CONDOMINIUMS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS

OF THE

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

UNITED STATES SENATE

NINETY-THIRD CONGRESS

SECOND SESSION

ON

S. 3658

TO PROTECT PURCHASERS AND PROSPECTIVE PURCHASERS OF CONDOMINIUM HOUSING UNITS, AND RESIDENTS OF STRUCTURES BEING CONVERTED TO CONDOMINIUM UNITS, BY PROVIDING FOR DISCLOSURE AND REGULATION OF CONDOMINIUM SALES BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

S. 4047

TO PROTECT PURCHASERS AND PROSPECTIVE PURCHASERS OF CONDOMINIUM HOUSING UNITS AND RESIDENTS OF MULTIFAMILY STRUCTURES BEING CONVERTED TO CONDOMINIUM UNITS BY PROVIDING NATIONAL MINIMUM STANDARDS FOR THE REGULATION AND DISCLOSURE OF CONDOMINIUM SALES TO BE ADMINISTERED BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

OCTOBER 9 AND 10, 1974

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CONDOMINIUMS

WEDNESDAY, OCTOBER 9, 1974

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 5302, Dirksen Senate Office Building; Senator William Proxmire presiding.

Present: Senators Proxmire and Biden.

Senator PROXMIRE. The committee will come to order.

This morning we are very happy to have the Assistant Secretary for Policy Development and Research of the Department of Housing and Urban Development, Mr. Michael Moskow, as our witness before the committee.

Mr. Moskow, will you introduce the gentlemen who are with you at the table?

STATEMENT OF MICHAEL H. MOSKOW, ASSISTANT SECRETARY FOR POLICY DEVELOPMENT AND RESEARCH, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; ACCOMPANIED BY GEORGE BROWNE, COOPERATIVE AND CONDOMINIUM PROGRAM SPECIALIST; AND DOUGLAS M. PARKER, DEPUTY GENERAL COUNSEL

Mr. MOSKOW. Mr. George Browne on my right, cooperative and condominium program specialist, and Mr. Douglas Parker who is Deputy General Counsel of the Department.

Senator PROXMIRE. Thank you.

Mr. MOSKOW. Mr. Chairman and members of the subcommittee.

Thank you for the opportunity to be here today to discuss wtih you proposed legislation which has been introduced by members of this committee to protect purchasers of residential condominium units and residents of multifamily structures being converted to condominiums. I refer specifically to S. 3658, the proposed "Condominium Disclosure Act," and to the recently introduced bill, S. 4047, which proposes the "Condominium Act of 1974."

Let me say at the outset that we at HUD have been following with great concern the recent accounts in the news media which tell of the problems resulting from the sharply-increased production of condominium housing. These problems involve some residents of rental structures which are being converted to condominiums, as well as some purchasers of new or renovated condominium units. A number of those problems may have occurred as a result of the inexperience of consumers and developers with condominiums; other problems appear to

have resulted from alleged developer abuses in failing to fully inform the buyer of the true nature of his housing investment. In view of these reports, this subcommittee has wisely decided to conduct hearings on the use and abuse of condominiums, and we commend and support you in this effort.

Last July, HUD published a consumer booklet entitled, "Questions about Condominiums—What to Ask Before You Buy." The booklet explains some of the pitfalls associated with condominium housing and suggests safeguards for avoiding them. It also provides an explanation of the condominium concept and a glossary of condominium terms. Bulk mailings have been made to the Consumer Information Service in Pueblo, Colo., and 500 other consumer and consumer advocate organizations. Mailings have been made to HUD field offices and are currently being made to all Members of the House and Senate. I have several copies of the booklet with me, and I will be happy to leave them for the subcommittee's information.

Senator PROXMIRE. Thank you.

[The booklet has been reprinted in the record, see p. 55]

Mr. MOSKOW. As you know, a major study of the condominium phenomenon and its ramifications has been mandated by section 821 of the recently enacted Housing and Community Development Act of 1974. The act requires the Secretary of HUD to make a report to Congress within 1 year of enactment—August 22, 1975—on the problems, difficulties, abuses or potential abuses applicable to condominium and cooperative housing. We look forward to conducting this study, since it will provide us with the hard data which we feel is essential in defining an appropriate Federal role in eliminating the problems which have arisen as a result of the condominium boom. The details of the study are currently being formulated within my Office of Policy Development and Research, and we are working closely with other offices within HUD to insure that the full resources of the Department are available for participation in the study.

Let me outline what we expect to learn from this study. I must do so in very general terms, since the detailed project design is still on the drawing board at this early date. However, I am confident that the report will shed light on a number of the major concerns this subcommittee is attempting to address. Our plans now call for the study to include the following elements:

(1) A survey and analysis of statistical data relating to condominiums and cooperatives, including a geographical distribution, with special emphasis on the conversion of rental structures to condominiums.

(2) An examination of selected rental markets in order to determine the impact of the condominium boom and the availability of housing for persons who do not desire or are unable to purchase condominium units.

(3) Analysis of the reasons for the trend to condominium conversions, including an examination of the economic reasons behind conversions.

(4) An investigation and analysis of consumer problems and alleged abuses or potential abuses in condominium and cooperative housing. As you may know, the Federal Trade Commission is presently conducting a similar investigation of consumer complaints. In this part

of our study, we will be in close contact with the FTC to coordinate our efforts and to share information to the maximum extent possible.

(5) A survey and analysis of present and proposed State and local legislation governing condominium and cooperative housing, with particular attention to the effectiveness of present State condominium disclosure laws.

I should add a sixth element, based on President Ford's message yesterday, in which he required that all major legislative proposals, regulations, and rulings emanating from the executive branch of the Government must include an inflation impact statement.

This statement would certify that the executive branch has carefully weighed the effect on the Nation. The President has asked the Congress to require a similar advance inflation impact statement, too, but we plan to include in our own efforts some assessment of the impact of any type of regulation in the condominium field on developers and the impact on the people who will be purchasing condominium units to see what additional costs, if any, they would have to incur as a result of this type of regulation.

Let me add at this point that we would be happy to discuss with members or staff of the committee our plans for this effort, and any suggestions they may have for inclusions in the study.

To complement our study, we are planning to evaluate the FHA section 234 condominium program, with particular emphasis on consumer protection and market acceptance. This program offers what in effect is the only national set of requirements concerning disclosures to prospective purchasers concerning legal rights, obligations, and physical condition of the structure.

Section 234(c) was enacted into law June 30, 1961. At that time, only Puerto Rico had enabling legislation which would make condominium ownership possible. Section 234(c) made it possible to convert rental apartments, insured by the FHA, to condominiums. (It should be noted that section 234(c) prohibits the FHA from insuring unit mortgages in conventionally financed condominiums with 12 or more units.)

After meeting FHA's requirements for conversion, the individual unit mortgages are eligible for insurance. Section 234(c) imposes a requirement on the FHA Commissioner to protect the consumer and the public interest. To implement this requirement, the FHA prepared model forms of condominium organizational documents and established the requirement that an independent engineering survey must be made, prior to the issuance of a commitment, to determine the extent of repairs and rehabilitation before conversion.

In 1964, section 234(d) was enacted, permitting the FHA to insure advances on the construction of condominiums. This made it possible to regulate a condominium from its inception. HUD has prepared two handbooks, one on the blanket mortgage which covers a project during construction ("project phase") (HUD 4580.1), and the other on mortgage insurance on individual units ("unit phase") (HUD 4265.1) to guide its field offices in handling condominium applications.

From the inception of the program to June 30, 1974, HUD has insured 30,869 units under blanket mortgages in the project phase and 20,906 unit mortgages in the individual unit phase. The difference between these figures represents individual units that were sold for cash or with VA-guaranteed loans or conventional mortgages.

Although we believe that our requirements offer the best consumer protection guarantees available in the condominium market, the program has not been widely used, and has not been a major financing vehicle in the current surge of condominium activity. There may be ways in which the program might be made more attractive. We hope to answer these questions during the course of the next year.

You may ask why HUD does not have more information on condominium problems, in view of the fact that it has administered, since 1961, a condominium program under section 234 of the National Housing Act. The reason is twofold. First, as I mentioned previously, the very magnitude of the recent condominium boom has raised new and different types of problems than we have experienced before. Second, FHA's authority under section 234 is that of mortgage insurer, and consequently we have very limited experience in dealing with conventionally financed units.

The FHA underwriting analysis—including value appraisal and architectural inspection—is intended to assure that a proposed project provides adequate security for a long term insured mortgage. Many of the elements scrutinized by FHA—such as quality of design and construction, location, and economic feasibility—are chiefly designed to protect FHA's interest as insurer.

HUD also has limited regulatory responsibility for condominiums under the Interstate Land Sales Full Disclosure Act. Under the act, HUD's Office of Interstate Land Sales Registration (OILSR) currently exercises jurisdiction over certain condominium developments. OILSR construes a condominium unit to be a "lot" under the act. Where the units number 50 or more and are sold in interstate commerce, jurisdiction attaches. The act, however, exempts registration of sales where the seller is obligated to erect a building within 2 years.

Therefore, if the purchaser's contract assures him of occupancy of his unit within 2 years, the sale becomes exempt. In the case of recreational developments where the major inducements to buy are the common facilities (ski-slopes, lakes, et cetera), these amenities must also be completed within 2 years if the sale is to be exempt. Since most condominiums are constructed within a 2-year period, only a small number are regulated under the act.

S. 3658 and S. 4047 would require additional Federal intervention in the private residential market. The bills would require detailed registration statements for most condominium transactions that might introduce delays into market-determined conversions and slow the private residential market's responses to changes in demand. Such factors must be balanced against the need to protect consumers from actual or potential abuses.

Moreover, any legislation in this area should be carefully designed to correct specific abuses. Unnecessary or excessive regulation might unduly restrict the condominium market. Many people who do not

want or cannot afford purchase of a single-family home can obtain a condominium unit. The availability of condominiums to these people might be reduced if unwarranted Federal regulation were imposed.

At this point, I do not feel that we have the detailed data which would enable us to make an informed determination as to the necessity for, or the potential effectiveness of, a Federal disclosure and regulation law of the type which is presently before this subcommittee. We recommend that any decisions as to the need for such legislation in the field of condominiums be deferred until we complete the study which the Congress has asked us to undertake during the next year.

We need solid information on the nature and degree of difficulties involved in condominium housing; where these problems are occurring; and the appropriate method and agent for correcting them. For example, special actions may be necessary to address specific problems of lower-income persons; or we may discover that abuses are occurring only within particular States or regions. We would then be in a position to address these particular problems from a more limited perspective and would be able to devise solutions, if needed, which would focus on specific problems and thus be more effective at the national level.

As you know, a number of States and localities have enacted legislation designed to protect condominum purchasers and those persons who are displaced by condominium conversions. If the States are able to establish procedures which afford an adequate level of consumer protection, there may be no need for a comprehensive Federal program of regulation or disclosure standards.

In saying this, I realize that S. 4047 would not preempt all State or local action in this area, as you, Senator Proxmire, pointed out in your remarks introducing the bill. However, I believe that those States which have already enacted strong disclosure statutes will be able to provide us with valuable information based on their actual experience in using the disclosure approach. As I mentioned previously, we are planning an analysis of such State laws in connection with our study. Indeed, we already have underway a comprehensive survey of State condominium laws.

Accordingly, we believe that consideration of these bills should be delayed pending thorough study and consideration, founded in solid research and fact. I believe that HUD's study can supply this necessary foundation. The task before us now is to ascertain what abuses are occurring and what kinds of remedial actions are justified, and to then assess the effectiveness of State and local government efforts to determine whether Federal legislation is needed.

Thank you, Mr. Chairman. This concludes the prepared portion of my testimony. I would be pleased to take any questions you may have at this time.

[Copies of the two bills being considered and the booklet published by HUD are reprinted as follows:]

93D CONGRESS
2D SESSION

S. 3658

IN THE SENATE OF THE UNITED STATES

JUNE 17, 1974

Mr. BIDEN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To protect purchasers and prospective purchasers of condominium housing units, and residents of structures being converted to condominium units, by providing for disclosure and regulation of condominium sales by the Secretary of Housing and Urban Development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Condominium Disclosure Act".

DEFINITIONS

SEC. 2. For the purposes of this Act, the term—

(1) "Secretary" means the Secretary of Housing and Urban Development;

(2) "person" means an individual, an unincorporated organization, partnership, association, corporation, trust, or estate;

(3) "condominium" means a single-family dwelling unit which is sold or offered for sale together with an undivided interest in common areas of the project in which the condominium is located;

(4) "project" means twenty or more condominiums related by common areas in which undivided interests are sold or offered for sale with each condominium;

(5) "condominium instruments" means all legal instruments, contracts, plats, plans, or other documents which are recorded or filed, with respect to a project, under local law, or which the Secretary, by regulation, determines are relevant to the rights of a purchaser of a condominium in a project and to the effective enforcement of this Act;

(6) "developer" means any person who, directly or indirectly, sells or leases, offers to sell or lease, or advertises for sale or lease any condominium in a project;

(7) "agent" means any person who represents or acts for or on behalf of a developer in selling or leasing or offering to sell or lease any condominium in a project, but such term does not include an attorney at law whose

representation of another person consists solely of rendering legal services;

(8) "interstate commerce" means trade or commerce among the several States;

(9) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(10) "purchaser" means an actual or prospective purchaser or lessee of a condominium in a project; and

(11) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a condominium in a project.

EXEMPTIONS

SEC. 3. (a) Unless the method of disposition is adopted for the purpose of evasion of this Act, the provisions of this Act shall not apply to—

(1) the sale or lease of real estate not pursuant to a common promotional plan to offer or sell or more condominiums in a project;

(2) the sale or lease of condominiums solely for commercial or industrial purposes or uses;

(3) the sale or lease of real estate under or pursuant to court order; or

(4) the sale or lease of real estate by any government or government agency.

(b) The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this Act any condominium or project, if he finds that the enforcement of this Act with respect to such condominium or project is not necessary in the public interest or for the protection of purchasers.

PROHIBITIONS

SEC. 4. (a) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce, or of the mails—

(1) to sell or lease any condominium in any project unless a statement of record with respect to such condominium is in effect in accordance with section 7 and a printed public offering statement, meeting the requirements of section 8, is furnished to the purchaser in advance of the signing of any contract or agreement for sale or lease by the purchaser; and

(2) in selling or leasing, or offering to sell or lease, any condominium in a project—

(A) to employ any device, scheme, or artifice to defraud, or

(B) to obtain money or property by means of a material misrepresentation with respect to any information included in the statement of record or

the public offering statement or with respect to any other information pertinent to the lot or the subdivision and upon which the purchaser relies, or

(C) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser.

(b) Any contract or agreement for the purchase or leasing of a condominium in a project covered by this Act, where the public offering statement has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within ten days, where he has received the public offering statement less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide.

REGISTRATION OF PROJECTS

SEC. 5. (a) A project shall be registered by filing with the Secretary a statement of record, meeting the requirements of this Act and such rules and regulations as may be prescribed by the Secretary in furtherance of the provisions of this Act. A statement of record shall be deemed effective only as to the condominiums specified therein.

(b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary a fee of $750, which may be used by the Secretary to cover

the cost of rendering services under this Act, and such expenses as are paid from such fees shall be considered nonadministrative.

(c) The filing with the Secretary of a statement of record, or of an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b).

(d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Secretary may prescribe and copies thereof shall be furnished to every applicant at such reasonable charge as the Secretary may prescribe.

INFORMATION REQUIRED IN STATEMENT OF RECORD

SEC. 6. The statement of record shall contain the information and be accompanied by the documents specified hereinafter in this section:

(1) The name and address of each person having an interest in the condominiums in the project to be covered by the statement of record and the extent of such interest.

(2) The developer's name, address, and in the case of an organization, the form, date, and jurisdiction of organization, and the address of each of its officers.

(3) The name, address, and principal occupation for the past three years of every officer of the developer.

(4) A statement of the condition of title to the project including thirty days preceding the date of application, by a title opinion of a licensed attorney who is not a salaried employee, officer, or director of the developer, or by other evidence of title acceptable to the Secretary.

(5) A copy of each condominium instrument.

(6) A copy of any management agreement, employment contract, or other contract or agreement affecting the use, maintenance, or access to all or a part of the project.

(7) A statement of any zoning or other governmental regulations affecting the use of the project, including the site plans and building permits and their status, and a statement of existing or proposed special taxes or assessments which may affect the project.

(8) A narrative description of the promotional plan for the disposition of the condominiums in the project.

(9) A copy of the proposed public offering statement.

(10) In the case of a condominium conversion, satisfactory assurances that existing tenants were given ninety days' notice of the intent to convert and a sixty-day exclusive option to buy the unit.

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TAKING EFFECT OF STATEMENTS OF RECORD AND AMENDMENTS THERETO

SEC. 7. (a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendments to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record.

(b) If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be

held within twenty days of receipt of such request by the Secretary.

(c) If, at any time subsequent to the effective date of a statement of record, a change occurs affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) If it appears to the Secretary at any time that any statement of record which is in effect includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

(e) The Secretary is authorized to make an examination in any case to determine whether an order should issue under subsection (d). In making such examination, the Secretary or anyone designated by him shall have access to and may

demand the production of any books and papers of, and may administer oaths and affimations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination. If the developer or any agent fails to cooperate, or obstructs or refuses to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Any notice required under this section shall be sent to or served on the developer or his authorized agent.

INFORMATION REQUIRED IN PUBLIC OFFERING STATEMENT

SEC. 8. (a) A public offering statement relating to the condominiums in a project shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, and shall disclose fully and accurately the characteristics of the project and the condominiums therein offered and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominiums, including—

(1) the name and address of the registrant;

(2) a general narrative description of the project stating the total number of units planned to be sold or rented; the total number of units that may be included

in the project by reason of future expansion or merger of the project by the registrant;

(3) copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, a projected budget for at least the first year of the project's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

(4) copies of any management contract, lease of recreational areas, or similar contract or agreement affecting the use, maintenance, or access to all or any part of the project with a brief narrative statement of the effect of each such agreement upon a purchaser, and a statement of the relationship, if any, between the registrant and the managing agent;

(5) a general description of the status of construction, zoning, site plan approval, issuance of building permits, or compliance with any other State or local statute or regulation affecting the project;

(6) the significant terms of any encumbrances, easements, liens, or other matters of title affecting the project;

(7) significant terms of any financing offered by the registrant to purchaser of units in the project;

(8) provisions of any warranties provided by the developer on the units and the common elements; and

(9) a statement of the rights of a purchaser under section 4(b).

(b) The public offering statement shall not be used for any promotional purposes before registration of the project and afterward only if it is used in its entirety. The Secretary shall require that the registrant alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. No change in the substance of the promotional plan or plan of disposition or development of the project may be made after registration without notifying the Secretary without an appropriate amendment to the public offering statement.

INVESTIGATIONS

SEC. 9. (a) The Secretary shall conduct such investigations as may be appropriate to determine the extent of compliance with section 4(a) by a developer or agent. If the Secretary finds any material misrepresentation in any case, he shall afford the developer a ten-day period to correct the representation.

(b) Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act or of any rule or regulation prescribed

hereunder, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this Act.

(c) The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation prescribed hereunder, and may require or permit any person to file with him a statement in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances, concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(d) For the purpose of any such investigation, or any other proceeding under this Act, the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(e) In case of contumacy by, or refusal to obey a subpena issued to any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. Such court may issue an order requiring such person to appear before the Secretary or any officer designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served

in the judicial district whereof such person is an inhabitant or wherever he may be found.

UNLAWFUL REPRESENTATIONS

SEC. 10. The fact that a statement of record with respect to a project has been filed or is in effect shall not be deemed a finding by the Secretary that the statement of record is true and accurate on its face, or be held to mean the Secretary has in any way passed upon the merits of, or given approval to, such project. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

PENALTIES

SEC. 11. Any person who willfully violates any provision of this Act or the rules and regulations prescribed hereunder, or any person who willfully, in a statement of record filed under, or in a public offering statement issued pursuant to this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not more than $5,000 or imprisoned not more than five years, or both.

RULES, REGULATIONS, AND ORDERS

SEC. 12. The Secretary is authorized to issue such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers conferred upon him elsewhere in this Act, and for such purpose, he

may classify persons and matters within his jurisdiction and prescribe different requirements for different classes of persons or matters.

COURT REVIEW OF ORDERS

SEC. 13. (a) Any person aggrieved, by an order or determination of the Secretary issued after a hearing, may obtain a review of such order or determination in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28, United States Code. No objection to an order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the

court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

JURISDICTION OF OFFENSES AND SUITS

SEC. 14. (a) The district courts of the United States, the United States courts of any territory, and the United

States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this Act and under the rules and regulations prescribed by the Secretary pursuant thereto, and concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this Act. Any such suit or action may be brought to enforce any liability or duty created by this Act. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28, United States Code. No case arising under this Act and brought in any State court of competent jurisdiction shall be removed to any court of the United States except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Secretary in any proceeding under this Act brought by or against him in the Supreme Court or such other courts.

APPROPRIATIONS

SEC. 15. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATE

SEC. 16. This Act shall take effect upon the expiration of two hundred and seventy days after the date of its enactment.

93D CONGRESS
2D SESSION

S. 4047

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 1974

Mr. PROXMIRE (for himself and Mr. BROOKE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing and Urban Affairs

A BILL

To protect purchasers and prospective purchasers of condominium housing units and residents of multifamily structures being converted to condominium units by providing national minimum standards for the regulation and disclosure of condominium sales to be administered by the Secretary of Housing and Urban Development.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Condominium Act of 1974".

DEFINITIONS

SEC. 2. For the purposes of this Act, the term—

(1) "Secretary" means the Secretary of Housing and Urban Development;

(2) "person" means an individual, incorporated organization, partnership, association, corporation, trust, or estate;

(3) "condominium" means a single-family dwelling unit which is sold or offered for sale (or held) together with an undivided interest in common areas of the project in which the unit is located;

(4) "condominium project" means a multifamily housing project, consisting of one or more buildings and related property, facilities, and appurtenances, in which all of the dwelling units (or some but not all of the dwelling units where clause (2) of section 10 applies) are or will be held as condominiums;

(5) "condominium instruments" means all legal instruments, contracts, plats, plans, or other documents which are recorded or filed, with respect to a condominium project, under local law, or which the Secretary, by regulation, determines are relevant to the rights of a purchaser of a condominum in a project and to the effective enforcement of this Act;

(6) "developer" means any person who owns or constructs a condominium project (or converts or proposes to convert a multifamily rental housing project to

condominium ownership) and who offers or proposes to offer dwelling units in such project for sale;

(7) "agent" means any person who represents or acts for or on behalf of a developer in selling or offering to sell any condominium in a project, but such term does not include an attorney at law whose representation of another person consists solely of rendering legal services;

(8) "federally related condominium housing loan" means a loan which is made to finance the transfer of a condominium to an individual or family or the purchase, construction, rehabilitation, or conversion of an existing structure to a condominium project by a developer and which—

(A) is made in whole or in part by a lender, the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by a lender which is itself regulated by any agency of the Federal Government; or

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program ad-

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ministered by the Secretary or a housing or related program administered by any other such officer or employee; or

(C) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(D) is made in whole or in part by any "creditor", as defined in section 103 (f) of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1602 (f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year;

and the term "federally related condominium project" means a condominium project (i) the purchase, construction, rehabilitation, or conversion of which was financed in whole or in part with a federally related housing loan a portion of which remains outstanding, or (ii) dwelling units in which are currently (as determined by the Secretary) being sold with the aid of federally related housing loans;

(9) "interstate commerce" means trade or commerce among the several States;

(10) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States;

(11) "purchaser" means an actual or prospective purchaser or lessee of a condominium in a project; and

(12) "offer" includes any inducement, solicitation, or attempt to encourage a person to acquire a condominium in a project.

