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# LOUISIANA CONDOMINIUM ACT OF 1974

*Donald E. Theriot\**

The enactment of the Louisiana Condominium Act<sup>1</sup> was the culmination of a study initiated by the Louisiana State Law Institute to examine the deficiencies in the existing Horizontal Property Act<sup>2</sup> and propose remedial legislation. A draft of a proposed new act was prepared by a Committee appointed by the Law Institute and approved by the Louisiana State Law Institute Council after substantial revision. The proposed legislation<sup>3</sup> was enacted by the Legislature in substantially the form approved by the Law Institute Council.

## *History of the Horizontal Property Act*

A comprehensive examination of the deficiencies of the Horizontal Property Act is beyond the scope of this article. However, consideration of some of the more serious deficiencies of that Act will indicate the reason for its repeal, and examination of certain of its provisions is helpful in understanding the sources of corresponding sections of the current act.

The most serious deficiency of the Horizontal Property Act was its extreme restrictiveness as to the type of condominium development it permitted. Certain sections of the Horizontal Property Act, perhaps unintentionally, implied that only one structure could be included within any one condominium regime.<sup>4</sup> This may be explained by the fact that most condominiums built during consideration of the Horizontal Property Act were high-rise structures. Additional examples of the Act's singular application to high-rise structures were the unduly restrictive provisions relating to the allocation of unit owners' interests in common elements<sup>5</sup> and

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1. LA. R.S. 9:1121-42 (1974); see full text in Appendix.

2. La. Acts 1962, No. 494. This act was repealed by La. Acts 1974, No. 502, §2.

3. H.B. No. 1592, Reg. Sess. 1974.

4. La. Acts 1962, No. 494, §§2-4, 6, 9-12, 14, all of which were repealed by La. Acts 1974, No. 502, §2.

5. La. Acts 1962, No. 494, §6, repealed by Acts 1974, No. 502 §2. This Section required that a unit's percentage ownership interest in the common

obligations for common expenses,<sup>6</sup> and the requirements for rebuilding improvements following a casualty loss.<sup>7</sup>

The majority of state condominium statutes, including Louisiana's original act, were enacted during the period 1961 through 1963 and were drafted to accommodate these high-rise structures. Subsequent attempted utilization of the condominium concept for lateral, low-rise "cluster" housing caused, in most states, a continuing revision of condominium statutes. Louisiana did not experience any condominium development prior to 1970, and as a result, the Horizontal Property Act was left virtually unchanged<sup>8</sup> until its repeal. Most contemporary condominium developments are lateral complexes, composed of clusters of separate townhouses attached to each other or garden-type apartments with communal service and recreational facilities. Although such lateral complexes could be organized as homeowner's associations,<sup>9</sup> the authors of the current act concluded that lateral complexes should be capable of development as condominiums so that unit owners could elect the benefits of a condominium regime.<sup>10</sup>

A second major defect of the Horizontal Property Act was its failure to create a valid and operable lien securing the collection of common expense assessments.<sup>11</sup> The statutory

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elements be determined solely on the basis of its value relative to the values of all other units in the condominium.

6. La. Acts 1962, No. 494, §17, repealed by Acts 1974, No. 502 §2. A unit's percentage obligation to contribute to the common expenses of the condominium was inflexibly tied to the unit's percentage ownership of the common elements.

7. La. Acts 1962, No. 494, §21, repealed by Acts 1974, No. 502 §2.

8. The Horizontal Property Act was amended by La. Acts 1968, Ex. Sess., No. 17, §1, *amending* La. Acts 1962, No. 494, §5, which was repealed by La. Acts 1974, No. 502, §2 and La. Acts 1972, No. 300, §1.

9. See Schreiber, *The Lateral Housing Development: Condominium or Home Owners Association?*, 17 PA. L. REV. 1104 (1969).

10. The principal benefits attained through the use of the condominium format would include: (1) statutory enforceability of decisions of the association and assessments for common expenses as well as valid provisions of the declaration and by-laws; (2) equal treatment for zoning and subdivision purposes of lateral developments using the condominium form of ownership; and (3) availability of a valid lien for common expenses to aid in the collection of the common assessments of the development.

11. La. Acts 1962, No. 494 §18, repealed by Acts 1974, No. 502 §2. Horizontal Property Act Section 1138 did not specify either the object to which the lien attached or the entity in whose favor the lien was granted and therefore failed to create a valid statutory lien. See LA. CIV. CODE art. 3185.

creation of a viable lien for common expenses is the critical element in the successful collection of periodic condominium assessments, and the failure of the Horizontal Property Act to create an enforceable lien for common expenses negated one of the main benefits of the condominium framework.

A number of other deficiencies in the Horizontal Property Act resulted from the fact that it was copied almost verbatim from the Arkansas Horizontal Property Act.<sup>12</sup> As might be expected, the Arkansas Act employed certain common law principles and terminology incompatible with Louisiana's civilian legal system, and some of those principles and that terminology were copied into the old Act. Section 1139, for example, purports to establish joint and several liability on the part of both a purchaser of a unit and his vendor for the payment of prior delinquent assessments against the vendor. This resulted in a confusion of the civilian concepts of real and personal obligations conflicting with articles 1997 (3), 2012 and 2019 of the Louisiana Civil Code.<sup>13</sup>

The authors of the Louisiana Condominium Act recognized the necessity of including certain general categories of provisions that: govern the creation and operation of the condominium regime and the transfer of unit titles; establish rules for the development of a condominium in stages; create a valid lien securing payment of assessments for common

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12. The Horizontal Property Act was passed as "emergency" legislation in response to a 1961 amendment to the National Housing Act, 12 U.S.C.A. §1715 Y(a), which made FHA insured mortgages on condominium apartments available "where, under the laws of the State in which the property is located, real property title and ownership are established with respect to a one family unit which is part of a multifamily project." As a result of the apparent "emergency," the Arkansas Horizontal Property Act was copied without any attempt to reconcile its substantive provisions with Louisiana civilian concepts.

13. The Horizontal Property Act, Section 1139, attempted to impose personal liability upon the vendee of an apartment for the delinquent common assessments of his vendor such that the vendee could be held liable *in solido* for such delinquent assessments after he reconveyed the property. Said Section stipulated that such solidary liability would attach to and pass with the property into the hands of a vendee, irrespective of whether or not a stipulation on the subject had been made between the vendor and vendee. The combination of these statutory directives created, in effect, a real obligation which was purely personal as to a subsequent acquirer of the property. LA. CIV. CODE arts. 1997 (3), 2012, and 2019 unqualifiedly state that no real obligation can be purely personal as to a subsequent acquirer of the property on which it is attached unless the acquirer affirmatively assumes such personal liability.

expenses; protect prospective purchasers of condominium units from certain practices of unscrupulous developers and from misrepresentations made in connection with the sale of condominium units; permit the "contraction" of a condominium regime; and regulate the filing of liens against the condominium property.

### *Definition of Terms*

Section 1123 of the Act defines the terminology used throughout the Act; thus, an understanding of these terms is crucial to an appreciation of the Act's substantive provisions. A definition of the term *condominium* was included in the Act<sup>14</sup> to indicate the dual nature of immovable property ownership unique to the use of the condominium format. The two types of immovable property ownership inherent in a condominium are (1) complete ownership of an individual unit, and (2) fractional undivided ownership of certain commonly used property.

All immovable property contained in a condominium regime must be categorized in the condominium declaration as either part of the individual *units* or a part of the condominium *common elements*.<sup>15</sup> Unlike the majority of other condominium statutes,<sup>16</sup> Section 1123 (3) defining "unit," and Section 1123 (5) defining "common elements," with certain limited exceptions,<sup>17</sup> make no attempt to dictate the portions of the condominium improvements which must be included within the boundaries of either area. Consequently, the author of the condominium declaration is free to illustrate and define the boundaries of the units and the common elements and to separate the tangible condominium improvements between the two areas in any manner desired. Section 1123 (3) gives the author of the condominium declaration the addi-

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14. LA. R.S. 9:1123 (1) (1974).

15. LA. R.S. 9:1123 (5) (1974) defines "common elements" to include all portions of the condominium property "not a part of the individual units."

16. See, e.g., Section 1122 (4) of the Horizontal Property Act, which enumerated seven different parts of the condominium improvements which were required to be classified in condominium documentation as "common elements."

17. In multi-unit buildings, LA. R.S. 9:1123 (5) (1974) requires that the following parts of the building be classified in the condominium declaration as common elements: (1) foundations, main walls, roofs and all principal structural parts of the building; and (2) installations of central utility services. *Quere* whether lateral townhouses attached physically by only a common wall would be a "multi-unit building" as that term is used in Sec. 1123 (5) of the Act.

tional right to define the boundaries of a unit to include only airspace, thereby effectively placing all tangible portions of the condominium improvements within the boundaries of the areas designated in the declaration as common elements.

One recurring flaw in condominium documentation has involved attempts to define or illustrate the boundaries of the individual units to coincide with that portion of the improvements in which the unit owner will be granted exclusive use and the attendant obligations of maintenance and repair. A literal reading of condominium statutes has apparently created the misconception that the type of ownership of particular improvements, complete or undivided, determines the exclusivity of their use and the responsibility for their maintenance and repair. This misconception has prompted the widespread usage in condominium documentation of the term "limited common elements," a hybrid concept designed to separate certain common elements and designate them for the exclusive use of less than all of the unit owners, thereby bridging the imaginary gap between type of ownership and type of use. While *limited common elements* are defined by the Act,<sup>18</sup> it is included not to perpetuate this misconception, but merely to make the limited common element device available to those draftsmen wedded to conventional condominium terminology.<sup>19</sup>

Notwithstanding the availability of the limited common element device, the author of condominium documents may designate portions of the common elements for the exclusive use of certain units without labeling such improvements as limited common elements. Permission to include only airspace within the boundaries of individual units and therefore to place all tangible condominium improvements within the boundaries of the common elements conclusively indicates that certain of the improvements, designated as part of the common elements for ownership purposes, can be dedicated to the exclusive use of less than all the unit owners without employment in the condominium documentation of the limited common element device. Consequently, if only "airspace" is included within the boundaries of the individual units, responsibilities for maintenance and repair of the tangible improvements must be allocated between the individual unit owners and the condominium association without refer-

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18. LA. R.S. 9:1123 (6) (1974).

19. The term "limited common elements" has traditionally been used in connection with balconies or patios adjoining a particular unit or for parking space to be used solely by a particular unit.

ence to the form of ownership, complete or undivided, of the improvements.

A *condominium parcel* is "a unit together with the undivided interest in the common elements, which is an inseparable component part of the unit."<sup>20</sup> This definition eliminates the dual usage of the term "unit" existing in the Horizontal Property Act<sup>21</sup> and avoids repetition of the phrase "unit and its undivided interest in the common elements" throughout the Act.

