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Review of “Condominiums and Cooperatives,” By David Clurman and Edna L. Hebard

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BOOK REVIEWS

CONDOMINIUMS AND COOPERATIVES. By David Clurman and Edna L. Hebard. New York: John Wiley & Sons Inc. 1970. Pp. 395. \$14.95.

Based on the questionable authority of the Sunday supplements, the quality of life in the United States is deteriorating. Car buyers acclimate themselves to compact and sub-compact models; fast-food franchises proliferate serving meals as convenient fuel, napkins, waiters, even tables gone; *La Cote Basque* an anachronism. The American dream, subject of novel and play, once realized in a home of one's own, is now a mobile home, or, as likely, an apartment.

For whatever reason, economic or social, in real estate, consumers have determined that there are unique advantages in combining communal living and individual ownership. Property owners are un-bundling the bundle of rights that traditionally went with their status, keeping some that offer tax and equity benefits, discarding others, such as absolute privacy, and substituting what shared expense provides: at one level, parks instead of gardens, at another, bath and tennis clubs in place of private pools and tennis courts.

What this amounts to is a kind of mutual fund of housing: equity ownership, but management contracted out to professionals; pooling of resources to finance projects beyond a single property owner's ability; diversification of economic risk—the individual housing unit, not unique, may be sold as well on the merits of the community enterprise as on the size of its rooms or lay-out.

Two principal legal devices have been developed over the years to accommodate this trend. The condominium form comes to us from various civil law codes, born of peccable latin lineage. In essence, the owner of a condominium unit owns his portion of the realty development in fee simple absolute; he has a recordable deed evidencing this, may mortgage his property, is separately taxed and may freely sell. Additionally, he obtains an interest in the elements common to the building housing his unit. In other words, he obtains rights to use hallways, basements, elevators and, of course, the underlying land itself.

The cooperative form, principally found in New York City, builds on corporate law concepts. The cooperator is a tenant with a permanent lease given by the corporation of which he is a stockholder. Financing is more difficult for him to obtain for the obvious reason that, should a sufficient number of tenants fail to make rent payments, called

“maintenance”, the corporation’s property may fall into disrepair or even, on default of mortgage payments, be foreclosed upon. Exactly this happened during the depression years. The cooperator pays an *aliquot* share of the cooperative corporation’s mortgage, tax and upkeep expenses, with appropriate *aliquot* tax deductions. A general rule is that he must have the corporation’s consent, expressed through its directors, to sell his stock, *i.e.*, his apartment. Blackballing prospective buyers, as Miss Barbara Streisand recently testified, is by no means unheard of. On occasion the corporate charter provides that the corporation has the right to repurchase the cooperator’s stock at a fixed price, thereby depriving him of gain in equity.

The cooperative and condominium are forms of real estate ownership whose time has come. The authors, in this useful book, modestly set out to furnish “a basic introduction and a reference to these two new categories of housing.” However, as might be expected by those who know Mr. Clurman to have one of the most innovative minds among government regulators, the authors have created more than an instructional guide for attorneys.

To the practicing attorney their book is a convenient source of required government forms, including an actual condominium offering plan. Equally useful are forms of condominium mortgages, warranty deeds, sale agreements and corporation by-laws. Attorneys concerned with drafting legislation or regulations will find the documents reproduced, especially the New York regulations and California condominium questionnaire, invaluable.

Beyond this, the volume, in a brief but enlightening manner, covers dozens of items of crucial interest to a practical realty project using either form of ownership. Tax factors are of obvious interest, but the legal prerequisites to establish a home owner association are certainly bed-rock material. Little is slighted; for example, a discussion of resort condominiums ranges from management and building codes to police unit cruising tours and storage space for children’s bicycles.

In short, Mr. Clurman and Professor Hebard have produced a timely and important book, a rare text which may be read profitably by a varied non-professional audience and members of the bar. While not designed to be the ultimate word on the subject, *Condominiums And Cooperatives* is a comprehensive summary of the concepts, problems and source materials relevant to this developing real property area.

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