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# MICHIGAN LAW REVIEW

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## CONDOMINIUM—HOME OWNERSHIP FOR MEGALOPOLIS†

*John E. Cribbet\**

THE past year, 1962, witnessed no let up in the cold war between East and West. In the race for the conquest of space, in the battle of national rates of economic growth, in the propaganda struggle to fix the responsibility for nuclear testing, in the trial of strength over Cuba, and in countless other areas, each bloc leader continued to measure achievement against the rival's successes or defeats. The cold war is a deadly business and produces little to warm the cockles of a man's heart, but, if only the threat of nuclear destruction *could* be averted, there is something of fascination and, indeed, high-spirited adventure in this clash between powerful societies founded on different economic, political, social, and religious theories. To the lawyer (or layman for that matter) interested in the institution of property, the struggle for superiority has an added fillip—the opportunity to see basic principle tested in times of great stress and change. The worldwide population explosion, the mass migration to urban and suburban areas, and the accelerating rate of technical advance call for a legal response to the needs of the new society without abandoning the heritage of the past. This broad generality becomes concrete when we look at the specific problem of home ownership in the United States of America and in the Union of the Soviet Socialist

† "Some two thousand years before the first European settlers landed on the shores of the James River, Massachusetts Bay, and Manhattan Island, a group of ancient people, planning a new city-state in the Peloponnesus in Greece, called it *Megalopolis*, for they dreamed of a great future for it and hoped it would become the largest of the Greek cities. Their hopes did not materialize. *Megalopolis* still appears on modern maps of the Peloponnesus but it is just a small town nestling in a small river basin. Through the centuries the word *Megalopolis* has been used in many senses by various people, and it has even found its way into Webster's dictionary, which defines it as 'a very large city.' Its use, however, has not become so common that it could not be applied in a new sense, as a geographical place name for the unique cluster of metropolitan areas of the Northeastern seaboard of the United States. There, if anywhere in our times, the dream of those ancient Greeks has come true." GOTTMANN, *MEGALOPOLIS* 4 (1961).

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Republics. Here is a facet of the domestic economy that touches the quick of every individual. A society<sup>1</sup> which fails to provide satisfactory housing for its citizens has stubbed its toe at the threshold of the good life.

Until August 1962, the prime example of private property in Russia was the individual home. It resisted collectivization and flourished, even under Stalin, primarily because of the acute housing shortage. By 1960, thirty-one percent of all living space in Soviet cities was privately owned, although built on land rented from the state.<sup>2</sup> Many of these homes were built by factory managers and government officials with construction loans obtained from the state bank. Due to shortage of building materials, to embezzling public servants who invested hoarded rubles in private houses, and to Chairman Khrushchev's propaganda that the imminent shift from socialism to communism would make privately-owned houses unnecessary, the August decree<sup>3</sup> banned all future private construction while allowing the existing private houses to continue as before. The new thrust is to be toward cooperatives, similar to the big apartment houses that already dot the Moscow landscape. Whether Khrushchev's decree runs so counter to basic human drives for "my own home" that it will founder in the relatively more relaxed atmosphere of present-day Russia remains to be seen.

It is clear, however, that the Western yearning to have an individual castle for everyman's home is running into a barrier that is just as real, though stemming from a different source. President Kennedy has issued no decree against private home building, but choice construction sites have all but disappeared in megalopolis, and suburban sprawl has added to the cost and inconvenience of the traditional house and lot. Unless there is a major reversal in present trends, people are likely to be "forced" back into the central city or into the close-lying peripheral areas, at an accelerating rate, in order to avoid prohibitive commuting distances and to

<sup>1</sup> I am not using "society" as synonymous with "government," although the latter must play a role if the normal functions of the economic system leave large numbers of people beyond the pale of decent housing.

<sup>2</sup> *Time*, Aug. 17, 1962, p. 21, col. 3. For an interesting statement of how the Soviet Government views its own housing position vis-à-vis the West, see Sosnovy, *Book Review*, 22 *SLAVIC REVIEW* 169 (1963).

<sup>3</sup> *State and Law*, Current Digest of the Soviet Press No. 41, Nov. 7, 1962, p. 23. Actually, the words "August decree" are misleading. Rather, a series of decrees passed in several of the republics culminated in the stated ban on private construction.

reduce the cost of dwelling units.<sup>4</sup> This inevitably means apartment living of some sort, which has traditionally required the head of the family to be a tenant rather than a homeowner. Even in a cooperative apartment he is not technically the owner, although he has many of the indicia of ownership. This tenant half of the landlord-tenant relationship, whatever its considerable advantages, runs counter to a deep strain in the American psyche. Long ago, Mr. Justice Story commented on this trait as it related to agricultural life in America: "One of the most remarkable circumstances in our colonial history is the almost total absence of leasehold estates. . . . The philosophical mind can scarcely fail to trace the intimate connexion which naturally subsists between the general equality of the apportionment of property among the mass of a nation, and the popular form of its government."<sup>5</sup> Admittedly, this drive for individual ownership is less in the city than in the rural areas, and less in the atomic age than in the colonial era, but millions of American renters still regard their fate as a temporary one and long for the full benefits of ownership *cum* mortgage.

If the preceding analysis is correct, it would seem that the law should provide some format that would allow private ownership of the individual unit involved in communal living. In fact, this format is now available under the esoteric heading of condominium, *i.e.*, "individual ownership in fee simple of a one-family unit in a multifamily structure coupled with ownership of an undivided interest in the land and in all other parts of the structure held in common with all of the other owners of one-family units."<sup>6</sup>

<sup>4</sup> The alternative is increased decentralization of the city so that the job moves to the man and so that manageable-sized dwelling areas can grow up around the smaller core. I do not propose to debate the desirability or inevitability of these alternatives, since both of them will probably occur at the same time. The current trend toward apartment dwelling is quite apparent, however. "More and more American families are moving into apartment houses, and the dramatic shift in their mode of living is having a profound effect in construction and real estate. . . . Realty men attending the annual convention of the National Association of Real Estate Boards discussed today the growing public preference for apartment living. . . . The foremost reason for the increase in apartment living, the realty men agreed, was the high cost of land in and around the nation's large cities. This has made the cost of buying land and creating single-family homes prohibitive to builders in many areas." N.Y. Times, Nov. 14, 1962, p. 63, col. 5.

<sup>5</sup> 1 STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 159, 166 (1833).

<sup>6</sup> RAMSEY, CONDOMINIUM: THE NEW LOOK IN CO-OPS 3 (pamphlet published by Chicago Title & Trust Co., 1961). For a more scholarly definition which should be sufficient to confuse the engineers, see BLACK, LAW DICTIONARY 391 (3d ed. 1933): "In the civil law. Co-ownerships or limited ownerships, such as *emphyteusis*, *superficies*, *pignus*, *hypotheca*, *ususfructus*, *usus*, and *habitatio*. These were more than mere *jura in*

It is the purpose of this article to explore this old-new concept and evaluate its utility for modern society.

### I. THE HISTORY OF CONDOMINIUM

It is tempting to remark that while the Russians have moved away from what little private property their system provides, the Americans have developed a legal technique which allows private ownership in the midst of mass living, and then add, "It could only happen in America."<sup>7</sup> That it could happen anywhere, however, is evidenced by the fact that condominium had its genesis in Europe during the Middle Ages, has had a marked renaissance there since World War II, has flourished in Puerto Rico in recent years, and has belatedly burst upon the scene in the United States, following the Housing Act of 1961 which extended FHA mortgage insurance to condominium projects.<sup>8</sup> Some writers seem to think that the concept found its origin in ancient Rome,<sup>9</sup> but this seems doubtful since classical Roman law followed the principle *superficies solo cedit*—whatever is attached to the land forms part of it—and did not visualize separate ownership of floors in a dwelling. During the Middle Ages, however, the ownership of floors of houses, and even separate rooms, appears to have been common in various parts of Europe. There is recorded history of such ownership (*Geschosseigentum* or *Stockwerkseigentum*) back to the twelfth century in German cities, and similar evidence exists as to the late Middle Ages in France and Switzerland.<sup>10</sup>

Apparently, the splitting up of ownership of housing units became excessive, and, since there were no clear rules as to repair and maintenance of the structure, disputes became common. These difficulties, plus the reception of Roman law principles, so

*re aliend*, being portion of the *dominium* itself, although they are commonly distinguished from the *dominium* strictly so called."

<sup>7</sup> This recalls the two women in New York City who watched the parade for Lord Mayor Robert Briscoe, the Jewish mayor of Dublin, and then commented, "It could only happen in America."

<sup>8</sup> Housing Act of 1961, 75 Stat. 160, 12 U.S.C. § 1715y (Supp. III, 1961).

<sup>9</sup> "[T]he concept of property ownership to which it pertains is literally as old as the hills—the hills of ancient Rome where it is said to have had its beginning." RAMSEY, *op. cit. supra* note 6, at 3.