The *association*, composed of the unit owners or their elected representatives, is the legal entity authorized by the Act to operate and manage the condominium, to enforce the provisions of the condominium declaration, and to maintain certain designated portions of the condominium property. The association may be organized as any type of legal entity, including a corporation.<sup>22</sup>

The *common expenses* of the condominium are those expenses assessed by the association for the maintenance and administration of the portions of the condominium property not designated for the exclusive use of a single unit and shared by all or a portion of the unit owners in accordance with certain enumerated percentages.<sup>23</sup> The condominium declaration may designate common expenses in addition to those created by the Act.<sup>24</sup> Subsection (a) of Section 1123 should not be interpreted to mean that the cost of maintenance, repair, or replacement of everything defined in the condominium declaration as a common element must be assessed as a common expense, but rather as establishing the

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20. LA. R.S. 9:1123 (7) (1974). The term "condominium parcel" was borrowed directly from the Florida Condominium Act. See FLA. STAT. §711.03 (8) (1963).

21. The Horizontal Property Act employs the term "apartment" to refer to both (1) the part of the improvements owned one hundred percent by an individual owner, and (2) the part of the improvements wholly owned by an individual owner plus the appurtenant undivided interest in the common elements.

22. LA. R.S. 9:1123 (8) (1974).

23. The declaration may contain different percentages for the sharing of different common expenses. Moreover, the Act does not require that any particular common expense be assessed to all unit owners. For example, in a multi-building project, the declaration may specify that expenses of upkeep of elevators in a particular building be assessed only to the unit owners of that building.

24. Certain sections of the Act create "common expenses." For example, Section 1123.1 (3) defines as a common expense the delinquent common expenses allocable to a particular unit and remaining unpaid after its sale as a result of foreclosure.

general rule of thumb that such costs are ordinarily treated as common expenses.<sup>25</sup>

### *Creation of the Condominium Regime*

#### *Condominium Declaration*

A condominium property regime is created upon filing and recordation of a *condominium declaration* containing the matters enumerated in Section 1126.2.<sup>26</sup> The principal function of the condominium declaration is to regulate the communal living arrangement inherent in the condominium form of ownership by clearly specifying the rights and obligations of all unit owners toward each other. The condominium declaration must also define the boundaries of all units and common elements<sup>27</sup> to create the necessary horizontal "subdivision" of the condominium property, much like a conventional subdivision plat.

*Filing.* The Horizontal Property Act did not clearly indicate the appropriate place for filing the condominium declaration.<sup>28</sup> This omission is corrected in Section 1126 of the new Act, which directs that for the condominium declaration to be effective against third parties, it must be "filed for registry in the conveyance records in the parish in which the condominium property is located."

*Execution.* The Act does not indicate who must execute the declaration preparatory to its filing for record. Presumably, only the signatures of the owners of the immovable properties submitted to the condominium regime would be required since mortgagees would not be holders of title to the immovable property. However, where a mortgagee holds a mortgage, as for example, a "construction" mortgage, on the entire condominium property prior to filing of the condominium declaration, subordination of the mortgage to the declaration is necessary. Failure of the developer to obtain subordination of such a mortgage prior to the sale of the units could cause disruption to the condominium regime. If, for example, a portion of the units were sold and the

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25. See text preceding notes 18 & 19, *supra*.

26. LA. R.S. 9:1126.2 (1974).

27. *Id.* §1126.2A (2).

28. La. Acts 1962, No. 494, §9. This was repealed by La. Acts 1974, No. 502, §2.



mortgage released as to the transferred units and the unsold units foreclosed thereafter, failure of the mortgagee to subordinate his mortgage to the condominium declaration would render doubtful the obligation of purchasers at the foreclosure sale to abide by the provisions of the declaration. Subordination of the mortgage can presumably be effected by having both the mortgagee and the owner of the immovable property execute the condominium declaration. This arrangement would effect the removal of the condominium property as a whole as security for the mortgage and substitute therefor the individual condominium parcels.

*Required Contents.* The purpose of Section 1126.2 of the Act, in requiring certain provisions in the declaration, was to insure that the association would be given the necessary authority to operate the condominium, and to delineate the rights and obligations of the unit owners toward each other.

The condominium declaration must include: (1) a statement of submission; (2) a survey and graphic description of the improvements; (3) the names of the condominiums and units; (4) a legal description of the land; (5) a schedule of the units' undivided interest in the common elements; (6) a schedule of the units' percentage obligations for common expenses and sharing of common surplus; (7) a statement of voting rights in the association; (8) the method of amendment of the condominium declaration; (9) the by-laws of the association; (10) provisions necessary for construction of the development in multiple stages; (11) provisions necessary for subdivision of units in commercial condominiums; (12) provisions for repair following casualty loss; (13) provision for disposition of casualty insurance proceeds; and (14) provisions to govern the association.<sup>29</sup>

A simple statement that the immovable property described in the condominium declaration and the building plans attached thereto is submitted to the condominium form of ownership is sufficient to satisfy the requirement of a statement of submission under Section 1126.2A (1) of the Act.<sup>30</sup>

The three-dimensional subdivision necessarily created in a condominium regime must be adequately described in the condominium declaration. To do so, the condominium declaration must sufficiently describe the location of the boundaries of individual units and the common elements, and their respective

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29. LA. R.S. 9:1126.3 (1974).

30. *Id.* §1126.3A (1).

locations must be correlated in some manner to a description of the boundaries of the underlying land. Section 1126.2A(2) specifies the required method of describing the condominium property, requiring both a survey of the land and "a graphic description" of the improvements to be filed as an exhibit to the declaration.<sup>31</sup> The land survey should presumably indicate both the boundaries of the land upon which the condominium improvements are or will be built and the precise location on such land of the proposed or existing condominium improvements. Specification on the land survey of the precise location of the condominium improvements is necessary to adequately correlate the location of the improvements to the boundaries of the underlying land, thereby insuring a three-dimensional description of the units.

In practice, three different approaches have been used in condominium declarations to describe, for title purposes, the boundaries of individual condominium units: the unit survey method,<sup>32</sup> the subdivision plat method,<sup>33</sup> and the floor plan certification method. The last method is the descriptive approach envisioned by Section 1126. Description of improvements under the floor plan certification method requires the filing of both a survey of the underlying land indicating the location, or proposed location of the improvements and a copy of the floor plans of the improvements filed with the application for a building permit. The floor plans should be in sufficient detail to adequately illustrate the layout, location, and dimensions of the individual units. If the construction of the improvements has not been completed on the date the condominium declaration has been filed, a verified statement by an architect or

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31. *Id.* §1126.3A (2): "A plat of survey of the land and a graphic description of the proposed or existing improvements and plat plan thereof in sufficient detail to identify the common elements and each unit and their relative location and approximate dimensions as certified by a registered architect, civil engineer or land surveyor."

32. The "unit survey method" requires separate surveys of each unit, which survey should indicate the elevation of its floor and ceiling as measured in relation to a datum plane. The unit survey method additionally requires the location of the vertical dimensions of the unit with reference to the boundaries of the underlying land projected upward. Where units are not in "cube" form because of sunken floors and the like, authors of condominium documentation have found it extremely difficult to describe the units in the precise manner necessary to use the unit survey method.

33. The "subdivision plat method" involves the filing of a three-dimensional plat similar to the two-dimensional plat used in conventional subdivisions.

engineer to the effect that the plans are an accurate copy of the plans filed with, and approved by, the governmental agency authorized to issue building permits should satisfy the certification requirement of the statute. When construction of the improvements is completed, an "as built" certification should be appended to the floor plans already filed. Use of the floor plan certification method permits description of an individual unit for conveyance purposes through a reference to the place of filing of the declaration and appended floor plans and the unit's number as shown on such plans.

The condominium declaration must also include a written description of the boundaries of the individual units. The establishment of the boundaries between the individual units and the common elements is left largely to the discretion of the author of the condominium documents. A written description of the boundaries of the individual units makes a description of the boundaries of the common elements unnecessary since the common elements include, by definition, all parts of the condominium property not within the boundaries of the individual units.

Unlike the Horizontal Property Act, Section 1124 of the Act prescribes no method for determining the percentage of the ownership interest of unit owners in the common elements, but a schedule showing each unit's respective percentage must be included in the declaration. Correspondingly, the obligation to pay a portion of the common expenses of the condominium<sup>34</sup> is a unit owner's sole financial obligation to the condominium association. Since the size of a unit owner's periodic assessment is a function of both the amount of the particular assessment and the measure of his percentage obligation therefor, it is appropriate that a schedule indicating each unit's respective percentage be included in the declaration to give a prospective unit purchaser some idea of the extent of his financial undertaking. Furthermore, with certain exceptions,<sup>35</sup> voting rights in the association may be allocated to the various units in any reasonable manner, provided that each unit's voting rights are stated in the declaration.

Since all owners of title to the immovable property presumably must initially execute the condominium declaration

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34. LA. R.S. 9:1125 (1974).

35. *See id.* §§1138, 1141.

preparatory to recordation, it necessarily follows that all unit owners must execute an amendment to the declaration unless it provides for certification of the action of the unit owners by an officer or agent of the association. To adequately set forth the procedure for amending the declaration, the required provision should address the subjects of notice, quorum, voting approval necessary, and any limitations on the subject of an amendment. Since the by-laws must be included in the declaration, presumably they must be amended in the same manner as the declaration.

The developer of an expandable condominium must be careful to include a provision in the declaration permitting him to unilaterally amend the declaration to comply with the provisions of Sections 1124.2 and 1126.2C when he adds additional immovable property to the condominium regime. Failure to do so might affect his ability to expand the condominium in the event he was unable to obtain the necessary votes of other unit owners to amend the declaration.

By-laws of the association must be incorporated in or annexed as an exhibit to the declaration.<sup>36</sup> While the Act makes no distinction between those matters which should be treated in the by-laws and those which should be treated in the declaration, the by-laws have usually been principally concerned with the procedural rules of the board of managers of the association and with the rights and obligations of such board with respect to the common elements.

A developer constructing a condominium in successive multiple stages must include certain information in the declaration. Since a staged project is an open-ended development, certain particulars must be disclosed to prospective unit purchasers to give them some idea of the character of the completed development and size of their financial commitment for common expense assessments.<sup>37</sup>

The method to determine whether to repair or reconstruct damaged improvements in a particular condominium development must be set forth in the declaration.<sup>38</sup> Any such

36. *Id.* §1126.2A (10).

37. *See generally* LA. R.S. 9:1124.2 (1974).

38. The Horizontal Property Act required reconstruction and repair of condominium property following casualty loss if the damage totaled less than two-thirds of the value of the improvements. If two-thirds or more of the improvements were destroyed, unanimous consent of the unit owners was required to rebuild. While a case could be made for the establishment of such an inflexible rule as long as the condominium enabling legislation was

method should provide answers to the following three questions: (1) what amount of damage to the condominium property requires a vote of the unit owners on reconstruction of the damaged premises; (2) what percentage vote<sup>39</sup> is necessary to authorize the repair of the damaged improvements, or a portion thereof; and (3) if a decision is made not to repair all or part of the damaged improvements, whether the condominium regime will be terminated in its entirety or only as to the unrepaired improvements.<sup>40</sup>

If damage caused by casualty loss affects only a portion of the condominium property and a decision is made by the unit owners not to rebuild or repair the damaged property, such damaged but unrepaired property may be withdrawn from the condominium regime through use of the concept of "contraction." Section 1136 of the Act authorizes a condominium association to "contract" the condominium regime by withdrawing all or part of the damaged improvements if the contraction is authorized by a vote of the unit owners. The character of the development will generally determine the utility of the contraction concept. If the condominium is composed of two or more groups of physically attached units and if any one group can be severed from the rest without significant disruption of the entire project, the declaration may grant individual unit owners in each the option to either rebuild their units or withdraw from the condominium regime.<sup>41</sup>

The Act does not specify any method for distributing casualty insurance proceeds not used for the repair of the damaged property to individual unit owners, but does require the formulation of such a method and its inclusion in the declaration.<sup>42</sup> Equitable division of casualty insurance pro-

employed solely to develop high-rise structures, current variation in types of condominiums makes such a rule unworkable. The authors of the new Act concluded that the decision as to whether damaged improvements should be reconstructed is influenced by the size and character of each condominium and that formulation of the decision making process should best be left to the discretion of the unit owners.

