1964

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Recommended Citation

David T. Smith, Hybrid Housing in Ohio: Condominium, 15 Cas. W. Res. L. Rev. 597 (1964)

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Hybrid Housing in Ohio: Condominium

David T. Smith

INTRODUCTION

The end of World War II saw the beginning of a building boom which has swept across the United States from coast to coast. One effect of this building boom has been a decrease in the availability of land adjacent to large cities for single homes. As each year passes, less and less urban land becomes available. Thus, subdivisions continually spring up at distances far removed from the business area of the central city.

Today, the highest rate of building growth is found at the periphery of metropolitan areas. This has caused a metamorphosis in the American countryside, leading quickly to the creation of spread out super-cities. Such a super-city has been aptly called a megalopolis. Such a term will soon apply, for example, to the east coast from Boston to Washington D.C., and to the west coast from San Francisco to San Diego. Indeed, many cities are becoming super-cities in themselves, spreading haphazardly in all directions. However, not all writers have been quite so kind with respect to the terminology used to describe this growth. For example, it has been stated that the peripheral development occurring at the present time leads to the development of "sloppy, sleazy, slovenly, slip-shod, semi-cities," called "slurbs." Whether we think in terms of a "megalopolis" or a "slurb," it seems evident that this spreading out process, largely caused by a movement to the suburbs, presents a clear danger to every large American city.

2. In Gottmann, Megalopolis 4 (1961), the author explains the origia of the "megalopolis" as follows:
   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, planned 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.'
3. Since the term megalopolis is not in common use, there is no reason why it shouldn't be utilized to designate such geographical areas.
construction sites have disappeared in megalopolis; slums have added to the cost and inconvenience of our traditional ideas of housing. Each man is finding it more difficult to build his "castle" on the traditional lot. He has become a victim of the suburban sprawl which he fostered. Commuting distances have become prohibitive and dwelling costs exceedingly high. The solution is in the alternative: either people will have to return to the central city, or its immediate environs; or the process of decentralization will have to increase still further. The result of decentralization is economically disastrous for urban areas as well as inconvenient. Decentralization, however, does allow the job to move to the man. Also, in some cases it allows manageable sized dwelling areas to grow out around smaller cores. However, if our central cities are to survive, decentralization must be counterbalanced, and, hence, a return of some of the populace from the peripheral areas is necessary if large cities are to continue to thrive and prosper. It is at this point that the concept of condominium enters the picture, for apartment dwelling of some type is the most feasible method of adequately housing large urban populations in a limited space.

THE CONDOMINIUM CONCEPT

What is Meant by the Term Condominium?

If one desires to learn the meaning of a certain term, his first resort is usually to a dictionary. However, the layman would find little solace in Webster with respect to the definition of condominium. Nor is any clarification of the matter available to the lawyer from an examination of Black. The definitions ascribed to "condominium" by these two dictionaries are, at best, nebulous and patently inadequate. Hence, an adequate definition is yet to be formulated.

It seems best to consider the term "condominium" as signifying a dual form of ownership, i.e., individual fee ownership of apartment space, plus fee ownership of an undivided interest in the land and all parts of the building (excluding all the apartment spaces) as a tenant in common with all other apartment owners. Perhaps the closest analogy to the condominium is the co-operative apartment. However, a co-operative apartment involves a share holding arrangement wherein the fee ownership of the land and building is in a corporation formed to take such title. The

6. Condominium is defined as follows: "Joint dominion or sovereignty; specif.: a Roman Law. Joint ownership. A government or protectorate jointly administered by two or more powers, as in Sudan or the New Hebrides; also, the region so governed." 1 WEBSTER, NEW INTERNATIONAL DICTIONARY 557 (2d ed. 1938).

7. "CONDOMINIA. In the civil law. Co-ownerships or limited ownerships, such as emphyteusis, superficies, pignus, hypotheca, usufructus, usu, and habitatio. These were more than mere jura in re aliena, being portion of the dominium itself, although they are commonly distinguished from the dominium strictly so called." BLACK, LAW DICTIONARY 367 (4th ed. 1951).
co-operators merely own shares in the corporation in proportion to the 
value of their respective apartments. They take leases to their apartments 
with permanent renewal rights. Thus, the individual does not own his 
apartment in fee; rather, he becomes a tenant in the apartment building. 
However, the opposite is the crux of the condominium concept. Each 
participant in the condominium project owns his "dwelling," or in other 
words the participant holds his apartment in fee.

In 1963, the Ohio General Assembly enacted the Condominium 
Property Act. However, Ohio is far from the first state to have enacted 
such a law. From 1961 through 1963, thirty-four states enacted con-
dominium legislation, twenty-seven such acts having been enacted during 
the 1963 legislative sessions. Thus, each of these jurisdictions has in-
sured, by statute, the legality of condominium property. Accordingly, 
the establishment of condominium projects has been greatly facilitated.

Is There a Necessity for the Condominium Property Act?

Although the Ohio statute, as in other jurisdictions, has insured the 
legality of condominium property, the question arises as to whether such 
legislation is actually necessary. In other words, can the condominium* 
exist at common law independent of the 22 sections found in chapter 5311 
of the Ohio Revised Code? It would seem that this question can be an-
swered in the affirmative. Such an answer may be deduced from an ex-
amination of the concept of condominium from an historic standpoint.

One authority attributes the origin of the condominium to Roman 
law. This author, however, respectfully contends that such a conclu-
sion is erroneous. First, it should be noted that the prevailing principle
of Roman law in this respect is that of super ficies solo credit, or, whatever is attached to the land belongs to the land. However, this principle is antagonistic to the condominium concept where the land itself is owned by all participants as tenants in common, but the dwelling units owned by them as individuals. There is, however, historical evidence of ownership of floors of houses and even separate rooms in Europe during the Middle Ages. Evidence of this type of ownership dates back to the 12th century in some German cities, and similar evidence exists in the later Middle Ages in France and Switzerland. At a much later date, the Code Napoleon specifically recognized the separate ownership of floors in a building. This was a special kind of co-ownership of an immovable.

The common law, however, did give impetus to separate floor or room ownership. Although a statement in the Year Books notes that a frank tenement could not exist in an upper chamber, other scholars have found authority to the effect that such ownership was recognized at common law and at a relatively early date. Coke upon Littleton mentions ownership rights in a portion of a building and states that such "superimposed freeholds" have existed in England for a long period of time.

Many American states have long recognized the legality of conveying a freehold estate in a portion of a building. For example, in Thompson v. McKay the California Supreme Court reached the conclusion that the instrument involved was operative to convey title in and to the second story of a building. Similarly, in the earlier Massachusetts case of Loring v. Bacon, the court found each of the parties involved had distinct dwelling houses adjoining together, one being above the other. Thus, one could have developed a condominium at common law. This conclusion is also supported by the fact that the common law has long recognized multiple interests in a single res, i.e., one thing may be subject to multiple rights.