<sup>10</sup> For a detailed treatment of the historical background, see Leyser, *The Ownership of Flats—A Comparative Study*, 7 INT'L & COMP. L.Q. 31, 33-37 (1958). For a presentation of the French law on fee ownership of apartments and an explanation of why this is blocked in Louisiana, see Comment, *Individual Ownership of Apartments in Louisiana*, 19 LA. L. REV. 668 (1959).

jeopardized the whole concept that some of the codifications by German states either failed to recognize this form of ownership or even prohibited outright the ownership of parts of buildings. The Code Napoleon, however, recognized the separate ownership of floors of a building, in line with established customary law, as a special type of co-ownership of an immovable. Through the years it became common to define the rights of the various floor or flat owners by special agreement, the *règlement de copropriété*, which prevented some of the earlier disputes. However, doubtful points remained, including the fact that the special agreement did not bind successors in title. Legislation in 1938, amended in 1939 and 1943, cured most of the defects.<sup>11</sup> The purpose of the legislation, as described by a French property lawyer, was three-fold:

“First, it was to clarify the rights and obligations of the owners of flats with regard to the common parts of the buildings.

“Second, it was to create an organization of the various flat owners in a building by (a) giving binding force to the *règlements de copropriété*, and (b) giving a majority of flat owners the right to make decisions binding on all.

“Third, it was to provide for the appointment of a person (the syndic) authorized to represent the flat owners and to contract on their behalf.”<sup>12</sup>

West Germany now allows ownership of individual flats in a building, as do most other European countries. Switzerland is one of the few continental states which has no legislation enabling an individual to own a flat, and changes in the law are contemplated even there.

“Although the creation of ownership rights in individual flats has thus now been made possible in most Continental countries, the legislation is by no means uniform. Not only are there differences in the concept of the right itself, but there are interesting variations in other aspects, such as the organisation and representation of the community of flat owners in a building, the binding force of statutory provisions,

<sup>11</sup> Law of June 28, 1938, [1938] Collection des Lois 654, as amended by order (Décret Loi) of Nov. 29, 1939, [1939] Collection des Lois 1408, and Law of Feb. 4, 1943, [1943] Collection des Lois 70 (Fr.).

<sup>12</sup> PLANIOL & RIPERT, 3 TRAITÉ PRATIQUE DE DROIT CIVIL FRANÇAIS 314 (Picard 2d ed. 1952).

and the role of the courts in the administration of flat ownership schemes."<sup>13</sup>

In contrast to the Roman law, the common law developed no aversion to separate floor or room ownership, and hence no special legislation is required to allow the creation of condominiums in countries whose legal system is based on English law. At first blush this seems odd, since the concept comes from the continent of Europe, but it is another example of the flexibility and capacity for growth inherent in the common law. Ownership rights in a portion of a building are mentioned in *Coke on Littleton*, and such "superimposed freeholds" have existed in England for a long period of time.<sup>14</sup> Many of the American states have long recognized the legality of conveying a freehold estate in a portion of a building.<sup>15</sup> The difficulty is that the interest created in the grantee may be a defeasible fee simple which will determine with the destruction of the building, the title reverting to the owner of the soil.<sup>16</sup> This falls short of the requirements desired by the purchaser of a home. Although the common law is broad enough to allow separate ownership of individual units in a building, it is only recently that much interest has developed in the condominium concept as a large-scale solution to housing shortages. The immediate impetus in this country has come, not from Europe, but from Puerto Rico, where *condominios*, as the buildings themselves are called, enjoy a wide popularity.

Three factors are apparent in the Puerto Rican picture. First, the island is faced with a major housing shortage that appears in a particularly acute form because of the expanding population and the lack of good building sites. Second, the average Puerto Rican has a great desire for home ownership which is certain to be thwarted if he has to wait for an individual house and lot. Third, the cost of construction and the monthly payments on a mortgage have proved to be less in a cooperative venture of the

<sup>13</sup> Leyser, *supra* note 10, at 37.

<sup>14</sup> BUCKLAND & MCNAIR, *ROMAN LAW AND COMMON LAW* 78 (1936). The authors mention specifically New Square, Lincoln's Inn, where the houses consist of layers of freehold sold as such centuries ago.

<sup>15</sup> *Thompson v. McKay*, 41 Cal. 221 (1871); *McConnel v. Kibbe*, 43 Ill. 12 (1867); *Townes v. Cox*, 162 Tenn. 624, 39 S.W.2d 749 (1931). See also Ball, *Division into Horizontal Strata of the Landscape Above the Surface*, 39 YALE L.J. 616 (1930).

<sup>16</sup> *Weaver v. Osborne*, 154 Iowa 10, 134 N.W. 103 (1912); *Hahn v. Baker Lodge*, No. 47, 21 Ore. 30, 27 Pac. 166 (1891); Bell, *Air Rights*, 23 ILL. L. REV. 251, 257 (1928). For a contrary English view, see GEORGE, *THE SALE OF FLATS* 29 (2d ed. 1959); Watts, *The Conveyance of a Flat—The Question of Defeasibility*, 1 AUSTR. L.J. 363 (1928).

condominium type than in any other form of comparable housing. The legality of this plan of ownership was first established in 1951,<sup>17</sup> and the present "Horizontal Property Act" was approved June 25, 1958.<sup>18</sup> The latter act includes virtually all of the provisions of the former, but it goes into much greater detail and has become the model for much of the current legislation being enacted in the various states. Several aspects of the act will be discussed later in connection with proposed legislation, but it should be mentioned here that its provisions apply only to those buildings where the parties expressly declare by a public deed, recorded in the Registry of Property, that they intend to submit the structure to the "Horizontal Property Regime."<sup>19</sup> Thus, while it may be possible to have split-unit ownership outside the act, a deliberate decision is required in order to receive the advantages provided by legislation. This is significant because, in discussion of the relative advantages of condominium and cooperative apartments, or other legal devices, it will be demonstrated that the former has problems all of its own. Even though this new tool is not a panacea, there seems to be no reason not to make the benefits available by statute for those who elect to follow it.

This brief historical sketch brings us to the present and the sudden surge of American interest in condominium. The same factors that account for its Puerto Rican popularity are undoubtedly at work in the states. Modern megalopolis has caused a land shortage formerly found only in small countries, and California, Illinois, Michigan, and New York, no less than Puerto Rico, may need new legal devices to satisfy old human needs. The current interest has been sparked, however, by the Housing Act of 1961, which promised to provide the necessary financing, and by the willingness of title companies to insure the title, so long as correct procedures are followed in setting up the condominium. The role of the title insurance companies has been particularly interesting since they have been devoting considerable space in their house organs to the new device, and the members of their legal staffs have been writing articles and making speeches on the subject. For example, the September 1962 issue of *Lawyers Title News* has a handsome picture of the leaning tower of Pisa on the cover with the following marginal comment:

<sup>17</sup> P.R. LAWS ANN. tit. 31, §§ 1275-93k (1955 & Supp. 1962).

<sup>18</sup> P.R. LAWS ANN. tit. 31, § 1291 (Supp. 1962).

<sup>19</sup> For a detailed analysis of the Puerto Rican Act, see RAMSEY, *op. cit. supra* note 6, at 8-13.



"A Way-Out Example—If the leaning tower of Pisa in Italy bordering the Gulf of Genoa had been built as a condominium, its famed 'leaning' would now be the world's most extreme example of encroachment on adjoining air rights. All buildings settle and constantly shift; yet, the space lot conveyed to condominium purchasers theoretically never changes. To cure the problem of possible encroachments and to preserve marketability of title . . . [the] author . . . suggests that the deeds contain reciprocal easements to exist as long as the building stands."<sup>20</sup>

This brief statement not only illustrates a typical problem in condominium, and a possible solution, but it shows the growing role of title insurance companies in shaping the American law of property.<sup>21</sup>

Before proceeding to an analysis of the practical advantages and disadvantages of condominium, cooperative apartments, etc., it may be well to take a further look at the classical property concepts involved in this type of ownership.

## II. THE CONCEPT OF CONDOMINIUM

The common law has long recognized multiple interests in a single *res*. Indeed, much of the law of property deals with the complex rules and principles developed to regulate the relationships among the owners of these multifarious interests. Ranging from the relatively simple problems of bailment in personal property to the intricate snarls of the Rule Against Perpetuities in future interests,<sup>22</sup> the law has struggled, more or less successfully,

<sup>20</sup> Lawyers Title News, Sept. 1962. See also the August 1961 issue of the same publication, which is referred to as the "Condominium Issue." Reference has already been made in note 6 *supra* to the pamphlet by Mr. Ramsey, a title officer for the Chicago Title and Trust Company.

<sup>21</sup> Some commentators feel that the role of title insurance is already too great and is crowding the lawyer out of his traditional position in the real estate practice. See Payne, *In Search of Title* (pts. 1-2), 14 ALA. L. REV. 11, 278 (1962). "The basic issue before conveyancers today is whether title insurance will spread and become the dominant form of conveyancing or whether the system of direct records examination can be restored. . . . The economic stakes involved are enormous, and the professional interests of the bar deeply involved. In this struggle the title insurance companies have the marked advantage, in that if they can simply block any action, the movement toward title insurance will undoubtedly continue. The bar, on the other hand, must take decisive action if the present trend is to be reversed. Whether the bar is capable of mobilizing its forces so as to achieve such a result will determine the course of future events." *Id.* at 63-64.