39. The Act authorizes the declaration to provide different voting requirements depending on whether common elements, individual units, or both, are damaged.

40. LA. R.S. 9:1136 (1974) permits the contraction of a development. Such section necessarily authorizes the removal of destroyed units from the condominium without terminating the condominium as a whole.

41. LA. R.S. 9:1136 (1974).

42. *Id.* §1126.2A (12).

ceeds among unit owners would depend on whether common elements or individual units were destroyed and the relative amount of damage to each kind of property. If damaged units are withdrawn from the condominium regime following a decision not to repair, some part of the insurance award should be allocated to the remaining unit owners to compensate them for their increased share of common expense assessments.<sup>43</sup>

The condominium declaration must contain the name and type of legal entity under which the association is organized. If it is not incorporated, the name and residence address of the person designated as agent to receive service of process upon the association must also be stated.<sup>44</sup> This section gives unit owners complete discretion in selecting the legal form of the association and specifically permits the formation of the association as either a business or non-profit corporation.<sup>45</sup>

Section 1130B grants certain powers to each association unless they are expressly withheld by the declaration. These powers include the power to own, administer and alienate units transferred to it or purchased by it.<sup>46</sup> It has been suggested<sup>47</sup> that the association should not have the authority to purchase a unit, either pursuant to a "right of first refusal" or otherwise and should be expressly prohibited from purchasing a unit on foreclosure since the price of any unit purchased by the association would be assessed to all unit owners as a common expense and result in an unexpected and nonrecurring cost. By increasing the risk that a unit owner would be unable to meet his common expense assessment, the grant of this authority could also be objectionable to mortgagees of individual units.

*Optional Provisions.* The declaration may include additional provisions not inconsistent with the Act or other laws. The declaration should contain provisions governing the purpose for which the condominium property and units may be

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43. Payment of part of the casualty insurance proceeds to the unit owners remaining in the regime as "severance" damages should also depend on the extent of damage to the common elements and whether any of the common elements are withdrawn from the condominium regime.

44. LA. R.S. 9:1126.2A (13) (1974).

45. See Rev. Rul. 74-17, 1974, INT. REV. BULL., No. 2, at 11.

46. LA. R.S. 9:1130B (1974).

47. See McCaughan, *The Florida Condominium Act Applied*, 17 FLA. L. REV. 1, 41 (1964).

used, the withdrawal of damaged or destroyed units from the condominium regime, and establishing procedures whereby a unit owner may convey his unit to the association and thereby release himself from future obligations for common expense assessments, fixing responsibility for unit maintenance and repair, restricting use of individual units or common elements, and restricting the conveyance, sale, leasing, ownership and occupancy of individual units.

### *By-laws*

The Act suggests that the by-laws should be primarily concerned with the "administration and operation" of the condominium<sup>48</sup> but does not distinguish between the scope of the by-laws and the scope of the declaration. The by-laws must contain provisions establishing procedures for the administration of the condominium, procedures for collecting common expense assessments, procedures for adopting and amending rules and regulations, arbitration procedures, and provisions for reserves.<sup>49</sup> The rules of administration of a condominium are closely analogous to the by-laws of a corporation. The inclusion of provisions establishing the association's governing body, commonly called the Board of Managers, and specifying the procedural rules under which it operates would presumably satisfy this requirement.

An orderly procedure for the assessment and collection of common expenses is crucial to the financial stability of the condominium. The amount of a periodic common expense assessment usually depends on the annual operating budget formulated by the association.<sup>50</sup> Assessments are usually made on a monthly basis. Since a claim of lien for delinquent common expenses must be filed within ninety (90) days of the date an assessment becomes delinquent,<sup>51</sup> the by-laws should indicate when unpaid assessments are delinquent and under what circumstances a claim of lien for common expenses will be filed against the condominium parcel of a delinquent unit owner. By-law provisions establishing procedures for the collection of common expenses should also cover institution of

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48. LA. R.S. 9:1128 (1974).

49. *Id.* §1128.1.

50. LA. R.S.9:1140 (1974) requires the developer to provide an itemized operating budget for the initial year of operation to each prospective unit purchaser.

51. LA. R.S. 9:1125.1A (1974).

suit by the association against a delinquent unit owner; whether a claim of lien for common expenses will include collection of attorney's fees;<sup>52</sup> the rate of interest on delinquent common expenses;<sup>53</sup> and the delegation of responsibility to certain officers of the association for execution and recordation of claims of lien.<sup>54</sup>

An important advantage of the condominium form of ownership as compared to the cooperative form of ownership, is the separate mortgageability of each individual unit.<sup>55</sup> However, one advantage incident to the single overall mortgage carried by a cooperative association is the availability of the mortgage for future refinancing to provide funds for major repairs and improvements. Since the coordinated refinancing of individual unit mortgages is practically impossible, some other method must be provided to insure the availability of sufficient funds at some future date when the condominium buildings are in need of repair and renovation. A one-time assessment to pay the cost of major uninsured improvements is undesirable since it could cause severe financial strain on unit owners. The periodic accumulation of funds in one or more reserve accounts is the only feasible solution.

The initial operating budget prepared by the project developer should establish reserve accounts and provide for reasonable periodic payments thereto. The project developer should carefully estimate the size of the periodic additions to such reserve accounts to provide adequately for future improvements and renovations.

#### *"Staged" Condominium Developments*

Accommodation of "cluster" type developments within the condominium format is a problem faced by developers under virtually every state condominium statute.<sup>56</sup> From a

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52. See LA. R.S. 9:1125 (1974) which permits a lien for common expenses to provide for attorney's fees.

53. See LA. R.S. 9:1125 (1974) which authorizes the association to determine the rate of interest on delinquent common assessments.

54. A lien for delinquent common expenses must be executed and verified by affidavit of an officer or agent of the association. See LA. R.S. 9:1125 (1974).

55. See LA. R.S. 9:1125.1 D (1974).

56. Only the condominium acts of Virginia and Maryland specifically permit a staged development of lateral housing units within the framework of a single condominium regime.



developer's point of view, it is desirable to construct cluster condominiums ultimately containing a large number of units, one section or stage at a time. By initially constructing and selling only a fraction of the total units planned for the completed project, a developer can minimize his initial capital investment in the project and determine the design and number of units to be included in subsequent stages of the development. The completion of a development in stages may also be dictated by the limited availability of interim and permanent financing.

Some developers of cluster condominium housing have retained a degree of marketing flexibility by structuring the development in two "tiers." In a typical two-tier development, each group of units or "stage" constructed and sold together are placed in a separate condominium regime. Once all stages are sold and the multiple condominium regimes formed, a "master association" is formed and entrusted with responsibility for the coordination and management of the legally separate but interrelated condominium regimes. The principle duties of the master association are to manage those common elements which are used by unit owners in all the separate regimes but which are separately owned by individual second-tier condominium regimes and to assess common expenses among the separate second-tier condominium regimes.

Structuring a condominium as a two-tier development does not conflict with the requirement that interest percentages and building plans be permanently fixed by the declaration, but does create other problems. One problem is the treatment of common elements owned by a separate second-tier condominium regime, but used by owners of units in other second-tier condominium regimes. The establishment of multiple covenants of use between the separate second-tier condominium regimes requires extensive and unwieldy documentation, and it is questionable whether subsequent unit purchasers would be bound by them.<sup>57</sup> The master association may face difficulties when it attempts enforcing its management decisions or collecting common expenses from

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57. It is questionable under Louisiana law whether affirmative covenants may be enforced against future unit purchasers who are not parties to the original agreements. See LA. CIV. CODE art. 655; Taggart, *Equitable Restrictions in Louisiana*, 33 TUL. L. REV. 822 (1959).

the second-tier condominium regimes.<sup>58</sup> Since the relationship between the master association and the separate condominium regimes is not governed by the condominium statute, all decisions of the master association would have to be enforced against individual unit owners by their respective second-tier associations. Failure to come within the terms of the condominium statute would further preclude the master association from asserting lien rights against unit owners who fail to pay its common expense assessments.<sup>59</sup>

The complex two-tier procedure is no longer required, although it is permitted, under the Condominium Act, which allows the development of a parcel of land in multiple separate development stages within a single condominium regime.<sup>60</sup> This allows a developer some flexibility in determining the design and final number of units in the project, the time period over which the units will be constructed and sold, and the common facilities to be included in the completed project, even after filing of the declaration.<sup>61</sup>

Section 1126C authorizes the filing of additional building plans after recordation of the declaration. Only a survey of the land and a graphic description of the improvements for the initial stage must be filed with the declaration prior to the conveyance of a unit in the initial stage. As successive stages are added, a developer can amend the declaration by

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58. Expenses assessed by the first-tier management entity would be allocated among second-tier condominium regimes which individually would include these amounts in their common expense assessments to individual unit owners in their respective regimes.

59. It has been suggested that assessments for common expenses by the first-tier entity in compliance with its management decisions could be enforced by incorporating these requirements as part of a second mortgage on each unit in favor of the first-tier entity. See Schreiber, *The Lateral Housing Development: Condominium or Home Owners Association?*, 17 PA. L. REV. 1104 (1969).

60. See LA. R.S. 9:1124.2, 1126C (1974).

61. As a practical matter, a "staged" development would be created using the following procedure: (1) The declaration would specifically indicate that the developer intends to construct the condominium on an incremental basis; (2) The land survey and building plans filed as an exhibit to the declaration would describe the land and improvements to be included and constructed in the first phase of the development; (3) The declaration is amended to add new land surveys or building plans, or both, when the developer desires to add succeeding phases to the regime; (4) The declaration sets a time limit within which all planned phases must be completed; (5) A schedule is provided in the declaration which indicates a formula for allocation of the percentages of interest among the stages.

filing supplemental land surveys and building plans describing the immovable property being added to the development.<sup>62</sup>

Section 1124.2 permits the sale of individual units even though the exact size and character of the completed development and the final interest percentages<sup>63</sup> are not known. Adequate safeguards for unit owners and their mortgagees are provided by a requirement that a staged project declaration specify the rights and obligations of unit owners as they may fluctuate with the ultimate size and character of the completed project. The requirements of Section 1124.2 provide a prospective purchaser of a unit in the initial stage or stages with an approximate picture of the entire project and permit him to estimate the size of his final interest percentages and the extent of common facilities to be constructed.