PROHIBITION; REQUIREMENTS FOR FEDERAL ASSISTANCE TO CONDOMINIUMS

SEC. 3. (a) (1) It shall be unlawful for any developer or agent, directly or indirectly, to make use of any means or instrument of transportation or communication in interstate commerce, or of the mails, to sell any condominium in any project unless the project is registered and a statement of record with respect to such condominium is in effect in accordance with sections 4, 5, and 6, and a printed public offering statement, meeting the requirements of section 7, is furnished to the purchaser in advance of the signing of any contract or agreement for sale by the purchaser.

(2) Any contract or agreement for the purchase of a condominium in a project covered by this Act, where the public offering statement has not been given to the purchaser

in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within ten days, where he has received the public offering statement less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide.

(b) No federally related condominum housing loan shall be made unless (1) the project is registered and a statement of record with respect to the project or the condominium involved is in effect in accordance with sections 4, 5, and 6, and (2) the developer of the project submits such statement of record along with the application for such loan.

REGISTRATION OF CONDOMINIUM PROJECTS

SEC. 4. (a) A project shall be registered by filing with the Secretary a statement of record, containing the information specified in section 5, which (1) meets the requirements of this Act and such rules and regulations as may be prescribed by the Secretary in furtherance of the provisions of this Act, and (2) is approved by the Secretary as being accurate, complete, and in accordance with the purposes of this Act.

(b) At the time of filing a statement of record, or any amendment thereto, the developer shall pay to the Secretary such fee as the Secretary may prescribe, to cover the cost of rendering services under this Act.

(c) The filing with the Secretary of a statement of record, or an amendment thereto, shall be deemed to have taken place upon the receipt thereof, accompanied by payment of the fee required by subsection (b) ; and such statement shall become effective as provided in section 6.

(d) The information contained in or filed with any statement of record shall be made available to the public under such regulations as the Secretary may prescribe, and copies thereof shall be furnished to every applicant at such reasonable charge as the Secretary may prescribe.

CONTENTS OF STATEMENT OF RECORD

SEC. 5. (a) The statement of record required by section 3 and referred to in section 4 (a) shall contain or be accompanied by—

(1) the name and address of each person having an interest in or lien on the project covered by the statement and the extent of such interest (including any interest to be retained by the developer) ;

(2) the developer's name and address, and, in the case of an organization, the form, date, and jurisdiction of the organization and the address of each of its officers;

(3) the name, address, and principal occupation for the past three years of every officer of the developer;

(4) a statement of the condition of title to the project for one year preceding the date of application,

furnished in a title opinion of a licensed attorney who is not a salaried employee, officer, or director of the developer, or supported by other evidence of title acceptable to the Secretary;

(5) a legal description of the project and the land on which it is situated, in sufficient detail to identify the common elements and units in the project and their relative locations and approximate dimensions, together with copies (signed by a professional registered engineer or architect or both) of all engineering and architectural plans for the construction or conversion of the project;

(6) a copy of all condominium instruments;

(7) the estimated operating and maintenance costs of the project, as well as any other costs which may be passed on to the owners of the dwelling units in the project whether in the form of recreational fees, maintenance fees, or otherwise;

(8) recreation fees (A) will be stated separately from any other fees to be charged purchasers of dwelling units in the project, and each prospective purchaser of a dwelling unit in the project will be informed in writing of (i) the extent to which (and the basis on which) the purchase of such unit would include the use of the project's recreational services and facilities and

(ii) the nature of the interest in such services and facilities which the purchase of such unit would confer.

(9) satisfactory assurances that no certificate of occupancy will be presented by the developer, or utilized to compel the signature of any prospective purchaser, until the structure involved is 95 per centum completed;

(10) a clear statement of the responsibility of the developer for any structural or engineering defects in the project;

(11) satisfactory assurances that all purchasers of dwelling units in the project will be given a full one-year warranty on all electrical, heating, air-conditioning, and ventilation equipment and on the plumbing, roofing, and elevators;

(12) satisfactory assurances that—

(A) owners of the condominiums in the project will be permitted to form an owners' association, to select the project management, and to establish appropriate employment contracts and other contracts or agreements affecting the use, maintenance, or access to all or a part of the project no later than one year after the initial occupancy of the project or as soon as 80 per centum of the units are occupied as condominiums, whichever is earlier;

(B) each owner of a condominium in the project shall have one vote in the owner's association;

(C) if, after one year, 100 per centum of the units are not sold as condominiums, the developer may participate in the owners' association in his capacity as owner of the units not sold; and

(D) the developer will not establish a management lease which is enforceable against the owners of the units in the project beyond the earliest date on which such owners are authorized to select the project management and establish related contracts as described in subparagraphs (A), (B) and (C);

(13) a statement of any zoning or other governmental regulations affecting the use of the project, including the site plans and building permits and their status, and a statement of existing or proposed special taxes or assessments which may affect the project;

(14) a narrative description of the promotional plan for the disposition of the condominiums in the project;

(15) a copy of the proposed public offering statement in accordance with the provisions of section 7; and

(b) In any case where the project involved is a leased-unit structure which is to be converted to a condominium project, the information required in the statement of record shall also include satisfactory assurances that—

(1) existing tenants will have first priority to purchase dwelling units in the project;

(2) all of the tenants of the structure or structures involved will have been given at least six months, after notification of the proposed conversion, to decide whether or not to purchase their dwelling units;

(3) no tenant will be required to move from the project upon its conversion without ninety days' written notice;

(4) no lease agreement outstanding at the time of conversion (and covering a dwelling unit in the project) will be abridged without the consent of both the lessee and the developer;

(5) each prospective purchaser of a dwelling unit in the project will be furnished with copies of the purchase agreement and the public offering statement at least fifteen days prior to signing, and in addition will be furnished with—

(A) a statement of the total operating and maintenance costs of the structure, and of the operating and maintenance costs per unit, on a monthly and yearly basis, for the preceding three years;

(B) a statement of the costs to be assumed by the owners of dwelling units in the project, both on a unit-by-unit basis and for the project as a whole;

(C) a list of the services to be offered to owners of dwelling units in the project;

(D) a statement of any changes to be made in the structure, with floor plans showing the contemplated alterations;

(E) a description of any new additions to be made to the structure (including recreational facilities) and the cost thereof;

(F) a report from a qualified licensed engineer stating the condition and the rated life and expected useful life of the roof, foundation, external and supporting walls, mechanical, electrical, plumbing, and structural elements, and all other common facilities, together with an estimate of repair and replacement costs projected for the five years following the effective date of the statement of record; and

(G) a list of any outstanding building code or other municipal regulation or code violations, which shall include the dates the premises were last inspected for code or regulations compliance.

(c) The fact that a statement of record with respect to a project has been filed or is in effect shall not be deemed a finding by the Secretary that the statement of record is true and accurate on its face or be held to mean the Secretary has in any way passed upon the merits of, or given approval

to, such project. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

EFFECTIVE DATE OF STATEMENT OF RECORD

SEC. 6. (a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record.

(b) If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incomplete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after

the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Secretary.

(c) If, at any time subsequent to the effective date of a statement of record, a change occurs affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

(d) If it appears to the Secretary at any time that any statement of record which is in effect includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

(e) The Secretary is authorized to make an examination

in any case to determine whether an order should issue under subsection (d). In making such examiation, the Secretary or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination. If the developer or any agent fails to cooperate, or obstructs or refuses to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the statement of record.

(f) Any notice required under this section shall be sent to or served on the developer or his authorized agent.

CONTENTS OF PUBLIC OFFERING STATEMENT

SEC. 7. (a) A public offering statement relating to the condominiums in a project shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, and shall disclose fully and accurately, in accordance with the provisions of this Act, the characteristics of the project and the condominiums therein offered and shall make known to prospective purchasers all material circumstances or features affecting the condominiums. Such statement shall include—

(1) the name and address of the registrant;

(2) a general narrative description of the project

stating the total number of units planned to be sold or rented, and the total number of units that may be included in the project by reason of future expansion or merger of the project by the registrant;

(3) copies of the declaration and bylaws, with a brief narrative statement describing each and including information on declarant control, projected budgets for at least the first and second years of the project's operation (including projected common expense assessments for each unit), and provisions for reserves for capital expenditures and restraints on alienation;

(4) copies of the management contract, described in section 5(a)(11), any lease of recreational areas, and any similar contract or agreement affecting the use, maintenance, or access to all or any part of the project with a brief narrative statement of the effect of each such contract or agreement upon a purchaser, and a statement of the relationship, if any, between the registrant and the managing agent;

(5) a general description of the status of construction, zoning, site plan approval, issuance of building permits, and compliance with any other State or local statute or regulation affecting the project;

(6) satisfactory assurances that the date on which each structure in the project is to be completed will be

clearly set forth in each purchase agreement covering a dwelling unit in such structure;

(7) the significant terms of any encumbrances, easements, liens, or other matters of title affecting the project;

(8) the significant terms of any financing offered by the registrant to purchasers of units in the project;

(9) the provisions of the warranties required by section 5 (a) (10) ;

(10) a statement of the rights guaranteed a purchaser under section 3 (a) (2) ; and

(11) such other information, documents, and certifications as the Secretary may require in order to assure that purchasers are protected in a manner consistent with the purpose of this Act.

(b) The public offering statement shall not be used for any promotional purposes before registration of the project and afterward only if it is used in its entirety. The Secretary shall require that the registrant alter or amend the proposed public offering statement in order to assure full and fair disclosure to prospective purchasers. No change in the substance of the promotional plan or plan of disposition or development of the project may be made after registration without notifying the Secretary and without an appropriate amendment to the public offering statement.

INVESTIGATIONS

SEC. 8. (a) The Secretary shall conduct such investigations as may be appropriate to determine the extent of compliance with section 3 (a) (1) by a developer or agent. If the Secretary finds any material misrepresentation in any case, he shall afford the developer a ten-day period to correct the representation.

(b) Whenever it shall appear to the Secretary that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this Act or of any rule or regulations prescribed hereunder, he may, in his discretion, bring an action in any district court of the United States, or the United States District Court for the District of Columbia to enjoin such acts or practices, and, upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Secretary may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the appropriate criminal proceedings under this Act.

(c) The Secretary may, in his discretion, make such investigations as he deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or regulation prescribed hereunder, and may require or permit any person to file with him a state-

ment in writing, under oath or otherwise as the Secretary shall determine, as to all the facts and circumstances, concerning the matter to be investigated. The Secretary is authorized, in his discretion, to publish information concerning any such violations, and to investigate any facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this Act, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Act relates.

(d) For the purpose of any such investigation, or any other proceeding under this Act, the Secretary, or any officer designated by him, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States or any State at any designated place of hearing.

(e) In case of contumacy by, or refusal to obey a subpena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or

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where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memorandums, and other records and documents. Such court may issue an order requiring such person to appear before the Secretary or any officer designated by the Secretary, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

PENALTIES

SEC. 9. Any person who willfully violates any provision of this Act or of the rules and regulations prescribed hereunder, or any person who willfully, in a statement of record filed or public offering statement issued pursuant to this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein, shall upon conviction be fined not less than $5,000 or imprisoned not less than six months, or both.

AUTHORITY OF THE SECRETARY

SEC. 10. (a) The Secretary is authorized to issue such rules and regulations and such orders as are necessary or appropriate to the exercise of the functions and powers

conferred upon him elsewhere in this Act, and for such purpose he may (1) classify persons and matters within his jurisdiction and prescribe different requirements for different classes of person or matters, and (2) modify the provisions and requirements of this Act, to the extent necessary to assure that it will apply in accordance with its purpose, in any case where only a part of the units in a project are or will be condominiums.

(b) The Secretary shall develop and prescribe within one year following the date of enactment, a standardized form for the statement of record, containing the information specified in section 5, and for the public offering statement, containing the information specified in section 7, and such forms shall be uniformly used (with only such minimum variations, in different areas, as may be necessary to reflect unavoidable differences in legal and administrative requirements) as the standard forms in all transactions in any State which involve federally related condominium housing loans.

STUDY OF RENTAL HOUSING SITUATION AND TENANT RELOCATION PROBLEMS

SEC. 11. (a) The Secretary is authorized and directed to conduct a full and complete study, and report to Congress not later than one year after the date of enactment of this Act, with respect to the state of the rental housing market in representative metropolitan areas experiencing significant in-

creases in condominium construction and condominium conversions. Such study shall include, but not be limited to, the following:

(1) rates of increase or decrease in rental housing units and condominium (or cooperative) units available to individuals and families at different income levels;

(2) trends in demand for rental and condominium (or cooperative) units, including projections of future demand;

(3) factors affecting conversion of existing rental housing to condominium projects, including the impact of tax laws and other Federal, State, and local laws or regulations; financial factors involved in rental housing management; and trends in housing construction.

(b) On the basis of the study authorized in section (a), the Secretary shall report to Congress within one year following the date of enactment his recommendations for handling tenant relocation problems involved in condominium conversion and shall give particular attention to the following possible approaches:

(1) a requirement that approval of any federally related condominium housing loan for a condominium conversion project be contingent upon its being demonstrated that at least 50 per centum of the tenants have

freely agreed either to purchase a dwelling unit in the structure or to move from the structure;

(2) a requirement that tenants who would experience severe hardship in relocating be given special consideration, such as continued rental of certain units in the structure, preferential financing arrangements, or relocation services.

(3) authority for the Secretary to defer condominium conversions in an area until such time as the rental market will provide sufficient rental housing to accommodate tenants who would be displaced by such conversions.

(c) On the basis of the study authorized in section (a) and any other current studies bearing on this matter, the Secretary shall report to Congress as soon as is feasible and no later than two years following the date of enactment of this Act his findings with respect to supply and demand in metropolitan rental housing markets and his recommendations for meeting the projected demand for rental housing, including any proposed changes in law or administrative procedure.

COURT REVIEW OF ORDERS

SEC. 12. (a) Any person aggrieved by an order or determination of the Secretary issued after a hearing may obtain a review of such order or determination in the court

of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order or determination, a written petition praying that the order or determination of the Secretary be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the court the record upon which the order or determination complained of was entered, as provided in section 2112 of title 28, United States Code. No objection to an order or determination of the Secretary shall be considered by the court unless such objection shall have been urged before the Secretary. The finding of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be adduced upon a hearing in such manner and upon such terms and conditions as to the court may seem proper. The

Secretary may modify his findings as to the facts by reason of the additional evidence so taken, and shall file such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and his recommendation, if any, for the modification or setting aside of the original order. Upon the filing of such petition, the jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Secretary, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

RELATION TO STATE LAWS

SEC. 13. (a) This Act does not annul, alter, or affect or exempt any person subject to the provisions of this Act from complying with the laws of any State or local government with respect to condominium sales, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any

State or local law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer.

(b) The Secretary may by regulation exempt from the requirements of this Act condominium sales within any State or locality if he determines that under the law of that State or locality condominium sales are subject to requirements substantially similar to those imposed under this Act or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

JURISDICTION OF OFFENSES AND SUITS

SEC. 14. (a) The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction of offenses and violations under this Act and under the rules and regulations prescribed by the Secretary pursuant thereto, and, concurrent with State courts, of all suits in equity and actions at law brought to enforce any liability or duty created by this Act. Any such suit or action may be brought to enforce any liability or duty created by this Act. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such

cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254 and 1291 of title 28, United States Code. No case arising under this Act and brought in any State court of competent jurisdiction shall be removed to any court of the United States except where the United States or any officer or employee of the United States in his official capacity is a party. No costs shall be assessed for or against the Secretary in any proceeding under this Act brought by or against him in the Supreme Court or such other courts.

ADMINISTRATIVE PROVISIONS

SEC. 15. In order to carry out the provisions of this Act, the Secretary may establish such agencies, accept and utilize such voluntary and uncompensated services, utilize such Federal officers and employees and (with the consent of the State involved) such State and local officers and employees, and appoint such other officers and employees as he may find necessary, and may prescribe their authorities, duties, and responsibilities. The Secretary may delegate any of the functions and powers conferred upon him under this section to such officers, agents, and employees as he may designate or appoint.

APPROPRIATIONS

SEC. 16. There are authorized to be appropriated such sums as may be necessary to carry out this Act.

EFFECTIVE DATE

SEC. 17. This Act shall take effect upon the expiration of six months after the date of its enactment.

Questions About Condominiums

What to ask before you buy?

Department of Housing and Urban Development

CONTENTS

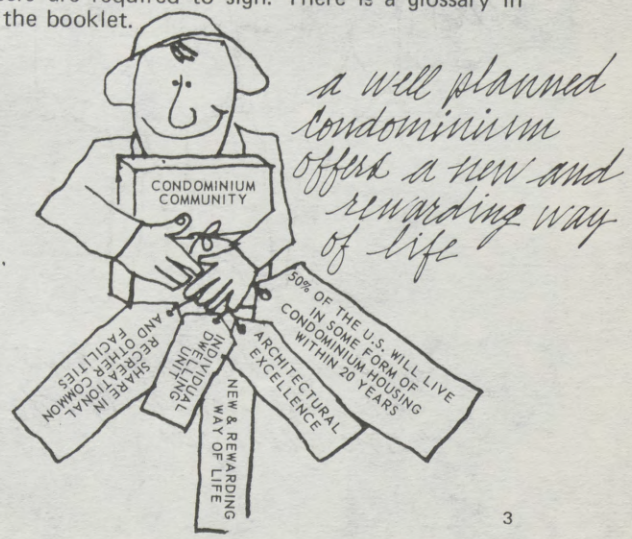
PREFACE

A well planned condominium community offers both possibilities for architectural excellence and opportunities for a new and rewarding way of life that seem almost limitless. These benefits, when coupled with the consumer's ability to own and control an individual dwelling unit and a share in recreational and other common facilities, hold increasing public appeal. Housing economists predict that 50 percent of the United States population will live in some form of condominium housing within 20 years. Statistical trends support that prediction.

The purpose of this booklet is to inform possible purchasers and others interested in the condominium concept and to encourage—not discourage—condominium ownership. To help potential owners buy wisely, some negative factors are discussed. A negative factor, however, does not necessarily mark a particular condominium unit as a poor investment or the developer as an unscrupulous operator. Rather, it may result from error or lack of understanding on the part of those who established the condominium and may be corrected.

The first three chapters cover pitfalls for purchasers and suggest safeguards for avoiding them. Chapters four and five discuss the condominium concept in somewhat greater detail for those owners who become members of a Board of Directors or an Owners' Council. The information also should be useful for indoctrinating the general public and government officials—both Federal and State—in this excellent form of homeownership.

Some terms used may be unfamiliar to readers, but they are the terms found in legal documents which condominium purchasers are required to sign. There is a glossary in the back of the booklet.



Chapter I

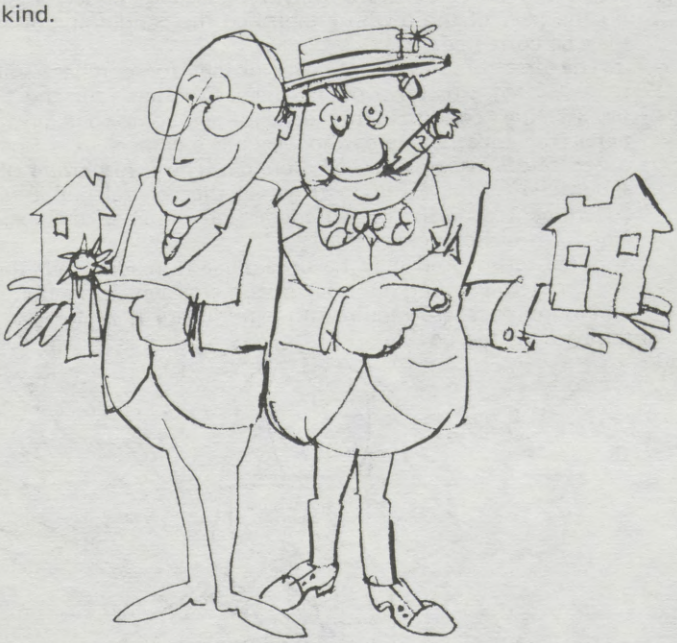
CONDO. . . . . What???

Questions to Ask

If you are thinking of purchasing a condominium dwelling unit, **don't be afraid to ask questions.** This booklet will supply you with some answers and stimulate more questions to ask as you learn about this relatively new form of homeownership.

Condominium living is rapidly gaining in popularity and, as land costs increase, it is destined to become even more popular in future.

Condominiums come in many forms, from towering inner-city structures to suburban townhouses with beautiful, environmentally designed surroundings. Some are conversions of luxurious old rental structures which have been rehabilitated and modernized into highly desirable dwellings. **Some, however, are merely old, exhausted rental properties** which have been painted, carpeted wall to wall, given new kitchen equipment and cast into the condominium market. Condominium laws can be applied to either kind.



there is no substitute for the integrity of the developer

Also, there are many kinds of developers of condominiums. **The majority are highly reputable and have no desire to limit their careers by marketing shoddy products.** They know that there is no substitute for integrity in their relationship with consumers whether or not they are operating in a State which has consumer protection laws or under a federally regulated program. There are, however, **many opportunists** who thrive on popular trends.

Contrary to the belief of many, **condominiums are not created under Federal laws.** There is, however, a law covering mortgages insured by HUD-FHA under the National Housing Act. This will be discussed in a later section of the booklet.

Condominiums are actually created under a special real estate law in the State where they are located.

Each of the 50 States, U.S. Territories, (i.e., Guam, Virgin Islands) and Puerto Rico has its own condominium law. The laws provide a legal framework within which conditions, covenants, and restrictions (C,C, R's) can be imposed on a property. The laws differ as to detail and the condominium documents used in each State will differ accordingly. **Condominium documents also differ from one development to another** because they must describe the characteristics of the development they represent.