<sup>22</sup> For an expanded treatment of this point, see CRIBBET, PRINCIPLES OF THE LAW OF PROPERTY 80-102 (1962).

with the concept of a *single* thing subject to *multiple* rights. The nearest approach to condominium, aside from the sub-surface, surface, and air rights cases, has been in one form or another of cotenancy. But whether coparcenary, tenancy by the entirety, joint tenancy, or tenancy in common, the legal concept has always called for unity of possession. The shares of each owner need not be equal, *e.g.*, tenancy in common, but the possession of one is the possession of all, and, in legal theory if not in fact, each owner has a claim to every square inch of Blackacre subject only to correlative claims by the other cotenants. Only on partition, whether by voluntary action or suit in equity, does the individual owner have a claim to his specific share of the *res*. At that point the ownership ceases to be joint and becomes several. A concept of ownership which is joint, *i.e.*, in common, as to part of the *res*, but several as to another part, goes beyond the ordinary theory of cotenancy. It means, in effect, that the owner of one unit in the structure has a fee simple absolute as to that unit, accompanied by the broad right to exclude others, which is of the essence of a fee, plus a tenancy in common with others as to the land and certain common elements of the building.

Although, as suggested in the previous section,<sup>23</sup> the common law recognized the rights of ownership in separate floors, rooms, etc., it did not, prior to the development of condominium, work out a theory of several plus joint rights which could be fixed in space and would survive even the destruction of a building. Nothing in the common law would prevent this from being done by special agreement among the parties,<sup>24</sup> but it scarcely stands alone as a separate type of property ownership like joint tenancy or tenancy in common. This may be significant in deciding whether a statute is needed in a particular jurisdiction to serve as a kind of enabling act for this form of multiple ownership. If the concept were well recognized in the legal system, it might be best to let it develop without legislative interference, but, where the concept itself is new, a more specific charter seems required.

One illustration should be sufficient to illuminate the conceptual difficulty. The typical cotenancies carry with them the

<sup>23</sup> See text *supra* at 1212.

<sup>24</sup> It has been pointed out that, in England, vesting of the common parts of the premises in the ownership of freehold titles to flats as tenants in common is impossible due to the Law of Property Act of 1925 [15 & 16 Geo. 5, c. 20, §§ 1(6), 34(2)]. See Leyser, *supra* note 10, at 51. However, this is due solely to legislation which itself modified the common law, and no such barrier exists in this country.

right to partition, and lawyers are accustomed to thinking of this right as one of the "sticks in the bundle." This right, transferred to condominium, could wreck a project since the land plus certain common elements must remain unsevered, although attached to the ownership of the individual air space represented by an apartment, office, or store. These common elements must pass, like easements appurtenant, to the successive owners of the individual unit. Interestingly enough, the right to partition has not always been an incident of co-ownership and, in the early common law, the joint tenancy had to remain joint in order to maintain the socially desirable unity of title. Indeed, coparcenary's very name was derived from the fact that, without benefit of a statute, the parceners could compel partition at a time when joint tenants and tenants in common enjoyed no such right.<sup>25</sup> In many states, the tenancy by the entirety is still non-severable, except on divorce, just as it was at early common law.<sup>26</sup> Thus, although the common law is flexible enough to deny partition of the common elements, the issue may be confused since condominium does not yet have sufficient status to stand alone as a type of new estate in the law. The concept will have to be delineated in a case-by-case approach, after the method of the common law, or clarified by specific statutory authority.

### III. THE COMMON-LAW APPROACH TO CONDOMINIUM

Apart from the specific concept of condominium, cooperative ownership of apartments is old hat in this country.<sup>27</sup> The familiar pattern is to vest the title to both building and land in a corporation or trust. The tenant-owner holds stock in the corporation or a certificate of beneficial interest in the trust plus a proprietary lease of a particular apartment in the building. The rights and duties of the tenant-owners are covered in great detail in the lease, charter, bylaws, or trust agreement. This type of cooperative ownership is easily accomplished without the necessity for statutory

<sup>25</sup> MOYNIHAN, PRELIMINARY SURVEY OF THE LAW OF REAL PROPERTY 135 (1940).

<sup>26</sup> *Licker v. Gluskin*, 265 Mass. 403, 164 N.E. 613 (1929); *Hoag v. Hoag*, 213 Mass. 50, 99 N.E. 521 (1912).

<sup>27</sup> The earliest reported case in this country involving a cooperative apartment is *Barrington Apartment Ass'n v. Watson*, 38 Hun 545 (N.Y. Sup. Ct. 1886). Among the many excellent discussions of cooperative ownership, see Hennessey, *Co-operative Apartments and Town Houses*, 1956 U. ILL. L.F. 22; Yourman, *Some Legal Aspects of Cooperative Housing*, 12 LAW & CONTEMP. PROB. 126 (1947); Note, 61 HARV. L. REV. 1407 (1948). For a discussion of the tax problems, see Jacobson, *Tax Problems of Sponsor and Tenant-Stockholder of Co-operative Housing Corporation*, 13 J. TAXATION 28 (1960).

authorization. The relative advantages and disadvantages of this legal device vis-à-vis condominium will be discussed later, though a detailed analysis is beyond the scope of this article.

As suggested earlier, the common law recognized the separate ownership of rooms or floors in a building, and, since air rights could be conveyed apart from the fee in the land,<sup>28</sup> it has long been possible to have condominium-type developments *sans* the esoteric name. Indeed, a 1947 example in New York City is discussed in some detail by Mr. Ramsey in his pamphlet, *Condominium: The New Look in Co-ops*.<sup>29</sup> This project involved a six-story building, containing twelve apartments, and conveyances of each unit were made separately by the legal description of a cube of space.

Similarly, the California "Own Your Own Apartment" plan functions without a statute on condominium and seems to have been attractive to both purchasers and lenders in that boom state.

"Under this method a purchaser receives a deed which conveys an undivided fractional interest in the land and building, subject, however, to the reservation by a grantor of the exclusive use and right to occupy all the apartments in the building as shown on a plat attached to and made a part of the deed, excepting from such reservation such rights of occupancy and use as are hereinafter granted to the grantee. A subsequent clause then grants to the grantee the exclusive right to occupy a particular apartment identified by number on the above mentioned plat."<sup>30</sup>

The California experience, plus an analysis of the problems that may arise in any jurisdiction, is thoroughly discussed in an excellent note in the *California Law Review*.<sup>31</sup> Most of the common-law precedents are mentioned, and the authors make it apparent that condominium can function effectively without the interposition of a legislative enabling act. Nonetheless, there are strong reasons for preferring the legislative approach, and some writers feel that legislation is a virtual necessity. Mr. J. Leonard Smith, Jr., a member of the Legislative Committee of the Real Property,

<sup>28</sup> See Note, 1960 U. ILL. L.F. 303. For a major, recent example, note the forty-one story Prudential Building in Chicago, erected in air lots over the Illinois Central Railroad tracks.

<sup>29</sup> RAMSEY, *op. cit. supra* note 6, at 6-7.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> See Note, *Community Apartments: Condominium or Stock Cooperative?*, 50 CALIF. L. REV. 299 (1962).

Probate and Trust Law Section of the Pennsylvania Bar Association, urges immediate adoption of a condominium act in Pennsylvania. He has stated:

"The same problems have arisen in California where several condominium type projects have been built without the benefit of specific condominium legislation. One California developer stated flatly that although he was more than pleased with his condominium project and the acceptance of it, he would not be inclined to do another one until something was done to remove some of the legal and practical roadblocks."<sup>32</sup>

Whatever the common-law possibilities of condominium, the real future for projects of this sort appears to lie with a sound enabling act, and attention is now turned to that phase of the problem.

#### IV. THE LEGISLATIVE APPROACH TO CONDOMINIUM

There are two principal reasons for preferring the legislative approach to condominium: (1) a carefully drafted statute can clarify many of the uncertainties which would otherwise have to wait for the answers to be produced by judicial decision, and (2) such an act will provide uniformity in the creation of projects and thus ease title and financing difficulties. Since the statutes are permissive, and therefore govern the condominium only if the owner or owners elect to follow the legislative plan, there seem to be no real arguments against the passage of enabling legislation. It is possible, however, that statutes will tend to freeze projects into a common mold and thus reduce valuable experimentation, but this seems a slight risk in view of the desirable features of a statute.

Puerto Rico led the way with its 1951 act, followed in 1958 by the "Horizontal Property Act,"<sup>33</sup> a somewhat confusing name for a well thought out statute. Arkansas<sup>34</sup> and Hawaii<sup>35</sup> were the first states to take up the Puerto Rican challenge, and Arizona, Kentucky, South Carolina, and Virginia<sup>36</sup> have recently joined the parade. The interest is now increasing at a rapid rate and, in

<sup>32</sup> J. L. Smith, *The Case for a Condominium Law in Pennsylvania*, 33 PA. B.A.Q. 513, 516 (1962).

<sup>33</sup> See notes 17, 18, and 19 *supra*.

<sup>34</sup> Ark. Acts 1961, No. 60, § 2(a).

<sup>35</sup> HAWAII REV. LAWS § 170A (Supp. 1961).

<sup>36</sup> See 60 MICH. L. REV. 527 (1962).

October 1962, the first draft of a Model Act was prepared by the National Association of Real Estate Boards, retaining the title "Horizontal Property Act." Earlier, the FHA had published a "Model Statute for Creation of Apartment Ownership." Several states have legislation under consideration, including New York with a "Unit Ownership Act"<sup>37</sup> and Illinois with a "Condominium Property Act." It is apparent that 1963 will see the passage of a rash of bills designed to spur further activity in this area of co-ownership.