Somewhat closely related to condominiums are cotenancies. Of course, questions of rights to the surface, sub-surface, and air must be put aside at this point. All of the cotenancies (tenancy in common, joint tenancy, tenancy by the entirety, and coparcenary) stress the legal con-

11. HUBNER, GRUNDZüGE DES DEUTSCHEN PRIVATRECHTS 158 (2d ed.).
13. See 11 DEMOLOMBRE, COURS DE CODE NAPOLEON 426 (1876).
14. BROOKES' ABRIDGEMENT (1586) tit. Demaunde, pl. 20, fol. 213.
15. BUCKLAND & McNAIR, ROMAN LAW AND COMMON LAW 78 (1936).
16. Townes v. Cox, 162 Tenn. 624, 39 S.W.2d 749 (1931); Thompson v. McKay, 41 Cal. 221 (1871); McConnel v. Kibbe, 43 Ill. 12 (1867); Loring v. Bacon, 4 Mass. 575 (1808). See also Ball, Division into Horizontal Strata of the Landscape Above the Surface, 39 YALE L.J. 616 (1930).
17. 41 Cal. 221 (1871).
18. 4 Mass. 575 (1808).
cept of the unity of possession. Unity of possession alone is sufficient to create a tenancy in common in that the possession of one is the possession of all, although the shares of each owner need not be equal. The same principles apply with respect to the common areas of condominium property. However, the problems not resolved by the common law prior to emergence of the condominium concerned air space. No theory had been worked out at common law for joint and several rights to be fixed in space; rights which would survive the destruction of a building. However, it is submitted that there is no common law doctrine preventing parties from providing among themselves for such a contingency.

The Advantages of an Enabling Act

It appears, therefore, that no enabling act is actually necessary to provide for the birth of a condominium. It is important to note, however, that enabling acts are highly desirable. Most enabling acts clarify the rights of the various parties inter-se and with third parties. For example, would a condominium unit owner who repaired common areas be able to obtain contribution from his neighbors in the absence of a statute? Could he demand that his neighbors make repairs? Would the unit owned by a participant be considered a separate entity for purposes of taxation? The answers to these questions at common law are uncertain. Thus, it is submitted that in this respect legislation is not only desirable, but possibly necessary.

Furthermore, statutory authorization of condominiums would seem to remove any doubts that lending institutions might have with respect to investing in a condominium project. Thus, although it would seem that the condominium can exist under the common law in Ohio, it is questionable whether it would flourish without the Condominium Property Act.19 It is important to note at this point that the question is of more than theoretical importance since the Condominium Property Act is applicable only to property which has been expressly made subject to its provisions in the manner prescribed by the act.20 Thus, if any attempt is made to convey a fee interest in a portion of a building which has not been expressly made subject to the act, the common law would govern.

Advantages and Disadvantages of the Condominium

Advantages

Chapter 5311 of the Ohio Revised Code provides advantages to numerous people, primarily purchasers, developers, lenders, and real estate brokers. The advantages to these various parties are, to a considerable

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extent, interrelated. However, the approach taken by this article, i.e., to provide housing for urban dwellers, necessitates nominating the purchaser as the most important party.21

Over twenty million people lived in apartments in the year 1960.22 Today there are even more. The condominium would provide such people with the advantages of apartment living plus the advantages of home ownership. In this respect, it could be said that the condominium is truly hybrid housing. But, what are these advantages? Primarily, the concept of condominium offers a partial solution to the traditional problems of land distribution, extreme distances from jobs, and devitalization of central cities. A condominium project would most likely be found in or near the central city. Thus, the obvious problem of commuting an excessively great distance is eliminated. The solution of this problem has the additional effect of allowing the unit owner to live closer to cultural areas. However, the apartment dweller has these same advantages. What then is the added advantage of the condominium? Basically, it is the advantage of home ownership. The apartment dweller is a renter; the unit owner is a home owner. His dwelling belongs to him. He has equity in his property. This aspect of home ownership is the crucial factor. Furthermore, since the unit owner is a home owner, he is the recipient of tax advantages which are not available to the apartment dweller. He is allowed to deduct his mortgage interest23 and property tax payments.24 The unit owner can also deduct uninsured casualty losses under the Internal Revenue Code, if such losses are not connected with a trade or business.25 Co-operative dwellers do not have such advantages.26 The unit owner can sell27 or mortgage his "home." Also, such unit owners or participants are not dependent upon the solvency of one another as are dwellers in a cooperative apartment project. Hence, all the ad-

21. This author is concerned with the use of the condominium to provide housing. However, there is no necessity to so limit a condominium's use.

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 storeroom, an industrial complex where each industry owns its own plant or facilities, a 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.


25. INT. REV. CODE of 1954, § 165 (c) (3).
26. The tenant-shareholder may deduct interest and property taxes under section 216 of the Internal Revenue Code but several conditions are imposed on him that would not have to be met by a condominium unit owner. The tenant-shareholder does not get the advantage of
vantages of apartment living plus the advantage of home ownership are present in condominium living.

The rapid growth of condominium legislation since 1961 was the direct result of the passage of an amendment to the National Housing Act in 1961. The resultant effect of the enactment of section 234 was a flood of state legislation, including chapter 5311 of the Ohio Revised Code. State legislatures were apparently concerned about insuring clarification of state laws with respect to the condominium in order that low down payment FHA insured mortgages would be available. The approach taken by the federal government benefits all parties interested in condominium projects. Ohio should benefit by lower cost condominium housing. The Condominium Property Act ought to stimulate prospective buyers, builders, and mortgage investors who might otherwise have been reluctant to act for fear that the condominium was invalid at common law.

Advantages to developers, lenders, and brokers come about through the advantages the condominium offers the purchaser. If the consumer accepts the condominium it is quite likely that the housing vacuum may be filled. Assuming consumer acceptance, it should follow that development will be stimulated due to the fact that the Federal Housing Administration is now authorized to insure a first mortgage given to secure the unpaid purchase price on individual units. Conventional financing will also become available since smaller lending institutions can participate in financing individual units. Prior to the enactment of section 234, the cost to small lending institutions of financing an entire apartment project would have been prohibitive. From the real estate broker's viewpoint, each unit in a condominium will be a single listing. For him the condominium should present a "rosy" picture. No longer does the broker have only two-dimensional subdivisions which are fast becoming problematic with respect to increases in commuting distances and construction costs. He now can deal with a three-dimensional subdivision, stacked like a child's blocks, unit on unit.