To secure "staged" development, a number of special provisions must be included in the condominium declaration.<sup>64</sup> The developer must reserve the right to change previously established percentages of interest allocated to individual units already conveyed and to reallocate a portion of such percentages to future unit owners. Alteration of the relative ratios of interest percentages among units already completed and included in the condominium regime is not permitted. Existing interest percentages may be altered only in the event additional units are in fact added to the condominium regime. In addition, the declaration must specify the maximum number of units which may be included in the completed project.<sup>65</sup> The declaration will therefore inform a prospective purchaser of the potential ultimate size of the development and allow him to estimate his financial respon-

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62. A developer constructing a "staged" development must be careful to reserve to himself in the declaration the absolute power to amend the declaration to add additional land surveys and building plans.

The Act does not permit the removal of land from the regime except in accordance with the provisions of LA. R.S. 9:1136 (1974). Accordingly, a developer must be cautious not to transfer any land to the condominium regime which he may later desire to withdraw from the regime if any of the additional planned stages are not built.

63. The term "percentages of interest" is meant to include the percentage undivided ownership of the common elements, the percentage obligation for common expenses assessed by the association, and the percentage voting power in the association.

64. LA. R.S. 9:1124.2 (1974).

65. The declaration must also necessarily describe the number and design of the units to be constructed and sold in the first stage of the project.

sibility depending on the number of units actually constructed. The declaration, as initially recorded, need not specify the number of stages in which the development will be built nor the number of units in each stage. The declaration must also contain a formula which permits a prospective unit owner to compute the interest percentages allocated to his unit depending on the number of units in the completed project,<sup>66</sup> and must specify the period, measured from its filing date, during which additional immovable property may be added to the project. Finally, the staging developer must specify the common facilities which will be added to the project with the addition of each successive stage. Purchasers of initial stage units should thereby be alerted to any potential overburdening of the common elements constructed as a part of the initial stages.

*Liens Securing the Payment of Delinquent Common Assessments*

The association's ability to enforce and collect assessments for common expenses is crucial to the financial stability of any condominium. While the association is granted the power to initiate a personal action to collect such assessments from a delinquent unit owner,<sup>67</sup> the availability of a statutory security right attaching to a delinquent owner's condominium parcel is regarded as the most effective collection device.

Unlike the Horizontal Property Act, the Condominium Act creates a lien for common expenses in favor of the association which attaches to the condominium parcel of the delinquent unit owner. To perfect a lien for common expenses, the Act requires that the claim of lien be executed and verified by an officer or agent of the association and recorded in the mortgage records of the parish in which the condominium property is located within ninety days of the date on which the common expense assessment became delinquent.<sup>68</sup> The lien must include a description of the condominium parcel against which the lien will attach, the name

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66. To reapportion percentage interests in the common elements, such a formula might assign a per square foot value to units and require the reassignment to be based on the relative square footage of a new unit compared to the total square footage of all units existing in the regime.

67. LA. R.S 9:1125 (1974).

68. *Id.* §1125.1 A.

of the record owner of the parcel, the amount of the delinquency and the exact date on which the assessment became delinquent. At least seven days prior to filing of the lien, the association must serve the delinquent unit owner with a statement of its claim.

A lien created in accordance with the requirements of Section 1125.1A secures only common expense assessments delinquent on the date of filing specified in the required notice to the unit owner. Should additional assessments become delinquent after the creation of the lien, additional liens must be filed to cover the additional delinquencies. Liens created under the Act are valid for one year from the date of recordation.<sup>69</sup>

In most instances, proceeds from judicial sale of a unit after foreclosure of a lien for common expenses will satisfy the amount of the delinquency. However, if any delinquent common expenses are not paid from the proceeds of the foreclosure sale and cannot be collected through a deficiency judgment, such unpaid common expenses become a common expense of the entire condominium, and are reassessed to all unit owners including the purchaser of the "delinquent" unit.<sup>70</sup>

A prospective unit purchaser may obtain the association's statement of whether or not the owner of a designated unit is delinquent in the payment of his common expenses and the amount of any delinquency. Good faith reliance on such a statement by a purchaser or mortgagee presumably would preclude the enforcement of a lien for common expenses in the amount greater than the amount shown on such statement.<sup>71</sup>

### *Liens Against Common Elements*

A prohibition against partition of the common elements is crucial to the viability of the condominium form of owner-

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69. *Id.* §1125.1 B.

70. LA. R.S. 9:1125.1 C (1974). The division of the unpaid liability for delinquent common expenses among all unit owners in the condominium, including the purchaser of the unit foreclosed on, should effectively minimize the financial burden of any individual unit owner in paying another unit owner's delinquent common expenses.

71. The delinquent common expenses of a vendor cannot be collected through a personal action against his vendee unless the vendee affirmatively assumes the obligation for the delinquent assessments. *See* LA. CIV. CODE art. 2019.

ship. While the Act prohibits a unit from partitioning the common elements,<sup>72</sup> foreclosure of a lien on the common elements or the entire condominium property would also effectively terminate the condominium regime dispossessing every unit owner including those unit owners who had paid their proportionate share of the debt which the lien was filed to secure. Section 1131 was included in the Act to prevent that result.

Section 1131 limits liens filed against individual units securing an individual unit owner's liability for debts incurred in connection with labor performed or materials furnished to the association to that fraction of the debt equal to his percentage obligation for common expenses. Creditors of the association must foreclose separately against all unit owners failing to pay their respective proportionate shares of the debt. No lien shall be created against the condominium property or common elements as a whole after recordation of the declaration and at any time during which that property is subject to the Act. During that period, liens may be created only against individual condominium parcels. Those liens are created in the same manner as liens against any other separate parcel of immovable property. In recognition of the practical difficulties inherent in filing multiple separate claims of lien, Section 1131B permits the filing of a single lien against the association to effect separate liens against each condominium parcel. A lien may be removed by the owner of a condominium parcel by payment of the portion of the total debt secured by the lien on his condominium parcel.

While Section 1131 protects an individual unit owner from liens against his parcel securing the entire amount of a debt owed by the association, it does not limit his personal liability for the entire amount of such debts.<sup>73</sup> Further, the payment by a unit owner of his share of the total debt owed by the association prior to the creation of a lien against his parcel, does not preclude the creation of subsequent liens against his

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72. LA. R.S. 9:1124.4 (1974).

73. Most commentators recognize that individual unit owners, in their capacity as co-owners of the common elements, may be solidarily liable for debts incurred for the maintenance, repair and improvement of the common elements and for the performance of contracts entered into by association personnel. See Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COL. L. REV. 987, 995 (1963); Kerr, *Condominium—Statutory Implementation*, 38 ST. JOHN'S L. REV. 1, 41-43 (1963); P. ROHAN & M. RESKIN, CONDOMINIUM LAW AND PRACTICE §10A.03 (1965) [hereinafter cited as ROHAN & RESKIN].

parcel resulting from that debt. In practice, the association will assess unit owners for their share of each association debt, presumably as part of the next periodic common expense assessment. If one or more unit owners fail to pay their assessment and correspondingly their portion of the assessed debt, the association may reassess the unpaid amount among non-delinquent unit owners and pay the creditor in full or partially default on the debt. If the second alternative is elected, the creditor may file a lien against the condominium parcels of all the unit owners, including those who initially paid their share of the debt.<sup>74</sup> To remove the lien from his condominium parcel, a unit owner would be required to make a second payment on the remaining debt. Similarly, following the first course of action, a non-delinquent unit owner would also be burdened with a second assessment. Under either course of action, restitution of the over-payment to the appropriate unit owners may be collected from all non-paying unit owners through the association's assertion of its common expense lien rights<sup>75</sup> against their condominium parcels.

#### *Contraction of the Condominium*

Section 1136 of the Act permits the removal of a portion of the immovable property from a condominium regime without terminating the regime. "Contraction," as this process is commonly called was not a significant consideration under the Horizontal Property Act since a condominium regime created thereunder was limited to a single building, but the current Act's authorization of multiple buildings within a single regime makes the contraction concept an important one.

If a condominium regime includes more than one building, the condominium declaration may specify conditions<sup>76</sup> under which part of the individual units and common areas

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74. See LA. R.S. 9:1131 (1974).

75. *Id.* §1125.1.

76. In a lateral condominium development where a casualty loss only affects part of the units, and where the remaining unaffected units are physically separate, as a practical matter the development can continue to operate even though the damaged improvements are not repaired and are withdrawn from the regime. Accordingly, in determining the potential application of the "contraction" concept to a particular condominium project, the physical interdependence of the units presumably would be the controlling factor.

may be removed from the condominium regime without terminating the regime.<sup>77</sup> Section 1136 authorizes the withdrawal of all or a part of the improvements from the condominium regime upon the vote of a stated percentage of the unit owners.<sup>78</sup> The declaration must specify which unit owners, if not all,<sup>79</sup> have the right to vote on a proposed withdrawal and the vote required to authorize the withdrawal.<sup>80</sup> Contraction provisions of the declaration must also provide for release of withdrawn units' obligations to contribute common expenses and reallocation of common expense obligations among the remaining unit owners; surrender by withdrawing unit owners of their ownership of the common elements and the reallocation of that ownership among the remaining units,<sup>81</sup> and termination of withdrawing owners' right to participate in the internal affairs of the condominium, particularly voting rights in the association.

Once a part of the condominium improvements has been withdrawn from the regime, the provisions of Section 1124.4 prohibiting the partition of the common elements, no longer apply to the withdrawn property; the subdivision created by the Act is no longer applicable and all withdrawn property is deemed to be owned in indivision by the persons formerly owning withdrawn units. Each such former unit owner's percentage of undivided ownership in the withdrawn property is equal to a fraction, the numerator being his former percentage of undivided ownership of the common elements and the denominator being the sum of all such percentages appurtenant to all individual units formerly existing in the withdrawn property. Any former unit owner in the withdrawn property is

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77. In regimes composed of several independent multi-unit buildings, the declaration should clarify whether the decisions necessitated by a casualty loss or obsolescence are to be resolved on a building or project wide basis.

78. The authors concluded that the statutory requirement of unanimous approval to terminate the entire regime would render it virtually impossible to terminate the condominium even in the face of obsolescence and the economic desirability of selling the improvements as a whole.

79. The authors of the Act concluded that in certain types of developments, it might be preferable to give the owners of units existing in single separable improvements the complete right to withdraw their building from the regime.

80. LA. R.S. 9:1136 (1974).

81. The withdrawal of part of the condominium improvements from the regime effects a permissible exception to the statutory prohibition against severing the appurtenant percentage undivided ownership interest in the common elements from its respective unit.



granted the right to partition that property. The proceeds from any sale of all or part of the withdrawn property are payable to the former unit owners owning an interest therein in proportion to their fractional undivided ownership interest in the withdrawn property.

### *Consumer Protection*

Numerous articles in the press and television documentaries have warned of fraudulent practices of condominium developers.<sup>82</sup> Some states have attempted to frustrate unscrupulous developers through the establishment of special regulatory agencies authorized to review and approve condominium "prospectuses."<sup>83</sup> In most such states, condominium units cannot be sold without review and approval of the sales documents by the appropriate agency.