The best, in fact the only, way to illustrate the role of legislation is to set forth an actual act and comment on its provisions. For this purpose the Illinois proposal<sup>38</sup> has been chosen, not only because the writer is most familiar with it, but because it was drafted after a study of the existing legislation and is an attempt to retain the best of that legislation while making some improvements upon it. The draft begins: "A Bill for an Act concerning ownership of individual units in multi-unit structures." The bill contains twenty-one sections, each of which is set forth below, followed by brief comment.

Section 1. *Short title.* This Act shall be known and may be cited as the "Condominium Property Act."

*Comment.* No particular brief can be made for any given title but, since lawyers must live by classification of subject matter, it seems reasonable to employ the name usually associated with projects of this type. Horizontal Property Act is less descriptive and, in a sense, misleading because the structures are divided both vertically and horizontally.

Section 2. *Definitions.* As used in this Act, unless the context otherwise requires:

(a) "Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such declaration as from time to time amended.

(b) "Parcel" means the lot or lots, tract or tracts of land, described in the declaration, submitted to the provisions of this Act.

<sup>37</sup> Introduced in the New York Senate, Jan. 29, 1962, Print. 2131, 4766 Intro. No. 2045.

<sup>38</sup> The Illinois proposal was drafted by a Joint Committee of the Chicago and Illinois State Bar Associations, operating under their respective sections on Real Estate Law. It has been introduced in the 1963 session of the Illinois General Assembly as bar association legislation.

(c) "Property" means all the land, property and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of this Act.

(d) "Unit" means a part of the property including one or more rooms, occupying one or more floors or a part or parts thereof, designed and intended for any type of independent use, and having lawful access to a public way.

(e) "Common Elements" means all portions of the property except the units.

(f) "Person" means a natural individual, corporation, partnership, trustee or other legal entity capable of holding title to real property.

(g) "Unit Owner" means the person or persons whose estates or interests, individually or collectively, aggregate fee simple absolute ownership of a unit.

(h) "Majority" or "majority of the unit owners" means the owners of more than fifty per cent in the aggregate in interest of the undivided ownership of the common elements. Any specified percentage of the unit owners means such percentage in the aggregate in interest of such undivided ownership.

(i) "Plat" means a plat or plats of survey of the parcel and of all units in the property submitted to the provisions of this Act, which may consist of a three-dimensional horizontal and vertical delineation of all such units.

(j) "Record" means to record in the office of the Recorder of Deeds or, whenever required, to file in the office of the Registrar of Titles of the county wherein the property is located.

*Comment.* This section is self-explanatory (or should be, if the definitions are to serve any useful function). Attention should be directed to (g), however. "Unit owner," as the term is used there, may consist of many persons. Thus, if *O* dies intestate, survived by a wife and several children, the heirs will own the unit as tenants in common, but, under the act, they will collectively constitute one unit owner. This is necessary in order to maintain a constant percentage of ownership among all of the unit owners.

Section 3. *Submission of Property.* Whenever the owner or owners in fee simple of a parcel intend to submit such

property to the provisions of this Act, they shall do so by recording a declaration, duly executed and acknowledged, expressly stating such intent and setting forth the particulars enumerated in Section 4.

*Comment.* This section makes clear the permissive nature of the Act. If an owner desires to establish some common-law scheme of multiple ownership, he is free to do so, but in that case he is deprived of the benefits of the act. It is probable that, in states adopting legislation, the lending agencies will force the owner to file a declaration and comply with the act in order to qualify for a loan, if he wants to establish a condominium of any type.

Section 4. *Declaration—Contents.* The declaration shall set forth the following particulars:

- (a) The legal description of the parcel.
- (b) The legal description of each unit, which may consist of the identifying number or symbol of such unit as shown on the plat.
- (c) The percentage of ownership interest in the common elements allocated to each unit. Such percentages shall be computed by taking as a basis the value of each unit in relation to the value of the property as a whole, and having once been determined and set forth as herein provided, such percentages shall remain constant unless thereafter changed by agreement of all unit owners.
- (d) Such other lawful provisions not inconsistent with the provisions of this Act as the owner or owners may deem desirable in order to promote and preserve the cooperative aspect of ownership of the property and to facilitate the proper administration thereof.

*Comment.* Since each unit owner also owns an undivided interest in the common elements, it is important to establish early the exact proportion which belongs to each such owner. Dollar amounts are not significant here except to establish the percentage that each owns. Thus, it will not be important whether the condominium itself is over- or under-valued so long as the *relative* values are correctly stated. This can be accomplished easily enough if all units are of the same value; in a ten-unit building each unit owner will own one-tenth of the common elements. It will be more complicated if the units are of widely varying values. In any case, the time to make this determination is at the outset, when presumably the builder (or converter, if an existing structure is involved) knows what the exact values are.



Note that additional items can be added to the declaration if the owner so desires—the act states only the minimum essentials. However, in most instances the declaration should be kept simple and the details should be left to bylaws which will also be recorded.

Section 5. *Plat to be recorded.* Simultaneously with the recording of the declaration there shall be recorded a plat as defined in Section 2(i), which plat shall be made by a Registered Illinois Land Surveyor and shall set forth (1) all angular and linear data along the exterior boundaries of the parcel; (2) the linear measurements and location, with reference to said exterior boundaries, of the building or buildings located on said parcel; and (3) the elevations at, above, or below official datum of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and lateral extensions thereof, of every unit in the building, and the locations of such wall surfaces with respect to the exterior boundaries of the parcel projected vertically upward. Every such unit shall be identified on the plat by a distinguishing number or other symbol.

In addition to the foregoing, such plat shall comply, as far as practicable, with such requirements as are now or may hereafter by law be imposed with respect to the approval, recording and filing of plats of subdivision or dedication.

*Comment.* The plat is a key document in planning a condominium, and this section of the act should be complied with carefully. Although the plat must be made by a registered land surveyor, the basic data will probably come from the architect's drawings or from the construction engineer's plans. This should simplify the problems where a new building is to be the subject of condominium, but the plat requirement may cause real difficulty if an older structure is to be converted to a condominium. The seemingly innocuous sentence calling for compliance with subdivision or dedication law may cause some headaches. Of, course, zoning regulations must be met, and the problems here are similar to those present in an ordinary apartment dwelling. The various subdivision acts,<sup>39</sup> by their terms, seem to apply to condominium, although it is doubtful whether the spirit of the

<sup>39</sup> For a good treatment of these acts, see HAAR, LAND-USE PLANNING 347-408 (1959).

acts is related to this new concept.<sup>40</sup> If, in the particular jurisdiction, these acts are so restrictive that they harm condominium development, the acts should be amended to exclude projects of this type.

Section 6. *Recording—Effect.* Upon compliance with the provisions of Sections 3, 4 and 5 and upon recording of the declaration and plat the property shall become subject to the provisions of this Act, and all units shall thereupon be capable of ownership in fee simple or any lesser estate, and may thereafter be conveyed, leased, mortgaged or otherwise dealt with in the same manner as other real property, but subject, however, to the limitations imposed by this Act.

Each unit owner shall be entitled to the percentage of ownership in the common elements appertaining to such unit as computed and set forth in the declaration pursuant to Section 4(c) hereof, and ownership of such unit and of the owner's corresponding percentage of ownership in the common elements shall not be separated, nor shall any unit, by deed, plat, court decree or otherwise, be subdivided or in any other manner separated into tracts or parcels smaller than the whole unit as shown on the plat.

*Comment.* Recording is the final, operative act necessary to make the condominium legally effective. Note that the units may be carved into lesser estates, but that physical subdividing into parcels smaller than the unit is prohibited.

Section 7. *Descriptions in deeds, etc.* Every deed, lease, mortgage or other instrument may legally describe a unit by its identifying number or symbol as shown on the plat and as set forth in the declaration, and every such description shall be deemed good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the owner's corresponding percentage of ownership in the common elements even though the same is not expressly mentioned or described therein.

*Comment.* This section, with its simplified method of description, points up the importance of an accurate plat and shows why a registered land surveyor is required. Note that the common elements are automatically conveyed with the unit, thus preventing a possible separation of title.

<sup>40</sup> The California Subdivision Map Act is typical of the regulations that a developer may face. For a discussion of the California problem, see Note, *supra* note 31, at 336.

Section 8. *Partition of common elements prohibited.* As long as the property is subject to the provisions of this Act the common elements shall, except as provided in Section 14 hereof, remain undivided, and no unit owner shall bring any action for partition or division of the common elements. Any covenant or agreement to the contrary shall be null and void.

*Comment.* The need for this section is obvious. Although the normal tenancy in common carries with it the right to partition, there is no reason why the courts should not respect a legislative ban on this right in the case of the common elements.<sup>41</sup>

Section 9. *Sharing of expenses—Lien for nonpayment.* It shall be the duty of every unit owner to pay his proportionate share of the expenses of administration, maintenance and repair of the common elements and of any other expense lawfully agreed upon. Such proportionate share shall be in the same ratio as his percentage of ownership in the common elements set forth in the declaration. Payment thereof shall be in such amounts and at such times as may be determined by the unit owners or the board of managers, as hereinafter provided.

