . sale to FHA-approved purchasers of units amounting to 80 per cent of the value of all units."¹¹⁵ FHA Regulations provide that a "mortgagor must have a general credit standing satisfactory to the Commissioner."¹¹⁶ Thus the FHA is attempting to insure project stability by credit checking of the unit purchasers. The efficacy of this effort, however, must be dubious where three per cent down payment purchasers are contemplated.¹¹⁷ Although they may be good credit risks, if the economy

basis." Smith, *Condominium in Pennsylvania*, PITT. L.J., Jan. 1964, p. 6. There is no reason to doubt the validity of this assumption. See also Karchmer, *Missouri Condominium Property Act of 1963*, 29 MO. L. REV. 238, 246 (1964).

On the other hand, without more, it fairly can be assumed that the unit owner, as a tenant in common of the common parts of the project, will be a joint or vicarious tortfeasor and jointly and severally liable with the other owners to anyone tortiously injured by the condition or operation of the common parts. Liability insurance, carried as a common expense, is the ready answer to this problem. Another answer more attractive to the unit owner is limited liability—limited perhaps to the value of the owner's unit. The choice is not easy, but it is submitted that owner responsibility should be limited in favor of owner security.

112. Comment, *Community Apartments: Condominium or Stock Cooperative?* 50 CALIF. L. REV. 298, at 323 n.184.

113. See FHA MODEL STATUTE § 21, which is typical: "No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas or facilities or by abandonment of his apartment."

114. See FHA MODEL STATUTE § 23(b), which is typical in this regard.

115. FHA, FACT SHEET, FHA MORTGAGE INSURANCE ON CONDOMINIUM 2 (1963); 24 C.F.R. § 234.26(c)(3) (1965).

116. 24 C.F.R. § 203.34 (1965).

117. 24 C.F.R. § 203.19 (1965).

should falter, some—perhaps many—of these people, with their limited financial backing, will not be able to meet their obligations.

In order to limit the loss caused by an owner's default, it is desirable that the common expense assessments, for which the owner is personally liable, be lienable against the defaulting owner's unit.¹¹⁸ The event giving notice of the lien to third parties probably should be the formal assessment of the common expense to the unit owner. It could be objected, however, that no lien affecting the rights of third parties should arise until a public recording gives notice of its existence. The choice is a close one because with the formal assessment, there will be a record at the office of the condominium project, and most persons who would benefit from a public recording will also be persons who would know enough to check the project records. In either case, the appropriate officer of the owners' association should be required to disclose such liens on request.

A lien, by definition, is a right to be paid from the value of the property on which it is imposed, unless that value is exhausted in paying a prior lien. Its validity being established, the crucial issue with reference to any lien is its relative priority. Tax liens, mortgage liens, and mechanics' liens, to name only the most obvious, will be competing with the common expense lien for payment from the value of the defaulting owner's unit. It is within the power of the state to determine, at least for future liens, the order in which these liens shall be paid.¹¹⁹ Thus, the relative priority of the common expense lien must be determined as a matter of policy, with attention to its purpose and to the purposes of the several competing liens.

At least two kinds of liens appear to have higher claims to recognition than the common expense lien. The first is the lien for unpaid state or local real property taxes. Usually this lien has a first priority without regard to the time at which it arises.¹²⁰ In this way the revenues of the taxing government are preserved.

118. See FHA MODEL STATUTE § 23(a).

119. U.S. CONST. art. I, § 10, the contracts clause, has been interpreted to prevent retroactive modification of state lien law, except in exceptional circumstances. *Cf. Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934).

Unless specifically invalidated as a result of the application of one of the trustee in bankruptcy's avoiding powers, state liens are valid in bankruptcy; 3, COLLIER, BANKRUPTCY § 64.02 (14th ed. 1941).

120. This assertion is subject to the qualification that federal tax liens imposed under INT. REV. CODE OF 1954, § 6321, will take precedence at least where prior in time.

The second lien is the purchase money mortgage securing the advance that makes possible the purchase of the condominium unit. To encourage relatively easy credit and home ownership, the purchase money lender should be subjected to as few risks as is feasible.¹²¹ There is, however, no reason why other liens, merely preceding in time the common expense lien, should be similarly benefited. Indeed, it can be maintained that a third priority for the common expense lien will actually benefit other lienors as a group insofar as it eliminates the stack-of-cards defect remaining in the condominium. One other lien that might be accorded priority over the common expense lien is the laborers' and materialmen's lien. The argument for elevating this lien is that it was designed to protect individuals and small businesses, any one of whom would be seriously injured by a default on its lien, unlike the institutional lienors for whom benefit as a group is a more meaningful concept. Of course, the laborers' and materialmen's liens also operate to favor substantial businesses in the building industry. Unless such businesses are to be distinguished, the choice between unit owners and laborers and materialmen is another hard one.