Disadvantages

For every pro there is a con, and this is no less true with respect to condominiums. Advantages are opposed by disadvantages, and these dis-

27. A seller or buyer of a condominium unit could receive the advantages of section 1034 of the Internal Revenue Code which provides that a home owner's gain on the sale of his residence need not be recognized if he invests it in a new residence.
29. Ibid.
advantages affect the same parties who would benefit by condominium projects, viz., purchasers, developers, lenders, and real estate brokers. However, the relatively cumbersome legal method utilized in setting up a condominium is a problem of major significance. Ohio law is, of course, controlled in this respect by the Condominium Property Act.\(^{30}\)

The purchaser may find himself faced with the problem of the "unneighborly neighbor;" that is, the lack of control that a unit owner has over the activity of a recalcitrant owner. He cannot simply fail to renew his lease as he might do if he were an ordinary apartment dweller. Although he receives certain tax advantages, it must be remembered that two advantages, the deduction of property taxes and the deduction of mortgage interest, have concomitant disadvantages with respect to the payment of local property taxes and interest on the loan received to purchase the unit. Conversely, the apartment renter does not pay such taxes or interest. One major disadvantage is clear: it is the uncertain evolution of legal problems concerning condominiums. The solution of such problems can only be resolved by judicial interpretation of statutes, or case law alone where the statute is deficient.

The developer of a condominium project will be faced with what might be called problems of "red tape." First, with respect to financing under the Federal Housing Administration, it is necessary for the developer to make two applications for FHA insurance.\(^{31}\) He must apply for a blanket mortgage for the entire project, as well as for individual mortgages for the unit owners.\(^{32}\) Since each unit owner must comply with FHA regulations, the developer may be delayed while these individuals secure necessary FHA approval. Also, if he has difficulty selling the units, the whole project might well collapse due to difficulty in meeting the original project mortgage. The developer might, however, prefer not to sell all the units; in other words, he could develop a combined residential and commercial project, acting as both a seller and renter of real estate. The developer must also be careful to follow the condominium statute in his respective jurisdiction lest he find himself with a common law condominium; or if it be true that a common law condominium cannot exist in some jurisdictions, he would have neither. In such a situation, he might find himself with a building taxed as a whole.\(^{33}\) Furthermore, by not adhering to statutory procedure, the developer might also find himself forced to comply with subdivision laws inapplicable to the

\(^{30}\) OHIO REV. CODE ch. 5311 (Supp. 1963).

\(^{31}\) See Note, Community Apartments: Condominium or Stock Cooperative, 50 CALIF. L REV. 299, 330-32 (1962).

\(^{32}\) Ibid.

\(^{33}\) Ibid.

\(^{33}\) In Ohio if a condominium project has been subjected to the provisions of chapter 5311, each condominium unit is treated as a separate parcel for all purposes of taxation. OHIO REV. CODES § 5311.11 (Supp. 1963).
In this regard, lending institutions might also take note that they will be dealing with a project or projects subject to rules and assessments imposed by a management or controlling group over which they have little control. The real estate broker's disadvantages, however, are minimal in this respect. If the units turn over, he prospers; if they do not, he still has his more conventional brokerage business. Thus, all is not necessarily "milk and honey" for the various parties who may have an interest in condominium projects.

**ANALYSIS OF CHAPTER 5311 OF THE OHIO REVISED CODE — THE "CONDOMINIUM PROPERTY" ACT**

It has been suggested previously in this article that legislation is not necessary for the creation of a condominium in a common law jurisdiction. However, there is an advantage to be found in such legislation. It organizes the field of law and thus eliminates uncertainty. In other words, the Condominium Property Act should facilitate the creation of condominium projects. Thus, there is no real argument to be advanced against the act since it is permissive in nature. It governs a condominium project only if the developer elects to follow the legislative plan.

Although the initial utilization of the condominium concept occurred in Europe, it did not reach American territory until the 1950's. Thus, in 1958, Puerto Rico passed its "Horizontal Property Act." This act modified a prior 1951 act that initially established the legality of this type of ownership. Indeed, the term "condominium" comes to us from a similar Spanish word in use in Puerto Rico. The passage of this "Horizontal Property Act" coupled with section 234 of the National Housing Act of 1961 set the stage for the condominium legislation that has been enacted since 1961. The Ohio statute is part of this legislation.

The statutory condominium is really a form of co-operative ownership in which: (1) there is a separate fee title to each unit in the building; (2) each unit owner has a proportionate undivided interest in the common areas and facilities in and around the building; (3) each owner must bear a proportionate share of the expenses created by the ownership of the common areas and facilities; (4) the unit owners must obey certain by-laws regulating relationship of owners; and (5) the condominium project is managed by a unit owners association.

34. If chapter 5311 controls, a condominium will not be considered a subdivision within the meaning of chapter 711 of the Code. Ohio Rev. Code § 5311.02 (Supp. 1963).
37. Ibid.
Definitions

The first section of the Ohio Condominium Property Act contains a number of definitions. The section is in a sense self-explanatory. "Condominium property" is defined. The statute uses the term "unit" to designate the apartment that is owned in fee; the owner of the unit is termed the "unit owner." Besides owning an individual unit, each unit owner owns, as a tenant in common with other unit owners, the "common areas and facilities." There is also a subcategory entitled "limited common areas and facilities." All unit owners are part of a "unit owners association" which administers the condominium property. A definition is also provided for the "declaration," a necessity in creating a

40. OHIO REV. CODE § 5311.01 (Supp. 1963).
41. "'Condominium property' means and includes the land, together with all buildings, improvements, and structures thereon, all easements, rights, and appurtenances belonging thereto, and all articles of personal property which have been submitted to the provisions of Chapter 5311 of the Revised Code." OHIO REV. CODE § 5311.01(A) (Supp. 1963).
42. "'Unit' means a part of the condominium property consisting of one or more rooms on one or more floors of a building or buildings and designated as a unit in the declaration and delineated on the drawings provided for in section 5311.07 of the Revised Code." OHIO REV. CODE § 5311.01(G) (Supp. 1963).
43. "'Unit owner' means the person or persons, natural or artificial, owning the fee simple estate in a unit or, if the real estate submitted as part of the condominium property is not fee simple, the ninety-nine year leasehold, renewable forever, in a unit." OHIO REV. CODE § 5311.01(H) (Supp. 1963).
44. OHIO REV. CODE § 5311.01(B) (Supp. 1963) provides what shall be included in common areas and facilities as follows:

   'Common areas and facilities' means and includes, unless otherwise provided in the declaration, the following parts of the condominium property:
   (1) The land described in the declaration;
   (2) All other areas, facilities, places, and structures which are not part of a unit, including, but not limited to:
      (a) The foundations, columns, girders, beams, supports, supporting walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the building or buildings;
      (b) The basement, yards, gardens, parking areas, garages, and storage spaces;
      (c) The premises for the lodging of janitors or persons in charge of the property;
      (d) Installation of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating;
      (e) The elevators, tanks, pumps, motors, fans, compressors, ducts, and, in general, all apparatus and installations existing for common use;
      (f) Such community and commercial facilities as may be provided for in the declaration;
      (g) All other parts of the condominium property necessary or convenient to its existence, maintenance, and safety, or normally in common use, or which have been designated as common areas and facilities in the declaration or drawings.
45. "'Limited common areas and facilities' means and includes those common areas and facilities designated in the declaration as reserved for use of a certain unit or units to the exclusion of the other units." OHIO REV. CODE § 5311.01(I) (Supp. 1963).
46. "'Unit owners association' means the organization of all the owners of units in a condominium property which administers the condominium property." OHIO REV. CODE § 5311.01(J) (Supp. 1963).
47. "'Declaration' means the instrument by which property is submitted to the provisions of Chapter 5311 of the Revised Code and any and all amendments thereto." OHIO REV. CODE § 5311.01(G) (Supp. 1963).
condominium under chapter 5311. Other definitions found in section 5311.01 are for "common expenses," "common profits," and "common loss." These definitions, although self-explanatory, are nevertheless of primary importance since an understanding of the provisions of the entire act is predicated upon them.

Subjecting the Condominium to the Act

Section 5311.02 specifically provides that the Condominium Property Act is only applicable to property which is expressly submitted to the provisions of the act. Filing for recording of a declaration by the owner or owners, i.e., developer or developers, of a condominium property project is a condition precedent to operation of the act. Thus a public deed, signed by the owner, acknowledged before two witnesses and a notary public, or other designated officer, must be executed.

The declaration should contain: (1) a legal description of the land; (2) the name by which the condominium property is to be known, said nameincluding the word “condominium”; (3) a statement of the purpose of the condominium property and the units, together with any restrictions on the use or uses thereof; (4) a general description of the building or buildings which states the materials out of which it or they are constructed, which also includes the number of stories, basements, and units therein; (5) a description of each unit; (6) the designation given each unit; (7) the location of each unit; (8) a description of the common areas and facilities and limited common areas and facilities; plus a statement of the percentage interest which each unit owner has therein; (9) a statement that each unit owner shall be a member of the unit owners association; (10) a designation of a person to serve as agent of the unit owners association for receiving service of process; (11) a statement of the method by which the declaration may be amended; and (12) any further provisions deemed desirable.

The statutory requirement which allows the declaration to contain “any further provisions deemed desirable” is a “catch-all” clause. This

48. "Common expenses" means those expenses designated as such in Chapter 5311. of the Revised Code and in or in accordance with the provisions of the declaration. OHIO REV. CODE § 5311.01(D) (Supp. 1963).
49. "Common profits" for any period of time means the amount by which the total income, rents, profits, receipts, and revenues from the common areas and facilities exceed the common expenses for said period. OHIO REV. CODE § 5311.01(E) (Supp. 1963).
50. "Common loss" for any period of time means the amount by which the common expenses exceed the total income, rents, profits, receipts, and revenues from the common areas and facilities for said period. OHIO REV. CODE § 5311.01(F) (Supp. 1963).
51. OHIO REV. CODE § 5311.02 (Supp. 1963).
52. OHIO REV. CODE § 5311.06 (Supp. 1963).
53. OHIO REV. CODE § 5311.05(A) (Supp. 1963).
54. OHIO REV. CODE § 5311.05(B) (Supp. 1963).
clause is not primarily intended to provide the basis for enumerating minimum day-to-day requirements involving the administration of the condominium. For example, it is not necessary to provide for election of a board of managers; collecting, budgeting, and disbursing assessments; and adopting rules for the maintenance and orderly use of common areas and facilities. Provisions concerning such administrative details are found elsewhere in the act.\(^5\) Rather, it would seem that optional inclusions are likely to include covenants and other rights of ownership in real property, e.g., a right of first refusal. Such an interpretation is justified in light of a later section of the act which deals with deed restrictions.\(^6\)

The declaration ought to state that all covenants and easements run with the land and that all subsequent purchasers and/or mortgagees take subject thereto. It would seem that among potential covenants one providing for reciprocal easements of encroachment in the event that the building settles or shifts ought to be included. This would result in one participant's unit being in the air space of another. There is no necessity to grant a right of access through individual units for the purpose of maintaining, repairing, or servicing any common areas or facilities since the statute specifically provides for such a contingency.\(^7\) However, one might consider the practicality of stating in the declaration that all legal and equitable remedies to enforce its provisions are preserved.

One other factor concerning the declaration is worthy of consideration. What if any one of the requisites of section 5311.05 is unsatisfied? If it is assumed that a common law condominium could exist apart from statute, the attempt to create a condominium is not thereby rendered nugatory. This is true even though the statute appears mandatory in nature by providing that the declaration "shall contain" certain provisions.\(^8\) Furthermore, even if the condominium could not exist at common law, might not an analogy to corporate law be drawn, and the contention made that what was created was a de facto rather than a de jure condominium?

Another section of the act requires the preparation of a set of drawings for the property made subject to the act.\(^9\) These drawings must show, in considerable detail, all the particulars of the condominium property. They must include, but need not be limited to, the layout, location, designation, and dimensions of each unit; the layout, location, and dimensions of both common areas and facilities, and limited common areas and facilities. These drawings must be certified by a registered surveyor and

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55. See OHIO REV. CODE § 5311.08 (Supp. 1963).
57. OHIO REV. CODE § 5311.03 (F) (Supp. 1963).
58. OHIO REV. CODE § 5311.05 (B) (Supp. 1963).
a registered architect, or by a registered surveyor and a licensed professional engineer.

The preparation of these drawings is an integral factor in planning a condominium. Although a registered surveyor must be one of the persons certifying the drawings in each case, it seems that they will probably be the work product of the architect or engineer.

The condominium is subjected to the provisions of the Condominium Property Act by filing with the county recorder the declaration together with the drawings of the building. The declaration and drawings must also be accompanied by a copy of the by-laws of the unit owners association. In this respect, certain changes were made in sections 317.08 and 317.18 of the Ohio Revised Code due to the enactment of chapter 5311. These changes were necessary to enable the county recorder to fulfill his obligations under the Condominium Property Act. However, before the declaration and drawings can be filed with the county recorder, they must be filed with the county auditor. After the declaration, drawings, and by-laws are filed with the recorder they will be recorded as follows: the declaration and by-laws in the County Registry of Deeds; the drawings in the Record of Plats. The county recorder is also required to index such documents.