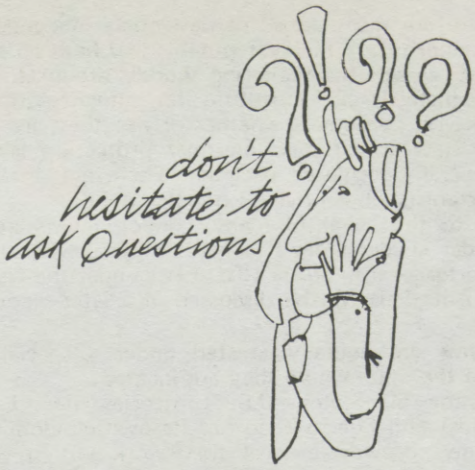
In the basic explanation only the fundamental condominium concept will be discussed. The conditions, covenants, and restrictions will be discussed as each document is explained.

Points to Consider When Buying a Condominium Unit

Don't hesitate to ask anything—even questions that may seem silly to you. It's better to feel silly now than sorry later.

Request any and all available informational material. Don't be reluctant or apologetic. You have a right to insist upon receiving copies of not only the basic documents but anything else that would make a full disclosure of the sale terms to you.

Don't sign a Subscription and Purchase Agreement or any other form of sales contract until you have received and read a copy of the Declaration, Bylaws, Operating Budget, Management Agreement, and Regulatory Agreement (if any mortgage in the project is HUD-FHA insured). Sales contracts or Subscription Agreements normally contain a clause which states, over your signature, that you have received the organizational documents. These principal documents are defined and explained more fully in Chapter V.



Don't accept the answer that the Condominium Declaration can only be seen at the local land records office.

Don't make a downpayment until you are sure of your mortgage loan—unless the purchase agreement states that the downpayment will be refunded if you are unable to get mortgage credit.

Ask about settlement costs. They will require cash over and above your downpayment.

Ask for a Budget. Each prospective owner must be aware that the extent of obligation assumed is not limited to the cost of the unit. Besides the mortgage debt (principal, interest, taxes, and insurance) which will run over an extended period, there will be monthly assessments to cover maintenance and related expenses of the common area in proportion to the percentage of undivided interest attached to your unit. Find out how much that will be beforehand, **Not After You Sign A Binding Contract.**

If you don't understand the documents—and even if you think you do—**seek legal aid.** It is necessary that you understand what is in them, since they will control not only your future rights as a condominium owner but also your obligations.

Ask about an **Information Bulletin** or its equivalent (pamphlets, brochures and the like), to give you a clear overall picture of the condominium development in which you're purchasing a unit. Remember, however, these do not substitute for the documents which legally create the condominium.

Find Out on what basis your ownership, assessments and voting rights are being determined. **If there is a lease involved** be sure you understand that you are not the owner of the property it covers. You should find out how much it will cost you to rent and maintain the leased property over and above your condominium charges.

A Declaration normally provides for a **master hazard insurance policy,** insuring against loss by fire and other perils. Such policy should contain a condominium property endorsement which recognizes that condominiums have a multiple number of beneficiaries. Each prospective condominium purchaser should be certain that such an endorsement is part of the insurance package. **Ask About It!**

The prospective purchaser should be sure that there is sufficient **liability coverage** for the entire condominium development and that the liability insurance policy names, as insured, the board of directors and each unit owner individually as co-owner. **Find Out For Sure!**

Does the developer have sufficient capital to complete the entire condominium **without using your downpayment?** The entire condominium development includes the common facilities. (The selling price as well as the cost per square foot allocated to each unit includes a proportionate amount of the common area and its facilities.) Failure to complete the common facilities will result in an overpayment for the value you actually receive. HUD-FHA and some States require that downpayments be deposited in escrow until the dwelling units and associated common area are substantially completed.

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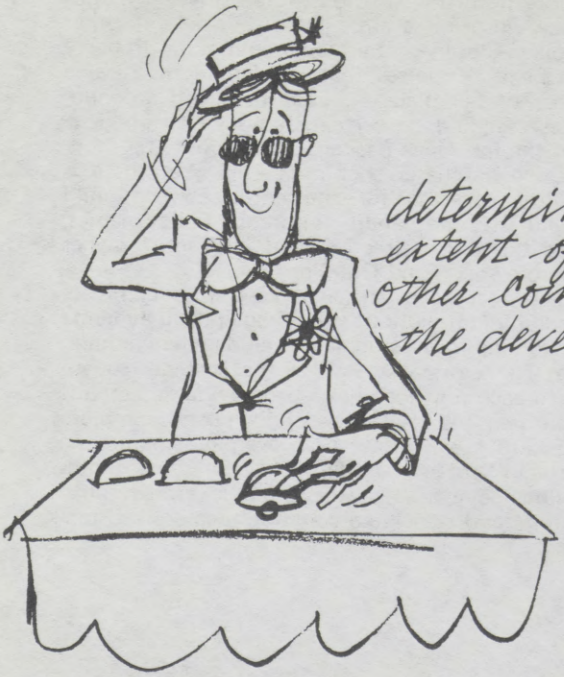


Ask Whether the condominium you see is the entire development or if the developer plans to enlarge the condominium by adding more land and additional condominium or rental units. Has the developer's right to do so been predefined in the Declaration? You need this information to make an intelligent decision whether or not to purchase a unit in a condominium which does not have a firm percentage of interest at the time you purchase. The developer must predefine his intention in order to add any kind of additional units whether compatible or not, i.e., commercial units, or expensive amenities not anticipated by you at the outset.

Determine the extent of any other control by the developer, both before and after the condominium is legally constituted, and the effect, if any, on your future rights and obligations.

Ask What Your individual dwelling unit estate encompasses. What are its boundaries? What are the boundaries of the common estate? Are there any restricted common areas and how do they apply to you?

If this is to be your permanent home find out to what degree transient occupancy is allowed. For developments with federally insured mortgages, HUD-FHA requirements specify that a family unit cannot be rented by the owners for transient or hotel purposes. This is defined in part as; (1) a rental for any period less than 30 days or; (2) any rental if the occupants of the family unit are provided customary hotel services. The owners of the respective units, however, should have the right to lease for residential

purposes, subject to the covenants and restrictions contained in the Declaration, Bylaws, and Regulatory Agreement.

Inquire About any "Liquidated Damage Clause" in the Sales Agreement, i.e., conditions under which you **could lose your downpayment.**

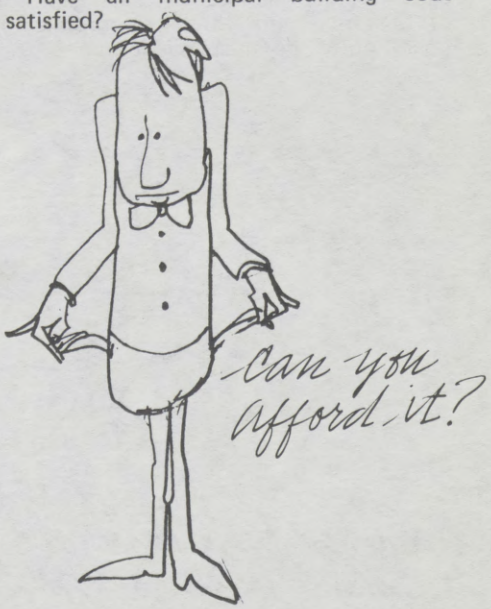
How Many Days are allowed for you to review the sales contract and basic condominium documents? Is it a long enough period for you to understand the documents and to seek legal assistance, if necessary?

In order to be assured of a good title, free and clear of any liens, you should consider purchasing an **"Owner's Title Policy."**

Are there any restrictions on your right to re-sell? Do you have the right to sell your condominium unit on the open market or must you first offer it to the condominium association for a stipulated period of time? In HUD-FHA regulated condominiums restrictions such as the "right of first refusal" are not permitted.

A condominium regime cannot be established within a given area without meeting State requirements. Remember—**not all condominiums are subject to HUD-FHA requirements—only those which have mortgages insured by HUD-FHA.**

Have all State requirements been met? (Verification can be obtained through your State Real Estate Commission or other appropriate State agency with authority to regulate condominiums). Have all municipal building code requirements been satisfied?



Can You Afford It? Weigh your present income, expenses, and living style against what they will be as a condominium owner.

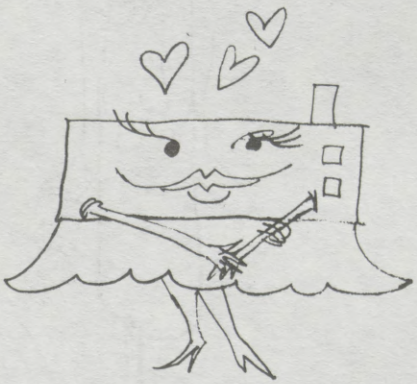
Ask The Seller to explain the condominium concept and how it applies to the particular development that interests you. The explanation will supply you with useful information and help you determine the capability of those with whom you are dealing.

Most States require licensed salesmen to be bonded. If you are negotiating with a salesman, determine that he is licensed before making any cash outlays.

Is It Really A Condominium or something else you're buying?

Not all townhouses, which surround a community area, are condominiums. The so-called planned unit development (PUD) or planned subdivision comprises a number of traditional estates (see Sketch No. 2 in Chapter 4) each of which has a membership interest in a separate property owned by a homeowners' association. **There is no undivided interest in such an arrangement.**

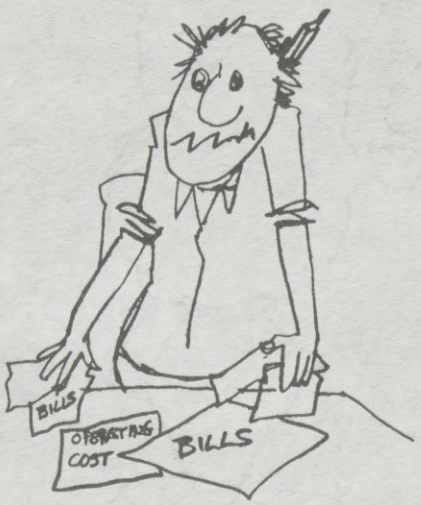
A number of separate condominiums may surround another separate and independent area which contains streets and recreation facilities. The independent area will not normally be a part of the common estate of any condominium. The area is normally on a separate traditional estate and owned by a nonprofit organization (usually a corporation). All condominium unit owners automatically become members of the organization with ownership of their unit and will be responsible for maintenance and operation of the independent area.



is it really a true condominium or something else youre buying?

NOTE: The term **"air space estate"** *is often misunderstood and has been interpreted as being applicable only to units in a high rise structure. Such is not the case. The dwelling units may also be in a low rise, garden type, row structure or in semidetached or detached townhouse structures. A large condominium may have a combination of different types of structures. The term air space is more fully explained in Chapter 4.*

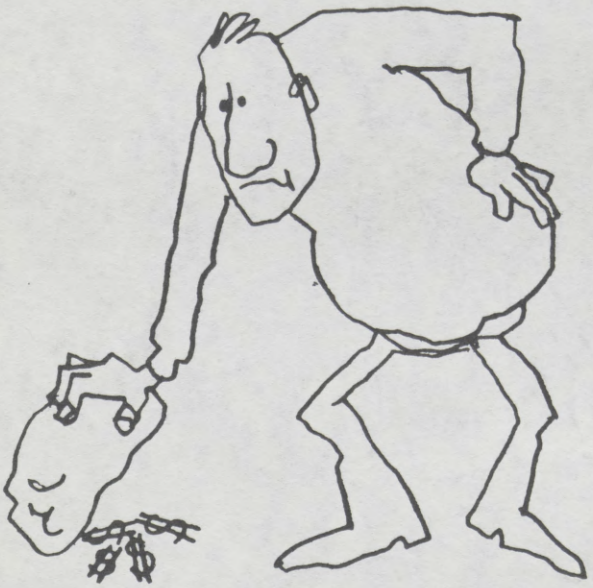
Are The Expenses Underestimated? Look at the operating budget so you can determine whether or not the items listed for maintenance realistically compare with the kinds of maintenance costs you can anticipate as you tour the development: grounds; swimming pool, clubhouse maintenance; building exterior and common interior area maintenance; and street maintenance, if streets are part of the common area of the condominium and not maintained by the municipality. If the initial budget is underestimated it could mean an increase in assessments soon after you move in. Be sure the seller isn't understating operating expenses to expedite sales.



are the expenses underestimated?

Are There Any Hidden Leasehold Costs? Some condominium developers retain ownership of parts of a project, usually the recreational facilities and sometimes the land, and lease them back to the buyers for 99 years. It is important to **be aware** of the difference between full ownership (fee simple title) which gives the owners control of the common area and a leasehold which gives the lessee full control over the property under the lease.

A developer or salesman may claim that more amenities can be provided by a leasehold arrangement and the condominium can be offered at lower prices. **However, what can and does sometimes happen to the consumer** is that he may be subjected to exorbitant rental charges initially and still higher rates over an extended period of time, in addition to the monthly assessment on the condominium. Failure to pay the monthly obligations could result in complete loss of your investment through foreclosure.



are there any hidden leasehold cost?

Chapter II

PITFALLS AND SAFEGUARDS IN CONDOMINIUM DOCUMENTS

SALES CONTRACT (Subscription and Purchase Agreement)

PITFALL—Yielding to high pressure and signing a Sales Contract or any other document before you fully understand its contents.

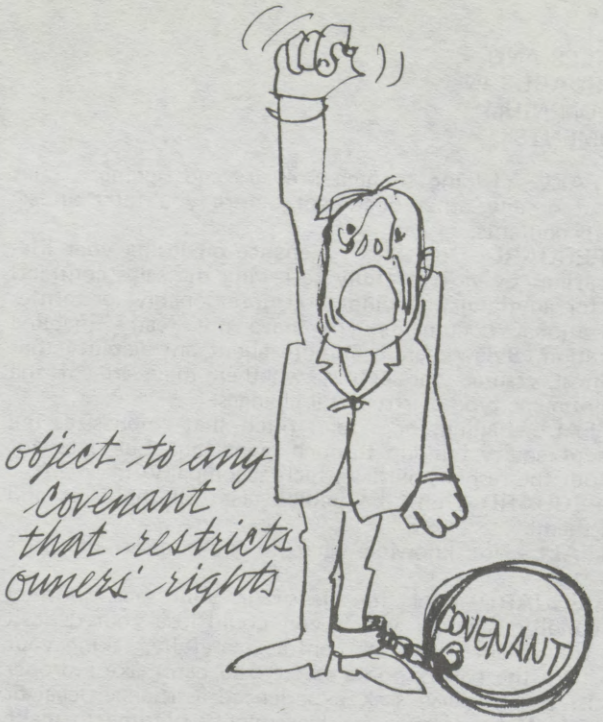
SAFEGUARD—Don't take a chance on losing your lifetime savings by not carefully reviewing the sales contract. Look for anything that binds you unreasonably, or ratifies organizational documents you have not read (Enabling Declaration, Bylaws, etc.). Inquire about any liability that you must assume for extras, whether they are of the embellishment type or structural changes.

PITFALL—Falling for a sales pitch that emphasizes the merits of equity buildup through ownership, but does not point out the responsibilities which accompany it.

SAFEGUARD—Don't be gullible—Get all the facts and weigh them!

PITFALL—Not knowing what to look for in the sales contract.

SAFEGUARD—Look for clauses in your sales contract with conditions under which you could lose your deposit or downpayment. Read the contract carefully, taking your time. Take the papers home where you can make a proper analysis. **If necessary,** seek experienced assistance, legal or otherwise. Make certain you have plenty of time to make up your mind.



ENABLING DECLARATION

PITFALL—The Grantor must establish the condominium by making certain declarations but **there should not be any language permitting the Grantor/developer to "lock" the condominium into long term agreements or self-serving covenants.**

SAFEGUARD—Object to any covenant that unduly restricts owners' rights to make their own decisions through their Board of Directors or that affects marketability of their units.

PITFALL—If a developer purchases a single condominium unit for his own use, **as an owner he could prevent any change in the Declaration not to his liking.**

SAFEGUARD—Conditions, covenants, and restrictions in the Declaration should be reviewed with knowledge that 100 percent of the owners must agree to any change in the Declaration after it has been legally recorded.

PITFALL—Unnecessary control by the developer over an extended period of time, either by controlling language in the Declaration or by retaining ownership of 51 percent or more of the units.

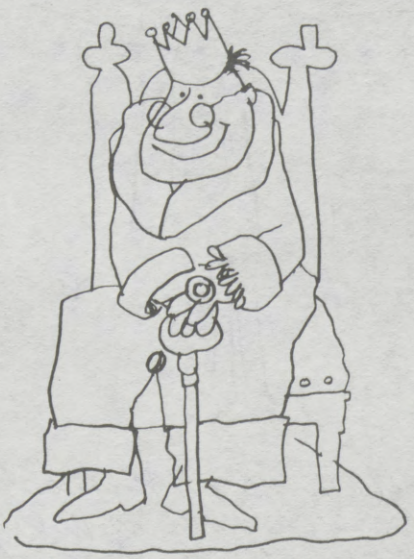
SAFEGUARD—Read the documents carefully. How long will it be before a Board can be elected from among the owners? Has too much power been given to a management company that is related in some way to the Developer?

PITFALL—Policy-making powers, delegated in the Declaration to professional management companies, which **preempt** powers of the elected Board of Directors of the Association. In such a case neither the Board nor the owners would be able to change future undesirable situations.

SAFEGUARD—Make sure the Declaration does no more than give the Board authority to hire a management agent who will be under its control. Since the Bylaws can be amended by the majority, delegations of authority can be set forth in it. Ask to see the Management Agreement.

PITFALL—Right of first refusal, in other words, any language restricting resale rights of owners. This may mean you cannot sell to whomever you choose but must first offer to sell to the Association. The Association may reserve the right to clear prospective purchasers before they are permitted to buy. This would contradict "fee simple ownership" which carries with it the undisputed right of disposal.

SAFEGUARD—HUD-FHA does not permit any language that would restrict the resale rights of owners. While "right of first refusal" is not prohibited in some State statutes, it is specifically prohibited in condominiums having HUD-FHA insured mortgages.



... has too much power been given to the management company

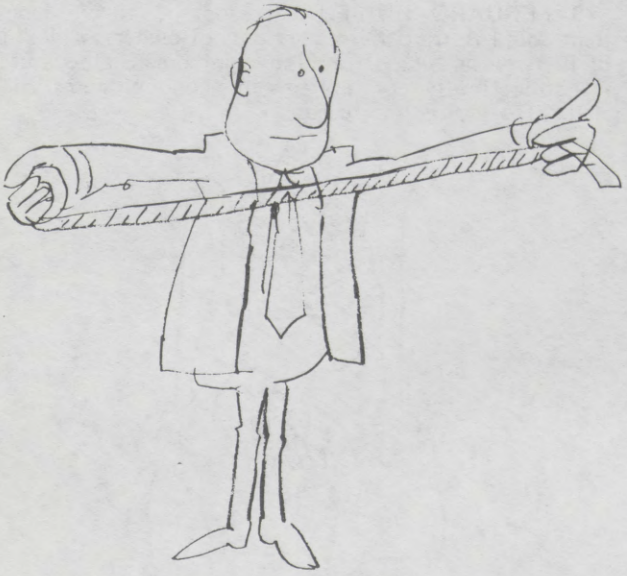
BYLAWS

PITFALL—As with the Enabling Declaration, care should be taken to determine that the Bylaws do not under- or overgovern the individual unit owners. They cannot be overly permissive with respect to the conduct of owners in areas where other owners would be adversely affected. At the same time, the powers of the Board should not become dictatorial in areas where it is not necessary to be so.

SAFEGUARD—Determine that the basis for governing the condominium is within reasonable and equitable boundaries. Use restrictions and rules of conduct should be on the same basis for all unit owners.

Bylaws implement fundamental powers given to the Association by the Declaration and should be clearly defined. If found undesirable, they may be amended by a majority vote of the owners.

Bylaws **should also contain the right for owners to petition for changes in the government of the condominium**—including the right to remove an ineffective Board of Directors.



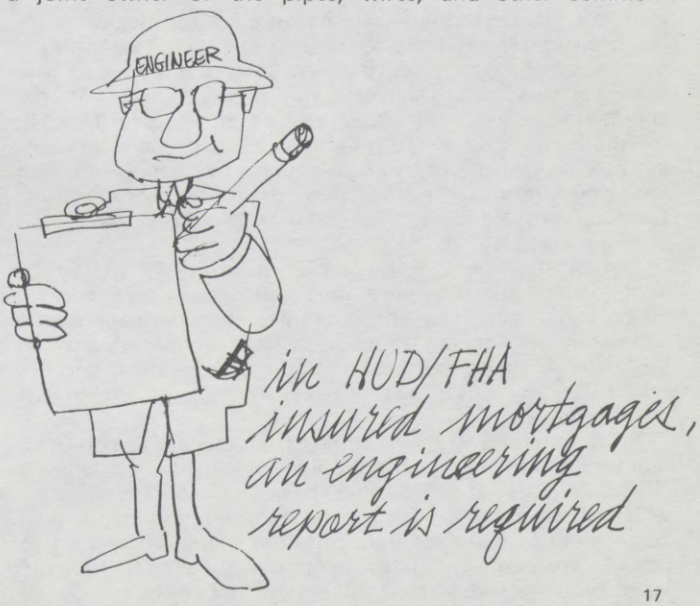
determine that the basis for governing is within reasonable and equitable boundaries

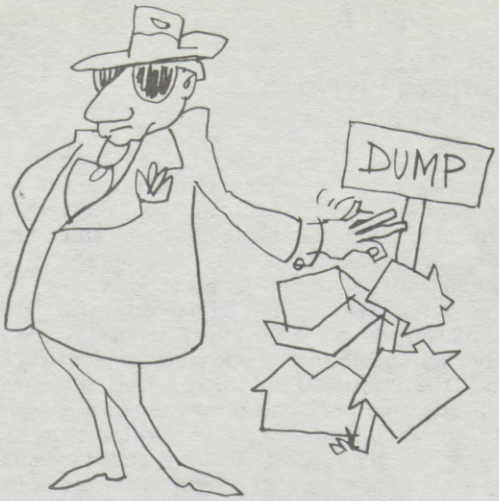
Chapter III

WHEN RENTAL PROPERTIES CONVERT TO CONDOMINIUMS

It is extremely difficult for HUD-FHA to protect the government's interest or the consumer's interest—or in fact, for the consumer to protect his own interest—in cases where an older building is being converted to condominium ownership. It is very difficult to determine the degree of deterioration that has taken place over the life of a structure. **In condominiums financed with HUD-FHA insured mortgages, an engineering report is required to determine the condition and adequacy of the structure, the plumbing, the electrical and mechanical components, the heating plants, the roofs, and other structural elements.** The estimated remaining life of these various elements determines whether they must be replaced immediately or whether a lump sum of cash should be placed in escrow to cover the deterioration that previously had taken place. In the latter case the HUD-FHA required replacement reserve would be collected on a monthly basis from the owners and added to the escrow account for the remaining life of the items.