The authors of the Condominium Act concluded that the limited amount of present condominium development within the state of Louisiana, did not, for the present, warrant the creation of a special state agency to regulate condominium offerings. The Act attempts to curb the most common developer abuses through regulating contracts for the management for the condominium property, restricting use by a developer of funds deposited by a prospective unit purchaser toward the purchase of a condominium unit, and requiring disclosure by a developer of material information to prospective unit purchasers.<sup>84</sup>

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82. See, e.g., *Newsweek*, "The Condo Caper," p. 78, March 25, 1974, vol. 83 no. 12; *Barrons*, "Condominium Crack-down," p. 5, April 14, 1975, vol. 85 no. 14.

83. See, e.g., Batsel, *Florida Condominiums—Developer Abuses and Securities Law Implications Create a Need for a State Regulatory Agency*, 25 *FLA. L. REV.* 350 (1973).

On October 9 and 10, 1974, the Senate Banking, Housing and Urban Affairs Subcommittee on Housing conducted hearings on proposals for federal regulation of condominium sales and conversions. In addition, reacting to reports of growing abuses in the sale of condominium units prompted the Federal Trade Commission to undertake a general investigation of the condominium industry commencing in July of 1974.

As of the date of this writing, all major condominium proposals introduced in Congress rely on disclosure requirements which are intended to give the prospective condominium owner more detailed information about the project before he buys. Rep. Collins (D. Ill.) introduced the first proposal (HR 15071) in the House in May 1974. Sen. Proxmire (D. Wis.) introduced a similar bill (S4047) on September 26, 1974. Other bills include S3658, sponsored by Sen. Joe Biden (D. Del.), and HR 17161, introduced on October 8, 1974, by Rep. Benjamin S. Rosenthal (D. N.Y.).

84. LA. R.S. 9:1138-40 (1974). These sections were adapted from similar

*Management Contracts*

The lack of success experienced by unit owners in their attempt to combat developer abuses in the courts has made legislative regulation mandatory.<sup>85</sup> Certain developer abuses stem from the fact that after the declaration is recorded but before the first transfer of a unit, the developer is the owner of all the units and possesses complete voting control of the association. During this period a developer may cause the association to enter into contracts which may be unfavorable to the subsequent unit purchasers. Such contracts typically provide for the long term management of part or all of the condominium property by the developer or an affiliated entity or for the leasing of developer owned recreational facilities at rentals which exceed competitive rates. Challenges to the enforceability of such contracts against subsequent unit purchasers have been unsuccessful.<sup>86</sup>

Louisiana unit owners may reform or abolish developer initiated management contracts under Section 1138. It grants to the condominium association, "controlled" by unit owners other than the developer, complete discretion to cancel any management contract entered into by the association during the period of its control by the developer.<sup>87</sup>

Section 1138 effectively divides management contracts according to their application. Contracts or portions of con-

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sections in the Florida Condominium Act. See FLA. STAT. §§711.13, 711.24-25 (1971). They accordingly are directed toward developer abuses which have been most prevalent in Florida experience.

85. See *Lake Mabel Corp. v. Bird*, 126 So. 356 (Fla. 1930); *Point East Mgmt. Corp. v. Point East One Condominium Corp.*, 258 So. 2d 322 (Fla. App. 3d Dist. 1972); *Wechsler v. Goldman*, 214 So. 2d 741 (Fla. App. 3d Dist. 1971); *Riviera Condominium Apts., Inc. v. Weinberger*, 231 So. 2d 850 (Fla. App. 3d Dist. 1970); *Fountainview Ass'n Inc. v. Bell*, 203 So. 2d 657 (Fla. App. 3d Dist. 1967).

86. See cases in n. 85, *supra*. Both the *Fountainview* and *Point East Mgmt. Corp.* courts refused to reform management contracts entered into by the association while controlled by the developer for the reason that the respective management agreements were available to all prospective purchasers prior to execution of their agreements to purchase.

87. The authors of the Act recognized that it would not be economically feasible for legitimate management companies to provide for contract management services unless the duration of the management contract was greater than three years. Consequently, Section 1138 should inhibit developers from making good faith efforts to place management of the condominium, at the outset of the development, with reputable companies charging competitive rates. However, it was felt that this small disadvantage to inclusion of Section 1138 in the Act was far outweighed by the effective removal of a serious developer abuse.

tracts relating to the management of an entire single building condominium or the management of any of its common elements are distinguished from contracts relating to the management of a group of individual units located in a single building a multi-building condominium. The former may be cancelled by a vote of seventy percent of the unit owners within one year beginning on the date developer control of the association ends.<sup>88</sup> If a condominium regime is composed of more than one building, owners of units in any building may vote to cancel a management contract as it relates to their building but that cancellation does not affect the application of the contract to all common areas of other condominium buildings.<sup>89</sup>

#### *Purchasers' Deposits*

Some condominium developers have misappropriated earnest money deposited by prospective unit purchasers. Developers with inadequate financing have attempted to sell units prior to the commencement of construction and use purchasers' deposits to pay a portion of construction costs. Where construction was not completed, in many cases the deposits were lost to construction liens recorded against the project.<sup>90</sup>

Section 1139 requires a developer who intends to use a prospective purchaser's deposit to pay construction costs, to include the following legend on the face of the agreement to purchase:

A deposit made pursuant to this agreement may be used for construction and development by the seller. If this unit is not completed for any reason, part or all of the deposit made under this agreement may be lost.<sup>91</sup>

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88. Section 1138, as appearing in the draft of the Act presented to the legislature, provided for unit owner cancellation by a greater than 50% vote. The percentage voting requirement was changed to 70% by the Senate Judiciary Committee.

89. Since management and upkeep of the individual units is ordinarily assigned to the respective unit owners, this provision should have only limited utility in residential condominiums. Its principal application should be to commercial condominiums where a significant amount of intra-unit services are provided.

90. See Batsel, *Florida Condominiums—Developer Abuses and Securities Law Implications Create a Need for a State Regulatory Agency*, 25 FLA. L. REV. 350, 357 (1973).

91. LA. R.S. 9:1139 (1974). The legend must be placed in bold face type on the

A developer is prohibited from using deposits for any purpose prior to commencement of construction of the condominium and may not, at any time, use deposits to pay advertising costs, or for salaries, commissions, or other sales expenses. Use of deposits by the developer without inclusion of the required warning in the agreement to purchase, makes that agreement voidable at the purchaser's option.

### *Disclosure*

The most prevalent developer abuse has been the making of oral and written misrepresentations in connection with the attempted sale of condominium units.<sup>92</sup> Examples are legion of developers promising grandiose recreational facilities that are never built or providing offerees with projected operating budgets which greatly understate the actual operating costs. Some developers have concealed unfavorable provisions in agreements previously entered into with developer-controlled entities.

The Act attempts to protect prospective purchasers from developers' misrepresentations by requiring disclosure of material facts in documents which must be given to a prospective purchaser prior to the signing of an agreement to purchase or the sale of a condominium unit. As initially drafted, the Section 1140 required the enumerated disclosures only prior to the initial transfer of a unit by the developer. However, as a result of legislative amendment, the provisions of Section 1140 are applicable to any transfer of a condominium unit, whether by a developer or otherwise.

Prior to the signing of an agreement to purchase or an act of sale, prospective purchasers of condominium units must receive copies of: (1) the condominium declaration; (2) the Articles of Incorporation or other documents organizing the association; (3) the By-Laws of the association; (4) any lease or sublease relating to the condominium property;<sup>93</sup> (5) a statement indicating whether the developer had previously

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face of the purchase contract and immediately above the place for the purchaser's signature. *Id.*

92. See *Hendler v. Rogers House Condominium, Inc.* 234 So. 2d 128 (4th Dist. Fla. 1970).

93. The required disclosure would include leases in which the association was acting in the capacity of either lessee or lessor. Accordingly, both leases of common elements by the association to third parties and leases of recreational facilities from a developer or a third party must be disclosed.

entered into, or intends to enter into, a contract for the management of any portion or all of the condominium property, and, if so, a complete description of the proposed or actual terms of the contract and any relationship, direct or indirect, between the developer and the person contracted with or to be contracted with, to perform the management services; (6) a projected operating budget for the condominium property, with complete itemization of all cost of operation<sup>94</sup> and any special charges; (7) an "information brochure" describing the recreational and parking facilities and indicating which will be common elements, and which will be leased to the unit owners;<sup>95</sup> (8) the floor plan of the unit being offered for sale; and (9) a statement indicating whether the developer will exempt unsold units from any part of their obligations for common expenses, and if so, the period of time for which the exemption will be effective.<sup>96</sup>

After these disclosures are made, they may not be materially changed or amended without the purchaser's written approval. Failure to satisfy the requirements of Section 1140 makes an agreement to purchase voidable by the purchaser at any time within fifteen days following the date on which the disclosures are in fact made, provided that a unit owner cannot rescind an act of sale of a condominium unit because of the failure of the seller to make the disclosures required by Section 1140.

If an action founded on a material misrepresentation or omission in any of the required disclosures is brought by a prospective purchaser prior to the closing of the act of sale of his unit, two remedies are available, recovery of actual damages or an action for rescission of the agreement to purchase. After the act of sale, a unit owner's remedy is limited to an action for damages. An action based on a material misrepresentation or omission in any required disclosure documents prescribes in one year after sale of the unit or completion of the building containing the unit sufficient to permit its lawful occupancy and completion of all common elements and all

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94. Such itemized cost would include amounts to be paid pursuant to the terms of any management contract or recreational lease.

95. This requirement is applicable only to residential condominiums.

96. This requirement was intended by the authors to authorize an exception to the provisions of LA. R.S. 9:1125 (1974) requiring all individual unit owners in a condominium regime to contribute to the common expense of the regime in an amount determined by each individual unit's percentage obligation for common expenses as expressed in the declaration.

recreational facilities described in the disclosure documents, whichever occurs last.

### *Separate Taxation of Condominium Parcels*

Virtually every state statute, including the Louisiana Act, requires that condominium parcels be separately assessed and taxed. Section 1132 requires that condominium parcels be individually assessed for taxes and other state and local assessments and limits the effect of any lien securing the payment of taxes and assessments to the delinquent condominium parcel. The Act also prohibits the classification of any condominium property containing more than one unit or the common elements as a parcel for tax purposes. In the event a condominium parcel is sold at foreclosure sale for delinquent taxes or special assessments, Section 1133 of the Act provides for the continuing application of the declaration to purchasers of foreclosed units.

### *Zoning*

The Horizontal Property Act and most condominium statutes do not provide for the classification of the condominium form of ownership under local zoning laws. This omission has raised questions for zoning purposes as to whether zoning ordinances may treat condominiums differently from other structures dedicated to the same uses, solely because of differences in the forms of ownership.<sup>97</sup> Could local zoning requirements applicable to single family residences for example be applied to high-rise condominiums? To guard against misapplication of local zoning laws, Section 1135 of the Act directs that zoning laws and regulations be applied to individual condominiums with reference to the character and use of the structure, irrespective of their form of ownership.