If any unit owner shall fail or refuse to make any such payment of the common expenses when due, the amount thereof shall constitute a lien on the interest of such unit owner in the property, and upon the recording of notice thereof by the manager or boards of managers shall, *unless otherwise provided in the declaration or bylaws*, be a lien upon such unit owner's interest in the property prior to all other liens and encumbrances, recorded or unrecorded, except only (a) taxes, special assessments and special taxes theretofore or thereafter levied by any political subdivision or municipal corporation of this State and other State or Federal taxes which by law are a lien on the interest of such unit owner prior to preexisting recorded encumbrances thereon and (b) encumbrances on the interest of such unit owner recorded prior to the date such notice is recorded which by law would be a lien thereon prior to subsequently recorded encumbrances, but only if such prior recorded encumbrance contains a statement of a mailing address in the State of Illinois where notice may be mailed to the encumbrancer thereunder, and provided further that if and whenever and as often as the manager or board of managers shall send, by

<sup>41</sup> This point was discussed earlier in the article. See text *supra* at 1215-16.

United States registered mail, to any such encumbrancer at the mailing address set forth in the recorded encumbrance a statement of the amounts and due dates of such unpaid common expenses with respect to the encumbered unit, then such prior recorded encumbrance shall be subject to the lien of all unpaid common expenses with respect to such unit which become due and payable within a period of 90 days after the date of mailing of each such notice. Any encumbrancer may from time to time request in writing a written statement from the manager or board of managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and unless the request shall be complied with within 20 days, all unpaid common expenses which became due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

Such lien *for common expenses* shall be in favor of the members of the Board of managers and their successors in office and shall be for the benefit of all other unit owners, and may be foreclosed by an action brought in the name of the board of managers in like manner as a mortgage of real property. Unless otherwise provided in the declaration, the members of the board of managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

Section 9.1. *Other liens: attachment and satisfaction.* In the event any lien exists against two or more units and the indebtedness secured by such lien is wholly payable, the unit owner of any such unit so affected may remove such unit and the undivided interest in the common elements appertaining thereto from said lien by payment of the proportional amount of said indebtedness which is attributable to such unit. In the event such lien exists against the property, the amount of such proportional payment shall be computed on the basis of the percentages set forth in the declaration. Upon payment as herein provided it shall be the duty of the lienor to execute and deliver to the unit owner a release of such unit and the undivided interest in the common elements appertaining thereto from said lien, provided, however, that such propor-

tional payment and release shall not prevent the lienor from proceeding to enforce his rights against any unit or interest with respect to which said lien has not been so paid or released.

*Comment.* The importance of the percentage of ownership of the common elements is illustrated by this section, since the percentage determines the proportionate share of expenses. The principal difficulty here is the priority of the lien for nonpayment of common expenses due from a unit owner. Should such lien be superior to (1) all mortgages or encumbrances, (2) all mortgages or encumbrances except a first mortgage (as suggested by the FHA model act and the New York bill), or (3) all mortgages or encumbrances except those recorded prior to recordation of notice of such a lien (as provided in the Puerto Rico—Hawaii—Arkansas acts)? The purchaser of a unit would prefer the first option since it gives him maximum protection if a co-owner fails to pay; the financing groups would like the third choice since it gives maximum protection for their loans. The Illinois draft attempts an interesting compromise which should protect the rights of both classes. In essence, it gives the mortgagee priority unless he is *specifically* notified of the delinquency—as opposed to constructive notice by recording, which would require continual search. If so notified, the encumbrancer can then pay the expenses and be secured by a lien on the unit, ranking from the date of the encumbrance lien. Of course, the common expense lien is subject to taxes and special assessments.

Following the introduction of the act, as Senate Bill No. 520, in the Illinois General Assembly, objections were raised that the proposed legislation did not give adequate protection for FHA insured mortgages. As a result, the italicized changes were made in section 9 and a new section, 9.1, was added as an amendment. The act has now passed both houses of the legislature and has been transmitted to the Governor for signature.

Section 10. *Separate taxation.* Real property taxes, special assessments, and any other special taxes or charges of the State of Illinois or of any political subdivision thereof, or other lawful taxing or assessing body, which are authorized by law to be assessed against and levied upon real property shall be assessed against and levied upon each unit and the owner's corresponding percentage of ownership in the com-

mon elements as a tract, and not upon the property as a whole.

*Comment.* This section is necessary to comply with FHA regulations for separate taxation. Some assessors may be reluctant to make such assessments without specific statutory authority, even though it could legally be done under existing law.<sup>42</sup>

Section 11. *Tax deeds.* In the event any person shall acquire or be entitled to the issuance of a tax deed conveying the interest of any unit owner, the interest so acquired shall be subject to all the provisions of this Act and to the terms, provisions, covenants, conditions and limitations contained in the declaration, the plat, the bylaws or any deed affecting such interest then in force.

*Comment.* This section might not be strictly necessary but, since there is some doubt as to whether a tax title holder takes subject to restrictive covenants in prior deeds, it seems wise to bind him to all aspects of the condominium.<sup>43</sup>

Section 12. *Insurance.* The manager or the board of managers shall have the authority to and shall obtain insurance for the property against loss or damage by fire and such other hazards as are covered under standard extended coverage provisions for the full insurable replacement cost of the common elements and the units. Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, such manager or of the board of managers, as trustee for each of the unit owners in the percentages established in the declaration. Premiums for such insurance shall be common expenses.

*Comment.* Since the individual has a fee simple in his own unit, he may wish to secure insurance for that unit. This will not solve the larger problem of the total structure, however, and this section is necessary in order to provide a realistic approach to what remains, in the last analysis, a cooperative venture.

<sup>42</sup> The law on separate taxation varies widely, ranging from the view that it places too great a burden on the state [*Toothman v. Courtney*, 62 W. Va. 167, 58 S.E. 915 (1907)], to the view that separate assessment is the better policy [*Russell v. Lang*, 50 La. Ann. 36, 23 So. 113 (1898)]. The weight of authority leaves the matter to the assessor's discretion. See Annot., 80 A.L.R. 867 (1932). Legislative authorization seems clearly desirable.

<sup>43</sup> For a discussion of the restrictive covenant point, see McCarthy, *Restrictive Covenants*, 1955 U. ILL. L.F. 709, 738.

Section 13. *Application of insurance proceeds to reconstruction.* In case of fire or any other disaster the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. Reconstruction of the building as used in this and succeeding Section 14 of this Act, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before.

*Comment.* With the destruction of the building, the individual owns a cube of air space plus an undivided interest in the land. This section, subject to later provisions, recognizes that the condominium still exists and calls for the reconstitution of the structure with the previous vertical and horizontal boundaries.

Section 14. *Disposition of property where insurance proceeds are insufficient for reconstruction.* In case of fire or other disaster, if the insurance proceeds are insufficient to reconstruct the building and the unit owners and all other parties in interest do not voluntarily make provision for reconstruction of the building within 180 days from the date of damage or destruction, the board of managers may record a notice setting forth such facts and upon the recording of such notice:

(a) The property shall be deemed to be owned in common by the unit owners;

(b) The undivided interest in the property owned in common which shall appertain to each unit owner shall be the percentage of undivided interest previously owned by such owner in the common elements;

(c) Any liens affecting any of the units shall be deemed to be transferred in accordance with the existing priorities to the undivided interest of the unit owner in the property as provided herein; and

(d) The property shall be subject to an action for partition at the suit of any unit owner, in which event the net proceeds of sale, together with the net proceeds of the insurance on the property, if any, shall be considered as one fund and shall be divided among all the unit owners in a percentage equal to the percentage of undivided interest owned by each owner in the property, after first paying out of the respective shares of the unit owners, to the extent suf-

ficient for the purpose, all liens on the undivided interest in the property owned by each unit owner.

*Comment.* This section covers the inevitable case where the insurance is not adequate for rebuilding and where the unit owners decide to call it a day. The condominium is now at an end, and the normal rules of partition for tenants in common apply. Note, again, the importance of the percentage of ownership of the common elements first established in the declaration.

Section 15. *Sale of property.* Unless a greater percentage is provided for in the declaration or bylaws, and notwithstanding the provisions of Sections 13 and 14 hereof, all of the unit owners where the property contains 2 units, or not less than 66 2/3% where the property contains three units, and not less than 75% where the property contains 4 or more units may, by affirmative vote at a meeting of unit owners duly called for such purpose, elect to sell the property. Such action shall be binding upon all unit owners, and it shall thereupon become the duty of every unit owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale, provided, however, that any unit owner who did not vote in favor of such action and who has filed written objection thereto with the manager or board of managers within 20 days after the date of the meeting at which such sale was approved shall be entitled to receive from the proceeds of such sale an amount equivalent to the value of his interest, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such unit owner.

*Comment.* Some escape hatch is desirable if a majority or more of the unit owners decide to end the condominium after a heavy loss by fire or other hazard. There is no foolproof way to handle this problem, since it is quite likely that there will be disagreement among the owners as to the proper course to follow. Stalemate could result and the damaged structure could then become a liability to all concerned. Subject to increase in the bylaws, this section provides for a minimum percentage of agreement in order to effect a sale. Further, to protect a disgruntled member of the minority, a procedure is established for a fair appraisal of the unit owner's share.

The section is broader than merely covering the circumstance



of a sale following a fire loss. It allows for a situation in which the building is no longer economically usable for the purpose set up in the declaration. For example, if the neighborhood were to change radically so that the building should be devoted to some use other than apartments, it would seem unfair to allow a substantial majority of the owners to be frustrated by a few dissenters.

Section 16. *Removal from provisions of this Act.* All of the unit owners may remove the property from the provisions of this Act by an instrument to that effect, duly recorded, provided that the holders of all liens affecting any of the units consent thereto or agree, in either case by instruments duly recorded, that their liens be transferred to the undivided interest of the unit owner. Upon such removal the property shall be deemed to be owned in common by all the owners. The undivided interest in the property owned in common which shall appertain to each owner shall be the percentage of undivided interest previously owned by such owner in the common elements.