The most important consideration to be remembered when buying a condominium unit in a structure which has been converted from rental or hotel operation is that you will not only become the owner of a dwelling unit but also a joint owner of the pipes, wires, and other common



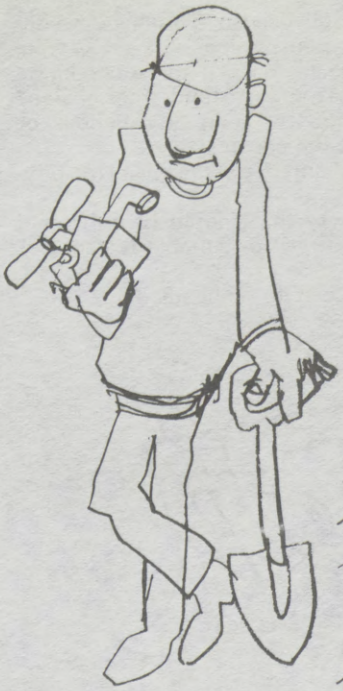


...some speculative operators might attempt to use the condominium concept as a "Dumping Ground" for undesirable properties

elements. **If rehabilitation is necessary after the property has been converted** from a single deed estate to a multiple number of deeded estates, the new owners will have to bear the cost over and above their purchase price. If the condominium has insufficient reserve funds to pay the cost, the money would have to be obtained by special assessment against the owners, or from a lender. If a loan is obtained all owners normally would have to sign the note securing the loan because it is they, and not the Association, who own the property.

Notwithstanding the reputable majority, it should be kept in mind that **there are some speculative operators** who might be attracted by the consumer characteristics of the condominium concept. Such operators might attempt to use it as a "dumping ground" for undesirable properties that prove no longer marketable for rental or investment purposes.

In determining whether or not it is possible to convert a rental development to condominium ownership, the appraisal should have included an engineering report, indicating which structural, electrical, or mechanical components must be repaired or replaced. **Rehabilitation should comprise two parts, restoration and improvements.** The property should have been restored to a "like new" condition and any deferred maintenance corrected. Improvements should



emphasis must be placed on replacing inadequate components or systems that are buried in walls and other common areas

include any that would enhance the livability and marketability beyond the original design of the property. These improvements might include the addition of a clubhouse, swimming pool, or other community facilities, and structural changes to room composition. In multifamily complexes, **emphasis must be placed on replacing inadequate components or systems that are buried in walls and other common areas.**

There are many properties that could readily be converted to condominium ownership with appropriate consumer safeguards. **Here are some of the many factors to consider before you buy:**

- Location
- Neighborhood characteristics
- Access to public transportation, churches, schools, stores and other facilities
- Age of the property
- How it is now managed and maintained
- Condition of property (Was an engineering survey made and resultant work completed?)

- Extent of rehabilitation still needed (Has the development received only a cosmetic refurbishing?)
- Were improvements made to make it more conducive to long term occupancy? **What about sound transmission?**
- The reputation of the grantor (and any builder or developer he may use to make the conversion)
- Experience of present tenants (Are the majority buying their units?)
- Is this the type of property that should be converted to condominium ownership? (It may be suitable to rent but is it suitable to buy?)
- Available financing (How is it to be handled?)

Has the development received only a cosmetic refurbishing?

Chapter IV

THE CONDOMINIUM CONCEPT

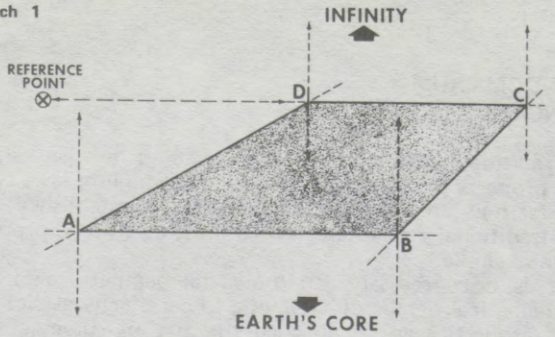
Traditional Real Estate—To understand how an estate in real property is established under condominium law, **consider first how an estate in real property is established under the traditional real estate law,** using single home properties as an example.

It is not necessary to know the geometry and other mathematical details of surveying to get a general picture of how properties are established. By use of surveying techniques a parcel of property (**lot**) can be located on the surface of the earth by relating the boundaries of the parcel to previously established bench marks or other reference points. Once established (**staked out**) it can be recorded in a land records office for future identification.

Sketch 1, which follows, shows what phenomenon occurs at the property when the surveyor drives stakes into the ground at each of the four corners of a parcel of land.

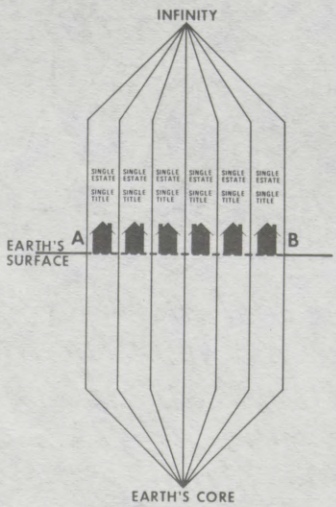
it is not necessary to know the geometry and other mathematical details of surveying to get a general picture of how properties are established

Sketch 1



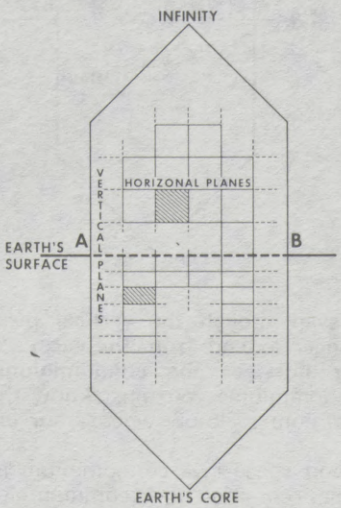
The lines in **Sketch 1** which form the real estate do not stop at the top or bottom of the stakes or the fence which may surround the property, but run upward to infinity and downward to the core of the earth. **Between each stake an invisible vertical plane is formed.** All that is encompassed by the four vertical planes represents a traditional estate in real property and partitions the estate from all surrounding property. **The word "estate" is used to explain the condominium concept because terms such as "lot" have caused many people to think of only the land surface as real estate.**

Sketch 2



The property described in **Sketch 1** could be subdivided into several smaller parcels (estates) as shown in the profile view (**Sketch 2**). The new vertical planes which would be established in the subdividing process would separate each estate from the other and would make separate ownership possible. This is typically what happens in a suburban subdivision.

Sketch 3



Condominium Estates—**Sketch 3** shows how horizontal planes can be used inside the traditional estate "A—B" (shown in Sketch 2) to bisect the vertical planes. In effect, the vertical planes shown in **Sketch 2** are prevented from running their course (earth's core to infinity) by the horizontal planes and instead form invisible cubes of air space (**frequently called air space estates**). In actuality the vertical planes will visibly appear as the walls and horizontal planes will appear as the floor and ceiling of a dwelling unit space. All of the structural, land, and air space outside of the various dwelling unit spaces is common to owners of all dwelling units. It is the common space which extends outwardly in all directions to the boundary lines of the property that maintains the real estate characteristics of the units. If it were not for the fact that each unit has an undivided interest in the common space it would be suspended in space without orientation to anything.

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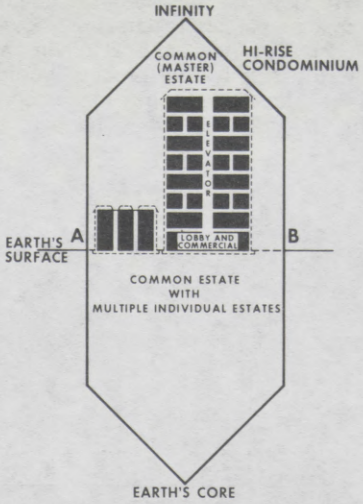
Sketch 4



Remember, even though the vertical planes of the unit spaces no longer extend from the earth's core to infinity, the property lines of the condominium do. In large, complex condominiums you must know the boundaries of your condominium to know where your undivided interest stops.

The common space in a condominium is referred to by different names—common area, common elements, common property, and common estate. It will be referred to in this booklet as common estate. The cube of dwelling space will be referred to as an individual unit estate or unit estate.

Condominium Property—**Sketch 4** shows another view of the condominium property "A—B" in which the units have been **architecturally delineated and legally described as condominium estates.**

Note *that the space between units and the masonry represented by the dotted lines around the structure and the roof is all part of the common estate. The land under the structure is also common estate.*

The plat of this property must show the **exact location of the structure** within the common estate and the architectural plans must show the exact location of each unit within the structure. The enabling declaration must contain not only a legal description of the boundary lines of the total property but also of the internal boundary walls of the dwelling space, in other words the unexposed surfaces of the four walls, floor and ceiling. **The condominium comes into existence when the declaration, together with the plat and plans, are recorded on the property.** The effect is to convert a previous single deed (traditional) estate into

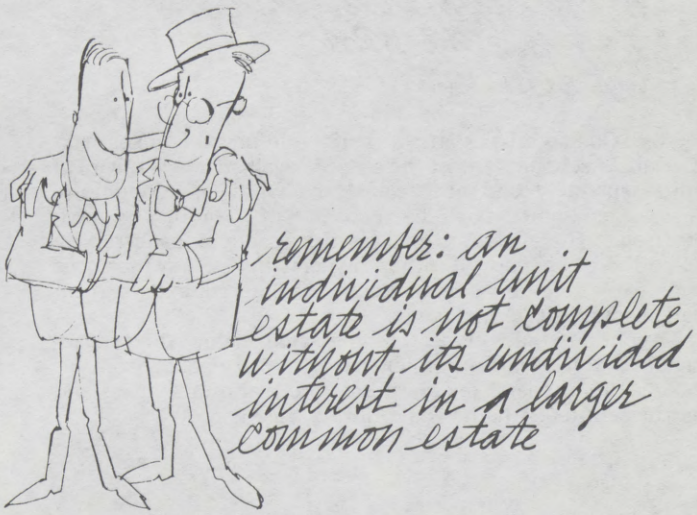
a multiple number of deeded dwelling unit estates within a common estate, the deed of which is shared by all the individual estate owners.

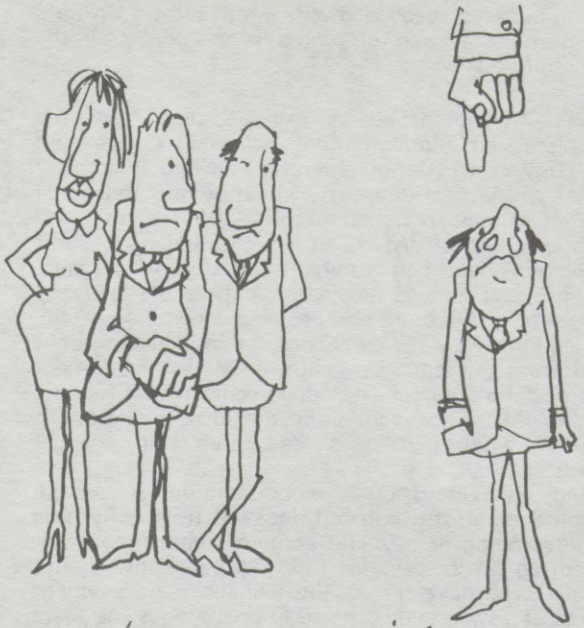
Characteristics Evolving Out Of The Concept

Ownership Characteristics—As can be seen from the foregoing discussions, **condominium ownership differs from traditional ownership.** Condominium ownership is actually created by a special real estate law which permits individual dwelling unit estates to be established within a total and larger property estate. After all of the individual unit estates have been described within the total property estate, all of the property not so described, such as the land and structural parts of the buildings, becomes a common estate, to be owned jointly by the owners of the individual estates. Departures from this basic concept will be discussed under the section on function of legal documents which follows.

Remember this: A condominium individual unit estate is not complete without its undivided interest in a larger common estate.

Operating Characteristics—**A condominium is usually operated on a nonprofit basis but does not necessarily have to be.** The common areas could contain commercial units. Each month an owner pays his mortgage payment (if any) to his lender. The payment usually will include a payment into his tax escrow account. In addition he pays his share of the cost to maintain and operate the common areas to the Association. This payment normally includes a share of the hazard insurance which is paid in lump sum payments by the Association. In some condominiums he may also be required to share the cost to fund reserve accounts.





Tax Characteristics—**In a condominium all taxes and special assessments must be levied against the individual units separately and not against the whole condominium.** Also, each unit must be capable of bearing its own mortgage. Therefore, an owner's title is not endangered by default on the part of other owners in meeting mortgage and real estate tax payments, nor is he required to meet deficiencies in such payments.

A condominium owner has the same income tax advantage as a conventional homeowner. He may deduct from his income, for Federal tax purposes, the real estate taxes and mortgage interest he has paid during the year.

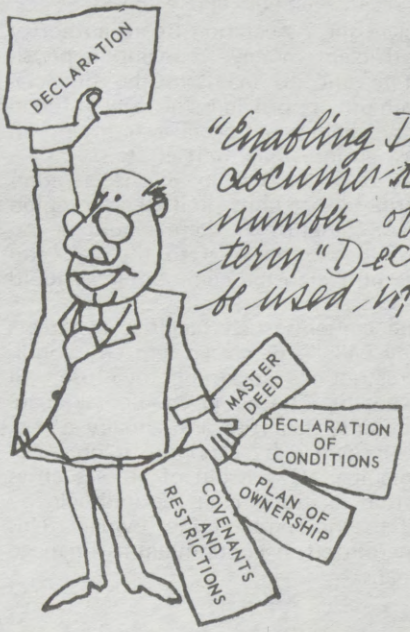
Chapter V

UNDERSTANDING THE FUNCTION OF PRINCIPAL CONDOMINIUM DOCUMENTS

Enabling Declaration—This document is called by a number of different names, such as Master Deed; Declaration of Conditions, Covenants and Restrictions; and Plan of Condominium Ownership. **The term Declaration will be used in this booklet.**

The Declaration is the most important of all condominium documents. It is prepared by the Grantor or declarant who previously owned the property as a single deed estate. When the Declaration is recorded the property converts to a number of single deed condominium estates. **It is in this document that departures appear from the basic condominium concept explained in Chapter IV.**

Most departures result from the different characteristics of a condominium development. However, many result from permissive laws which can be broadly interpreted. As indicated by one of the alternate terms used for the Declaration, it does **enable** the condominium to come into existence by legally establishing a condominium regime. As another title indicates, it contains conditions, covenants and restrictions which, when recorded on the property, become the constitutional law of the condominium. **It gives author-**



"Enabling Declaration"... this document is called by a number of names... the term "Declaration" will be used in this booklet

... look for the section in the Declaration which accurately describes the units and the common elements

ity and power, through the bylaws, to the Board of Directors of an Association of Owners to regulate and administer the affairs of the condominium with regard to the common estate and all its elements and facilities.

This document also gives the Association Board authority to assess and collect sufficient money to maintain physically the common estate and to maintain the financial stability of the condominium. It provides for legal enforcement of unpaid monthly charges or special assessments in the form of a lien against an individual unit estate.

Logically, there must be a section in the Declaration which accurately describes the units and the common elements. Without such a description there would be no basis on which title could be conveyed to the unit and there would be no basis on which the common areas could be governed.

If the common estate contains such facilities as streets and recreation areas they will be described and any conditions, convenants and restrictions governing their use will be written into the document. The buyer should take care to determine that community facilities are actually a part of the common estate or owned by a nonprofit organization of which he is a member. Ownership of areas such as parking lots and recreation facilities might be withheld by the Grantor and leased to the condominium owners. This type of leasing is not permitted in condominiums financed by HUD-FHA insured loans.

Provisions for professional management, hazard and liability insurance, replacement and operating reserves normally will be included. **Patios, balconies and parking spaces** may all be owned jointly, as a part of the common estate, but restricted to the exclusive use of the dwelling unit to which they are assigned. On the other hand, a balcony or patio may be included as a part of the unit description and be included in the "fee simple" (exclusive ownership) of the unit estate.

Commercial property may be made a part of the common estate. If such is done it probably would be leased by the Association and the income used to reduce the assessment. On the other hand, **some units may be declared commercial.** In this case the commercial income would belong to the owner. Obviously, to protect other owners, the Declaration should contain restrictions as to type of commercial operation.

Another section of the Declaration establishes the undivided interest percentage (ratio of a unit to the total of all units). **The formula used to determine the undivided interest in the common estate of a condominium will affect** (1) an owner's percentage of ownership of the common area, (2) the number of votes an owner has in matters brought before the Association of Owners, (3) the amount an owner will be assessed for maintenance and operation of the common properties, (4) real estate tax assessed against the unit owner and (5) the amount of money a lender would be willing to loan on the unit and its percentage of common area.

A State condominium law may specifically require that certain formula be used. One or a combination of the following is normally used when there is no State requirement:

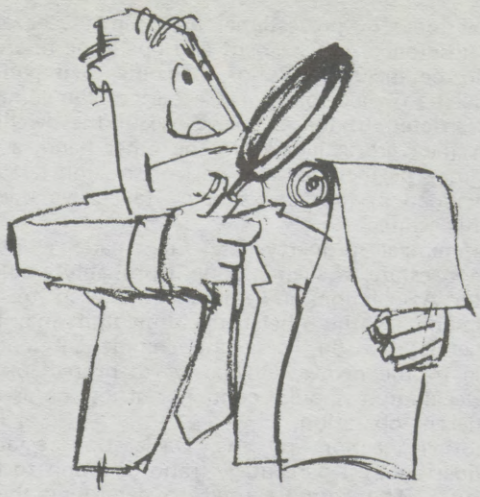
By value—in proportion to the originally established value in the fraction or percentage obtained by dividing the value of a single unit by the total value of all units.

By living area—in proportion to the originally determined living area in the fraction or percentage obtained by dividing the living area of a single unit by the total living area of all units.

In equal shares—in the fraction or percentage obtained by dividing the total number of units into the figure 1. (When voting is determined on this basis the owner of each unit would have one vote).

By market price—where State law permits, some condominiums base unit ratios on the preestablished market price of a unit to the total market price of all units.

In all instances, **be wary of language in documents that would allow unit ratios to change at some future date.** This would adversely affect the undivided interest coupled to your unit after your purchase.

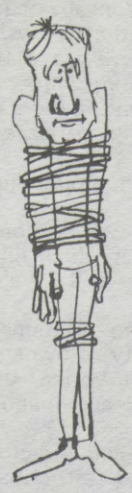


Be Wary of language that will allow unit ratios to change at some future date

The equal share ratio is used most frequently for determining the assessment in "row" or "townhouse" condominiums in which all dwelling units are on the ground level and there are no units above or below them or in cases where community facilities are in a separate nonprofit membership organization. **(In condominiums financed with HUD-FHA insured loans, assessment for common expenses** must be in proportion to unit value or living areas, when living units extend over or under other units or when the units are not of the same approximate type. Voting and ownership in the common estate, however, may be based on equal shares.)

The Declaration must identify and describe accurately the individual units and the common areas as well as the ratio of the unit to the total of all units. **When the ratios attach to their respective units, all unit owners are bound by them.**

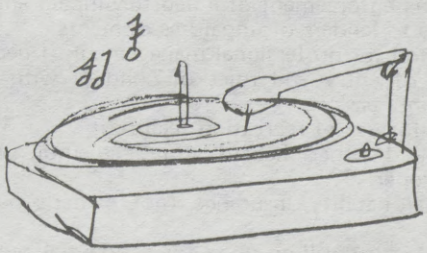
The condominium regime is established by recording the Declaration, dedicating the property to a condominium plan of ownership. Exhibits attached to and recorded with the Declaration should include the plat and plans of the project, the Bylaws of the Association of Owners and the regulatory agreement, if regulated by HUD-FHA.



when the ratios attach to their respective units, all unit owners are bound by them

When the Declaration is recorded, it extends the condominium laws of the State in which the condominium is located to the property. It also establishes an Association which provides for the use and maintenance of the common estate and for it to be governed by a Board of Directors elected from among the owners of the individual estates. *Changes in the Declaration normally require consent of 100 percent of the owners.*

Bylaws - **The internal government of a condominium development is controlled by the Bylaws.** They are sometimes called the secondary laws of the condominium, as contrasted to the primary or constitutional laws set forth in the Declaration. All present or future owners, tenants, future tenants, or their employees, or any other person



when the Declaration is recorded, it extends the condominium laws of the state in which the "Condo" is located to the property

who might use the facilities of the project in any manner, are subject to the regulations set forth in the Bylaws. *The Declaration or Bylaws should contain a covenant that the mere acquisition or rental of any of the family units of the project or the mere act of occupancy of any of those units has the effect of signifying that the Bylaws are accepted, ratified and will be complied with.*

Bylaws establish a plan for governing the condominium and generally encompass the following:

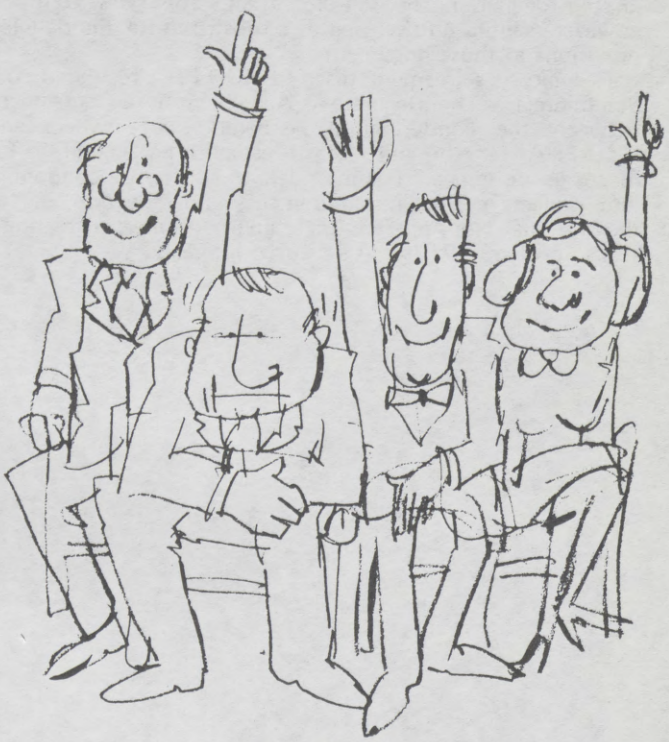
- Administration of the condominium—**will be done by the grantor until the first annual meeting** at which time an Association Board or Counsel of co-owners will be elected by and from among the owners.
- **Owner responsibilities** with regard to elections and special meetings—what constitutes a majority of owners and a quorum for doing business, method of voting, use of proxies, removal of an undesirable board and manner in which Bylaws can be amended.
- The **responsibility of Board officers and directors** in carrying out the conditions, covenants and restrictions set forth in the Declaration—the number, qualifications, powers, duties and term of office of officers and directors. The Bylaws also set forth the rules for conducting meetings, such as the order of business, quorum proxies and number of votes required to legally resolve an issue.