61. Ibid.
62. The county recorder shall keep five separate sets of records as follows:
   (A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices, as provided for in sections 5301.47 to 5301.56, inclusive, of the Revised Code; all declarations and by-laws as provided for in sections 5311.01 to 5311.22, inclusive, of the Revised Code; and all certificates as provided for in section 5311.17 of the Revised Code; ....
   (D) A record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys of lands, and any center line survey of a highway located within the county, the plat of which shall be furnished by the director of highways or county engineer and all drawings as provided for in sections 5311.01 to 5311.22, inclusive, of the Revised Code. .... Ohio Rev. Code § 317.08 (Supp. 1963). (Emphasis added.)
63. At the beginning of each day's business the county recorder shall make and keep up general alphabetical indexes, direct and reverse, of all the names of both parties to all instruments theretofore received for record by him. ....
   In all cases of instruments filed in accordance with sections 5311.01 to 5311.22, inclusive, of the Revised Code, the name of each owner shall be entered in the direct index, under the appropriate letter, followed on the same line by the name of the condominium property, and the name of the condominium property shall be entered in the reverse index under the appropriate letter followed on the same line by the name of the owner of the property, or if the instrument contains the names of more than one owner there shall be entered the name of the first owner followed by "and others" or its equivalent. .... Ohio Rev. Code § 317.18 (Supp. 1963). (Emphasis added.)
64. Ohio Rev. Code § 5311.06(B) (Supp. 1963).
66. Ibid.
It is important to note that the provisions of the Condominium Property Act do not apply to all estates in real property. Only real estate which is held in fee simple, or a ninety-nine year leasehold, renewable forever, can be so subjected. From a practical standpoint, however, it would seem that little difficulty would arise in this respect. Once property is subjected to the provisions of the act, all the property, each unit, together with its undivided interest in the common areas and facilities, is considered for all purposes to be real property and is deemed real estate within the meaning of all provisions of the Ohio Revised Code. Such real estate, however, is not considered a subdivision and would, therefore, not be subject to any statutes regulating the subdivision of real property.

Ownership Rights

Two questions with respect to the rights of ownership of a unit owner should be analyzed: (1) What is the nature of the unit owner's interest in his own individual apartment? (2) What is the nature of his interest in the portions of the condominium project that are to be used in common?

The common law recognized the possibility of the conveyance of a freehold estate in a portion of a building. However, if the building was destroyed, the owner of a portion lost his interest. The conveyance of the specified portion of the building was in the nature of a defeasible fee, e.g., "to A so long as the building is in existence." The common law situation must be contrasted with that existing under the Condominium Property Act.

It is not entirely clear from the statute what the unit owner does own. The "'unit' means a part of the condominium property consisting of one or more rooms on one or more floors of a building or buildings . . ." It is submitted that the unit owner owns his unit in fee simple absolute. Aside from the statutory provisions concerning the status of the property if it is damaged or destroyed, a unit owner is, because of the nature of a condominium, the fee owner of the airspace enclosed by the apartment unit. Such an interest in the airspace should survive the destruction of the building. Thus, it could be argued that upon reconstruction of the individual units within this space previously occupied by units, title to the tangible portions of the building would vest in the owner of the airspace by virtue of the doctrine of accession. From this approach, the airspace would, upon destruction of the building, remain subdivided into separately owned cubes. If, on the other hand, the conveyance of the air-

71. See **Ohio Rev. Code** § 5311.01(G) (Supp. 1963).
space is considered in the nature of a defeasible fee, ownership of the airspace would be terminated with the destruction of the tangible building.

In any event, each unit owner has a fee interest in his apartment which is entirely separate and apart from the interests of all other unit owners. He may sell it, mortgage it, rent it, etc. In other words, he may treat his unit as he would any other piece of real estate, subject of course to any covenants, conditions, and restrictions contained in any deed to which he is subject, in the declaration, in the by-laws of the unit owners association, or in any administrative rules and regulations adopted pursuant to the provisions thereof.  

From the standpoint of conveyancing, the unit owner's situation is quite similar to that of any other real estate owner. By deed, he can convey title to his unit; by such a conveyance his undivided interest in the common areas and facilities will pass since the undivided interest in the common areas and facilities flows from the ownership of the individual unit. The deed merely describes the unit by stating the name of the condominium property, the number or other designation of the unit, and the numbers of the volumes and initial pages of the records of the declaration and drawings of the condominium property.  

Chapter 317 governs the recording of the deed. One important factor is that the Condominium Property Act makes no provision for the Torrenizing of condominium titles. Because of this "omission," it is questionable whether a condominium title could be registered under chapter 5309 of the code. This chapter provides for the registration of title to "land," and the unit owner has no land other than an undivided interest in common with other owners to the land described in the declaration. Aside from his interest in the common area, he has only four walls, a ceiling, a floor, and the airspace included therein. Certainly this does not constitute land, yet each unit does constitute real estate within the meaning of all of the provisions of the Ohio Revised Code. And real estate is, in a physical sense, land. Needless to say, such circuitous

74. It is likely, though, that the unit owner's deed will recite that the fee interest in the unit and the undivided interest in the common areas and facilities appurtenant thereto are being conveyed.
75. OHIO REV. CODE § 5311.10 (Supp. 1963). Initial conveyances of condominium units would be affected by section 5311.12 of the Code which reads as follows:

The owner or owners of property submitted to the provisions of Chapter 5311 of the Revised Code shall not thereafter convey any unit thereof until all liens and encumbrances, except taxes and assessments of political subdivisions, affecting both such unit and any other part of the condominium property have been paid and satisfied or the unit being conveyed has been released from the operation thereof.

It would seem that this section applies only to the establishment of a condominium project and thus does not affect subsequent conveyances by individual unit owners.
77. OHIO REV. CODE § 5309.05.
78. OHIO REV. CODE § 5311.03 (Supp. 1963).
reasoning must be avoided. Since it was necessary to amend certain sec-
tions of chapter 317 to allow the recording of condominium titles to be
effectuated, it is submitted that changes must be made in the "Torrens
Act" if they are to be registered.

Since it is questionable whether condominium titles can be registered,
it is therefore necessary to require the usual title search and guarantee
in every conveyance or other transaction affecting the condominium title.
Since the Condominium Property Act is a new enactment, it might be
advantageous for a county to establish a separate condominium tract in-
dex. A tract index is by lot number. Every lot in a county with a tract
index would have a number. In a special condominium tract index
each condominium project would have a number and each unit in the
project would have a sub-number.