*Comment.* Since the bill is permissive, condominium depends on the volition of the owner or owners in the first instance. Thus, there is no reason for continuing the project if all of the unit owners plus the lien holders agree to bring it to an end. This section makes explicit what would probably be implicit in any case.

Section 17. *Bylaws.* The administration of every property shall be governed by bylaws, which may either be embodied in the declaration or in a separate instrument, a true copy of which shall be appended to and recorded with the declaration. No modification or amendment of the declaration or bylaws shall be valid unless the same is set forth in an amendment thereof and such amendment is duly recorded.

*Comment.* The heart of condominium lies in the bylaws. Separate ownership of units there may be, but since the parties must live to some extent in each other's pockets, the cooperative areas of the project should be clearly outlined. This will differ from project to project, however, and the act should not freeze the nature of the bylaws. It does require that such rules be available and that they be recorded for the protection of future participants in the project.

Section 18. *Contents of bylaws.* The bylaws shall provide for at least the following:

(a) The election from among the unit owners of a board of managers, the number of persons constituting such board, and that the terms of at least one-third of the members of the board shall expire annually; the powers and duties of the board; the compensation, if any, of the members of the board; the method of removal from office of members of the board; and whether or not the board may engage the services of a manager or managing agent.

(b) Method of calling meetings of the unit owners; what percentage of the unit owners, if other than a majority, shall constitute a quorum.

(c) Election of a president from among the board of managers, who shall preside over the meetings of the board of managers and of the unit owners.

(d) Election of a secretary, who shall keep the minutes of all meetings of the board of managers and of the unit owners and who shall, in general, perform all the duties incident to the office of secretary.

(e) Election of a treasurer, who shall keep the financial records and books of account.

(f) Maintenance, repair and replacement of the common elements and payments therefor, including the method of approving payment vouchers.

(g) Method of estimating the amount of the annual budget, and the manner of assessing and collecting from the unit owners their respective shares of such estimated expenses, and of any other expenses lawfully agreed upon.

(h) That upon 10 days notice to the manager or board of managers and payment of a reasonable fee, any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

(i) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common elements.

(j) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective units and of the common elements by the several unit owners.

(k) Method of adopting and of amending administrative rules and regulations governing the operation and use of the common elements.

(l) The percentage of votes required to modify or amend the bylaws, but each one of the particulars set forth in this section shall always be embodied in the bylaws.

*Comment.* This section requires a minimum of twelve bylaws, designed to cover the basic aspects of the condominium. The same committee which drafted the act in Illinois is now in the process of preparing a model declaration (Section 4) and a model set of bylaws<sup>44</sup> which should further the goal of uniformity and fairness in the establishment of projects.

Section 19. *Records of receipts and expenditures—Availability for examination.* The manager or board of managers, as the case may be, shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the common elements, specifying and itemizing the maintenance and repair expenses of the common elements and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the unit owners at convenient hours of week days.

*Comment.* This section could be included in the bylaws but, because of its importance to the successful operation of a project, it was felt desirable to include it in the act itself.

Section 20. *Exemption from rules of property.* It is expressly provided that the rule of property known as the rule against perpetuities and the rule of property known as the rule restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of this Act.

*Comment.* Section 8 prohibits partition of the common elements. This is necessary in order to protect the condominium from the destructive effect of a partition sale. It does, however, raise the spectre of the Rule against Perpetuities and the doctrine against restraints on alienation. It is clear that condominium does not violate the spirit or purpose of these common-law doctrines, and, indeed, there is authority upholding restraints on partition

<sup>44</sup> Copies of the model declaration and bylaws may be obtained from the writer as soon as they are available. The bylaws should be as explicit as possible to cut down on areas of dispute. One Illinois project has 34 pages (legal-size) of bylaws.

that are reasonable in purpose without regard to the Rule against Perpetuities.<sup>45</sup> However, in dealing with these twin terrors one likes to be sure, and this section should clarify the matter. Writing of the California situation, where no statute exists, one commentator stated: "Though a court might be persuaded to recognize the reasonableness of the restriction, it would be advisable to avoid the problem by a provision limiting the applicability of the clause against partition to the stated condition or to a life or lives in being plus twenty-one years, whichever is shorter."<sup>46</sup> Surely the statutory solution is better.

Section 21. *Severability.* If any provision of this Act or any section, sentence, clause, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby.

*Comment.* None.

The proposed Illinois act is one example of the legislative approach to condominium. It is the shortest statute yet drafted on the subject and has the merit of covering the principal "running gears" of condominium while leaving the developers relatively free to provide a detailed pattern in the bylaws. The Puerto Rican act has forty-eight sections, some of which are unnecessary from a legal viewpoint while others tend to be impractical or to lend themselves to odd interpretations. States planning to pass condominium statutes should certainly study the Puerto Rican legislation, since it is the parent act and has proved itself in practice; but the Arkansas act and Illinois proposal offer greater simplicity and flexibility.

One provision of the Puerto Rican act, which is omitted in the Illinois draft, should be mentioned—the right of first refusal. This provision gives to the unit owners the first right to purchase any unit when it is offered for sale. If they fail to purchase within a reasonable time,<sup>47</sup> the vendor can then accept the outside offer on the terms originally proposed. If the unit owner sells without giving the co-owners the option to buy, they have the right to

<sup>45</sup> *Martin v. Martin*, 170 Ill. 639, 48 N.E. 924 (1897); *Avery v. Payne*, 12 Mich. 540 (1864).

<sup>46</sup> Note, *supra* note 31, at 307.

<sup>47</sup> The Puerto Rican act sets the period at ten days, but this seems an unreasonably short time within which to expect the other unit owners to respond.

redeem from the sale. This right of first refusal is thought to be necessary in a cooperative enterprise so that the unit owners will have a voice in the selection of their neighbors. Does it violate the doctrine of restraints on alienation of fee interests? Mr. Ramsey thinks that it does not, because "the purpose of such a provision is not to restrain an owner from selling, but rather to enable a particular person to buy."<sup>48</sup> However, the provision was purposely omitted from the Hawaiian act and does not appear in either the Arkansas act or the Illinois draft. It should be noted that the provision does not afford complete protection in all cases since it deals only with voluntary sale and does not cover transfer by gift, judicial sale, or devolution on death.

The omission of this provision from the particular legislation does not prevent the inclusion of a similar clause in the bylaws if the owners so desire. While the right of first refusal may be valid if attacked solely as an unreasonable restraint on alienation,<sup>49</sup> it could raise questions under the doctrine of *Shelley v. Kraemer*<sup>50</sup> if it becomes apparent that the provision is but a mask to conceal restrictions on racial or religious grounds. This will be particularly true in condominiums built with funds to which President Kennedy's Executive Order of November 24, 1962, applies.<sup>51</sup>

#### V. ADVANTAGES OF CONDOMINIUM

The advantages of all things are relative.<sup>52</sup> The advantages of condominium must be stated in relationship to ordinary apartment dwelling, to ordinary home ownership, and to other types of cooperative apartments. Moreover, as the advantages to the purchaser will be different from the advantages to developers, lenders, and brokers, they must be stated separately for each group. Finally, since some of the advantages will turn out to be illusory,

<sup>48</sup> RAMSEY, *op. cit. supra* note 6, at 21. See also *Gale v. York Center Community Co-op., Inc.*, 21 Ill. 2d 86, 171 N.E.2d 30 (1961) (upholding a comparable restraint).

<sup>49</sup> It could also run afoul of the Rule against Perpetuities as an unlimited option to purchase, but for § 20 of the act. See *Eastman Marble Co. v. Vermont Marble Co.*, 236 Mass. 138, 128 N.E. 177 (1920); *Starcher Bros. v. Duty*, 61 W. Va. 373, 56 S.E. 527 (1907).

<sup>50</sup> 334 U.S. 1 (1948).

<sup>51</sup> Exec. Order No. 11063, 27 Fed. Reg. 11527 (1962). This Order was designed to create equal opportunities in housing for all Americans regardless of their race, color, creed, or national origin. It does not apply to privately financed structures unless the loans are "insured, guaranteed, or otherwise secured by the credit of the Federal Government."

<sup>52</sup> This is best illustrated by an old canard. A man greeted his friend with, "Life is odd, isn't it?" Came the reply, "Compared to what?"

and because certain disadvantages exist which will offset some of the rosy claims made for condominium, a group-by-group analysis of advantages must be followed by a realistic look at the other side of the coin.

#### A. *Advantages to the Purchaser*

1. *Compared to Ordinary Apartment Dwelling.* The advantages of condominium as compared to ordinary apartment dwelling are roughly those claimed for any form of cooperative ownership. It is possible to compile a list of fifteen to twenty specific advantages, depending on the zeal with which the advocate of cooperative dwelling approaches his task.<sup>53</sup> Basically, however, these advantages fall into two large categories: first, the improved financial situation of the owner vis-à-vis the tenant, and second, the added security and sense of status that accompanies ownership of a dwelling unit.