### *Casualty Insurance*

Section 1134 of the Act requires the association to obtain insurance for condominium property against property loss or

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97. For example, Abington Township, Montgomery County, Pennsylvania, has taken the position that the formation of a condominium project constitutes, without more, a "subdivison" within the scope of their subdivision ordinance. The Louisiana Act makes it clear that subdivison and land development approval is not required merely by reason of the submission of immovable property to a condominium form of ownership.

damage by fire and other casualties and hazards in an amount not less than the appraised replacement cost of the condominium property. In addition, it must give written notice of the insurance, including details as to coverage, and any change or termination, to each unit owner. An appraisal of the condominium property to determine replacement cost is required upon completion of construction and at least once every three years thereafter. Although the association has the sole responsibility for obtaining the requisite amount of casualty insurance coverage, the Act does not require that the association be the named insured. If convenient, casualty insurance may be obtained by the association in the form of separate policies for each individual unit. If the required insurance is provided through a single overall policy in the name of the association, individual unit owners may obtain additional coverage through individual unit policies.

As a practical matter, the structural interdependence of units in most condominium developments will preclude the use of separate individual unit policies and require a single master policy written in the name of the association. If the entire condominium property is insured under a master policy, the declaration and policy should authorize the association to negotiate all loss adjustments with the insurer. To insure the availability of insurance proceeds to repair damaged improvements, the declaration should, pending a decision on whether or not to rebuild the damaged improvements, prohibit attachment of any part of the insurance proceeds by creditors of individual unit owners and should deny mortgagees of individual units the right to apply the insurance proceeds to mortgage debts.

#### *Potential Liabilities of Individual Unit Owners.*

An initial draft of the Act contained the following section:

All claims involving the common elements, not including the limited common elements, shall be brought only against the association and all judgments relating to such claims shall automatically become a common expense of all the unit owners. A judgment creditor shall have the right to require the association to assess the unit owners for such common expense and to timely record a lien for unpaid

common expenses in accordance with the procedures set forth in R.S. 9:1125.1 hereof against all unit owners delinquent in paying their percentage obligation for said common expense. A judgment creditor shall have the right personally to foreclose on any such lien against all delinquent unit owners provided, however, that the amount that a unit owner is liable for shall be limited to the sum equal to his percentage obligation for payment of common expenses multiplied by the amount of the judgment.<sup>98</sup>

The purpose of including this section was to limit a unit owner's personal liability for tortious conduct occurring in connection with use of the common elements. Absent such a provision, an individual unit owner, as a co-owner of the common elements, would have been solidarily liable for such tortious conduct connected with the common elements whether or not he exercised any effective control over the condition responsible for the damage. This section was deleted from the Act by the Law Institute Council. While recognizing the potential solidary liability of individual unit owners for both tortious conduct occurring in connection with the common elements<sup>99</sup> and for contractual obligations of the association, the Council thought that the burden should be placed on the association to purchase adequate liability insurance to insure against potential liability in tort and to provide efficient procedures for the assessment and collection of common expenses. Although the Act contains no provision specifically authorizing the association to purchase liability insurance, the authors of the Act concluded that the purchase of liability insurance would be an implied power of the association.

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98. Proposed Section 1124.6.

99. See *White v. Cox*, 17 Cal. App. 2d 824, 95 Cal. Rptr. 259 (Cal. App. 2d Dist. 1971); 4 R. POWELL, *REAL PROPERTY*, par. 633.24 (1965); ROHAN & RESKIN §10A.05 (2)(a); Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COL. L. REV. 987 (1963); Kerr, *Condominium—Statutory Implementation*, 38 ST. JOHN'S L. REV. 117 (1963).

In *White*, the court held a homeowners' association liable for damages incurred by one of the unit owners where the injured unit owner tripped and fell over a water sprinkler negligently maintained by the association. While the court's holding only affirmed the unit owner's right of action against the association, it implied that a cause of action might be maintainable against the other individual unit owners. In a separate opinion Judge Roth pointed out that the existence of the association did not immunize the individual unit owners from liability.



*Subdivision of Units in Commercial Condominiums*

Section 1124.3 of the Act provides that: the owner of a unit in a strictly commercial condominium may subdivide his unit and allocate his interests and assessments according to the subdivision. Subdivision of units in condominiums in which all of the individual units are not dedicated to commercial use is prohibited.<sup>100</sup> Individual unit owners in condominium regimes containing residential units should not be allowed to subdivide those units since a diminution in the size of the individual units could adversely affect the market value of neighboring residential units.

*Creation of Condominiums on Leased Land*

The Act, in the form as introduced to the legislature, contained a proposed Section 1126.1, which would have allowed creation of a condominium on leased land.<sup>101</sup> In many instances, land otherwise suitable for condominium development may be impossible to purchase and could be used for condominium development only in states permitting the construction of condominium improvements on leased land. However, most condominium statutes require that the immovable property underlying the condominium improvements be owned by the condominium unit owners as a common element and implies that such underlying land be completely owned by the unit owners.

The original draftsmen of the Act thought that creation of a condominium on leased land would be permissible if the Act did not contain the typical requirement<sup>102</sup> that any land underlying condominium improvements be held by the unit owners as a common element. Accordingly, no such requirement was placed in the original draft of Section 1123(8). Proposed Section 1126.1 was not intended to authorize condominiums generally on leased land but to require that leases

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100. LA. R.S. 9:1124.3 (1974).

101. Proposed section 1126.1: "A condominium regime may be created on leased land. A residential condominium may be created only on lands leased or subleased for a minimum term, including renewal options, of not less than sixty (60) years. A commercial condominium may be created only on land leased or subleased for a minimum term including renewal options, of not less than thirty (30) years."

102. See, e.g., §2(4)(a) of the Horizontal Property Act, Acts 1962, No. 494, §2 (repealed by Acts 1974, No. 502 §2).

of land on which condominiums were constructed have certain minimum terms.<sup>103</sup>

Proposed Section 1126.1 was deleted from the Act by the House Judiciary Committee. By removing that Section the Committee intended to prohibit the development of condominiums on leased land, but since a requirement that the underlying land be held as a common element was not reintroduced into the Act, the Act in its present form arguably permits the creation of a condominium regime on leased land without requiring any minimum lease term.

### *Conclusion*

The lack of previous significant condominium development in Louisiana can be traced principally to the shortcomings of the Horizontal Property Act. The new Condominium Act has corrected these deficiencies. It provides a developer with significantly greater flexibility in planning the development, through its authorization of stage developments. The Act additionally accomplishes other statutory goals considered important by its authors.<sup>104</sup> Hopefully, the availability of a condominium statute which accommodates all types of condominium development, lateral and high-rise, will eliminate many of the practical impediments to the use of the condominium form of ownership in Louisiana.

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103. A minimum of sixty years for residential condominiums and thirty years for commercial condominiums.

104. Some of these goals were: (1) equal treatment for zoning and subdivision requirements for all lateral developments, whether utilizing the condominium form of ownership or otherwise; (2) relaxation of the requirement for the completion of all units and common elements before conveyance of any units; (3) authorization of discretionary control by the condominium association of the question of repair of damages, condominium improvements following casualty loss and otherwise; (4) permissible use of condominium format for both high-rise and lateral developments; (5) authorization to "contract" a condominium development through the withdrawal of part of the improvements from the condominium regime.

## APPENDIX

LOUISIANA CONDOMINIUM ACT  
Act No. 502 of 1974, La. R.S. 9:1121-1142

## AN ACT

To amend and reenact Part II of Chapter 1 of Code Title I of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950 to contain Sections 1121 through 1142 relative to condominium property law to be known as the Louisiana Condominium Act; to repeal laws in conflict therewith; and to provide otherwise with respect thereto.

Be it enacted by the Legislature of Louisiana:

Section 1. Part II of Chapter 1 of Code Title I of Code Book II of Title 9 of the Louisiana Revised Statutes of 1950 is hereby amended and reenacted to contain Sections 1121 through 1142 to read as follows:

§1121. Short title

This part shall be known as the "Louisiana Condominium Act."

§1122. Application

This part shall apply only to property made subject to it by a condominium declaration duly executed and filed for registry.

§1123. Definitions

As used in this part:

(1) "Condominium" is the property regime under which portions of the immovable property are subject to individual ownership and the remainder thereof is owned in indivision by such individual owners.

(2) "Condominium property" means all interests in land, improvements thereon, and all servitudes and rights subjected to the condominium.

(3) "Unit" means a part of the condominium property subject to individual ownership. A unit may include air space only. A unit includes such accessory rights and obligations as are stipulated in the condominium declaration.

(4) "Unit designation" means the number, letter or combination thereof or any other official designation identifying a particular unit in the condominium declaration.

(5) "Common elements" means the portion of the condominium property not a part of the individual units. In every multi-unit building, the following shall be common elements:

(a) Foundations, main walls, roofs and all principal structural parts of the building;

(b) Installations of central services such as power, lights, gas, hot and cold water, heating and air conditioning.

(6) "Limited common elements" means those common elements reserved in the condominium declaration for the exclusive use of a certain unit or units.

(7) "Condominium parcel" means a unit together with the undivided interest in the common elements which is an inseparable component part of the unit.

(8) "Association of unit owners" or "association" means a corporation, trust, unincorporated association, partnership, or other legal entity, owned by or composed of the unit owners and through which the unit owners manage and regulate the condominium.

(9) "Common expenses" means:

(a) Expenses of administration, maintenance, repair or replacement of the common elements;

(b) Expenses declared to be common expenses by provisions of this part or by the condominium declaration or bylaws;

(c) Expenses agreed upon as common expenses by the unit owners.

(10) "Condominium declaration" means the instrument by which immovable property is made subject to this part.

§1124. Common elements; measure of undivided interest in common elements forming a component part of individual units

Each unit owner shall have an undivided interest in the common elements of the condominium determined on any reasonable basis and as expressed in the condominium declaration.

§1124.1 Permanent character of undivided interest in common elements

Except as provided in R.S. 9:1124.2, R.S. 9:1124.3 or in the event a portion of the condominium property is removed from the provisions of this part following a casualty loss or expropriation, the percentage of undivided interest of each unit owner in the common elements of the condominium as expressed in the condominium declaration shall be an inseparable component part of the ownership of the unit and shall not be altered without the consent of all the unit owners expressed in an amended condominium declaration duly filed for registry.

§1124.2. Reapportionment among unit owners of the percentage ownership interests in the common elements; percentages of sharing common expenses and common surplus; voting power in the association of unit owners

A. If on the date a condominium regime is created, it is the intention of the developer to construct additional units to be included within the condominium regime, the developer shall have the power to change, with respect to individual units in the condominium property, their respective percentage interests in the common elements, their percentage sharing of the common surplus and common expenses and their respective voting rights in the association of unit owners and to reallocate part of said interests to units actually constructed at a future date upon providing the following particulars in the condominium declaration:

(1) A statement that the respective percentage interests of an individual unit in the common elements, common surplus and common expenses and the proportionate voting rights of an individual unit in the association may be changed in the event the developer actually constructs additional units that are included within the condominium regime;

(2) The maximum and minimum number of units that may be constructed on the condominium property;

(3) A formula indicating the method or manner of determining a particular unit's percentage interest in the common elements, percentage sharing of surplus and common expenses and proportion of voting power in the association, dependent upon the total number of units finally constructed;

(4) The maximum time period, subsequent to the date of filing the condominium declaration, during which additional units may be built on the condominium property; and

(5) Any additional common elements or recreational facilities that may be constructed by the developer in the event additional units are constructed on the condominium property and specifically indicating what common ele-

ments and recreational facilities will be constructed if less than the maximum planned number of units are constructed on the condominium property.