The major difficulty with a lien system such as the one outlined in the preceding paragraph is that it provides continued protection to non-diligent parties. Assume a condominium unit that originally sold for \$10,000, with an outstanding purchase money mortgage of \$9,000. Assume further that the market value of the unit has declined to \$8,500. At this point, the owner defaults on a monthly assessment of, say, no more than \$50. A lien for this amount arises in favor of the owners' association. Assuming the owner is judgment proof, the association faces a dilemma: if it does not foreclose the lien, the owner is likely to default on later assessments; on the other hand, it is more unlikely that the unit, now subject to the prior lien, can be sold. In this situation, most owners' associations will not be aided by the opportunity to bid at the sale. If a stack-of-cards acceleration of defaults is to be avoided the lender must be forced to clear the property.¹²²

The lender should be given the alternatives of selling to clear the property or of being subordinated *pro tanto* to the common expense liens

121. Cf. UNIFORM COMMERCIAL CODE § 9-312(3).

122. Similar situations will be frequent. Each defaulted assessment will be small, hardly worth suing for, and certainly not worth a mortgage foreclosure regardless of the value of the condominium unit. Yet, as these unpaid assessments accumulate, they pose an increasing threat to the unit owners. The liens may well eat up the unit owner's equity before his neighbors can bring themselves to foreclose.

on it.¹²³ The lender should not be subordinated until notice of default has been given; he should be subordinated only to subsequent defaults, and then only if he fails to clear the property in a reasonable time—for instance, 90 days. He should be subordinated to new liens for a limited period, probably 90 days, unless he is notified of further default before the expiration of such period.

The risk thus incurred is somewhat similar to the danger of the lender's being subordinated to liens for unpaid taxes.¹²⁴ In both cases, it is submitted that the lender is in the best position to determine whether or not the property should be transferred to a more able user. Also, the lender has the capacity to protect the non-defaulting individual owners and the predominately local property tax revenues, either by adding the cost of this service to its mortgage charges or channeling these losses back into the broader public sector represented by FHA mortgage insurance.

While it would enhance unit owner security to make similar provisions regarding state and local tax liens, this is not recommended. These lienors are not likely to have either the organization necessary to assess owner responsibility on a continuing basis or the capacity for diligence possessed by a commercial lender. They too will face the problem of small and accumulating liens, and thus, the want of a paramount interest in obtaining a financially able user for the property liened. Finally, the problems in this area are likely to be greatest at times when property tax revenues are already under great pressure, and a new and unlikely institution would be necessary to spread the resulting losses.

There remains the two-pronged problem of what happens to the common expense lien and the unpaid common expenses when the liened unit is sold, whether voluntarily or involuntarily. The determination that each unit "shall for all purposes constitute real property . . ." should determine the treatment of the lien.¹²⁵ No reason appears for varying generally obtaining principles concerning real property liens. Thus, a grantee who takes a voluntary conveyance should take subject to outstanding liens of which he has actual or constructive notice, including, of course,

123. Cf. ILL. ANN. STAT. ch. 30, § 309 (Smith-Hurd Supp. 1964), which subordinates prior recorded encumbrances to common expense liens arising in the 90 day period following notice to the encumbrancer of a default by the unit owner.

124. It can fairly be assumed that all institutional lenders will protect themselves from accumulating tax liens by providing that liability on their secured indebtedness will be accelerated, at their option, in the event of the unit owner's default in payment of tax assessments.

125. FHA MODEL STATUTE § 4.

a common expense lien.¹²⁶ On the other hand, a grantee purchasing at either a tax or mortgage foreclosure sale should take free of subordinate liens.¹²⁷ Subordinate lienors must be relegated to intervention to obtain the benefit of any surplus realized on the foreclosure sale, since any other result would effectively subordinate the tax and prior mortgage liens to the common expense lien.