Under section 5311.04, the common areas and facilities are to be
owned by the unit owners as tenants in common. The ownership in-
terest is then an undivided one. It would seem, therefore, that this
section provides the only practical answer to ownership of elements
that are of community interest. Although it would be theoretically
possible to have several ownership of the entire condominium property,
such ownership is not practical for two reasons. First, in such a project
there are a great number of facilities which do not lend themselves to
several ownership, e.g., elevators, swimming pools, gardens, etc. Sec-
ond, if such facilities of community or common interest were severally
owned, it would then become necessary to spell out common rights and
duties through the use of an excessive number of easements and covenants.
This would be a formidable task. Thus, there is a necessity for some
form of common ownership of these facilities and areas which are used
by all. The statute provides for a cotenancy in these facilities and areas,
and rights of ingress and egress are thus guaranteed by the nature of the
interests. Also, section 5311.04 provides that the percentage of interest
in the common areas and facilities shall be set forth in the declaration,
and shall be that percentage which the fair value of the unit bears to the
aggregate value of all the units having an interest in such common areas
and facilities at the date the declaration is filed for record. This per-
centage can be altered only by an amendment to the declaration, and
such amendment must be unanimously approved by all unit owners af-

Administration of the Condominium Property

Closely allied with the general problem of ownership rights is the

machinery which permits these rights to be exercised. The most im-
portant part of this machinery is the by-laws which govern the condo-
minium and which are administered by the unit owners association.
These by-laws are mandatory to the extent that they shall, unless the
declaration provides otherwise, control: (1) the election of a board of
managers from the unit owners association; (2) meetings of the unit
owners association; (3) the election of officers of the board of man-
gers; (4) the procedure for authorizing maintenance, repair, and re-
placement of the common areas and facilities; (5) assessment and col-
lection of common expenses; (6) distribution of common profits; and
(7) the procedure for the establishment and amendment of administra-
tive rules and regulations. These by-laws cannot be amended unless
the declaration creating the condominium is amended as well, and the
amendment is filed for record. The developer of the condominium
project must file the by-laws with the declaration; otherwise, a statutory
condominium has not been created.

The by-laws are the key to the entire condominium project. The
unit owners association is bound by them, and this means that since the
association is not a corporation, but merely consists of all unit members,
each and every unit owner is bound. However, problems can arise. For
example, a non-conforming unit owner who does not abide by the by-
laws might cause one such problem. It would seem that the unit owners
association could provide for the forfeiture of this owner's interest; how-
ever, this is a rather distasteful device. Therefore, the other owners
would be relegated to the more normal process of seeking either money
damages or injunctive relief. Either approach is apt to be slow and in-
effective.

Another problem may arise with respect to a subsequent purchaser of
a condominium unit. There is no specific provision in the statute giving
the right of first refusal to the unit owners association when the indi-
vidual unit is sold. Nevertheless, such a provision could be inserted in
either the declaration or the by-laws. Under section 5311.03, however,
all units are deemed real estate. Thus, since a unit is real estate it may
naturally be the subject of a demise, devise, gift, mortgage, sale, or trust,
and would be subject to the laws of descent and distribution if the
unit owner dies intestate. The statute requires unit owners and those

83. OHIO REV. CODE § 5311.08 (Supp. 1963).
84. Compare, e.g., MASS. ANN. LAWS ch. 183(A), § 12(C) (Supp. 1963). This section
reads as follows:

[The by-laws may provide a] right of first refusal by the organization of unit
owners in case of the sale of a unit, such right to be exercised within thirty days after
written notice of intent to sell is given to such organization, provided, however, that
this right shall not be exercised so as to restrict alienation, conveyance, sale, leasing,
purchase, ownership and occupancy of units because of race, creed, color or national
origin.
claiming through them to comply with the covenants, conditions, and restrictions set forth in either the deed to which they are subject, the declaration, or the by-laws of the unit owners association. These covenants, conditions, or restrictions would be subject to the same limitations which normally apply to restraints on alienation and utilization of real estate in general. Although one purpose of the Condominium Property Act is to create a marketable interest in the units of a project, it would seem that a right of first refusal in the by-laws ought to be held valid. In other words, because of the unique nature of a condominium wherein the rights of all parties are interrelated, the courts should permit a sale of a unit which is conditioned on the approval of the unit owners association or some percentage of the total number of unit owners. In this respect, the sale could be regulated. If a provision regarding the right of first refusal is inserted, some agreement as to price should be made in the event the right is exercised. Similarly, the leasing of units might be regulated by provisions concerning leases, assignments and subleases. Remedies for violation of such provisions would be either damages or injunctive relief or both.

The code further provides that the board of managers which is elected by the unit owners association shall exercise all power and authority of the unit owners association, unless the statute, declaration, or by-laws provide otherwise. The board, if it desires, may engage the services of a professional manager or managing agent. Thus, unless the Condominium Property Act provides otherwise, the authority of the unit owners association will be determined by the provisions in the declaration and the by-laws, and the board of managers will act for and through the association.

The unit owners association must keep complete books and records of accounts. These books must specify the receipts and expenditures relating to the common areas and facilities, as well as other common receipts and expenses. Also, the records must show the allocation, distribution and collection of common profits, losses, and expenses. Minutes of the meetings of both the unit owners association and of the board

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83. The insertion of a right of first refusal would present a perpetuities problem since it is, in effect, an option to buy which runs for an indefinite time. Thus, such a right would fail under the Rule Against Perpetuities, unless saved by statute which is not the case in Ohio. The author submits that the courts should make an exception to the general law where condominiums are concerned. The easiest solution, from the developer's standpoint, would be to limit the right of first refusal to an allowable time if it is inserted in the declaration or by-laws.
86. Ibid.
87. Ibid.
88. Ibid.
90. Ibid.
91. Ibid.
of managers must be kept,\textsuperscript{92} in addition to the records of names and addresses of unit owners and of their proportionate interests in the common areas and facilities.\textsuperscript{93}

The unit owners association is, through its board of managers, responsible for the maintenance and repair of the common areas and facilities. The procedure for authorization of such maintenance and repair must be specifically set forth in the by-laws.\textsuperscript{94} The association can also authorize the alteration or repair of any unit, if that alteration or repair is considered necessary by the board of managers for public safety, or to prevent the damage or destruction of other parts of the condominium.\textsuperscript{95}

A specific provision is found in the Condominium Property Act regarding insurance.\textsuperscript{96} Unless otherwise provided for by the declaration or by-laws, the board of managers must procure insurance to protect all unit owners and those claiming under them. They must provide personal injury and property damage insurance, as well as fire and extended coverage insurance.\textsuperscript{97} The personal injury and property damage insurance relates to injury or damage arising from or related to the common areas and facilities.\textsuperscript{98} The fire and extended coverage insurance covers all buildings and structures of the condominium property.\textsuperscript{99} The cost of this insurance would be a common expense.\textsuperscript{100}