The Bylaws will contain many details that would be necessary to clearly establish the rights and responsibilities of the **owners as individuals and the individuals as co-owners.** Following is a list of some of those items:

- Use and maintenance of common areas
- Establishment of an operating budget including general operating reserve and reserve for replacement of common elements
- Collection of monthly charges and special assessment including the enforcement of a lien for unpaid amounts
- Notice to lenders of unpaid assessments
- Provision for professional management, if necessary
- Right of entry and rules of conduct with respect to the common areas
- Rules for use of recreation facilities
- Fire and other hazard insurance (not on owner's personal property)
- General liability insurance (not owner's personal liability)
- Use of the dwelling units for residential purposes and rules of conduct which would be necessary to preserve the asthetic appearance of the development and promote harmony among the owners
- Compliance with State laws
- Compliance with HUD-FHA requirements (if any unit is financed with HUD-FHA insured mortgage loan)

Some items listed above may appear in the Declaration instead of the Bylaws because it usually takes 100 percent of the owners to amend the Declaration. It usually takes only a simple majority to amend the Bylaws. Obviously some rules should be flexible so they can be changed by a majority of owners. On the other hand some changes which would have an effect on the owners' equities should not be changed without each owner's consent.

Subscription and Purchase Agreement (Conditional Sales Contract) - A model form is used by developers in the solicitation for condominium purchasers seeking a HUD-FHA insured mortgage. It is also required from purchasers obtaining conventional financing of individual units or those paying cash for a unit in a HUD regulated condominium. A budget and a schedule of estimated monthly assessments is required to be attached. **It is on the basis of statements contained in these documents that condominium**



... it usually takes 100 percent of the owners to amend the Declaration

purchasers are solicited. It is, therefore, essential that the statement be accurate and that the expenses are not underestimated.

A Subscription and Purchase Agreement (regardless of whether or not HUD-FHA is involved) **should:**

- Act primarily as a sales contract. When no separate information bulletin or prospectus is included, by reference **it should fully disclose all pertinent facts concerning the condominium.**
- Bring to buyer's attention the individual interest attached to his unit
- Make known the existence of other condominium documents
- Include language of a properly drafted sales contract appropriate for the State of jurisdiction
- The Declaration, Bylaws and other legal documents are usually included by reference and may be explained to a limited degree in the sales contract. **The sales contract, however, should not be used as a substitute for the detailed provisions in those documents.**

Regulatory Agreement (used in HUD-FHA regulated condominiums) - The Regulatory Agreement is an agreement between the condominium Association of owners and HUD-FHA for the purpose of establishing eligibility for mortgage insurance. It is intended to conform a condominium project to certain requirements under Section 234 of the National Housing Act (including consumer protection). It also protects HUD-FHA's insured interest.

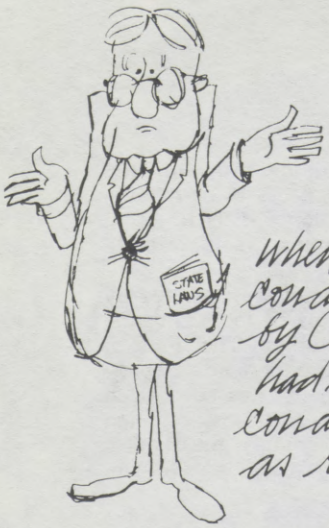
Chapter VI

SECTION 234 (NATIONAL HOUSING ACT) AND THE CONSUMER

Discussion of HUD-FHA condominium programs has been purposely limited in the foregoing pages to permit the most fundamental explanation of the concept. HUD-FHA, however, does have condominium programs which are authorized under the National Housing Act.

The Section 234 Condominium Program was enacted by Congress to provide an additional means of increasing the supply of privately owned dwelling units. The Federal Housing Administration which is now a part of the Department of Housing and Urban Development, was authorized to insure private lending institutions against loss on high value loans. High value loans (approximately the market value of the property) reduced the initial amount (down-

Prior to the advent of HUD/FHA Mortgage insurance the ratio of a loan to the value of the property was held down by the lender



when the authority for condominiums was enacted by Congress... most states had no law to enable condominiums to be treated as real estate

payment) a consumer would have to pay to purchase a home. **Prior to the advent of mortgage insurance** the ratio of a loan to the value of the property was held down by lenders. This naturally required the consumer to produce more cash for a higher downpayment. This resulted in a high risk of loss for the consumer but the lender's risk of loss through default by the consumer was smaller. In a foreclosure and resale of the property the lender's chance of complete recovery was greater. HUD-FHA high loan-to-value mortgage insurance, therefore, reduced the need for the high downpayment from the consumer by assuming the risk. The lender recovers from HUD-FHA and the consumer's loss is reduced because he is not required to invest as much money.

When the mortgage insurance risk is assumed by HUD-FHA the need for regulations becomes apparent. Minimum property standards are necessary to assure that structures will not deteriorate and lose their marketability before the mortgage and HUD-FHA's insurance risk terminates. The consumer receives a side benefit from this in that he usually acquires a better quality home for the same price he would pay for a home with no quality control.

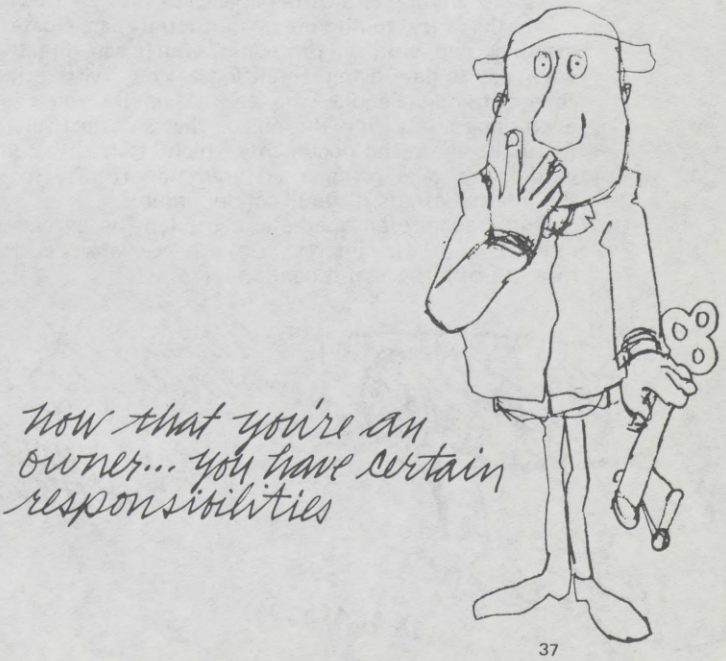
When the authority for condominium insurance was enacted by Congress the majority of States had no law which would enable condominiums to be treated as real estate. FHA at that time prepared a model form of enabling legislation which contained a number of consumer protection provisions. Some States adopted the suggested model verbatim but many did not. Variations have also

come about over the years by amendments to State laws. To provide additional consumer and government protection, FHA prepared a model form of Declaration, Bylaws, Subscription and Purchase Agreement, Management Agreement, and other documents which were required to be used in a condominium containing a unit financed by an FHA-insured mortgage. Condominium developers do not have to use HUD-FHA programs if nonfederally insured financing is available. In such cases the HUD-FHA minimum property standards and the documentary provisions are not applicable. **As was previously pointed out, there are many reputable developers who will meet or exceed, the minimum property standards and will not, as Grantor, take advantage of the consumer in the documentation.** The primary purpose of this booklet has been to help the consumer in making an informed decision about buying into a condominium development.

You as an Owner

If you have found the condominium which matches your life style, you should now appraise your own attitude toward the purchase.

First and foremost, **you have certain responsibilities** and must live up to them. As a homeowner, take pride in your surroundings. Be concerned about how well your unit is maintained, as well as the maintenance of the entire common area. If, like most people, you have undertaken a mortgage obligation, be certain it's fulfilled. Budget your expenses in order to handle your monthly assessments.



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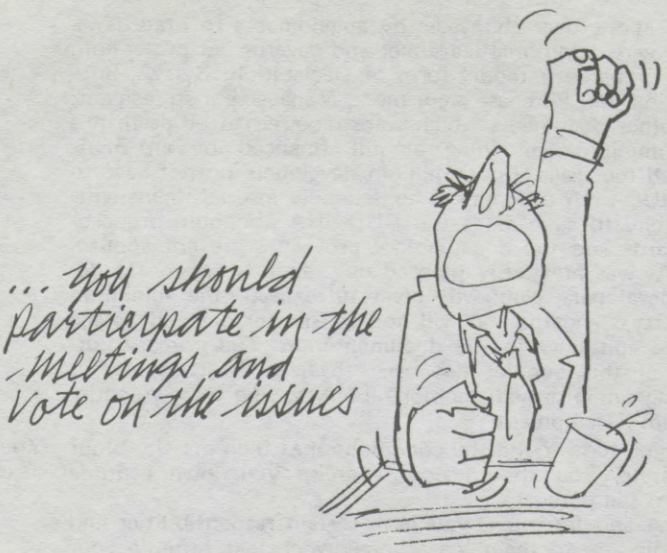
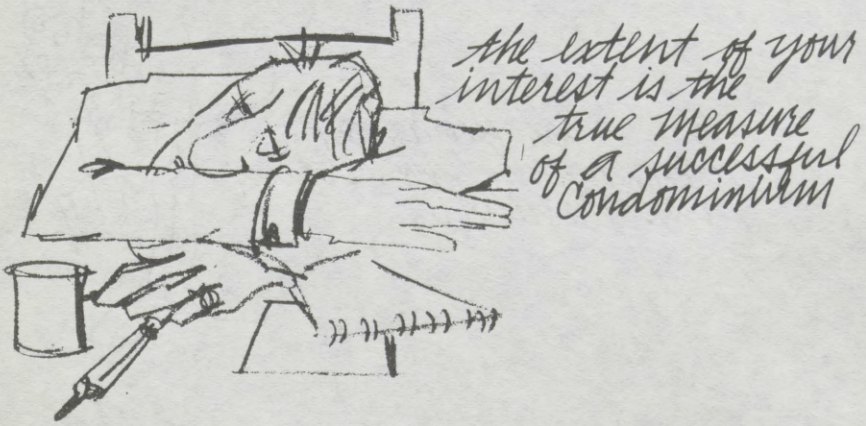


Don't forget that, **as a condominium owner, you have certain rights over and above the average renter.** You can assume an active role in the Association, on the Board of Directors, merely by running for office. You have as much chance as anyone else of being elected.

At the very minimum, you should participate in the meetings and vote on the issues, which can directly affect your day-to-day living conditions. You, with others, can change things. People who seek a similar voice in rental operations rarely find the means that so effectively legalize this right as do the documents which establish a condominium. Don't take for granted your opportunity to vote on the internal affairs of your condominium.

Don't acquire an apathetic attitude. The extent of your interest and the interest of other owners is the true measure of a successful condominium.



GLOSSARY

What Those Words Mean

ABSTRACT—A summary of the history of the legal title to a piece of property.

AMORTIZATION—Provision for gradually paying off the principal amount of a loan, such as a mortgage loan, at the time of each payment of interest. For example, as each payment toward principal is made, the mortgage amount is reduced or amortized by that amount.

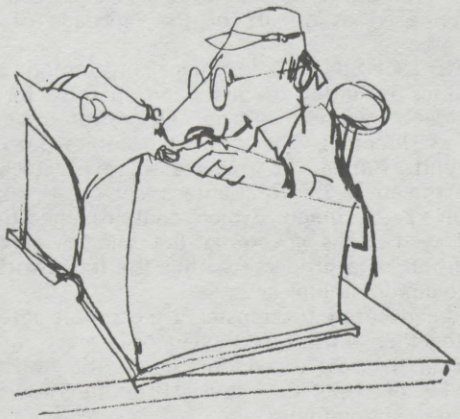
APPRAISAL—An evaluation of the property to determine its value. An appraisal is concerned chiefly with market value—what the unit would sell for in the market place.

ASSESSMENT (Operating)—Proportionate share of the budgeted annual cost to maintain physically the common areas and elements of a condominium and to maintain sufficient reserves to assure financial stability. The annual assessment is reduced to monthly charges payable to the Association of owners.

ASSESSMENT (Special)—An assessment for some special purpose or because of inadequate budgeting of operating expenses.

CAVEAT—A warning or notice to take heed such as a clause in a document which is meant to be a warning.

CERTIFICATE OF TITLE—Like a car title, this is the paper that signifies ownership of a unit. It usually contains a legal description of the unit and its relationship to the condominium.



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CLOSING COSTS—Cost in addition to the price of a unit and its undivided interest in the common estate including mortgage service charge, title search, insurance and transfer of ownership charges paid each time the unit is resold or refinanced.

CLOSING DAY—The date on which the title for property passes from the seller to the buyer and/or the date on which the borrower signs the mortgage.

COMMON AREA OR COMMON ESTATE—Generally, this encompasses all of a condominium which is not specifically delineated and described as dwelling or commercial units.

COMMON OR UNDIVIDED INTEREST—Joint ownership with other fee owners of all land and areas within the structures that are not described as individually owned units. The interest is defined by a percentage of a total area but not actually divided into individual parts.

CONDOMINIUM ASSOCIATION, ASSOCIATION OF OWNERS, CONDOMINIUM ASSOCIATION BOARD OF DIRECTORS, OR COUNCIL OF CO-OWNERS—The governing body of a condominium, elected by and from among the owners upon conveyance of titles to the individual owners by the Grantor. Its authority to operate comes from the Declaration. It must operate within the framework of the Bylaws.

CONDOMINIUM REGIME—The mode of self-rule established when condominium documents are recorded. The term also refers to all the documents necessary to legally constitute a condominium and to permit it to operate as such.

CONVEY—To transfer title from one person to another.

COVENANT—A promise usually in the form of a recorded agreement when used as a part of the language of real estate.

COOPERATIVE HOUSING—A housing corporation or a group of dwellings owned by residents and operated for the benefit of resident members of the corporation by their elected Board of Directors. The resident occupies but does not own his unit. Rather, he owns a share of stock or membership certificate in the total enterprise.

DECLARATION—A document which contains conditions, covenants and restrictions governing the sale, ownership, use and disposition of a property within the framework of applicable State condominium laws.

DEED—A document used to transfer a fee simple interest in the unit together with an undivided interest in the common estate in the case of condominium title transfers.

DELINEATE—To describe the physical boundaries of a dwelling unit in a condominium.

DEPRECIATION—A decline in the value of a dwelling unit as the result of wear and tear, adverse changes in the neighborhood and its patterns, or for any other reason.

EASEMENT RIGHTS—A right of way granted to a person or company authorizing access to or over the owner's land. Water, sewer and electric companies often have easement rights across private property.

EASEMENT—A right or privilege a person or group of people may have in property owned by one or more other persons.

ENCUMBRANCE—A claim or lien attached to real property, such as a mortgage or unsatisfied debt incurred with respect to the property.

EQUITY—Increase in value of ownership interest in the unit as the owner reduces his debt by paying off his mortgage, and from market value appreciation.

ERNEST MONEY OR SUBSCRIPTION MONEY—The deposit money given to the seller by the potential buyer to show that he is serious about buying the dwelling. If the deal goes through, the earnest money is applied against the downpayment. If the deal does not go through, through no fault of the seller, it may be forfeited.

ESCROW FUNDS—Subscription or downpayments required to be held unused, until the condominium regime is recorded on the property and titles are conveyed to each buyer. Escrows are usually used in each resale situation. The deed is held in escrow until all conditions of the sale (including any prepayments) have been met. Other escrow accounts are used to accumulate monthly tax and insurance payments until the taxes and insurance are actually due.

GRANTOR—The owner of the property which is being subdivided into a multiple number of individual unit estates under a condominium regime.

LATENT DEFECT BOND—One type is an assurance required by HUD-FHA that defects due to faulty materials and workmanship, which are found within a year of the date of completion, will be corrected.

LEASEHOLD INTEREST—The right to use a property under certain conditions which does not carry with it the rights of ownership.

LIABILITY AND HAZARD INSURANCE—Insurance to protect against negligent actions of the Association of owners and damages caused to property by fire, windstorm and other common hazards.

LIEN—A claim recorded against a property as security for payment of a just debt.

MORTGAGE COMMITMENT—The written notice from the bank or other lender saying that it will advance the mortgage funds in a specified amount to enable one to buy the unit.

MORTGAGE DISCOUNT "POINTS"—Discounts (points) are a one-time charge assessed by a lending institution to increase the yield from the mortgage loan to a competitive position with the yield from other types of investments.

MORTGAGE INSURANCE PREMIUM—The payment made by a borrower to the lender for transmittal to HUD-FHA to help defray the cost of the FHA mortgage insurance program and provide a reserve fund to protect lenders against loss in insured mortgage transactions. In the case of an FHA insured mortgage this represents an annual rate of one-half of one percent paid by the mortgagor on a monthly basis to FHA. Non-government mortgage insurance companies have a similar premium.

MORTGAGE LOAN (INDIVIDUAL UNITS)—The amount loaned by the lender (mortgagee) to the individual owner (mortgagor) necessary to purchase the unit.

MORTGAGE LOAN (PROJECT)—Provides money to the builder/developer to acquire the land and construct the condominium. This loan should be paid off in full by the cash and individual mortgage loans that come into existence when all sales have been consummated. At such time the condominium individual units must be free and clear of all liens and all individual unit mortgages must be first mortgages assumed by owners of the units.

MORTGAGE LOAN (HUD-FHA INSURED)—The lender is insured by HUD-FHA against default by the mortgagor to induce the lender to lend a larger sum to the purchaser. The loan limits are established by HUD-FHA.

MORTGAGOR—The homeowner who applies for, receives and is obligated to repay a mortgage loan on a property he has purchased.

MORTGAGEE—The bank or lender who loans the money to the mortgagor.

PLAT AND PLANS—Drawings used by surveyors and architects to show the exact location of utilities, streets, buildings and units within the buildings, in relation to the boundary lines of the total property. They may also show units, common areas and restricted areas.

PREPAID EXPENSES—The initial deposit at time of closing, for taxes and the subsequent monthly deposits made to the lender for that purpose. Hazard insurance is not a mortgage payment under the individual unit mortgage.

REPAIR AND MAINTENANCE—The costs incurred in replacing damaged items or maintaining housing systems to prevent damage. In a condominium the owner is responsible for repairing and maintaining the dwelling unit and the condominium Association is responsible for repairing and maintaining the common areas. The owner only pays his proportionate share of the cost to the Association.

RESERVE FUNDS (REPLACEMENT)—Funds which are set aside in escrow from monthly payments to replace common elements, such as roofs, at some future date.

RESERVE FUNDS (GENERAL OPERATING)—Funds which are accumulated on a monthly basis to provide a cushion of capital to be used when and if a contingency arises.

STATUTE—A law passed by a legislative body and set forth in a formal document, for example the Horizontal Property Act of Puerto Rico.

TAXES—Local real estate assessments which are levied on the individual units and not on the condominium Association.

TITLE—The evidence of a person's legal right to possession of property, normally in the form of a deed.

TITLE COMPANY—A company that specializes in insuring title to property.

TITLE INSURANCE—Special insurance which usually protects lenders against loss of their interest in property due to unforeseen occurrences that might be traced to legal flaws in previous ownerships. An owner can protect his interest by purchasing separate coverage. A mortgagee's policy, as distinguished from an owner's policy, usually protects only the lender in an amount equal to the outstanding balance of the mortgage loan.

TITLE SEARCH OR EXAMINATION—A check of the title records, generally at the local courthouse, to make sure you are buying the dwelling from the legal owner and that there are no liens, overdue special assessments, other claims, outstanding restrictive covenants or other defects in title filed in the record.

UNDIVIDED INTEREST—In condominium law, the joint ownership of common areas in which the individual percentages are known but are not applied to separate the areas physically. This situation is similar to the joint ownership of an automobile or home by husband and wife.

UNIT VALUE RATIO—A percentage developed by dividing the appraised value of a unit by the total value of all units. The percentage attaches to the dwelling unit and determines the percentage of value of the common estate attached to that unit, the percentage of votes the owner of the unit has in the government of the common estate, and the percentage of operating costs of the common area the respective unit owner must bear.

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Senator PROXMIRE. Thank you very much, Mr. Moskow.

You know, Mr. Moskow, that I have great respect for you and the Secretary. But I do wish that there would be more of a sense of urgency in the Department and more of a sense of feeling that we shouldn't have to study everything to death before we act.

That study provision was put in on the floor of the House. As I understand it, and it conformed to what HUD wanted. I just hope and pray that is not going to be used as an alibi for not doing anything for a year.

Here is something that cries out for remedy. There are heartbreaking situations in Washington here, Milwaukee, and Wilmington, Del., and elsewhere in the country. It is something that has been festering for a long time.

As long ago as 1972, 45 percent of all the new homes bought in Milwaukee were condominiums. In some areas, it is up to 80 percent. So, it is a massive involvement here of literally millions of families, and while I think it is good to be as informed as possible, the notion that it should take a year to study this before we begin to act on legislation, and then maybe another year before something goes into effect—meanwhile, you will have literally hundreds of thousands of families, and I suppose millions, without exaggerating, who have been fleeced, who have bought condominiums without the proper safeguards, and unnecessarily.

Why isn't it possible for HUD to speed up this study for a change and get something done in a hurry and really get some results so that we could act on this early next year, and put it into effect by the spring or earlier, if possible?

Mr. MOSKOW. Senator, this provision is the law of the land at this time, the requirement that we conduct this study, and the timeframe for the study was set forth in the statute which was passed in August.

So, that is the timeframe we have been operating under. As for trying to get information out more quickly, we would be happy to provide any preliminary results from parts of the study that are conducted during this period to the committee, to the Congress, for its use.

But, given the magnitude of the condominium changes that have taken place, both in the conversion side and on the new construction side, and given the state of the data that we now have in the field, I would certainly feel more comfortable with the timeframe that the Congress put into the bill.

Senator PROXMIRE. It seems to me it is not a matter of comfort. It is a matter of getting some relief here.

You say in your statement that in 1964, section 234–D was enacted permitting the FHA to insure advances on construction of condominiums.