When, however, it becomes apparent that a common expense assessment is uncollectible, or at best will be collected only catch-as-catch-can from the prior unit owner, this expense will have to be borne by the other unit owners. If it is assessed to these owners before there is a foreclosure successor, the liability should not be shifted, even in part, to the successor. The prior lien should not be indirectly subordinated. On the other hand, when the common expense arrears are reassessed after there is a foreclosure successor, it seems fair that he share this expense as he would any other contemporaneous common expense.¹²⁸ To a certain extent this future common expense potential does work a subordination of the prior liens by depressing the sale value of the unit. This effect should be minimal where only a small fraction of the units in a project are in default, because the defaulted assessment will be spread over all units. Where a large number of units are in default, the sale value will be substantially depressed; but this depression, being a cost of spreading existing owner defaults and thus avoiding further owner defaults, is the price of project stability that benefits both lienors and owners.

Thus limited by owner screening when the FHA is involved (as it predictably will be in any moderate income housing development) and by the advocated lien law, the common expense stack-of-cards defect of the condominium should not be unduly hazardous to the unit owner. This conclusion depends, however, on adequate definition of common expenses. In brief, while it is perfectly reasonable that a simple majority or a working majority of a quorum of an owners' association should be able to assess the expenses of administration, maintenance, and incidental replacement, that same simple majority should not be empowered either to undertake substantial project improvements or substantial post-destruction rebuilding. Clear division will not be possible, but the concept

126. *E.g.*, FHA MODEL STATUTE § 24.

127. *E.g.*, FHA MODEL STATUTE § 23(b), concerning superior mortgages. The model statute is curiously silent concerning purchasers at tax sales.

128. *Cf.* FHA MODEL STATUTE § 23(b).

is readily expressed: ordinary and necessary expenses of project upkeep should be assessable.¹²⁹

It should be possible, on the other hand, to make assessments for extraordinary expenditures although there is less than unanimous owner support. The easiest case is that where sufficient insurance proceeds are available to finance rebuilding of destroyed units. Here, it seems, an absolute majority should be controlling; less than a majority should not be able to renege on their commitment to the group where their only added expense will be interim living expense. From this case on, the appropriate statutory provision becomes a matter of balancing. The following arrangement seems to be a good one: where the additional expense will be less than 20 per cent greater than the insurance proceeds, two-thirds of the unit owners should be able to determine to rebuild and to bind the other owners; where, however, the additional expense is greater than 20 per cent, while two-thirds of the owners should be able to determine to rebuild, they should be required to elect either to undertake the additional expense or to buy out the dissenters at the fair market value of their respective interests in the insurance proceeds, land, and remains.

The problem posed by less than unanimous desire for improvements is similar to that raised by destruction where the insurance proceeds are inadequate.¹³⁰ Again, it would seem that two-thirds of the unit owners should be able to determine to improve. It would seem also that these assenting owners should either underwrite the expense or buy out the dissenters when the costs of improvements are substantial—say greater than 10 per cent of the pre-improvement unit value. It is believed that this percentage should be set lower than that on the destruction contingency for two reasons. First, there is a self-insurance factor working in the destruction setting. Insurance proceeds are intentionally likely to be less than pre-destruction unit values. Nonetheless insurance proceeds do seem to be an appropriate measure of individual capacity to tolerate additional expense. Second, resistance to improvement expenditures generally deserves greater respect in that the dissenting owners can assert reliance on the original concept of the project.

129. Cf. INT. REV. CODE OF 1954, § 162.

130. Cf. MASS. GEN. LAWS ANN. ch. 183A, § 18 (Supp. 1964), which provides that, where 50-75% of the unit owners wish improvements, they may undertake them at their own expense; but that, where more than 75% desire the improvements, all unit owners must pay their share. If, however, the cost of the improvements to a dissenting unit owner in the latter case exceeds 10% of the value of the unit before the improvements, the dissenter is given appraisal rights.

There is at least one other significant opportunity for unit economic independence inherent in the condominium concept. This is the opportunity for separate insurability. A condominium unit represents a substantial interest in specific property; a contract to indemnify the unit owner against its loss hardly could be found a mere wager policy. Moreover, separate insurability should follow implicitly from the declaration that the unit is real property.¹³¹ This would allow the individual unit owner to protect himself from major loss.¹³²

It should be noted, however, that the FHA requires blanket project insurance, with the costs assessed to the unit owners as common expenses.¹³³ And this would seem to be the necessary approach, particularly if significant reconstruction provisions are to turn on the amount of the insurance proceeds. Every unit, both because it is in part composed of common parts and because of the close physical relationship of the apartments, must be insured in order to protect every other unit owner. Here again, the significance of the provisions enabling the collection of common expense assessments is demonstrated; defaults of insurance premiums on which every unit owner is relying cannot be permitted.¹³⁴