There is no denying that substantial savings can be realized in a well-run cooperative. The landlord's profit is eliminated, and all of the economies produced by mass purchase of supplies, fuel, public utilities, etc., can be passed on to the unit owners. Tax deductions for interest on the mortgage payments and real estate taxes should be most attractive to prospective purchasers. Moreover, under the proper circumstances, a purchaser may receive deferred capital gains treatment as a seller of a home who reinvests in a new residence under section 1034 of the Internal Revenue Code.<sup>54</sup> Since the owner is building an equity in his unit, which can later be sold, he is adding to the total of his estate rather than paying out rent which disappears with each passing day. It has even been noted that the homestead exemption laws would apply to the unit so that something might be salvaged if the owner fell on evil days. However, since lenders will invariably require a waiver of the homestead right, this is likely to be one of the illusory advantages.

The sense of ownership that goes with cooperatives in all forms, and which is strongest in condominium, may well be the principal advantage over a normal tenancy. The owner can sink his roots into his apartment with an assurance of tenure that would

<sup>53</sup> For illustrations, see Teitelbaum, *Representing the Purchaser of a Cooperative Apartment*, 45 ILL. B.J. 420 (1957); Wall St. J., March 8, 1962, p. 1, col. 1.

<sup>54</sup> For a treatment of this and other tax problems, see Anderson, *Cooperative Apartments in Florida: A Legal Analysis*, 12 U. MIAMI L. REV. 13, 29 (1957).

be lacking if he could be evicted by a landlord at the termination of any given period of the lease. He can make alterations, decorate his own unit to his individual taste, and have a voice in managing the entire structure in a way not possible except through cooperative ownership. It is true that he must share the management with others, but even this has its advantages since he may find a sense of purpose and fellowship in the united effort for maintenance and improvement of the building and grounds. The exclusiveness of this type of ownership is usually listed as an advantage—the ability to choose one's neighbors, in a way denied to the tenant, being heavily stressed. It is easy to overplay this point, however, since the initial subscribers may have no right to pass on other initial subscribers and the developer may dispose of the remaining units, in a slow-moving cooperative, without much thought of exclusivity. Later sales may also fall short of the ideal if the project runs into financial difficulties, and a situation may develop in which any solvent buyer begins to look better than the burden of extra assessments.<sup>55</sup> Nonetheless, the cooperative in any form is likely to be more exclusive than ordinary apartment living, and the right of first refusal in the condominium has a distinct appeal to many purchasers.<sup>56</sup>

2. *Compared to Ordinary Home Ownership.* Many of the advantages just discussed are inherent in ordinary home ownership. The merit of the cooperative device is that it makes these advantages available in urban areas where land scarcity and high cost cause individual home ownership to be next to impossible. Cooperative units of all types tend to combine the values of separate home ownership with the economy and stability of a large-scale enterprise. It becomes possible to have landscaping, garden areas, swimming pools, and other luxuries infrequently found in the "cheesebox on a raft" type of large-scale, individual unit subdivisions. These can be financed at a lower cost per unit because of the "one basement, one roof, high rise" approach to urban dwelling. In short, the advantages of apartment living with the freedom from worry over the petty details of day-to-day maintenance and operation can be combined with the pride of ownership that strikes a common chord for most Americans. These apartment-type advantages are likely to be particularly appealing to

<sup>55</sup> *Id.* at 15.

<sup>56</sup> See text *supra* at 1233-34 for a discussion of this point.

the older generation whose children are grown and away from home. Since the life expectancy tables disclose increasing prospects of longevity for the average American, this advantage of condominium may be of prime importance.

3. *Compared to Other Types of Cooperative Apartments.* An extensive brief could be prepared for condominium as opposed to other types of cooperative apartments currently in operation. However, most of the arguments can be reduced to a single claim, *i.e.*, condominium combines the advantages of cooperative dwelling and separate home ownership. Thus, the unit owner's tenure is more akin to a fee simple title than would be the case under a proprietary lease with stock in a cooperative corporation. Granting that he is bound by the cooperative aspects of the declaration and bylaws, he comes as close as it is possible to get to "true ownership" of his apartment. This is important, not only psychologically, but in many, more tangible ways. The history of cooperative apartments, especially during recessions, has been an unfortunate one,<sup>57</sup> and the liability under a blanket mortgage is enough to scare away many interested purchasers. The unit owner is not quite so financially dependent upon the activities of his fellows. He negotiates his own mortgage and can make accelerated payments much as he could on a separate home. He pays his own taxes, and thus can avoid forfeiture and the ignominy of a tax sale. Although the condominium purchaser is not entirely free from the defaults of others (as will be seen in the later discussion of disadvantages), he probably avoids the worst hazards of the other types of cooperatives.<sup>58</sup>

The unit owner's greater degree of financial independence is illustrated in another way. He may sell his unit at market price and thus reap a capital gain, instead of being required to sell his shares to the corporation for the amount originally paid in, as is frequently the case in the ordinary cooperative. Even if the other owners have a right of first refusal, they must exercise it at the market level. This can be of major importance in an era of steadily rising real estate values. Moreover, the owner has assurance that his family will have a place to live on his death without undergoing scrutiny from other members of the cooperative as to popularity and financial resources. In other forms of cooperatives, leases fre-

<sup>57</sup> *Postwar Co-ops*, Architectural Forum, June 1948, p. 93.

<sup>58</sup> For a good analysis of these hazards, see Note, 68 *YALE L.J.* 542 (1958).



quently terminate on death, with a right of the family to remain for a limited period only.<sup>59</sup>

It is well known that owning a home offers several significant income tax advantages over renting. These same benefits should be available to a unit owner in a condominium, although they may not accrue to the participant in a typical cooperative. Thus, the unit owner should be entitled to casualty loss deductions, to interest and property tax deductions, to deferred recognition of gains on sale of an old residence, and to a depreciation allowance if he rents the unit to another.<sup>60</sup>

### B. *Advantages to the Developers, Lenders, and Brokers*

In essence, the advantages to the developers, lenders, and brokers arise from the advantages to the purchaser. If the consumer finds condominium to be an attractive investment, then the suppliers of housing are certain to fulfill the demand. The present impetus toward condominium is furnished principally by the 1961 amendments to the federal housing laws, which recognized this concept of real property ownership and authorized the FHA to insure a first mortgage given to secure the unpaid purchase price on individual units.<sup>61</sup> As late as 1958, commentators noted that mortgage loans for ordinary cooperatives were "practically unobtainable," even with federal insurance, because the terms were too long and the maximum interest rate too low.<sup>62</sup> Condominium should alleviate this problem with its smaller individual mortgages, rather than a single blanket one, and with negotiated down payments that may well run higher than that possible for the entire structure. As with any cooperative, the builder or promoter can find equity capital from the potential purchasers, rather than being forced to provide his own. Moreover, smaller lending institutions may be able to participate in financing the individual units in situations where they could not have financed the entire project.

There may be less "red tape" in the sale of condominium units than in the handling of a stock cooperative. The latter must meet the requirements of the appropriate state blue sky laws, whereas condominium, since involving the sale of real property, should be

<sup>59</sup> Note, 61 HARV. L. REV. 1407, 1419 (1948).

<sup>60</sup> Note, *supra* note 31, at 332.

<sup>61</sup> Housing Act of 1961, 7 Stat. 160, 12 U.S.C. § 1715y (Supp. III, 1961).

<sup>62</sup> See Note, *supra* note 58, at 569.

regulated by the real estate laws of the several states.<sup>63</sup> However, since real property interests have on occasion been held to be securities, the developer will want to check carefully the law of his own jurisdiction.<sup>64</sup>

The advantages to the real estate broker are easy to visualize since each unit becomes a potential listing. One enthusiastic writer outlines five distinct advantages to the realtor and sums it up this way.

“The condominium subdivision is an answer to the land scarcity problem. The two-dimensional subdivision that passage of time and increase of land values has rendered obsolescent and uneconomic, is transformed by the condominium into a three-dimensional subdivision, section stacked vertically upon section. It restores the realtor’s base of individually owned, single family units destroyed in land clearing operations, but in a new and different form.”<sup>65</sup>

## VI. DISADVANTAGES OF CONDOMINIUM

Ironically, the advantages of condominium carry the seeds of disadvantage. The more you strengthen individual unit ownership the more you weaken cooperative control by the group. It may be true “that condominium is simply another form of cooperative ownership of real property,”<sup>66</sup> but the very security of the fee simple title runs counter to the traditional view of a cooperative. This is but a legal affirmation of the truth in the saw, “you can’t have your cake and eat it too.” It is not an argument against condominium, as such, since all legal devices have weaknesses as well as strengths, but it does suggest caution in dealing with overly optimistic claims about the merits of this kind of project.

### A. *Disadvantages to the Purchaser*

As in the case of advantages, a long list of claimed disadvantages of condominium to the purchaser could be compiled. The problem areas can be isolated under three heads, however: first, the

<sup>63</sup> See *Brothers v. McMahon*, 351 Ill. App. 321, 115 N.E.2d 116 (1953).

<sup>64</sup> Note, *supra* note 31, at 338.

<sup>65</sup> Maki, *Condominiums: New Prospects for Realtors*, *Lawyers Title News*, Nov. 1962, p. 5.

<sup>66</sup> Ramsey, *Condominium, The New Look in Cooperative Building*, in *PROCEEDINGS OF THE AMERICAN BAR ASS’N SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW, PART II, REAL PROPERTY LAW DIVISION 4-5* (1962).

cumbersomeness of this legal device, especially if unaccompanied by statutory authorization; second, the lack of control by the co-owners of the activity of a recalcitrant owner; and third, the legal problems peculiar to any new technique that has not been fully developed by the case law.