This made it possible to regulate condominiums from their inception. That has been on the books for 10 years, and while I understand FHA is a limited area—about what proportion of condominiums are insured, 5 percent?

Mr. BROWNE. I would say under 1 percent.

Senator PROXMIRE. Have you had experience with that?

Mr. BROWNE. We have had experience in producing and insuring 20,000 units since 1961.

Senator PROXMIRE. And in 1972 to 1973, only 3,300 units were insured, or rather were——

Mr. BROWNE. There were 30,000 units insured as projects, and 20,000 some-odd——

Senator PROXMIRE. So, it is a very, very small area.

But, has that given you—has your action to regulate the condominiums under this provision given you some kind of experience under which you could have a basis for acting more broadly?

Mr. MOSKOW. Senator, this has given us some limited experience in the field. We have insured 20,000 units as we indicated in our statement, but as you mentioned yourself, it is a very small portion, and the program we have been administering has not been used extensively, and one of the things——

Senator PROXMIRE. When you say "not been used," not used by whom?

You mean HUD hasn't gone ahead and provided this?

Mr. MOSKOW. No, it hasn't been used by developers. The condominium boom has taken place largely in units that were not insured by FHA.

One thing we would like to find out in the coming months is why this is true.

Senator PROXMIRE. U.S. News is a publication that is rarely critical of a conservative administration. It stuck with Milhous almost to the very end and then some, and yet they come down very hard on the lack of leadership here.

They indicate that it is a very, very difficult problem for condominium buyers. It is one that really cries out for some kind of Federal action, and Federal protection that is needed.

It seems to me that this sort of indication, from a magazine as conservative as U.S. News is, would suggest that somehow, somewhere, on the Federal level, we are not doing our job.

I understand the Secretary has been quoted that he favors condominium legislation on the State level rather than the Federal level, and further, that he would propose a disclosure-type of law rather than a regulatory statute.

As you know, the bill Senator Brooke and I have introduced goes beyond disclosure and sets standards to protect the condominium buyers.

Does the Secretary still oppose the regulatory law?

Mr. MOSKOW. I think the Secretary instinctively would lean toward State regulation rather than Federal regulation when it is appropriate. But I am confident that the Secretary wants to look at this situation carefully in the coming months and make an informed judgment. His mind is not closed on this issue.

Senator PROXMIRE. Of course, we have been over this State preference thing for so many years on truth-in-lending. They kept saying "do nothing, let the States do it." They applied that do-nothing principle to so many of the other laws that were finally enacted. Everybody applauds now and says they were necessary.

They also said, "Let the States proceed and let's see how they operate." It took us 8 years to get that truth-in-lending through. I would hate to think we are going to have to take years rather than weeks or months to get this enacted.

Let me say, one major area of complaints about condominium concerns is continued Developer control and financial gain after the units have been sold. There have been a number of instances where developers maintain control of the swimming pools, et cetera, and lease them back to the condominium owners for a high fee.

I know HUD's regulations bar this. Would you support language in this legislation to require recreational facilities be sold to buyers along with other common facilities?

Mr. Moskow. We have had complaints about the abuses you mention. In terms of whether we would support legislation at this time, I think the answer is that we really want to find out more about this.

Is this just a few selected developers, or in one part of the country, or is this an extensive problem that requires a Federal law at this time in order to regulate it?

Senator Proxmire. I don't now why it takes a year to find that out. It would seem to me that you could do this in a matter of weeks.

Mr. Moskow. Well, I think it depends on the type of effort you have in mind. For the types of things that we have outlined in the testimony, looking at, first, the abuses that have occurred, and second, the rental markets where condominium conversions are taking place to see what the impact is on those people who are being forced to move out of rental units that are being turned into condominiums, and third, looking at the existing State laws and then making some assessment as to the effectiveness of these State laws—I think that is a large undertaking.

Senator Proxmire. Would you support a requirement that management control be turned over to the buyers within a reasonable period of time, for instance, no later than 1 year after initial occupancy, or after 80 percent of the units are sold as required in our bill?

Mr. Moskow. This is something that we do require under section 234, but in terms of whether we would support this on a nationwide basis, I think that we would have to decide that pending the outcome of the study.

Senator Proxmire. Many condominium buyers lose all that money, because the developer put their money into construction of the building and then went bankrupt.

Do you think the law should provide that down payments should be kept in escrow until the construction is completed?

Mr. Moskow. I think all of the provisions you are mentioning are ones we would consider carefully as part of our effort in the coming months.

Senator Proxmire. Why shouldn't everybody be entitled to the protection you offer in the program you have got, limited as it is?

Mr. Moskow. Well, I think the question we have to ask ourselves is why our program hasn't been utilized. One point is that the protections that we are requiring are very costly, both to developers and in turn to the people who are purchasing the condominium units.

I think it is important to consider that if we are to regulate condominiums, either in a disclosure statute or some type of a further regulatory action, there is a possible cost here—there is a definite cost.

Senator Proxmire. That is one of the reasons we have legislation, though. It seems to me as we hold hearings on these bills and as those

who are interested come up and testify, we can ascertain quite a bit of that in the hearings.

Mr. MOSKOW. As to what the cost would be?

Senator PROXMIRE. Well, to some extent, where there are areas where they can anticipate costs. If they oppose this legislation, they should try to make a case, and then perhaps we can make some kind of an investigation.

Mr. MOSKOW. As you know, there are people who have said that a disclosure law could cost condominium purchasers $1,000 extra. I don't know if those figures are accurate, but that type of analysis has to be done before you make a decision whether to have a Federal disclosure or regulatory approach in this field.

Senator PROXMIRE. You know, the Interstate Land Act, and Senator Williams is the author of that, the Land Sales Act, relies wholly on a disclosure approach. For instance, it is legal to sell land under water so long as the location of the land is disclosed. I think there are shortcomings in that if it does not—I remember when my father, who was a gullible doctor, bought a lot in Florida, and went down to see it a few months later and found it was 2 miles out in the Atlantic Ocean. I think this experience was quite common before the SEC stepped in.

Based on HUD's experience, you still feel that this disclosure approach is adequate, or do you think we need to give positive protection to consumers?

Mr. MOSKOW. Well, I think in terms of the State laws, this is something we want to look at carefully. We would want to go into the States and see if the disclosure laws have had the positive effect that some people say they have had.

I can't speak with any authority about our own interstate land sales program, but I would be happy to supply information on that for the record.

Senator PROXMIRE. One other question before I yield to Senator Biden.

I am glad that you intend to examine the selected rental markets in order to determine the impact of the condominium boom and the availability of rental housing where people can buy condominiums.

As you know, my bill calls for detailed study of the impact on the rental market and the problems of tenants displaced by condominium conversions. I think that is one of the most tragic aspects of this.

On my local route running home, I pass apartment houses that used to be occupied by people with modest incomes and many children, and now there are very few of those families. They are all being converted into expensive condominiums.

So I hope you will examine the effect of HUD's policies and the tenant displacement. Obviously the cutoff of funds under section 236 has aggravated the shortage of rental units for low income people. While the department does favor legislation that may be down the pike somewhere, I mean housing allowances for instance, that may or may not be passed, and that is several years off. Meanwhile, we wonder what these people are going to do who are displaced.

So my question is, have you given this any consideration? This seems to me to be the big social problem.

Mr. MOSKOW. This is one of the big social problems, and many of the things that are included in the provision of your bill requiring a fur-

ther study will actually be done as part of the study we will be doing in the coming months. I think this is one thing we want to look at very carefully, because we need information on what is happening to the people when their building turns to condominium.

We have heard some stories in the media about people who are put in a very difficult situation. But we would like to get some better ideas of what is really happening to those people on a broader basis, whether they will find decent housing at a reasonable price, whether they are taking advantage of the opportunity to purchase the condominium unit, or whether there is a serious social problem.

Senator PROXMIRE. Senator Biden?

Senator BIDEN. Thank you, Mr. Chairman.

I would like to put in the record my opening statement.

[Senator Biden's statement follows:]

OPENING STATEMENT OF SENATOR BIDEN

Condominium ownership has emerged in recent years as an attractive form of home ownership. Diversified forms of home ownership including that of condominiums should be encouraged. However, difficult experiences beseige many owners of condominium units. There are attractions to this type of ownership. These include tax deductions, relative freedom from maintenance, buildup of equity, and access to communal facilities. However, a purchaser is confronted with a bewildering set of documents which were only recently subjected to disclosure laws in some states. The purchaser finds that his or her money, time, and welfare depend on others in a unit owner's association because he or she is a joint owner of the pipes, wires, and other common elements. And if the building is converted to a condominium, the purchase of a unit in it could be like purchasing a used car that turns out to be an economic lemon. The hot water heater may break down, or the elevator might stop after one has lived there for 6 months, so the new owner may find himself responsible for major repairs without recourse to the developer.

The National Association of Home Builders predicts that this year condominiums will account for nearly one out of four single family housing units sold. According to a Housing and Urban Development survey, almost 50% of new units for sale last year in 25 major metropolitan areas were condominiums. In addition to a new construction activity, the condominium boom is being intensified by the steady conversion of rental units to condominiums.

We're holding these hearings to hear grievances, bring the issues into focus, and discuss the suggestions by Senators Proxmire and Brooke and myself that Federal regulations, including disclosure, are necessary. We want to hear from witnesses what should be disclosed, how much should be disclosed, and in what manner so that a consumer, that is a prospective or actual condominium owner, can make an informed decision. Furthermore, even if the consumer can understand or should understand the documents, we'd like to discuss what practices would be absolutely curtailed, because abuses become so grave that a law is needed to protect people. We'd like to hear discussion about what warranties are essential so that purchasers can obtain the basis of their bargain.

With housing starts in decline, the rental market at a standstill, and condominiums accounting for nearly a quarter of all housing units sold, we want to hear how we can soften the impact on the poor and elderly. In response to this situation, for example, the municipal government in Washington, D.C. has imposed a freeze or moratorium on development of condominiums.

I'd like to point out that states in which condominium development is conspicuous, such as Maryland, Virginia, New York, and cities such as New York and Washington, D.C. have responded with responsible legislation. We'd like to discuss how some features of those laws can be incorporated into the two bills before us today, S. 3658 and S. 4047, in order to set a standard for the development, purchase, and use of condominiums.

Senator BIDEN. With regard to the reason why we are here in this legislative hearing, Mr. Moskow, we are talking about passing a new

law, and we have several hundred new laws proposed in this body every day.

Quite frankly, I don't think we would be here talking about this law if the private sector even bothered to do its job again. The only reason we are stepping into the breach again is because people are being cheated, displaced, and people in fact aren't getting a square deal, and the industry which talks about how it is so concerned about no Government regulation again is the very thing that caused the regulation, or the potential regulation to come about.

I am convinced that the condominium sector has a number of abuses contained in it, and it is becoming more apparent with the increased desirability of condominium housing as oposed to single-family dwellings that are not in a condominium arrangement.

I am also convinced that it is good to be a chairman of a committee. Back in June I introduced a comprehensive bill and we didn't move much on it, but then the chairman introduced a comprehensive bill in September, and you made reference to him, and I will remember that 20 years from now when I become chairman. [Laughter.]

Senator PROXMIRE. Senator Biden will chair this committee tomorrow.

Senator BIDEN. I am being facetious.

Senator PROXMIRE. You mean tomorrow, you are going to chair, Joe?

[Laughter.]

Senator BIDEN. The number of questions I have written, my capable staff has prepared, you are not going to answer anyway, because you are going to do just what Secretary Lynn does. You are very personable and nice, and you come up here in a situation where you are not about to make a commitment to anything with regard to the condominium bill; your general direction is, and correct me if I am wrong, is the same as the Secretary's, whom I voted against, but admire very much. He is a capable man. He says if the Federal Government can stay out of it, the better off we are for that, and let's see what the States can do, and let's see what will happen here, and let's make studies.

Mr. MOSKOW. Could I correct you on one point, because that is not our position on this.

I am not recommending, and the Secretary at this point is not recommending, that we should turn the regulation, either disclosure or regulation, of condominiums over to the States.

Senator BIDEN. You are not recommending anything, are you?

Mr. MOSKOW. At this point what we are recommending is that the Congress wait for the period it has indicated in the Housing and Urban Development Act of 1974, wait for the results of the study that it has mandated the Secretary of HUD conduct, and as the results of that study come in, and we have some better idea what the abuses are, what the costs of regulation would be, and the effect on rental markets, and then make a more informed decision whether Federal action is necessary in this area.

Senator BIDEN. You see, we are going to wait again for a year. I remember talking about waiting to study the housing program, and we now have a depression. Now we are in such a serious situation in the housing industry the likes of which haven't been seen for over a

decade. Now we have the results of the study and we have a depression on our hands in the housing industry.

What I am going to be afraid of is that we are going to wait a year, and say hundreds—I will be extremely conservative—are going to be displaced and manhandled.

If you want, by the way, we will be happy to send them to you, the case studies we have from our little old State. We can garner as much case study as you want from other States. You can do that in a matter of 2 weeks, as the chairman says, and I lay you 8 to 5 you get thousands of people who come in and tell you just how they have been had. It won't take you a year to find that out, a year down the road. And now fortunately, the President has come out and said, "We are going to do a cost study," which means you don't have to do anything, because now we can hold up every single thing we are going to move on and say, "We have to wait to have a cost study on what effect this is going to have on inflation, and that is going to take about 6 months to a year, probably." We are going to have to the end of that year, and you are between the rock and a hard spot. You say, "I have to go," and I will hear Biden harangue me again.

I am getting it off my chest, because the last year and a half sitting in the Housing Committee here all I hear is, "We are going to study." We have studied every bloody thing in the world and have gone from ruination to ruination. We have housing in a hell of a state, and the construction industry in a depression. Everybody was in a pipeline. Now we are going to study the effects on inflation, and you know, it really bugs me.

I would like to get off my soapbox here and ask a few specific questions:

Although you have had only 20,000 units under FHA—under section 234—what has been your experience with the 20,000 units? Tell me about the abuses that have occurred in the 20,000 units, and tell me what you have learned from the people in the 20,000 units.

Mr. BROWNE. I believe we have prevented the abuses, because we have reviewed the organizational documents. That is part of the consumer protection that is mandatory under section 234.

Senator BIDEN. Let's be very specific to help me out, because I am slow. The original documents, how have you reviewed them?

Mr. BROWNE. For a while we were reviewing them at the central office level. We now have the review in the field, because we do not have the staff at the central office level.

Senator BIDEN. What constitutes reviewing?

Mr. BROWNE. We usually look at all the legal documents, particularly the declaration, to determine whether or not the developer is holding back some part of the property, and what has been inserted in the declaration.

We check the bylaws to determine that the individuals who buy into the condominium are able to control their own affairs properly. These things are all being done in our program, and have been since about 1961.

We also have other side effects that people receive through use of the Federal program, and that is minimum property standards which are basically for the benefit of the Government to assure that these units

will hold up for a period of 30 years, or 40 years, or whatever the case may be.

Senator BIDEN. You actually send someone in who works for the Federal Government and they look over the plumbing and the walls and the roof?

Mr. BROWNE. That is right; they inspect the units.

Mr. MOSKOW. This is to protect us as insurer.

Senator BIDEN. I know that. I am as concerned about individuals as I am about the Federal Government.

Mr. BROWNE. I think even in a disclosure situation we would check everything such as that to determine our risk in getting involved in that particular development.

We actually have done this, but we do have questions in our minds inasmuch as we have not done the bulk, or been involved in the bulk of condominiums as to whether our requirements are too stringent.

Senator BIDEN. What has been your experience with the 20,000 units? How about the cost of that?

Mr. BROWNE. In 20,000 units, we have 424 units that we have taken back. That is two-tenths of 1 percent.

Mr. MOSKOW. In terms of the cost factor, I think it is hard to tell, because in recent years the program has not been used extensively. So it may be that the requirements that we have put in our program are costly, and maybe that is the reason it is not being used.

Senator BIDEN. Give me an example other than the Martin Luther King, Jr., project out in Michigan. Give me an example of a HUD project where section 234 was utilized. I mean it is not just a single unit within a project, is it?

Mr. BROWNE. No; section 234(d) provides for insurance of advances during construction and 234(c) for insurance of the individual unit after it has been completed.

Senator BIDEN. So, most of the 20,000 units you have gotten into, you have gotten into effect the whole building, not just condominiums, right?

Mr. BROWNE. The bulk of our condominiums have been built with insurance upon completion, but they had to be acceptable to HUD.

Senator BIDEN. Let me be as elementary as I can.

There are two types of ways you can get into the condominium market under the legislation. One is that a contractor who is out here and buys a piece of ground bare, and he builds a condominium development that has, let's say for the sake of discussion, 10 units, all condominium, OK? There are 10 units there.

Now, you would go in and take, if you got involved, the usual procedure is that you would be involved from the time the land was purchased and he starts to build the entire project. All 10 of those units would likely be 234-type units, wouldn't they, or would they?

Mr. BROWNE. I am sorry you used 10, because for 11 or less units we have a different rule. Let's make it 15 units.

Normally, the developer would go out and acquire the property. He would get an attorney to write up the organization documents. He would hire someone to make the sales, and once he had sold 80 percent of the value of the units, we would permit him to record a condominium regime on the property and convey the title to the individual buyers.

Senator BIDEN. You have a piece of the action of that entire project from the time he starts to the time he finishes, right?

Mr. BROWNE. Regardless of whether it is insurance upon completion, or insurance on advancements, we would have checked it.

Senator BIDEN. That is my point.

Now, what has been in those units, that type of deal you have gotten into for the last 10 years, what has been your experience on the increase in cost to that individual development?

Mr. BROWNE. Around 1969 and 1970 a development which is called a quardriplex started out in California, and was selling for about $15,000 per unit, and marketing very well at that figure. That same unit is now selling at about $25,000 or $27,000. That is the way the costs have increased. As compared to an individual home, I couldn't tell you.

Mr. MOSKOW. Senator, is your question what is the increase in cost as a result of the requirements we have put on?

Senator BIDEN. Yes.

Mr. MOSKOW. We don't know. That is one thing we are looking at as part of the study in the coming months.

Senator BIDEN. Why don't you know?

Mr. MOSKOW. HUD has never done any type of analysis or kept figures of this type before.

Mr. BROWNE. We would have to compare it against something, and we hope to compare it against conventionally financed condominiums. That way we can tell whether our requirements are more costly. The savings and loans are permitted to loan monies to conventional developers. The conventional developer would normally get private insurance, under a private insurance program, and there are very few requirements imposed. In fact, through Federal Home Loan Mortgage Corp., there are no consumer protection requirements imposed as there are in the National Housing Act. So if you come into housing through the National Housing Act, consumer protection is required.

Mr. MOSKOW. Senator, I think your question really gets to one of the major points that President Ford was making in his speech yesterday, that the Federal Government has many regulatory activities, rules, regulations, and laws, and they mainly have been looked at from the point of view of helping a certain group, consumers for example.

Now, at the same time we do that, there is a cost involved, and just as important as it is to decide whether you want to take this action to protect consumers, it is important to recognize what those costs are, and to assess whether there are better ways of trying to protect that group.

Senator BIDEN. HUD began foreclosure proceedings on the Martin Luther King units; that was billed as the Nation's first low income condominium units. What were the difficulties out there?

Mr. BROWNE. That is in housing management. I could get that information for you for the record.

Senator BIDEN. I would appreciate that.

[The following information was received from the Department of Housing and Urban Development:]

According to HUD files, Martin Luther King Terrace in Pontiac, Michigan never became a condominium. The application for insurance upon completion under section 234 was dropped and a new application was filed for insurance of advances as a section 236 rental project. It was insured as a section 236 project and subsequently went into default.

Senator PROXMIRE. Thank you, Mr. Moskow. I appreciate your testimony.

Our next witness is Mr. David Clurman, assistant attorney general of the State of New York, in charge of condominium and cooperative regulation.

Mr. Clurman, we are happy to have you here. Your statement is fascinating and helpful. You obviously have had a lot of experience with this in New York.

Will you introduce the gentleman with you today?

Mr. CLURMAN. This is Arthur Levine, a member of our staff.

STATEMENT OF DAVID CLURMAN, ASSISTANT ATTORNEY GENERAL OF THE STATE OF NEW YORK; ACCOMPANIED BY ARTHUR LEVINE, STAFF MEMBER

Senator PROXMIRE. Proceed as you like.

Mr. CLURMAN. I have a short statement; I would like to read it.

My name is David Clurman. I am assistant attorney general of the State of New York, and have been in charge of condominium and cooperative regulation for 13 years in the office of Attorney General Louis J. Lefkowitz. I appear here only in that capacity.

I am also chairman of the Condominium Committee of the New York State Bar Association Real Property Law Section, and I am author of several books and articles on condominiums and cooperatives.

I wish to thank this committee for your kind invitation that I testify here today in connection with proposed legislation before you, S. 4047 and S. 3658, on the subject of rising abuses in the condominium housing field, both in new construction and conversions.

First, let me say that you should not be dismayed with the host of real estate professionals who will no doubt urge that Government regulation in this field will deter construction of new housing or needed rehabilitation of older housing.

We heard the same plaintive notes beginning in 1961 when New York's unique protective legislation went into effect. We went off on our own. The FHA model State statute, on which many State legislatures relied in drafting State condominium statutes, unfortunately did not contain a requirement for full disclosure to purchasers.

Our statutes and regulations in New York probably now exceed your current proposals in several ways. We have not permitted recreational leases for condominium developments in our State since enactment of our State condominium law. In addition, long term management agreements entered into by promoters are barred. The most pre-

cise and detailed disclosure must be made to prospective buyers, so that, for example, they know makes and models of equipment such as ranges, and refrigerators, and roofing, rather than mere generalities customary elsewhere in the marketplace. I shall submit to this committee at the conclusion of my remarks a copy of the New York attorney general's regulations and a typical offering prospectus to be made part of the record as an exhibit to my remarks.

We believe people who are asked to purchase condominiums and housing cooperatives should be told the truth, even if the accepted tradition in real estate home sales and apartment renting is to tell as little as possible, and misleadingly try to color the facts to the extent necessary to close the transaction.

Conversion protections have also been enacted in New York. New Yorkers resident in rental buildings are protected by a statutory requirement that a 2-year moratorium of evictions be provided to protect nonpurchasers, after the law-imposed specific percentage requirement for tenant consent is obtained.

To show that protective legislation can be administered to allow the construction industry to function effectively, let us look at the number of registrations for condominiums in New York.

In 1973, we registered 93 condominium offerings seeking $560 million from the public. We are running somewhat ahead so far in 1974. You may also be interested to know that some of the most innovative buildings being constructed in modern times are being planned for construction as multiuse condominiums in our State. The availabilty of the experience and expertise of my office has helped to make such new developments possible.