The provision found in the statute concerning voting privileges is important from an administrative standpoint.\textsuperscript{101} This statutory voting privilege of unit owners can be provided for in the declaration. If the declaration does not so provide, each unit owner has voting power in proportion to his percentage of interest in the common areas and facilities.\textsuperscript{102} A fiduciary or minor may vote his respective interests if he is an owner of record.\textsuperscript{103} If two or more persons own undivided interests in a unit, each can exercise a proportion of such voting power according to his interest in the unit.\textsuperscript{104} The unit owners may also vote by proxy.\textsuperscript{105} A proxy vote can only be exercised by a fiduciary or representative of a unit owner who has established, by satisfactory proof to the unit owners association, that

\textsuperscript{92.} Ibid.
\textsuperscript{93.} Ibid.
\textsuperscript{94.} OHIO REV. CODE § 5311.08 (B) (4) (Supp. 1963).
\textsuperscript{95.} Ibid.
\textsuperscript{96.} Ibid.
\textsuperscript{97.} Ibid.
\textsuperscript{98.} Ibid.
\textsuperscript{99.} Ibid.
\textsuperscript{100.} Ibid.
\textsuperscript{101.} Ibid.
\textsuperscript{102.} Ibid.
\textsuperscript{103.} Ibid.
\textsuperscript{104.} Ibid.
\textsuperscript{105.} Ibid.
he is entitled to vote. The unit owner's voting privilege is important in many respects. It is important in amending the declaration since included within the amendment to the declaration could be amendments to the by-laws. In this respect, it will be recalled that no amendments to the by-laws are valid unless they are set forth in an amendment to the declaration. The unit owner's voting privilege is especially important where there is damage to, or destruction of, all or part of the condominium; or where rehabilitation of the condominium is contemplated; or when termination of the condominium is contemplated.

**Taxation**

Section 5311.11 which concerns the taxation of condominium units reads as follows:

> Each unit and its percentage of interest in the common areas and facilities shall be deemed to be a separate parcel for all purposes of taxation and assessment of real property, and no other unit or other part of the condominium property shall be charged with the payment of such taxes and assessments.

Various issues are presented in this section. Since each unit is treated separately for purposes of taxation it would appear possible that a buyer at a tax foreclosure sale might take free of the normal restrictions imposed on the unit owner. A unit might even qualify for tax exemptions. The question also arises as to whether the tax revenue raised by separately taxing each unit would equal whatever amount that could have been obtained by taxing the project in its entirety. Also, since the section states that each unit shall be deemed a separate parcel for purposes of taxation, it appears that it will be so treated for purposes of inheritance taxes as well as normal property taxes. This treatment of each unit as a separate parcel for tax purposes is the reason why the declaration and drawings must be presented to the county auditor before being filed.

**Liens and Encumbrances**

Various provisions of the Condominium Property Act deal with liens...
and encumbrances. Liens and encumbrances affect a condominium unit in the same manner that they affect any other real estate. Not only is the unit itself encumbered, but its percentage of interest in the common areas and facilities is also similarly encumbered. Such lien or encumbrance will most likely arise out of some act by the unit owner, or an agent acting under his authority, since the unit is owned in fee. However, there is one major exception. A person who works on or furnishes products for the alteration or repair of a unit may be entitled to a lien if such alteration or repair has been authorized or directed by the board of managers of the unit owners association. However, the board must consider such repairs or alterations necessary in the interest of public safety, or to prevent the damage to or destruction of other parts of the condominium. Such a lien does not depend upon the intent of the unit owner. If a party works on, or furnishes products for the alteration or repair of any part of the common areas or facilities, such party is entitled to a lien to secure payment therefor. This lien is on all units and their respective percentages of interest in the common areas and facilities, provided the alteration or repair work was authorized by the board of managers. It is thus a lien on the entire condominium project. Each unit owner, however, is not liable for the whole debt, but rather only for the share of the debt that is proportionate to his interest in the common areas and facilities. He may secure a discharge of the lien as to his unit by paying that amount. Thus, there should be no joint liability arising with respect to a lien or encumbrance imposed on more than one unit.

A further provision of the Condominium Property Act concerns a lien for a unit owner's share of the common expenses. Unless the declaration or by-laws provide otherwise, the unit owners association may have such a lien for the payment of the portion of common expenses chargeable against a particular unit, if such expenses remain unpaid for ten days after they have become payable. The lien exists from the time certain formalities have been fulfilled. The lien relates to the unit owner's interest in the common areas and facilities as well as to his estate or interest in the individual unit.

114. Ibid.
117. Ibid.
119. Ibid.
122. See Ohio Rev. Code § 5311.18(B) (Supp. 1963).
Section 5311.18 provides in part:

The lien [for common expenses] . . . shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages which have been filed for record . . . .

In this respect the statute takes a middle of the road approach. Undoubtedly the unit owners association would prefer the lien for common expenses to be superior to all liens and encumbrances. On the other hand, financing groups would prefer it to be subordinate to any encumbrances created before or after it. The statutory language creates no problem as far as priority of the lien over other liens and encumbrances which arise subsequent to the lien and which are not afforded special preference. The lien of the unit owners association is a matter of public record and affords constructive notice to subsequent creditors.

The statute does, however, give priority to liens for real estate taxes and assessments, and liens of first mortgages. One authority has attacked the constitutionality of a "priority provision," such as the Ohio provision, on the basis that it constitutes discriminatory class legislation.

It should be noted that if foreclosure is necessary, the lien for common expenses can be foreclosed in the same manner as any mortgage of real estate. The action is brought on behalf of the unit owners association by its president or other chief officer, pursuant to authority given him by the board of managers. During such a foreclosure action, the unit owner must pay a reasonable rental for his unit to a receiver appointed by the unit owners association. The unit owners association may purchase the unit at the foreclosure sale unless prohibited from doing so by the declaration or by-laws. If the unit owner believes that the portion of the common expenses chargeable to his unit has been wrongfully charged, he may bring an action in the common pleas court for discharge of the lien. In such an action, if it is determined that the expenses were improperly charged, the court would then make the necessary order providing for a discharge of the lien, either in whole or in part.

125. A certificate creating the lien has to be filed with the recorder of the county or counties in which the condominium property is situated. See Ohio Rev. Code § 5311.18(A) (Supp. 1963).
126. Ramsey, supra note 10, at 11.
128. Ibid.
129. Ibid.
130. Ibid.
131. Ohio Rev. Code § 5311.18(C) (Supp. 1963)
132. Ibid.
Legal Actions

Although not a corporation, the unit owners association has the status of a legal entity. It may sue or be sued in any action relating to the common areas and facilities, or to any right, duty, or obligation imposed upon it. If it is to act as plaintiff, the action must be brought pursuant to authority granted by the board of managers. The code provides for procedure as to service of summons or other process on the association.