B. Present Legislation

The present statutes do not adequately define the scope of the common expense concept. Many, in following the FHA Model Statute, do not limit these expenses to administration, maintenance and repair or replacement, but include expenses "agreed upon as common expenses by the Association of Apartment Owners." (Emphasis added.)¹³⁵ The term "agreement" is ambiguous. Either unit owner security is radically impaired because the vote of a simple or working majority or majority in interest is association agreement and can authorize any expenditure, or unit owner flexibility is radically impaired because there is no provision for

131. See text, *supra* at 11.

132. Smith, *supra* note 114, at 5, observes that one aspect of the "heart rending" tale of the cooperative owner in the thirties was uninsured loss on account of unpaid corporate insurance premiums.

133. 24 C.F.R. § 234.26(b) (1965).

134. FHA MODEL STATUTE, COMMENTARY ON MODEL STATUTE FOR CREATION OF APARTMENT OWNERSHIP 3, observes that the FHA requirement of project-wide insurance is intended to be without prejudice to the right of the owner to carry additional insurance. It does, however, seem that individual insurance will be infrequent where there is project insurance.

135. FHA MODEL STATUTE § 2(g)(3).

less than unanimous determination to make expensive, fundamental changes in the project.

Massachusetts alone has specific provisions for project improvements. A high vote requirement protects dissenting owners from the imposition of unwanted expenses; appraisal rights are given to the dissenters if their share of the resulting common expenses exceeds 10 per cent of the pre-improvement value of their unit, but fundamental changes can be authorized with less than unanimous owner support.¹³⁶ California takes another approach, permitting reasonable assessments as common expenses.¹³⁷ Inferentially, this approach appears to authorize common expenditures for ordinary upkeep and for improvements as long as these are reasonable in amount and probably in purpose as well. The concept is likely to be a difficult one to apply. Massachusetts appears to have the better approach.

Almost all of the statutes have destruction-rebuilding provisions. Most simply provide that, in the event of destruction, and in the event that the owners' association does not decide within a certain period to rebuild, then the condominium shall terminate and the owners shall be tenants in common of the land and ruins.¹³⁸ Only West Virginia faces the problem posed by the possible imposition of high rebuilding costs on unwilling owners. Its statute provides that the owners in the area "directly affected" are to bear the burden of reconstruction costs, but that 75 per cent of these owners can determine not to rebuild.¹³⁹ The statute does give those affected a say, and it does set up the desirable presumption that rebuilding should take place. But it seems to assume that the condominium project will always be severable. Where the project is not technically, economically, and aesthetically severable, the statute may allow a minority to renege on their commitment to the majority to rebuild, since realistically *all* units are "directly affected," yet owners of only 75 per cent of the physically damaged units (possibly a minority of all unit owners) might well be permitted to decide not to rebuild. Again, a better approach to the problem would appear to be along the lines of the Massachusetts improvement provision, with the costs of rebuilding being spread to all owners after a high vote determination to rebuild, and with appraisal rights for dissenters if the cost

136. MASS. GEN. LAWS ANN. ch. 183A, § 18 (Supp. 1964).

137. CAL. CIV. CODE § 1355.

138. *E.g.*, MINN. STAT. ANN. § 515.26 (Supp. 1964).

139. W.VA. CODE ANN. § 3581(72) (Supp. 1965).

of rebuilding is substantially in excess of either insurance proceeds or pre-destruction unit value.

With few exceptions, common expenses assessments are made liens on the unit assessed, either at the time of assessment¹⁴⁰ or, more frequently, when a notice of delinquency in payment is recorded.¹⁴¹ Pennsylvania, surprisingly, specifically negates lien treatment; it requires that the common expense be prosecuted to judgment as any other debt of the unit owner.¹⁴² Several of the shorter acts are silent in this regard.¹⁴³ Several avoid calling their provision that the common expenses shall be paid first on sale or conveyance (subject to specific exceptions) a lien.¹⁴⁴ This provision creates a priority that closely approximates the function of a lien. The danger in this approach is that with several of the attributes of the traditional lien missing, including, significantly, foreclosure initiative, there is a possibility that the provision will be deemed to create only an insolvency priority, ineffective in bankruptcy proceedings.¹⁴⁵ Because the issue is close, the clear expression of an intent to effect a lien might be determinative, and it should be expressed in future legislation.