While we know how tough cost overruns are becoming to legitimate builders, and we are keeping our fingers crossed, to date no purchaser of a condominium or cooperative, new or conversion in New York since 1961 has ever lost his deposit because of failure by a builder or developer to deliver his home.

Senator PROXMIRE. That is a remarkable record. How many buyers does that include; roughly?

Mr. CLURMAN. Thousands and thousands; probably 20,000 or 30,000 at least.

Senator PROXMIRE. And nobody has lost his deposit?

Mr. CLURMAN. That is right.

If you consider cooperatives, it is probably over 200,000 or 300,000.

Senator PROXMIRE. It is a great record.

Mr. CLURMAN. Most importantly, when there are problems during the sales period or after people move in, the public has somewhere to go; an agency whose primary concern is protection of the public.

Construction workers benefit when jobs go to completion and builders do not fail and bills and wages are paid, and further opportunities for employment exist because of a scandal-free atmosphere that keeps the real estate industry healthy. In addition, disclosure most certainly is a built-in motivator for better quality construction.

Even though we consider our New York laws satisfactory when we compare them to the scant protections existing in other States, we nevertheless feel that some Federal legislative action will help New Yorkers. Our State's citizens are regularly bombarded with condominium offerings in national periodicals, while vacationing in sunny

climes or ski areas, or when looking for places to retire. Even though our laws cover offerings coming into our State from elsewhere, many sales originate while New York residents are traveling elsewhere. More than most States, our residents have great mobility and need protection all over the United States from high-pressure salesmen operating with wide freedom to deceive, defraud and engage in high-pressure tactics.

Protective laws elsewhere are important to New Yorkers because scandal upsets confidence in our own real estate community, deters lenders from making any loans even in places beyond the scandalous sites, and frustrates the resale values of those who have purchased from legitimate builders.

Before I make specific legislative proposals on behalf of Attorney General Lefkowitz which we think may help sanitize the condominium industry nationally, I would like to discuss one aspect of this problem briefly, where we have had considerable experience in New York, and which I know deeply concerns this committee.

I am talking about the rising problem of conversions to condominium or cooperative status of existing rental buildings. If something forceful is not done soon on a national scale, we are going to see a multibillion-dollar ripoff unparalleled in American economic history. Because of our longer history with cooperative-type housing, New York experienced this problem long before other States. We hope other can learn from our experience.

I remember reviewing the first substantial attempts to convert buildings in New York to cooperative status back in the early 1960's. Fortunately, we had a full disclosure law, local percentage requirements for tenant consent in New York City for pre–1947 buildings, and most attempts to convert were aimed at luxury east side Manhattan rental apartments.

The problem was not acute while new construction of comparable rental apartments was taking place. It developed as a critical one when New York City and other areas developed housing shortages, and when landlords tried to convert middle-income housing.

Conversions were attempted by landlords for one over-riding reason; to make large profits, larger than from the sale of the building as a whole to a single purchaser.

Throughout this discussion, I do not wish to imply that no tenants ever welcome conversions. Some, usually less than a majority in most buildings, do prefer to own rather than rent. But the overwhelming masses of rental tenants find a vast difference between being asked for a mere rental increase and $20- or $30- or $40,000 for the purchase of their apartments. Especially is there hardship for the elderly; those on fixed income, or young marrieds, and particularly in areas where a housing shortage prevails. Oftentimes, persons have deep roots in the community or have made expensive decorations or alterations to their apartments, and would be adversely affected even if comparable apartments existed as rentals elsewhere.

One major aspect of the problem, lacking in your proposals, is the harassment of tenants that leads to tenant turnover before a conversion plan is formally announced. In other words, landlords sometimes repopulate buildings with persons more apt to buy apartments. They try to do this by raising rents excessively or reducing services. There-

fore, a regulatory agency, such as my office does, would have to be able to handle complaints earlier than submission of a prospectus.

This area of landlord-tenant abuses may also involve inadequacies of services for other reasons and would be far afield from confined Federal regulation of merely the technical conversion process. Of necessity, this area of regulation should preferably be done at the local or State level by an agency close to the scene. Tragically, most States have failed to act.

Since 1961 in New York, about 120 buildings have been converted to cooperative or condominium status from rental buildings. I estimate that 1000 additional buildings would have been converted in the absence of Government regulation in New York.

Looking at our sister States without regulation, and recalling the thirst for landlord profits we tried to curb in New York, I expect several billions of dollars in rental buildings and developments throughout this country outside of New York to be converted in the next 5 to 10 years. Especially in these difficult economic times, it is outrageous for Government to permit this massive occurrence without protecting those adversely affected. Rip-off it is, because the profits are immense, usually between 50 and 100 percent higher than on an ordinary sale of the total building. In New York, any flip seller who owns the building less than 3 years must disclose his profit.

Senator PROXMIRE. Will you tell us what a "flip seller" is?

Mr. CLURMAN. He is a speculator who buys for a fast resale. He is not a long-time owner of a building who wishes to convert.

This requirement has sometimes reduced asking prices as much as 60 percent before the conversion was concluded.

In New York State, as the result of the constant legislative attack on this problem, there is probably today an 80 to 90 percent failure rate on conversion attempts in my State. This is reasonable under today's economic conditions. In more prosperous times, the failure rate is more likely to be about 50 to 60 percent. Hundreds of other landlords in New York who would love to convert buildings never try to register with the attorney general, because they couldn't stand the floodlights of disclosure. They would have had to repair their buildings and cut their prices. In the past 2 years, I estimate a 60 to 80 percent success in many States outside of New York.

I doubt if many new apartment rental complexes being completed currently or the near future will remain rental for long. The trick for a builder is to take your accelerated depreciation for a few years, then convert for a hoped for enormous profit. If Congress whittles away at depreciation allowances for builders, there will be less reason to hold properties as rental for even a few years. To that degree the conversion boom will get worse.

In 10 to 15 years, rental housing may be looked upon as a relic of an earlier time in American real estate and social history. I do not propose to say that wider home ownership is wrong or without benefits. But the changeover should not be by abusive profiteering or by painful uprooting of those who prefer to rent.

Think of the many older persons, or those on limited incomes living in satisfactory rental apartments in most American communities without protections on conversion. Additionally, many middle class Americans able to survive financially in rental buildings would be

hard pressed to find money to buy their apartments or incur high interest debts.

They are told, in most cases, to buy or get out. In New York tenant occupancy is protected for 2 years after a conversion attempt begins, under a new law that based this provision on a specific recommendation by Attorney General Lefkowitz. Commendably, your S. 4047 gives at least 6 to 9 months protection. I wonder if this is enough, but it certainly could provide emergency relief in many American communities right now.

But one caution; landlords also count on some tenants moving out of pure disgust and fear of future conversions, even if the immediately current conversion attempt fails. Therefore, there should also be at least a 1-year bar on new conversion plans once a specific cutoff date arrives without a conversion. This is required under New York law, and prevents the aggravation and harassment that would result from a continuous conversion program without limitation.

Senator PROXMIRE. Is it 1 year or 2 years?

Mr. CLURMAN. One year.

Senator PROXMIRE. You say in the previous 2 years.

Mr. CLURMAN. The 2 year—once a conversion plan is effective, no tenant can be evicted for 2 years after the plan has begun, so he has a 2-year lease. The 1-year bar is a bar that I am talking about on renewing a plan.

In other words, if an attempt to convert takes place and a year passes, this should not be a continuous offering that has no limit. There should be a hiatus so that people are not continually plagued by the offering.

I think that in most States today it is not too hard to wear out tenants so they buy or move. If there are willing outside buyers around, the landlord may be pleased with those incumbents who wish to move. He sometimes even pays their moving expenses.

Once in a while a landlord overplays his hand. I was told of a landlord who owned a 500-unit building in a State near the District of Columbia. He served his notice to convert. To his amazement, 300 tenants notified him they were moving. But there was no housing shortage in the area, and the tenants had been largely transient Government workers living under 1-year leases. I am of the belief that the landlord is working hard to get his tenants back and forget about the whole conversion.

Unfortunately, many urban areas do have housing shortages, and long-term tenants tied to the community. They cannot just gingerly get up and leave. Many have nowhere to go.

Attorney General Lefkowitz asked me to deliver the following additional specific statement on behalf of himself:

> Thirteen years ago, I proposed and obtained from the New York legislature protective disclosure requirements for purchasers of this kind of housing, both in new construction and for conversion attempts. Unfortunately, at least 46 states, in my opinion, still do not protect their citizens adequately in this area. New Yorkers who travel to Florida and other states often are subjected to fraudulent practices to their detriment. The climate of fraud in a few of our states has hurt the legitimate builders in all states, and created general public wariness in a way that impedes the creation of new housing opportunities that would be made possible by bona fide use of condominium and cooperative formats.

In connection with the following proposals for Federal regulation, the Attorney General wanted me to indicate to you that he is specfically proposing Federal regulation that he hoped would protect the public but avoid needless Federal bureaucracy or interference with State and local government regulation in this field. The specific proposal that he asked me to make today on his behalf is as follows:

I propose that Congress strongly urge state government to enact adequate disclosure laws in this area by a new law that would bar federally assisted bank or other lending institutions from making construction or permanent mortgage loans in new or converted condominium or cooperative developments unless a state law exists in the particular community that meets the rigors of disclosure requirements set out in a new Federal law. Such determination would be made by the Secretary of HUD. One requirement of such Federal law should be the requirement that adequate protections exist in the state laws against harassment and evictions in conversions, similar to protections now in force in New York such as a two-year moratorium on evictions once a conversion attempt begins.

Thank you.

Now, I want to offer for the use of the committee, New York State condominium regulations in this regard. Included also in an offering plan with documents and a description of the particular property.

Thank you very much.

Senator PROXMIRE. Thank you.

You say that professionals will argue that Federal regulation will deter construction, and you dismiss that.

What evidence have you got that your law hasn't had that effect? I have heard a lot of criticism of both the rent control law in New York and of the condominium law from the interested parties who argue that it has had a very bad effect on construction.

Mr. CLURMAN. Well, it is not a question of a rent control law. I am talking about our State law that requires disclosure and interpretation of our law with respect to certain protection, such as against the recreation leases.

I think that the argument, and I have heard today about the possibility of additional costs, et cetera. I heard all that. I have heard all this for 13 years. That is why I gave you the figures to show the immensity of the condominium offerings that do go through, and in the overwhelming cases, they are successful.

Senator PROXMIRE. What you are saying is when they make 50 or 100 percent profit, that comes out of the pockets of people who buy it. You call it a ripoff, and I think you are right. Right there, you have an inflation element here which is very substantial.

Mr. CLURMAN. There is no question that if the owner of building would have to sell the building to a single purchaser for investment purposes as opposed to converting it, it is a lot easier to do if he made the same profit.

The reason he goes through the process of dealing with all the tenants, which is difficult and time consuming and expensive, is that he is going to make a much higher profit. So profit is the name of the game, and I think the New York experience does show that legitimate, substantial profits can be made, and that in most cases the additional cost of registration is limited.

I think one thing that Congress could do with respect to our proposal is to empower HUD to set up a model format so that model forms

would be used in making the disclosure. We are working now on standard and model forms.

Senator PROXMIRE. That is in our bill, I think, my bill.

Mr. CLURMAN. This could counter the argument about the expense. Because if you have a model type of format, you don't have a situation where someone has to sit down and write his own biblical tract.

Senator PROXMIRE. You quote Mr. Lefkowitz as saying he requested and obtained this legislation in New York. Did he require a yearlong study, or did he go into the kind of examination that HUD is saying they have to have before they can consider this?

Mr. CLURMAN. At the time—I only talk about condominiums. In 1964 the condominium act was enacted in New York, and while the legislature, which usually works for 2 or 3 months only in New York, was in session, the last year, they had put in a bill for a study, but there was no provision for hearings of any substance, but the last year when the bill was in, when they intended to enact a condominium law, they asked us our view, and we had to contemplate it. This was a new thing.

We contemplated the problems and complexity, and we felt people should be protected. When somebody buys a 20-cent mining stock from Canada, he is protected by the Ontario Securities Commission, the SEC of the United States, and attorneys general, but when somebody is going to spend the largest amount of his income in his lifetime for his home, there is no real regulation. You are on your own.

We long ago felt that this was wrong—that the citizens in our State should be protected, and they should have adequate disclosure, and if it cost something to do it, the overall protection and the longrun benefits certainly outweight that.

Senator PROXMIRE. You were able to put those protections in promptly after you got the request, and it didn't take a detailed study of the kind called for here?

Mr. CLURMAN. I wouldn't exactly say that. I have been studying the condominium as used throughout the world, but there was no information——

Senator PROXMIRE. What I am trying to get at is that we have had a lot of studies, too, and we can operate to some extent based on your experience and other States. What would you advise us on this? Do you think we should wait until next August?

Mr. CLURMAN. The Attorney General and I feel this legislation should be promptly enacted. The evidence is notorious and overwhelming.

Senator PROXMIRE. Very good.

I wonder if you have had any kind of experience you can inform us on on the effects this had on improvements in housing. I know in most condominium conversions that there is an improvement by and large, and there are undoubtedly exceptions, but they not only do just a surface paint-up job, but they often substantially improve the building, rehabilitate it to a considerable extent.

Do you think this might be lost if we had this kind of legislation in the sense that it would discourage condominium conversion?

Mr. CLURMAN. No, I don't think so. I think the real estate industry is starting to realize themselves—you know, they may not like Federal legislation, and they certainly don't like State legislation either, or any

regulation. That is their tradition. But I think they realize all the stories coming out in the newspapers and national magazines are wiping out their industry. This is a lucrative industry, and if done legitimately, money can be made, and made honestly, and people would not be ripped off. They are committing suicide.

I think one of the justifiable arguments for the legislation is to keep the real estate industry legitimate and healthy. When you have bankruptcies and builders walking away—a fellow is a butcher or a supermarket operator, and he doesn't know what he is doing, and there are cost overruns and he walks away. You have enormous losses to the communities, and the real estate industry suffers. In Florida they are suffering terribly because of the excesses that have taken place.

Senator PROXMIRE. Let me ask you: How much do you estimate that New York tax assessments have gone up as a result of conversion?

Mr. CLURMAN. I am afraid I just don't have that.

Senator PROXMIRE. I think many of us are inclined to think of this whole problem in terms of New York City, which is a mistake, because you are talking of the whole State of New York. You have Buffalo and Utica, and all kinds of cities, so that your experience there has not meant that in the smaller cities you have had a worse experience necessarily than in the big cities, or have you?

Mr. CLURMAN. We have found that in the last 2 years, up to about 2½ years ago, most of the conversion and new construction that took place was in the metropolitan area of New York, but in 1973, about 50 percent of the condominium registration we had in our office came from upstate areas, not from New York City. So it is now evenly balanced. The outlaying areas, most of the experience we have with the nonmetropolitan areas of New York City is probably similar to what is going on with respect to the wants of people and desires and feelings in other States in similar areas.

Senator PROXMIRE. Does 35 percent or any set minimum percent offer a real protection of tenants hurt by conversion?

Mr. CLURMAN. It is a very substantial protection.

In New York, we have a statewide law that mandates you have to get 35 percent of all the people. We have argued for years for a 51 percent requirement. The attorney general for 4 years has put in bills to that effect. It has considerably given the people power, because they have—built into the statute are other provisions. For example, in New York, you have this 7-year bit about not being evicted. You can't be dumped out, and there is no pressure that if you don't buy quickly you are going to go. We are careful to monitor any complaints about harassment.

We have another law that prohibits excessive vacancies taking place and then a conversion plan suddenly coming about.

There are some cases where we do encourage conversions. For example, in Harlem, or Bedford Stuyvesant, a landlord will be walking away from a building, and the people want to control the building. We use our office to try to help the tenants. They have almost no expense. We even do a lont of printing to help them so they understand what they are getting into, and in this way, they take control of their own buildings.

There are all kinds of varieties beyond the type that we are talking about, and they have to be considered in connection with local prob-

lems, and that is one of the problems you have when you are dealing just on a Federal basis.

Senator PROXMIRE. Thank you, very much.

Senator Biden?

Senator BIDEN. Thank you, Mr. Chairman.

Mr. Clurman, you know, I had a football coach named Milo Lude, who used to say he never heard a man say so much in so little time. You are an excellent example of that.

The chairman has covered a range of questions, and I don't want to hold up getting to other witnesses, but one question I would like to ask you is, does your office or any State agency in New York provide a service for those tenants who are displaced after the conversion, even though they are given a 2-year lease in a rent-type market. Is there any kind of placement service that is used?

Mr. CLURMAN. We don't have any. What we have done on occasion is when the eviction does have to take place, we have brought the landlord in and tried to convince him not to evict older people and people of lesser means, and in a great number of cases we were able to accomplish a lot. This is not by any statutory authority. This is just acting with the decency of the situation.

Senator BIDEN. You indicated in your statement that long-term management agreements entered into by promoters is barred.

Mr. CLURMAN. We don't like to see control of a condominium retained after a majority of the units have been sold. The type of management agreement that you have in many States where sellers retain control, we won't permit it. We think the purpose of the condominium law in our State is democratic control passing as soon as possible to those who invest. We try to encourage the unloading of control as fast as possible, depending on a particular condominium development that is involved and the way it is set up legally.

Senator BIDEN. One more question here.

Your experience obviously is at a State level——

Mr. CLURMAN. And also at the Federal in one respect. All condominiums of all types, including FHA 234's that go through HUD also go through my office. We register them, too, and the interesting thing is that up until about 2 years ago these HUD condominiums, the 234's did not have an information bulletin requirement. Now they do. The Model Act, when it was proposed for States by the FHA years ago, had no requirement for disclosure that could have been put into that, and we would have had a prototype that the States could have used.

I think, the States have to do something. There is a lot of talk in a lot of States. I think the Federal Government can trigger action by Federal law to get the States to act. I think it should be done promptly.

Florida, for example, passes a law without an agency. They have a disclosure law now. It is not what we would like, but there is no agency to implement it.

Illinois has the same situation.

You have to have a law that requires certain things and an agency that administers it and implements it so that people get protected properly.

Senator BIDEN. With regard to the administration of whatever law is on the books, whether it be a municipal, State, or Federal law, how important is it that there be local administration? Assume we pass

either the Proxmire bill or any of the bills before us. How important is it that there be a local agency?

Mr. CLURMAN. I have to concede that real estate, knowing about the problems of my own State and the problems of New York City, they are different from Buffalo or Watertown. The housing market is different, and the local zoning and so forth are different.

I do believe that it is preferable to have State administration of this sort of—I don't think we should take a view and say, "States have always done real estate and the Federal Government should stay out." I think that is wrong. If the States stay out, I think the Federal Government should force them to act, if there are interstate connotations as there are now.

This is not the same as an interstate land sales act. Here, you have different varieties. You can have a luxury type multiuse development made up of rental units, and condominiums, and in your bill you have one vote per person. This could be terribly unfair. That sort of thing should be left to State condominium acts. The intent is good. The intent is obviously to show fairness for a certain type of middle class income condominium.

We have all varieties. We even have a church condominium in New York, and we have. Mr. Onassis is just putting up Olympic Towers, and he is dividing it up into a business unit and luxury unit at the top.

I think we have to worry about laws that can be aimed at solving the problems of different varieties of real estate presented. I do believe the States should act here. I believe with respect to the Federal Government, I shudder to think of the administration of all varieties of problems by HUD in this area. I think the Federal Government should insist on basic protections, and they should be provided by State law; otherwise banks should not be permitted to issue loans. That could be done before you get a State agency. There is no reason that couldn't be done promptly, as an initial step.

Senator BIDEN. Could you look in detail at two bills that have been proposed, and from my point of view, any suggestion you would have with respect to the last topic we were just discussing, how we administer these regulations, would be most appreciated.

Mr. CLURMAN. Yes. I want to indicate to the chairman and everyone here that my office remains open to give not only that cooperation, but with respect to cooperation with all our experience, with respect to histories of particular developments, how they have worked, cost analysis, et cetera. We have a library of these documents, and I am sure this could be very helpful, in addition to the one I present here.

I think the problem is an overwhelming one. I can't see delay on this, as far as forcing the States to do this fast, because so many people are going to get hurt if you don't.

Senator PROXMIRE. Thank you so much. Your testimony has been, as Senator Biden said, most useful to us. I will join him in asking you to comment in anyway you can, critically, or constructively, on the legislation we have introduced further, if you would like.

Thank you very much.

Our next witness is Kay McGrath, president of Citizens for City Living, Washington, D.C.

STATEMENT OF KAY C. McGRATH, PRESIDENT, CITIZENS FOR CITY LIVING

Senator PROXMIRE. Go ahead. We are in a little time bind. There is a vote scheduled in 3 minutes on the floor. We will have to interrupt at that time. You have a nice short statement, but if you want to abbreviate it in anyway, that is fine, too.

Ms. McGRATH. Thank you.

I am Kay McGrath. I am the president of a citizens' organization called Citizens for City Living, a member of the Democratic Central Committee and its committee on housing, and a recent contender for city council from Ward 3 in the District. I am not speaking for these organizations, but simply list them for purposes of identification.

I appreciate the opportunity to comment on the proposed condominium legislation S. 3658 and S. 4047. Condominiums as a housing alternative seem to be with us for some time to come because of the multiple factors operating within the financial, natural resource, labor, and construction sectors of society.

Pressures on all these sectors have come together at this time to create a complex housing problem with equally complex results, which are as yet not fully understood.

The legislation proposed addresses the legal mechanisms for creation of condominiums and the protection of the purchaser of condominiums through full disclosure. This is greatly needed as a Federal guideline, and I am very pleased to see such legislation.

I would favor S. 4047 since it incorporates provisions in S. 3658 and goes much farther to protect consumers through its disclosure requirements and broadened definition of "federally related condominium housing loan."

There are aspects of the condominium phenomenon which are still insufficiently addressed. How the general welfare is affected by replacement of rental property with condominiums; how we can best protect the rights of present tenants; and adequately absorb displacement caused by increasing conversions at a time of little or no new construction.

In S. 4047, under section 11, the Secretary of Housing and Urban Development is authorized to study the whole housing picture as well as the possibility of tenant-protecting provisions such as a 50-percent agreement of present tenants to the conversion, retention of some units for rent in hardship cases, and deferral of conversion until sufficient replacement housing is available.

This section provides keys to the displacement concerns and I would recommend broadening it to require studies by local jurisdictions. Where the available replacement housing is below 5 percent (which I believe is considered crisis level) and until new construction provides additional rental units, conversion should be deferred.

When the 5 percent level is reached, the 50 percent tenant-agreement provision could go into effect.

I am talking about a replacement housing which is of a similar kind as that taken off the market, and similar in price, not just any housing.

Furthermore, developers should play a more constructive societal role by filing "human environmental impact statements" indicating

how this conversion will affect the housing community, where alternative housing is available, and plans to assist in relocation before tenants can be evicted.