The first point has been well stated by Professor Powell, writing before the current impetus for condominium and not mentioning the concept by name.

“The legal patterns employed in creating cooperative apartments fall into four categories, of which two are extremely rare. . . . Under the second of the rare patterns, each tenant acquires the legal ownership of the cubic footage constituting his apartment but a joint tenancy or tenancy in common is established as to the areas used in common, such as halls, stairways and grounds.<sup>67</sup> Few persons have resorted to these cumbersome and unsuitable patterns for the creation of a cooperative apartment relation.”<sup>68</sup>

In a footnote, Professor Powell adds:

“The inconvenience of requiring the joinder of many persons in deeds, leases or mortgages, the complete absence of a simple method of forcing the individual participant to perform his financial obligations, and the risk of heavy individual personal liability, combine to prevent both of these devices from ever having popularity.”

The previous discussion in this article indicates that some of these objections have been met by the Puerto Rican experience and by carefully drafted statutes and bylaws, but others remain, and the whole idea will undoubtedly strike many purchasers as too complicated for their tastes. Just as the sale of realty can never be made as simple as the transfer of personalty, neither can the sale of a condominium unit be reduced to the simplicity of the deed, mortgage, and closing statement to which individual home owners are accustomed. Moreover, the expense may be increased because of the separate fees and separate mortgages. The latter will require more servicing and may carry a one-half percent higher interest rate than a blanket mortgage on the same project.<sup>69</sup>

<sup>67</sup> See, e.g., *Woods v. Petchell*, 175 F.2d 202 (8th Cir. 1949), where the result was found to be a cooperative apartment. [Footnote by Professor Powell.]

<sup>68</sup> 4 POWELL, REAL PROPERTY 709-10 (1954).

<sup>69</sup> See Note, *supra* note 58, at 603.

The appeal of individual ownership may also be lessened when the purchaser realizes the necessity for a long-term mortgage on which he will remain personally liable even after he leaves the project. In ordinary cooperatives the agreement usually has an "escape clause" which allows a member to get out after the payment of a fixed sum. Although the separate mortgage makes the owner more financially independent of his fellows, it also means that he cannot take advantage of any reserves which might be built up and which could be available to carry him through a temporary default.

The second disadvantage comes down to this—it may be difficult to get rid of a "bad egg" if one owns a fee. The lessee can be evicted by summary proceedings, but the owner has a security of tenure which protects the undesirable participant as well as the desirable one. Remedies do exist, but lien foreclosures and breach of covenant suits can be costly and protracted if the built-in social pressures fail to resolve a dispute. Moreover, it may be difficult to insure, even through restrictive covenants in the deed and the binding force of the statute and bylaws, that future purchasers will be desirable and financially responsible.<sup>70</sup> The principal difficulty, however, lies with the owner who becomes *involuntarily* undesirable, *i.e.*, one who, for reasons beyond his control, cannot pay his share of the common expenses and taxes. These defaults are anticipated in the various statutes, and remedies are provided. They should work well when the defaults are few and the bulk of the owners are solvent, but what will happen in times of recession or of major depression? It was the latter which broke the back of the old-style stock cooperative, and no one knows how condominium would fare in such troubled times. The mortgages are several but the common expenses are joint.

The third area of disadvantage is the most difficult to handle. Condominium has a long history, but it is only now being tried in the crucible of twentieth-century America. An inventive mind can visualize numerous problems for which the solutions are not at hand. The more cautious investor may wish to let others provide the answers before casting his own lot with condominium. Central to this problem is the exact nature of the management association and its relationship to the unit owners. It has been suggested that the board of managers might be considered an

<sup>70</sup> See Comment, 13 HASTINGS L.J. 357 (1962).

"association" and taxable as a corporation.<sup>71</sup> This seems doubtful since there is no intent to carry on a business for joint profit;<sup>72</sup> but it would be possible to show a profit in a given year, and one is never too sure about tax matters. On the other hand, the management group is not incorporated and hence there is no limited liability either in contract or tort. This may not cause difficulty since the role of the board is carefully circumscribed; it deals principally with the common elements, and proper insurance coverage is mandatory. Nonetheless, one can foresee situations where the coverage would be inadequate, and the unit owner might find himself liable for a sizable judgment with no protecting corporate screen.<sup>73</sup> Similarly, on the insurance point, would a breach of warranty by one co-owner (say, in a fire insurance policy) void the policy for all? Can the management association sue a unit owner, or a third party, without joining all other owners? What if some refuse to join? What can be done to facilitate class actions by the association?

Other questions come readily to mind. In an eminent domain proceeding, is each unit owner entitled to a separate hearing on his fee or can the condemning authority proceed against the entire building? Many statutes of limitations read, "No person shall commence an action for the recovery of lands . . . unless within twenty years," etc.<sup>74</sup> Is a unit land, and, if not, will the contract statute apply? There is no point in continuing this list since the moral should now be clear. None of these objections are, in any sense, fatal, but collectively they must be treated as some of the disadvantages of a new legal tool like condominium.

### B. *Disadvantages to the Developers, Lenders, and Brokers*

The disadvantages to the developers, lenders, and brokers follow the same pattern as those to the purchaser. The principal objection is administrative complexity. At the outset, the developer must make two applications for FHA insurance, one for a blanket

<sup>71</sup> See INT. REV. CODE OF 1954, § 7701(a)(3). For a detailed discussion of the point, see Note, *supra* note 31, at 334.

<sup>72</sup> Treas. Reg. § 301.7701-2(a)(2) (1960) states that "the absence of [either associates or an objective to carry on business for joint profit] will cause an arrangement among co-owners of property for the development of such property for the separate profit of each [or for no profit] not to be classified as an association."

<sup>73</sup> Note, *supra* note 31, at 312. The board of managers could be set up as a not-for-profit corporation to avoid some of these problems. This is being done in some condominiums.

<sup>74</sup> ILL. REV. STAT. ch. 83, § 1 (1961).

mortgage for the project, the other for individual mortgages for the unit owners. Each must comply with the FHA regulations and the developer may run into delay while individuals arrange for FHA approval. If the developer is unable to sell all the units, he may have difficulty in discharging the original project mortgage, with the result that the entire venture could bog down.<sup>75</sup> Moreover, the lender may be restive under a security which is subject to rules and assessments imposed by a management group over which he has little or no control. This is particularly true if incompetent amateurs are in the position of running the show.

Prior discussion has indicated other administrative problems. In the absence of statute, the building may be taxed as a whole, and even with statutory authorization some assessors may be less than cooperative in carrying out their duties.<sup>76</sup> The developers may have to comply with subdivision regulations which would not be involved in ordinary apartment houses.<sup>77</sup> In short, the suppliers of condominia will find that all is not beer and skittles, and that they, too, must deal with the cumbersomeness inherent in this type of multiple unit housing and with some of the uncertainties involved in the new and the different.

## VII. CONCLUSION

Will condominium help provide home ownership for megalopolis? The advantages and disadvantages to the purchaser, the developer, the lender, and the broker are relevant in answering that question, but the issue for society as a whole is how to provide more and better housing for a rapidly expanding urban population. On balance, condominium should be a useful legal tool because it appeals to the basic American urge for private ownership and provides a greater degree of independence from one's fellows than is normally available in the landlord-tenant relationship or in the traditional cooperative. While it is far from perfect and while some of its advocates seem to be overly optimistic in its praise,<sup>78</sup> condominium is more than an attractive gimmick de-

<sup>75</sup> See Note, *supra* note 31, at 330.

<sup>76</sup> See text *supra* at 1226-27.

<sup>77</sup> See text *supra* at 1222-23.

<sup>78</sup> "Think of a condominium as a high-rise apartment building, a garden-type housing development of detached and semi-detached units each consisting of one or more stories, a row of attractive town houses, an office building in which each occupier owns his own office space, a shopping center where each shopkeeper owns his own store-room, an industrial complex where each industry owns its own plant or facilities, a

signed to lure reluctant capital into the housing market. It has more to commend it than the availability of FHA insurance, and, if approached with the usual legal skepticism and caution, it should join its older cousins as a respectable member of the property family. Although not strictly required, condominium should be undergirded by a well-drafted statute, and the bar should watch its growth closely so that needed changes can be made as experience discloses the weak spots in the pioneer projects.<sup>79</sup>

warehouse or terminal with ownership of areas divided among the occupiers—think of a condominium as any conceivable type of project where it is desirable for the various occupiers to own their respective areas and to have joint control of common areas or facilities. The possibilities are unlimited. Think, also, of the unlimited possibilities for land development and redevelopment and the possibilities for more and better housing, as well as urban renewal and rejuvenation. Do not overlook the possibilities for commercial and industrial expansion and all of the economic advantages that can accrue to our Commonwealth and its residents, *if* we are farsighted enough to provide the legislation and legal working tools so that condominium projects will be feasible in Pennsylvania." Smith, *supra* note 32, at 514. As Mr. Smith correctly points out, condominium is useful for many projects other than housing and, if it operates successfully in the apartment field, it will undoubtedly be used in a variety of commercial ventures.

<sup>79</sup> Currently the subject is receiving a vast amount of attention. For some idea of just how much, see Title News, May 1962, p. 5, for an up-to-date bibliography of developments in the field. The most recent treatment is a 146-page symposium, *The Condominium*, 14 HASTINGS L.J. 189 (1963).