Generally, tax liens and mortgage liens are superior to the common expense lien. Only Puerto Rico limits the superiority of the tax lien, subordinating its common expense preference only to the last three years' taxes.¹⁴⁶ The states appear to be about evenly divided between those subordinating the common expense lien to all prior recorded mortgages¹⁴⁷ and those subordinating the former lien to first mortgages only.¹⁴⁸ The latter approach is preferable. A first mortgage is probably a purchase money mortgage, so the property, as security, is first applied for the benefit of those debts arising directly from the use of the property, including the common expenses. Oklahoma and North Carolina are exceptional in interposing one or more other liens before the common expense

140. *E.g.*, WASH. REV. CODE ANN. § 64.32.200 (Supp. 1964); WIS. STAT. ANN. § 230.92 (Supp. 1965).

141. *E.g.*, OHIO REV. CODE ANN. § 5311.18 (Baldwin 1964); R.I. GEN. LAWS ANN. § 34-36-25 (Supp. 1964).

142. PA. STAT. ANN. tit. 68, § 700.703 (Supp. 1964).

143. *E.g.*, S.D. LAWS 1963, ch. 293.

144. *E.g.*, S.C. CODE ANN. § 57-488 (Supp. 1964); TEX. REV. CIV. STAT. ANN. art. 1301a, § 18 (Supp. 1964); VA. CODE ANN. § 55-79.15 (Supp. 1964).

145. See 3 COLLIER, BANKRUPTCY § 64.02 (14th ed. 1941).

146. P.R. LAWS ANN. tit. 31, § 1293(d) (Supp. 1964).

147. *E.g.*, § 448.080 RSMo 1964 Supp.

148. *E.g.*, Kan. Sess. Laws 1963, ch. 329, § 23.

liens.¹⁴⁹ Nevada simply applies a first-in-time principle.¹⁵⁰

Illinois stands alone in promoting diligence among mortgagees as a condition to continued superiority over common expense liens. It provides that, on notice of a unit owner's delinquency with respect to a common expense assessment, prior encumbrances are subordinated to expenses becoming due in the succeeding 90 days.¹⁵¹ It is submitted that this is good law. The Puerto Rico provision, limiting the superiority of tax liens relative to common expense liens, has the same commendable intent.¹⁵² It is less clear, however, that diligence can reasonably be required of state and local governments.

The greatest difficulty with present legislation has been encountered in the disposition of the unpaid common expenses and related liens following a conveyance of the unit. On the one hand, there are the relatively early statutes, such as those in Arkansas and Louisiana, which make any purchaser of the unit liable for unpaid common expense assessments.¹⁵³ These provisions effectively subvert the statutory declaration that tax liens and certain mortgagees have lien priority; a purchaser at a foreclosure sale will discount his bid to take account of his acquired common expense liability. On the other hand, there are the many relatively satisfactory statutes that follow the FHA Model Statute. These impose the outstanding common expense liability only on voluntary purchasers from the unit owner; purchasers at mortgage foreclosure sales take free of the unpaid common expenses, except as the failure to collect the prior assessment necessitates a re-distribution of the expense over all unit owners, including the purchaser at the foreclosure sale.¹⁵⁴ This is an informed approach to the problem of balancing the integrity of the lienor's security interest against the desire to avert a stack-of-cards defect in the condominium project. The flaw is in the failure to provide for disposition of the unpaid common expenses in the event of a tax foreclosure sale. It would seem that the purchaser here should receive the same treatment as the purchaser

149. OKLA. STAT. ANN. tit. 60, § 523 (Supp. 1964), judgment liens prior in time and mechanics' liens; N.C. GEN. STAT. § 47A-22(3) (Supp. 1963), mechanics' liens.

150. NEV. REV. STAT. § 117.070(2) (1963).

151. ILL. ANN. STAT. ch. 30, § 309 (Smith-Hurd Supp. 1964).

152. *Supra* note 149.

153. ARK. STAT. ANN. § 50-1019 (Supp. 1963); LA. REV. STAT. ANN. § 1139 (1965).

154. *E.g.*, Alaska Laws 1963, ch. 44, § 1; Kan. Sess. Laws 1963, ch. 329, §§ 23, 24.

at the mortgage foreclosure sale; Pennsylvania so provides.¹⁵⁵ The Pennsylvania statute does not, however, provide for the re-distribution of unpaid common expenses over the entire owners' group, including the foreclosure purchaser. It is possible that this provision may be implied in that it is fair to characterize the re-distribution simply as the distribution of a present expense. The statutes should be clarified.