§1124.3. Physical division of a unit and its percentage interest in the common elements in a commercial condominium project

The owner of a unit in a condominium in which no individual unit is intended for residential purposes shall have the power, if specifically so provided in the condominium declaration, to divide his unit into two or more separate units and to allocate on any reasonable basis his original percentage interest in the common elements, percentage sharing of the common surplus and common expense and proportionate voting power in the association among the subdivided units.

§1124.4. Nonpartition of common elements

The common elements shall remain undivided, and shall not be subject to partition, except with respect to that part or all of the condominium property that has been withdrawn from the provisions of this part.

§1124.5. Maintenance and repair of common elements

The necessary work of maintenance, repair and replacement of the common elements and the making of either additions or improvements thereto shall be carried out only as provided herein and in the condominium declaration and the bylaws. The association of unit owners shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the common elements accessible therefrom, or for making emergency repairs necessary to prevent damage to the common elements or to another unit or units. The condominium declaration or bylaws may contain such reasonable rules and regulations for the administration of this provision required for the privacy of the units and the protection of the units and their contents from theft or other loss or damage.

§1125. Common expenses and common surplus; in general

The common surplus may be distributed among and the common expenses shall be the obligation of the unit owners in the proportion or percentages of sharing common surplus and common expenses provided in the condominium declaration. This proportion or percentage shall have a permanent character and shall not be altered unless altered pursuant to the provisions of R.S. 9:1124.2 or 9:1124.3. A unit owner shall be personally liable for all sums assessed for his share of the common expenses.

§1125.1. Lien for common expenses

A. The association shall have a lien on a condominium parcel for all unpaid sums assessed by the association for its share of common expenses, and interest thereon at the rate provided in the condominium declaration, bylaws, or in the absence thereof, at the legal interest rate. If authorized by the condominium declaration or by-laws, this lien shall also secure reasonable attorney's fees incurred by the association incident to the collection of the assessment or enforcement of the lien. The claim of lien shall be signed and verified by affidavit of an officer or agent of the association and shall be filed for registry in the mortgage records in the parish in which the condominium parcel is located not more than ninety days after the date on which the assessment for common expenses becomes delinquent. The claim of lien shall include a description of the condominium parcel, the name of its record owner, the amount of delinquent common expenses and the date on which said expenses became delinquent. The association shall, at least seven days

prior to the filing for registry of the lien, serve upon the delinquent unit owner a sworn detailed statement of its claim for delinquent common expenses, which service shall be effected by registered mail or personal service. The lien for common expenses shall secure only assessments for common expenses which are due and payable when the claim of lien is filed for registry.

B. A claim of lien recorded as set forth in Subsection A of this section shall preserve the lien against the condominium parcel for a period of one year from the date of recordation. The effect of recordation shall cease and the lien preserved by this recordation shall preempt unless a suit on the claim of lien is filed by the association in a civil action in any court of competent jurisdiction in the parish in which the condominium parcel is located within one year from the date of the recordation of the inscription of the lien.

C. A purchaser of a condominium parcel at a judicial sale shall not be liable for the share of common expenses chargeable to the former unit owner of the parcel that became due prior to the sale. The unpaid common expenses or assessments shall be deemed a general common expense collectible from all the unit owners including the purchaser.

D. A unit owner, mortgagee or purchaser of a unit shall have the right to require from the association a certificate showing the amount of unpaid assessments with respect to the unit. The association may not enforce against a purchaser or mortgagee who relies on the certificate any indebtedness as of that date in excess of the amount shown thereon.

#### §1125.2. Waiver of use of common elements; abandonment

A unit owner may not relieve himself from liability for his common expenses by waiver of the use or the enjoyment of any of the common elements or by abandonment of his unit. Subject to terms and conditions as may be specified in the condominium declaration or bylaws, any unit owner may, by conveying his condominium parcel to the association on behalf of all other unit owners, relieve himself from common expenses thereafter accruing.

#### §1126. Creation of condominium regime; condominium declaration; recordation

A condominium regime is established by the execution of a condominium declaration. The condominium declaration and any instrument by which the condominium regime is altered or terminated shall be effective against third parties when filed for registry in the conveyance records in the parish in which the condominium property is located.

##### §1126.1. Character of condominium regime

A single condominium regime may contain noncontiguous lands and one or more single unit or multiunit buildings.

##### §1126.2. Contents of the condominium declaration

A. The condominium declaration shall contain or provide for the following matters:

- (1) A statement submitting the property to a condominium regime;
- (2) A plat of survey of the land and a graphic description of the proposed or existing improvements and a plat plan thereof in sufficient detail to identify the common elements and each unit and their relative location and approximate dimensions as certified by a registered architect, civil engineer or land surveyor;
- (3) The name by which the condominium is to be identified, which name

shall include the word "condominium," or be followed by the words "a condominium";

- (4) A legal description of the land;
- (5) An identification of each unit by letter, name or number or combination thereof, so that no unit bears the same designation as any other unit;
- (6) The undivided shares, stated as percentages or fractions, in the common elements which are a component part of each of the units;
- (7) The proportions or percentages and the manner of sharing common expenses and owning common surplus;
- (8) The proportionate voting rights of the unit owners in the association;
- (9) The method of the amendment of the condominium declaration;
- (10) Bylaws;
- (11) All matters required by R.S. 9:1124.2 and 9:1124.3 in the event the developer or an individual unit owner intends to reserve the right to change, with respect to a unit or units, its percentage interest in the common elements, percentage of sharing of common surplus and common expense and proportionate voting power in the association of unit owners;
- (12) The reconstruction or repair of all or part of the condominium property after casualty, the disposition of the proceeds of casualty insurance required by R.S. 9:1134 among owners of destroyed or damaged units or to the owners of any common elements destroyed; and
- (13) The name of the association and the type of legal entity under which it is organized. If the association is not incorporated, the name and residence address of the person designated as agent to receive service of process upon the association. The agent must be a resident of the state of Louisiana.

B. The condominium declaration may contain other provisions not inconsistent with this section such as those relating to the withdrawal of damaged or destroyed units from the condominium regime, the reallocation of the percentage interest in the common elements of the units so withdrawn to the unit owners of the units remaining within the condominium regime, and the basis of the reallocation, and the release of any unit or units so withdrawn from their respective obligations for payment of their percentage share of the common expenses of the condominium property, the purpose or purposes for which the condominium property and units are intended, procedures whereby a unit owner may convey his unit to the condominium association and thereby release himself from any further obligation for the common expenses of the condominium, designation of limited common elements, responsibility for the maintenance and repair of units, use restrictions, and limitations upon conveyance, sale, leasing, ownership and occupancy of units.

C. Whenever additional immovable property is subjected to the condominium regime, an amendment to the condominium declaration shall be executed in accordance with subsections A and B of this section and filed for registry in the conveyance records in the parish in which the condominium is located.

§1127. Unit deeds or other acts translative of title; contents; plans

An act effecting a transfer of a unit shall include the following:

- (1) A statement that the act of transfer is of a condominium unit;
- (2) A description of the land or a reference to the condominium declaration and plat of survey attached thereto; and
- (3) The designation of the unit in the condominium declaration and any other data necessary for its proper identification.

§1127.1. Inseparable component parts of unit ownership

Ownership of a unit includes the following:

- (1) An undivided percentage interest in the common elements;
- (2) The exclusive right to use certain limited common elements as may be provided in the condominium declaration;
- (3) An obligation to pay a portion of the common expenses of the association;
- (4) An undivided share in a common surplus;
- (5) All rights, privileges and obligations of the prior owner in the association; and
- (6) Such other interests as may be provided in this part or in the condominium declaration.

§1128. Bylaws; in general

The administration and operation of the condominium shall be governed by the bylaws set forth in the condominium declaration. Modifications or amendments to the bylaws shall be valid only when filed for registry.

§1128.1 Contents of bylaws

A. The by-laws shall provide for the following:

- (1) The form and manner of administration of the condominium;
- (2) The procedure for collecting from the unit owners their respective shares of the common expenses assessed;
- (3) The method of adopting and amending administrative rules and regulations concerning the details of the operation and use of the condominium property;
- (4) A procedure for submitting disputes among unit owners arising from the administration of the condominium property to arbitration; and
- (5) The establishment of reserves to provide for maintenance, improvements, replacements, working capital, bad debts, obsolescence and other appropriate purposes.

B. The bylaws may include other provisions deemed necessary or desirable for the administration of the condominium property consistent with this part.

§1129. Compliance with condominium declaration, bylaws and administrative rules and regulations

The condominium declaration and bylaws shall have the force of law between the individual unit owners. The remedies for breach of the obligation imposed on unit owners shall be damages, injunctions or such other remedies provided by law.

§1130. Association of unit owners

The condominium shall be managed by an association composed of the unit owners. A unit owner, except as an agent of the association, shall not have authority to act for the association.

§1130.1. Powers of the association

A. The association shall have the capacity to contract and to sue and be sued as to any cause of action involving the common elements or arising out of the enforcement of the condominium declaration or bylaws. If the association of unit owners is formed as an unincorporated association, the condominium declaration shall designate an agent for service of process. Except as provided in R.S. 9:1131 C, service of process upon the association shall not constitute service of process upon a unit owner.

B. The association shall have the power, unless expressly prohibited by



the condominium declaration or bylaws, to own, transfer, encumber, lease or sublease or otherwise deal with units transferred to it or purchased by it.

C. The association shall have the power to make and collect assessments for common expenses and to lease, maintain, repair and replace the common elements.

D. The association shall have the power to appoint a manager or managing agent to administer and maintain the condominium.

§1130.2. Accounting records of the association

The association shall maintain accounting records according to good accounting practices which shall be available for inspection by a unit owner at reasonable times. The records shall include:

(1) An itemized record of all receipts and expenditures; and

(2) A separate account for each unit which shall indicate the name and address of the unit owner, the amount of each assessment for common expenses, the date on which the assessment becomes due, amounts paid on the account and any balance due.

§1130.3. Voting interests in the association

Each unit owner shall have a voting interest in the association in the proportion or percentage set forth in the condominium declaration. Except as provided in R.S. 9:1124.2 and 9:1124.3, the voting interest shall be an inseparable part of the ownership of the unit.

§1131. Liens

A. Subsequent to the filing for registry of the condominium declaration, and at all times during which the condominium property remains subject to this part, no liens of any nature shall arise or be created against the entire condominium property or the common elements as a whole. During this period a lien may arise or be created only against the individual condominium parcels in the same manner and under the same conditions as a lien may arise or be created upon or against any other separate parcel of immovable property subject to individual ownership.