The statute makes no provision for incorporation of the unit owners association. Nor would it seem advantageous to incorporate since limited liability would not be available. In this respect, section 5311.20 provides that the unit owners actually own the common areas and facilities. Duties relating to them are common to all unit owners, and hence each owner is personally liable for the common expenses of the condominium in proportion to his interest in the common areas and facilities. Also, it would seem that each unit owner would be severally liable in tort for personal injury or property damage arising from or relating to the common areas and facilities. These adverse consequences can, however, be avoided by insurance.

One question which seems unanswered by the statute is whether the unit owners association may contract or take title to property in its own name. Notwithstanding the lack of statutory authority, it is submitted that there appears to be no reason why the association could not be considered a separate entity for such purposes.

Damage, Destruction, and Rehabilitation

Generally, damage or destruction of all or any part of the common areas and facilities of a condominium project can be rectified by the board of managers of the unit owners association. Any repairs to the common areas are, of course, a common expense. However, insurance may cover all or at least a part of the cost of repairs. But, the premises do not have to be repaired. Unless the declaration provides otherwise, the unit owners may, by an affirmative vote of those entitled to exercise not less than seventy-five per cent of the voting power, or a greater per cent if provided in the declaration, elect not to repair or restore the condominium. Upon an election not to repair or restore the condominium, all of the condominium property is subject to an action for sale as upon

134. Ibid.
137. Ibid.
partition at the suit of any unit owner. The proceeds from such a sale are distributed to all the unit owners in proportion to their percentage interests in the common areas or facilities.

A condominium may, though not damaged or destroyed, become obsolete through the passage of time. In such a case, it may be rehabilitated if the unit owners decide, by an affirmative vote of those entitled to exercise not less than seventy-five per cent of the voting power, or a greater per cent if the declaration so requires, that the condominium is in whole or in part obsolete and elect to have the property renewed and rehabilitated. The cost of such rehabilitation is a common expense. In addition, the declaration may provide that any dissenting unit owner may elect to have his unit purchased by the remaining unit owners at its fair market value. This purchase expense would also be considered a common expense.

**Dissolution**

Section 5311.17 of the Ohio Revised Code provides for the dissolution of a condominium. The passage of time or unanticipated events may warrant such action. A condominium may be removed from operation of the Condominium Property Act by an affirmative vote of all of the unit owners, unless the declaration provides otherwise. This termination of the condominium is effectuated by filing with the county recorder a certificate stating that the unit owners have elected to remove the property from the provisions of the condominium act. The certificate should be signed by the president or chief officer of the board of managers of the unit owners association who must certify that all liens and encumbrances upon the common areas and facilities have been paid except taxes and assessments not then due. The certificate must also be signed by each unit owner who also must certify that all liens and encumbrances on his unit or units have been discharged. A copy of this certificate must be filed with the county auditor prior to being filed with the county recorder. Upon filing the certificate with the

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139. Ibid.
140. Ibid.
142. Ibid.
143. Ibid.
144. Ibid.
147. Ibid.
148. Ibid.
149. Ibid.
recorder, the condominium terminates; the entire project is then owned in common by all of the unit owners, each owner's interest being the percentage of interest in the common areas and facilities which he owned prior to dissolution.151

Since the Condominium Property Act affects only a condominium which is subjected to its provisions, a developer may elect whether he wants to place his project within the scope of the act. Thus, creation of a condominium depends upon voluntary action. Since this is the case, there is no apparent reason for continuing the project when all of the unit owners desire to end it. The statute provides for this situation. However, it might be preferable to allow the removal of the project from the act by affirmative vote of some percentage less than the entire number of unit owners, e.g., those unit owners entitled to exercise not less than seventy-five per cent of the voting power.152 This would prevent one recalcitrant owner from preventing termination.

Another question which might be raised is that of partial dissolution. The statute does not specifically provide for the removal of all or any part of the condominium property; rather it only provides for the removal of the condominium property. Could separate units be removed from the project if all unit owners, including those of the units in issue, so agreed?153 Most likely not. This viewpoint seems best in view of the other problems which would be raised by such a dissolution. Suppose, for example, that A and B and all of the remaining unit owners voted to remove the units owned by A and B from the project. It would seem that A and B, who formerly owned individual units, would now own undivided interests in common in these two units! Furthermore, the question arises as to the nature of the interests of A and B in the common areas and facilities upon such a partial dissolution.

CONCLUSION

The condominium is unique. Therefore, its concept has enlivened the normally conservative law of property. At the present time, it has become attractive to developers all over the country. Some of these developers are corporations who also develop conventional apartment projects. The author has observed the construction of a condominium project adjacent to a conventional apartment project very recently completed by the same builder. It is submitted that this approach is somewhat distasteful since the unit owners will have apartment dwellers as relatively close

151. OHIO REV. CODE § 5311.17(C) (Supp. 1963).
152. Compare, e.g., MASS. ANN. LAWS ch. 183A, § 19(a) (Supp. 1963), which reads as follows: "Seventy-five per cent of the unit owners, or such greater percentage as is stipulated in the by-laws, may remove all of a condominium or portion thereof from the provisions of this chapter . . . ."
153. Ibid.
neighbors; people who are not likely to fix roots but who will move on to be replaced by other transients. The very nature of a condominium, as opposed to a conventional apartment building, suggests stability. Thus, to achieve the desired area stability, it would be better to keep condominium projects apart from conventional apartment projects if at all possible.

If the consuming public accepts the condominium, a great step forward will be made in alleviating the problem of providing housing in urban areas such as Cincinnati, Cleveland, and Columbus. Such a project should appeal to the purchaser who wants to be a home owner, yet who desires the relative freedom of responsibility afforded the apartment dweller. Thus, it is truly hybrid housing!

The sale price of a condominium unit will, on the whole, be less than the price of conventional housing of equivalent interior dimensions. It appears to this author that the garden type unit will prove most attractive to the public. The condominium may appeal to the initial home buyer, i.e., young married couples with small children, or no children; to childless couples, or older couples whose children have reached maturity and have left to build their own homes; to the elderly; and ought to appeal to confirmed apartment dwellers. The consumer however, may be wary of purchasing a “cat in a bag.” Although a condominium unit should prove more economical than an ordinary apartment, the unit purchaser is forced to commit capital. He makes an investment in a title of unproven value. At the present time, it cannot be determined whether the savings in monthly charges will compensate for this risk. Hence, only time will tell the full story of the condominium.