VI. CONCLUSION

The condominium is a significant innovation in the real property field. Its promise is that it can provide home ownership, with its economic and psychological advantages, in areas where the single family dwelling has become economically, if not physically, impossible. It is this promise that justifies the carving of the real estate parcel to provide separate taxation for the condominium unit and that amply compensates for the other necessary modifications of the law of property and liens.

155. PA. STAT. ANN. tit. 68, § 700.705 (Supp. 1964).

APPENDIX

CONDOMINIUM STATUTES

- Ala. Acts 1964, No. 206.*
 Alaska Laws 1963, ch. 44.
 ARIZ. REV. STAT. ANN. §§ 33-551 to -561 (Supp. 1964).
 ARK. STAT. ANN. §§ 50-1001 to -1023 (Supp. 1963).
 CAL. CIV. CODE §§ 1350-59.
 Colo. Sess. Laws 1963, ch. 223.
 CONN. GEN. STAT. REV. §§ 46-67 to -88 (Supp. 1964).
 DEL. CODE ANN. tit. 25 §§ 2201-41 (Supp. 1964).*
 D.C. CODE ANN. §§ 5-901 to -933 (Supp. 1965).*
 FLA. STAT. ANN. §§ 711.01-23 (Supp. 1964).
 GA. CODE ANN. §§ 85-1601b to -1625b (Supp. 1963).
 HAWAII REV. LAWS §§ 170A-1 to -33 (Supp. 1963).
 IDAHO CODE ANN. §§ 55-1501 to -1527 (Supp. 1965).*
 ILL. ANN. STAT. ch. 30, §§ 211-31 (Smith-Hurd Supp. 1964).
 IND. ANN. STAT. §§ 56-1201 to -1231 (Supp. 1965).
 IOWA CODE ANN. §§ 499B.1-.16 (Supp. 1964).
 Kan. Sess. Laws 1963, ch. 329.
 KY. REV. STAT. ANN. §§ 381.805-.990 (Baldwin 1963).
 LA. REV. STAT. ANN. §§ 9:1121-42 (1965).
 ME. REV. STAT. ANN. ch. 357, §§ 560-87 (Supp. 1965).*
 MD. ANN. CODE art. 21, §§ 117A-142 (Supp. 1964).
 MASS. GEN. LAWS ANN. ch. 183A, §§ 1-19 (Supp. 1964).
 MICH. STAT. ANN. § 26.50 (Supp. 1963).
 MINN. STAT. ANN. §§ 515.01-.29 (Supp. 1964).
 MISS. CODE ANN. §§ 896-01 to -21 (Supp. 1964).*
 §§ 448.010-.220 RSMo 1964 Supp.
 NEB. REV. STAT. §§ 76-801 to -823 (Supp. 1963).*
 NEV. REV. STAT. §§ 117.010-.120 (1963).
 N.J. REV. STAT. §§ 46A-1 to -28 (Supp. 1964).*
 N.M. STAT. ANN. §§ 70-4-1 to -28 (Supp. 1965).
 N.Y. REAL PROP. §§ 339d-ii.*
 N.C. GEN. STAT. §§ 47A-1 to -28 (Supp. 1963).
 N.D. REV. CODE §§ 47-04.1-01 to -13 (Supp. 1965).*
 OHIO REV. CODE ANN. §§ 5311.01-.22 (Baldwin 1964).
 OKLA. STAT. ANN. tit. 60, §§ 501-30 (Supp. 1964).
 ORE. REV. STAT. §§ 91.505-.675 (1963).
 PA. STAT. ANN. tit. 68, §§ 700.101-.805 (Supp. 1964).
 P.R. LAWS ANN. tit. 31, §§ 1291-93k (Supp. 1964).
 R.I. GEN. LAWS ANN. §§ 34-36-1 to -36 (Supp. 1964).
 S.C. CODE ANN. §§ 57-471 to -493 (Supp. 1964).
 S.D. Laws 1963, ch. 293.
 TENN. CODE ANN. §§ 64-2701 to -2722 (Supp. 1964).
 TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 1-25 (Supp. 1964).
 UTAH CODE ANN. §§ 57-8-1 to -35 (Supp. 1965).
 VA. CODE ANN. §§ 55-79.1-.33 (Supp. 1964).
 WASH. REV. CODE ANN. §§ 64.32.010-.920 (Supp. 1964).
 W.VA. CODE ANN. §§ 3581(34)-(73) (Supp. 1965).
 WIS. STAT. ANN. §§ 230.70-.97 (Supp. 1965).
 Wyo. Sess. Laws 1965, ch. 59.*