B. Labor performed or materials furnished to a unit shall not be the basis for the filing of a claim of lien pursuant to R.S. 9:4801 through 9:4820, unless the unit owner expressly requested or consented to the same. Labor performed or materials furnished to the association shall not be the basis for a lien on the common elements as a whole; however, if the performance of labor or furnishing of materials is expressly authorized by the association, the labor or materials shall be deemed to be performed or furnished with the express consent of each unit owner and shall be the basis for the filing of a claim of lien against each condominium parcel in the condominium. A single claim of lien filed against the association shall be deemed to be a separate claim of lien against each individual unit, but any such claim of lien against an individual condominium parcel shall be limited in amount to the total charge for the labor performed or materials furnished multiplied by the percentage obligation of the owner of the condominium parcel for common expenses. Each individual owner may thereafter relieve his condominium parcel from any such lien by payment of the proportionate amount of the claim of lien attributable to his parcel. Upon such payment it shall be the duty of the lien creditor to release the lien against such condominium parcel.

C. Service or delivery of notices and papers required under R.S. 9:4801 through 9:4820, on unit owners for or incident to the perfection or enforcement of liens arising from labor performed or materials furnished to the

association, may be effected by service on or delivery to an officer of the association.

§1132. Separate taxation

All kinds of taxes and special assessments authorized by law shall be assessed against each individual condominium parcel. A multiunit building, the condominium property as a whole, and any of the common elements shall not be deemed to be an individual parcel for tax purposes. Each unit shall be deemed to contain its percentage of undivided interest in the common elements and computation of taxes and special assessments against a unit shall include the percentage of undivided interest. The taxes and special assessments levied against a condominium parcel shall constitute a basis for claiming a lien only upon the individual condominium parcel assessed. There shall be no forfeiture or sale of a multiunit building or the common elements as a whole for delinquent taxes or assessments on individual units.

§1133. Survival of terms and conditions of condominium declaration and bylaws after a sale for delinquent taxes

A condominium parcel which has been sold for taxes or special assessments shall continue to be subject to the condominium declaration and bylaws of the condominium of which it forms a part subsequent to the issuance of a tax deed.

§1134. Insurance

The association shall obtain insurance for the condominium property against property loss or damage by fire and other casualties and hazards in an amount not less than the appraised replacement cost of the condominium property and shall give written notice of the insurance, including details as to the coverage thereof, and of any change therein or termination thereof, to each unit owner. An appraisal of the condominium property to determine the minimum insurance coverage required by this section shall be performed initially upon completion of construction of the condominium improvements and at least once every three years thereafter. The insurance may be written in the name of the association for the benefit of each unit owner and a unit owner's mortgagee, and if so written, the condominium declaration shall specify the percentage coverage of each unit. Each unit owner and his mortgagee, if any, shall be a beneficiary even though not named. The association shall have the right to charge the cost of the insurance to the individual unit owners on the basis of the comparative replacement costs or comparative risks insured of the individual units.

§1135. Zoning and building restrictions

Laws, ordinances, and regulations relating to zoning and building restrictions shall be construed and applied to condominium property in the same way as other immovable property.

§1136. Withdrawal of property from condominium regime.

A. The condominium property or a part thereof may be withdrawn from the provisions of this part by the vote of the percentage of all or part of the unit owners as provided in the condominium declaration. In order to be effective against lien creditors of units included within the part being withdrawn, their consent is required.

B. Upon withdrawal of the condominium property or a part thereof from the provisions of this part, the part so withdrawn shall be deemed to be owned in indivision by the unit owners in the withdrawn premises. The percentage of undivided ownership of a unit owner in the withdrawn property shall be equal to his former percentage of ownership in the common

elements divided by the total former percentages of ownership in such common elements of all withdrawing unit owners. Liens upon individual condominium parcels withdrawn shall, following their withdrawal, be upon the respective undivided shares of the withdrawing owners in the property withdrawn.

Condominium property withdrawn from the provisions of this part shall be subject to partition by action of a unit owner owning a portion of the withdrawn property. The proceeds from the sale of withdrawn property shall be paid to a unit owner after all claims secured by liens on his share of the withdrawn property have been satisfied.

§1137. Certain work prohibited

A unit owner shall not do anything that would jeopardize the soundness or safety of the condominium property, reduce its value or impair any servitude in its favor.

§1138. Contracts for management of the condominium property

A contract for the maintenance, management or operation of the condominium property entered into by the association while the association is controlled by the developer of the condominium shall be subject to cancellation by the association by vote of not less than seventy percent of the individual owners computed with reference to their respective percentage obligations for common expenses within a one year period immediately following the date on which individual unit owners other than the developer assume or acquire control of the association. If within the one year period, seventy-five percent of the individual unit owners in residence in a single multiunit building, computed with reference to their respective percentage obligations for common expenses, vote to cancel the management contract as to their building, the contract shall be cancelled as to that building. The cancellation shall not affect management contracts as to commonly owned facilities.

§1139. Purchasers' deposits

A. Whenever a purchaser of a condominium unit makes a deposit of a sum of money in connection with a contract to sell a condominium unit with the seller prior to the commencement of the construction of the building in which the unit is to be located, the seller shall segregate money so deposited in a special account and he shall not commingle it with his other funds prior to the commencement of the construction of the building.

B. After commencement of construction of the building in which the unit to be sold is located, and only if the contract to sell provides, the seller may withdraw the deposited money from the segregated account and may expend it along with money deposited after the commencement of the construction, in the construction and development of any portion of the condominium, except that no part of the deposited money may be used by a seller for salaries, commissions, or expenses of salesmen or for advertising. When the parties agree that the seller has the right to expend money deposited for construction and development of the condominium, there shall be clearly printed or stamped in bold face capital type on the face of the contract to sell and immediately above the place for signature of the purchaser the following legend:

**A DEPOSIT MADE PURSUANT TO THIS AGREEMENT MAY BE USED FOR CONSTRUCTION AND DEVELOPMENT BY THE SELLER. IF THIS UNIT IS NOT COMPLETED FOR ANY REASON, PART OR ALL OF A DEPOSIT MADE UNDER THIS AGREEMENT MAY BE LOST.**

C. A failure of a seller to comply fully with Subsections A and B of this section shall render the contract to sell voidable at the option of the purchaser, and money deposited by him shall be refunded with interest at the highest rate then being paid on savings accounts, not inclusive of certificates of deposit, by savings and loan associations in the area in which the condominium is located.

§1140. Full disclosure prior to sale of unit; publication of false or misleading information

A. Prior to each sale or execution of a contract to sell a condominium unit, the seller must make full disclosure of, and provide to the other party to the agreement the following information:

- (1) Copy of the condominium declaration;
- (2) Copy of articles of incorporation or other documents creating the association;
- (3) Copy of the bylaws of the association;
- (4) Copy of any predial lease or sublease relating to the condominium property;
- (5) A written statement indicating whether the developer has entered into or intends to enter into a contract for the management of the condominium property. With respect to any such contract, this statement shall specify in detail, the services to be rendered, the amount or estimate of the costs to be incurred thereunder and the duration thereof, including any renewal provisions, and any relationship, whether direct or indirect, between the seller and the person to perform such management services;
- (6) Copy of a projected operating budget for the condominium property, including full details of the estimated monthly charges for maintenance or management of the condominium, monthly charges for the use of any recreational facilities, and of insurance coverage on the condominium and the estimated premiums therefor;
- (7) If the unit offered for sale is intended for residential use, an information brochure which shall include a description of any recreational and parking facilities, together with a statement indicating which of those will be owned by the unit owners as such and which facilities will be owned by other persons;
- (8) A diagram or other illustration of the floor plan of the unit; and
- (9) A written statement indicating whether any units remaining unsold subsequent to the filing of the condominium declaration will be exempted from the payment of all or a portion of the common expenses normally accruing to said unsold units and, if so, the period of time of the exemption.

B. Subsequent to the execution of a contract to sell a unit no change or amendment may be made in any of the items required to be furnished to a prospective purchaser pursuant to Subsection A of this section which materially affects the rights of such purchaser or the value of the unit without obtaining the written approval of the purchaser. If all the information required to be disclosed in Subsection A of this section is not disclosed to a prospective purchaser by the date of the execution of the contract to sell, then the contract to sell shall provide in writing that it is voidable at the option of the purchaser at any time within fifteen days immediately following the date on which the last item of information required by Subsection A of this section is disclosed to the purchaser, or prior to the date of closing the act of transfer, whichever is earlier. A refund of money deposited on a contract to sell voided by a purchaser pursuant to this subsection shall

include interest at the highest rate being paid on savings accounts, not inclusive of certificates of deposit, by savings and loan associations in the area in which the condominium property is located.

C. Any person who reasonably relies on a materially false, or materially misleading statement in information provided by a seller or in information required to be disclosed in Subsection A of this section and deposits money or other things of value toward the purchase of a condominium unit shall have a cause of action to rescind the contract to sell or collect damages from the seller prior to the closing of the act of transfer of the unit. After the closing of the act of transfer, the purchaser shall have a cause of action against the seller for damages for one year subsequent to the date upon which the last of the events described in the following paragraphs occur:

(1) The closing of the act of transfer of the unit; or

(2) Sufficient completion by the seller of construction of the building containing the unit to allow lawful occupancy of the unit and completion of all common elements and all recreational facilities, whether or not common elements, which the seller is obligated to complete or provide under the contract to purchase the unit or which the seller has represented that he will provide in a sales brochure or similar material.

A cause of action created or recognized under this section shall prescribe five years after the date of closing of the act of transfer.

§1141. Improvements; costs

A. If fifty percent or more, but less than seventy-five percent, of the unit owners based on their percentage obligation for common expenses agree to make an improvement to the common elements, the cost of such improvement shall be borne solely by the owners so agreeing.

B. Seventy-five percent or more of the unit owners based on their percentage obligation for common expenses may agree to make an improvement to the common elements and assess the cost thereof to all unit owners as a common expense. If the improvement shall cost in excess of ten percent of the then appraised value of the condominium the improvement may be made only on the affirmative vote of not less than ninety percent of the unit owners based on their percentage obligation for common expenses.

§1142. Effect on existing horizontal property regimes

The provisions of this part shall be applicable from and after the effective date of this part to existing horizontal property regimes formed pursuant to the provisions of the Horizontal Property Act. This part shall not affect or impair any right that is guaranteed or protected by the constitution of this state or the United States nor shall this part be construed to impair or affect any act done or offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred, under the Horizontal Property Act. This part shall not be construed to impair or cast a cloud upon the titles to units of any horizontal property regime formed prior to the effective date of this part, notwithstanding any conflicts which may exist between this part and the former Horizontal Property Act.

Section 2. The Horizontal Property Act as enacted by Act No. 494 of 1962 and as amended, contained in the Louisiana Revised Statutes of 1950 as R.S. 9:1121 through 1142, inclusive, is hereby repealed.

Section 3. If any provision of this Act or its application to any person or circumstances is held invalid, the remainder of this Act or the application of its provisions to other persons or circumstances is not affected.

1975]

*LOUISIANA CONDOMINIUM ACT*

1247

Approved by the Governor: July 12, 1974.

A true copy:

WADE O. MARTIN, JR.

Secretary of State.

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