Experience in the District has shown an urgent need for tenant protection. We have a highly mobile population here, with a replacement level of only 2 percent and ever-increasing conversions, it has become necessary to impose a moratorium on conversions until the new City Council can legislate effectively.

The tragic reality of our situation is that those displaced are the least able to find alternatives. The largest segment are elderly people on fixed incomes who have lived for many years in apartment buildings on Connecticut Avenue, Massachusetts Avenue, et cetera.

They are now the victims of circumstance. They need familiar surroundings for their own psychological well-being. They depend on easy access to public transportation for doctors and shopping. They cannot obtain long-term loans to buy their units—even if they wanted to. Where they are to go to find suitable housing, no one seems to know or care.

If the private sector does not consider the human equation its responsibility, the public sector must. Regulation is needed to protect the nonbuying tenant from being evicted without safeguards.

According to Patrick Cohan, professor of law at Saint John's University in New York:

> Another impressive legal argument in defense of controlling condominium conversion through legislation is that within a major urban area like Washington, D.C. where there is an actual physical limitation upon the available housing, the status of the dwelling unit, rental or privately owned, can be considered a "quasi" public asset.
>
> Consequently, placing legal restrictions on property owners attempting condominium conversion is not, as some would argue, a violation of the right of property owners to dispose of property as they see fit. It is rather an extension of the fundamental legal precept that the public has a direct interest in private real estate matters that intimately affect the general welfare.

In conclusion, I feel S. 4047 is a good bill and should be enacted. I would like more coverage given to tenant protection, however.

I have a few specific comments within the bill, S. 4047.

Section 5—Contents of Statement of Record, a, 4, p. 7, provides for a staement of the condition of title to the property for 1 year preceding application. I think this is preferable to the 30 days called for in S. 3658.

a, 10 and 11, p. 9—The warranty should be required on all systems for longer than a year. Developer should set aside an account in escrow for repair and replacement of structural, engineering defects as well as major systems.

Still under section 5, 15, b, (5) p. 11—Provides purchaser with copies of statement 15 days prior to signing. Is this to be considered a cooling-off period? Could it not be extended to 15 days after signing to give the purchaser time to reconsider?

15, b, (5) (F), p. 12—On engineer's report. I suggest it stipulate an independent engineer.

Also, I would like to add this, that we make the disclosure provisions in the bill apply to resales, also.

Thank you very much for this opportunity to comment on what I feel is a very constructive legislation.

Senator PROXMIRE. Did you have an opportunity to listen to Mr. Clurman?

Ms. MCGRATH. Yes; I did.

Senator PROXMIRE. He had interesting suggestions, very helpful and constructive suggestions, as you have made.

Do you approve of the suggestions he made with respect to making this legislation conform to some of the better aspects of the New York law?

Ms. MCGRATH. Yes, the New York law is a very good one, and I think it has proven that it has not cut off the condominium market, and the whole development fear that that is what is going to happen is baloney.

I heard Mr. Moskow make his statement, and the whole idea of another year's study is just ridiculous. When I was looking into this about 6 monts ago, the people from 3100 Connecticut were being taken out of that building. That is the one right opposite the zoo.

At that time, there was nothing on the books here except 30-day notice. Between myself and a graduate student, we researched the field in 3 weeks and had a comprehensive paper put together on what had been going on in the District; how many units had been converted; how many units had been put in; and how many people had been dislocated.

If HUD can't do it with their staff, I suggest they get a few good graduate students.

Senator PROXMIRE. How long did it take you to do this?

Ms. MCGRATH. Three weeks.

Senator PROXMIRE. And how many people?

Ms. MCGRATH. Two.

Senator PROXMIRE. Do you have the other documentation on that?

Ms. MCGRATH. Yes.

Senator PROXMIRE. Can you make that available to the committee?

Ms. MCGRATH. Yes.

Senator PROXMIRE. Both Senator Biden and I and the other Members of Congress are concerned with this delay. We won't get legislation with that until 1976.

Ms. MCGRATH. I must admit I am skeptical of studying things. Studying things has been a way of not doing anything.

Senator PROXMIRE. Why can't this be done as far as the District is concerned by the District? Don't you have powers to do this?

You have a moratorium on conversions now. It is frozen, I guess, for the time being. I suppose the court will only permit that for a short time.

Ms. MCGRATH. It will expire—we just got an extension until May 31. The reason we had to, is until the new City Council sits in January, we did not have the authority to rewrite the law.

Senator PROXMIRE. Will the new City Council have the authority?

Ms. MCGRATH. Supposedly, yes, they will have the authority to rewrite all the District laws.

Senator PROXMIRE. Then it was the decision of the court, too, that they would need a yearlong study, and that they would be able to do it by May if they wish to do so; is that right?

Ms. MCGRATH. The moratorium was put on, and we had to come to Congress to have permission to get the moratorium.

Senator PROXMIRE. But you don't have to come to Congress to enact the protective legislation that they have in New York.

Ms. MCGRATH. It can be vetoed by Congress.

Senator PROXMIRE. But if it is not vetoed by the Congress?

Ms. MCGRATH. Yes.

Senator PROXMIRE. Thank you very, very much, Ms. McGrath. You were the champ who won the victory on McLean Gardens?

Ms. MCGRATH. Yes.

Senator PROXMIRE. As one who lives in the area; I congratulate you.

Ms. MCGRATH. Thank you.

Senator PROXMIRE. I have to recess and go to the floor for a vote. I will return in about 10 minutes or less.

[Recess.]

Senator PROXMIRE. The committee will come to order.

Mr. Morris, go ahead, sir.

Do we have a copy of your statement?

STATEMENT OF FRANK C. MORRIS, JR.

Mr. MORRIS. I don't have a written statement, Senator.

I am here as a representative of downtrodden condominium owners who have problems and insufficient protections and remedies. I would like to share with you some of the problems we have in the hopes that the legislation you are drafting might deal with them and prevent their occurrence in the future.

Three things that I think are not covered in the legislation and I think ought to be, are these:

First, in the disclosure field for conversions, I think it is extremely critical that there be statements of the condition of major common elements and expected useful life, because these items are extremely expensive to repair or replace, and it is very difficult for any individual buyer looking at a conversion project to determine whether or not boilers, swimming pools, air-conditioning units, wiring, and such items are in good condition, or will require early replacement.

Senator PROXMIRE. That requirement is in my bill.

Mr. MORRIS. Yes, Senator, and I think that is very necessary. A prospective single-family home buyer can hire a professional engineer to inspect the home, but the cost of this action to a prospective condominium purchaser is prohibitive.

Second, one other item that should be in the bills, because of its critical importance, is a performance bond. It would be a remedy when a developer has not performed. I believe the bills give the right of voiding a contract.

Senator PROXMIRE. We have a 1-year warranty.

Mr. MORRIS. One year may or may not be sufficient, and there is a question whether a warranty will cover all defaults or nonperformance.

Senator PROXMIRE. Also, a responsibility for projects.

Mr. MORRIS. Senator, let me give an example to the committee, if I may. Two years ago, a tennis court was promised for our development, and it still is not there. You don't know whether a warranty for a tennis court that does not exist is helpful.

I think a performance bond is necessary, so that if a developer does not do the things he sets forth in the statement of record and in the public offering statement, there would be a means for those owners who have already bought and can't rescind or void their contracts, to obtain monies and complete the project as they thought it was going to be completed.

Now, let me deal specifically——

Senator PROXMIRE. Not as they thought, but as was promised.

Mr. MORRIS. Yes, sir, strictly as was promised in the various representations of the developer and his agents.

Some of the other problems currently being experienced by condo owners are excessive control of the developer for an extended period of time. I believe the bills would and should solve this problem by strict limitations on the deviation of the developer's control of the unit owner's association and developer signed management contracts.

In my project, units have been bought since mid-1972. Nevertheless, the developer retains control until June 30, 1975, or until 100 percent of the units are sold. That has proven to be a problem for us, because we have been dissatisfied with the actions of the developer, and his action or total inaction as paid management agent of the project.

Senator PROXMIRE. Ours is a 1-year, or until 80 percent is sold, whichever is earlier.

Mr. MORRIS. I think that is a good provision, except maybe the 80 percent is a little high.

Senator PROXMIRE. What do you suggest?

Mr. MORRIS. Perhaps in the nature of two-thirds or three-quarters.

Now, the thrust of that is good. That is a small matter, where you set the percentage, but it is important to set that 1-year maximum limitation.

We have been faced with the situation where the developer has also been in total and absolute control of the council of coowners for 2½ years. We have no check on how he has been spending the funds of the council of coowners. Bills are routinely paid from the developer's accounts and then rebilled back to the council of coowners.

We believe some funds may have been spent for conversion items. What should be problems and expenses of the developer may have been handled as maintenance, and charged to the council of coowners.

The project's swimming pool had a slow leak last summer from the time it was opened after conversion of the project. Every morning, the pool would be down approximately 6 to 8 inches. That wasn't too serious. That was last summer. This summer, the leak became worse, even though we were told first that there was no leak, and then that it had ben repaired in the fall of 1973.

It leaked onto an adjoining property owner's property, who threatened to sue. As a result, that pool was closed on August 1. Repairs have never been satisfactorily completed. Our pleas to the developer apparently go unanswered.

We are concerned that water will enter the repair excavations around the pool, and a freeze will occur producing further damage. The developer maintains that he gave us a pool that was in working condition, and now there have been damages, it is going to run into thousands of dollars of repairs, but that it is the responsibility of the council of coowners to pay for such repairs.

Some other problems we have encountered: total refusal of the developer to provide operating information. I think there are great benefits of the condominium concept, and I believe in condominiums——

Senator PROXMIRE. It was less than a year that this occurred with respect to the swimming pool?

Mr. MORRIS. Yes and no. For some owners, it's more than a year.

Senator PROXMIRE. I wonder if we would cover it in our bill either in the warranty or defect.

Mr. MORRIS. How does the defect run?

Senator PROXMIRE. He is responsible for any capital defects.

Mr. MORRIS. That would probably cover it.

Senator PROXMIRE. By "he," I mean the developer.

Mr. MORRIS. Yes.

I think the condominium concept is a good one, for the condominium owners tend to get together and tend to have a useful social interaction to solve common problems.

Senator PROXMIRE. There is an overwhelming reason that the Federal Government has a responsibility to act. The condominium is based on the hard economic fact that you are able to deduct expenses from your taxes.

This amounts to a loss of hundreds of millions of dollars to the Government. If you pay rent, you can't deduct any small part of the rent from the income tax. You can deduct your full interest cost on your mortgage if you buy, and therefore, I think we in the Federal Government have a great responsibility as well as an interest in the rental conversion to condominiums aside from protecting consumers, which we are deeply interested in, too.

Mr. MORRIS. Yes, Senator.

I think the losses to the Federal Government are recovered in light of increased local taxes on property.

One other area that I think should be covered in the legislation is a requirement for a bond, in the amount of the annual operating budget. The bills require that the developer set forth what the operating budget will be in the public offering statement.

While the developer is both developer and the council of coowners, or the unit owners association, while he controls both of those, there is no way for the owners to know how he is conducting himself; that is, how he is handling those funds of the council obtained from the condo fee payments of the individual owners.

If at a later time it is discovered that the developer has mishandled those funds, there may well be no way of recovering. That is why I think a bond should be required in the amount of the operating budget. Since you are requiring him to submit——

Senator PROXMIRE. Do you have any precedent for that?

I would like to know, because I do think we have to be aware of the cost. I don't buy at all the argument made that our bill is too costly, or obviously, I wouldn't have introduced it, but I think we should face that situation and be honest about it and make as accurate an estimate as we can.

Obviously, if you are going to require the developer to put up his own capital these days with interest what it is, it would be an enormous burden for it, if he could purchase a bond in some way through a

bondsman, there may be ways of doing it that would hold the cost down.

Mr. MORRIS. That is what I am suggesting. He is, in effect, acting as a fiduciary for those who have already purchased. In most situations, whether it be administration of a trust or other areas, you require a person acting in such a fiduciary capacity to have a bond, the cost of which is minimal.

We think this would be an appropriate measure here, because he is dealing with the moneys of a large number of people who have no power over him as things presently stand, and cannot even, in effect, see how he is administering the project and expending these operating funds.

Our condominium documents provide for an annual budget statement. That is in the master deed, and the statement of operating procedures that the developer drew up. Such annual budget statements have not been provided as required. Our condo apparently will virtually double in less than 2 years without explanation.

An annual meeting of the council of coowners was supposed to have been held in my condominium on September 30, 1974. That meeting was not held. There are supposed to be monthly certified statements as to the operation and the financial condition of the condominium.

Those statements have never been filed by the developer. These aren't the kinds of derelictions that you can easily take to the local court and say, "The developer hasn't filed the statements or held the annual meeting for the coowners to determine how the project is being run, how the funds are being expended, and why the condo fees set by the developer are grossly inadequate."

These are important things to coowners. A lot of them don't have any expertise in the financial area. It is easy to get yourself into a situation where you cannot tell what the developer is doing, but, at the same time, have little remedy, and have your costs escalate significantly over developer's representations.

We are suing the developer at the present time in the circuit court of Arlington County, but there are difficulties. Since we are not yet in control of the council of coowners, the form of the suit is a problem.

Do you have to get each and every coowner to join as a plaintiff? Do you proceed as a class action? Class actions in Virginia are disfavored, so it is difficult to utilize that approach.

Thus, I think the bills ought to provide a class action, or a cause of action, where several coowners, perhaps 5 or 10 percent of the coowners might represent the other coowners in a suit against the developer when he has failed to comply with any of the provisions of the bill, and if it is an affirmative failure to provide the facilities, or breach of the warranty, then the recovery would be against the performance bond that I suggested earlier.

That is the big problem now. When you can identify a problem, you seek to resolve it. The developer is not compelled to cooperate with you. We have asked for relevant information simply to prepare ourselves for running the project when he has to leave on June 30, 1975, because we realize you don't take over a condominium project that has a budget of $200,000 a year, unless you are prepared for that.

There is no information on the operating budget from the developer. We think that it is reasonable to request information to prepare our-

selves for the project's turnover to the coowners. The requests have gone unanswered, unfortunately.

These are some of the difficulties that we run into. Turning again to why I said a performance bond is necessary, the particular project I live in has three 10-year old buildings that have 65 units each. The first building was refurbished in a good fashion. That building was used as a model.

The second and third buildings were to be renovated in the same manner as the first according to the developer's representations. Those of us in buildings 2 and 3 have serious questions whether these buildings were renovated in a manner similar to building 1.

This is another problem where the performance bond is something that is very much needed to insure that the developer will, in fact, deliver what he has promised.

I heard some of the witnesses testifying that they thought there was a need for further study, further delay. I can suggest from our experiences, from those who I have talked with in Virginia, and from the widespread adoptions of this form of commercial activity that there ought not to be any delay at all.

Action is needed just as soon as possible, because every day of delay means more projects can be stated without the salubrious requirements the bills would establish.

Senator PROXMIRE. You don't see any need for a long study?

Mr. MORRIS. I don't believe so. Virginia has had extensive studies as have other States. I think the data is there now, and further delay would only harm citizens of the country.

Senator PROXMIRE. You don't see any additional costs resulting from this legislation?

Mr. MORRIS. I think it would be naive to say there won't be "any" additional cost.

Senator PROXMIRE. The position taken by Mr. Clurman is that there may be costs, but they are overwhelmed by the colossal increases in costs of housing by people who buy the condominiums.

The increase in the value of the building has to come out of the pockets of people who buy it. That adds to inflation, because housing costs are essential and part of the cost of living.

I thought that was a pretty telling response to almost any argument unless you can document that somehow other costs would compare to that, and I think other costs would be dwarfed by it.

He called it a rip off and pointed out it amounts to a tremendous amount of money, probably to billions of dollars over the country as a whole.

Maybe there are some holes in that, but subsequent witnesses, and we will have witnesses tomorrow, and perhaps later, and they might be able to refute that, but I would like to hear it.

Mr. MORRIS. I think, Senator, you are correct. I think the increment, per purchaser, of the reforms suggested in the bills and that I suggested would be very minor when you spread out the cost of the performance and operating bonds over all of the purchasers in the project. It is a minor cost, but I think what would be obtained for the few extra dollars is well worth the money.

If buyers get into a project that isn't completed as promised, they have paid $30,000, $40,000, etc., and the price range is unlimited and

if they don't get what they paid for, they have lost a great deal more than if they paid a few more dollars to provide for disclosure and to pay for a performance bond.

I think there is going to be a slight increase in cost per unit to comply with the bill, but I think the cost is well qualified, and it will not be such a great cost as to be prohibitive.

Senator PROXMIRE. I was going to say I want to thank you very much. It is after 12 noon. I do have other appointments, but if you want to sum up, I would be happy to hear you.

Mr. MORRIS. I would simply say that I think the time for action is now, and not later; that the testimony of Mr. Clurman and Ms. McGrath were both to the point, and illustrated problems, and we have experienced some of these problems.

We have still endorsed the form. I don't know of any people in our project who do not agree with the condominum concept. We believe this is kind of a last vestige of New England-style, town meeting participatory democracy.

The people share common interests, and work together and get to know each other in a way that does not go on in our urban environment very often, and if we can assure them the project is completed properly, we think it is a concept that is pretty much viable across the economic board, too, and using it in low and middle and high income areas, it is simply a concept that should be made to fulfill its promises, and that can be done by Federal legislation.

Senator PROXMIRE. Thank you very much, Mr. Morris.

The committee will stand in recess until 10 o'clock tomorrow morning, when it will reconvene in this room to hear further witnesses.

[Whereupon, at 12:08 p.m., the hearing was recessed to reconvene at 10 a.m., on October 10, 1974.]

[The following material was ordered inserted in the record:]

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 16, 1974.

Hon. JOHN SPARKMAN,
Chairman, Committee on Banking, Housing and Urban Affairs,
5300 Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR SPARKMAN: I thank you and your Committee staff for giving me the opportunity to testify before the Subcommittee on Housing and Urban Affairs.

Unfortunately, I was unable to stay at the hearings and present my statement due to a last minute call of the House Public Works Committee for a mark-up session. Although I was unable to personally deliver this statement, I appreciate the offer to place it in the hearing transcript. I am enclosing a copy of this statement, my introductory remarks on the National Condominium Act and a copy of the bill itself.

With every best wish,

CARDISS COLLINS,
Member of Congress.

STATEMENT OF CARDISS COLLINS, REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

DEAR MR. CHAIRMAN, Senators, it is a privilege and honor to be here with you this morning to discuss national condominium regulations which provide certain protections to potential buyers of condominiums newly built and to tenants who live in units that are scheduled for conversion into condominiums. As the author of the first legislation, (H.R. 15071), National Condominium Act, introduced on

May 29 in the House of Representatives to provide such protections, I applaud the efforts of the Subcommittee in undertaking this task.

In the interest of saving time because I am currently due in a Public Works mark-up session in the House, I will limit my remarks to those regulations which I think might not be covered in either or both of the bills that are before this Subcommittee: S. 3658 introduced by Senator Biden and S. 4047 introduced by Senators Proxmire and Brooke. My main concern is that neither bill directly undertakes to solve the problem of tenant displacements in apartment buildings that are being converted into condominium units. S. 3658 provides that tenants of converted apartments be given a 60-day exclusive option to purchase their unit; S. 4047 requires that the Secretary of HUD make a complete study of the problems associated with condominium conversions and the problems of tenant relocations. On the other hand, my legislation will offer more concrete protections for the tenants by providing that they not only have first priority in purchasing their units, but that they be given six months in which to decide to do so. Furthermore, H.R. 15071 provides in Section 5(c)(3) that "more than half of the tenants in the structure or structures involved will have freely agreed (before the conversion to condominium use can occur) either to purchase their dwellings units or to move from the structure." My reason for including this provision in the bill is this.

We are experiencing a severe housing crisis, not only in metropolitan areas, but throughout the country. It is unethical to literally force people out of their apartments when they have no where else to go.

In Chicago, for example, only two out of every one hundred residences are vacant. Consider the predicament of tenants in a 100-apartment complex slated for conversion. If none of these families can afford to buy their "condominium," they are, nevertheless, forced out of their former homes. Only two of these 100 people can expect to find a new residence (let alone a parallel one) in Chicago. The other ninety-eight are left with nothing, given the present 2% vacancy rate.

In our efforts to protect the owner of the apartment complex we must not ignore the rights of the people living in the apartments. By adopting a bill similar to H.R. 15071, the federal government would not be violating the property rights of the owner, but would be providing greatly needed protection for the all—but helpless residents. Certainly, not every interference with property rights is a deprivation of property requiring compensation. [See *N.L.R.B.* v. *Cities Service Oil Co.*, 122 *F.2nd* 149 (2nd Cir. 1941), *Breard* v. *Alexandria*, 341 *U.S.* 622 (1951), and *Euclid* v. *Ambler Co.*, 272 *U.S.* 365 (1926).]

Further, it must be reemphasised that the federal government does have the power to make regulations with respect to health, welfare and morals, and is thus able to legislate in this manner:

"The Fifth Amendment imposes . . . no greater limitation upon the national power than does the Fourteenth Amendment upon state power. If the nature and conditions of a restriction upon the use or disposition of property are such that a state could, under the police power, impose it consistently with the Fourteenth Amendment, then the United States may for a permitted purpose impose a like restriction consistently with the Fifth Amendment without making compensation."*U.S.* v. *American Bond and Mortgage Co.*, 31 *F.2nd* 318, affm'd, 52 *F.2nd* 318, cert. den. 285 *U.S.* 538.

Therefore, if a statute evidences a reasonable exercise of the federal power for the public welfare or public interest (in this case housing), its provisions do not constitute a deprivation of property without due process (a taking) merely because it limits or restricts the use which the owner may make of his property. [See *Bowles* v. *Willingham*, 321 *U.S.* 503 (1944).]

The question that immediately comes to mind, then, is whether or not this provision in H.R. 15071 is a reasonable restriction on the use of property. The Supreme Court reaffirmed, in 1958, that "the mere fact that [such action] deprives the property owner of the most profitable use of his property is not necessarily enough to establish the owner's right to compensation." *U.S.* v. *Central Eureka Mining Co.*, 357 *U.S.* 155, 168: see further, *Mulger* v. *Kansas*, 123 *U.S.* 623, 664, 668, 669.

Finally, Mr. Justice Brandeis wrote for the Court in *Nashville, C. & St. L. Ry.* v. *Walters*, 294 *U.S.* 429 (1935),

"It is true that the police power embraces regulations designed to promote public convenience or the general welfare, and not merely those in the interest of public health, safety and morals . . . But when particular individuals are singled out to bear the cost of advancing the public convenience, that imposition

must bear some reasonable relation to the evils to be eradicated or the advantages to be secured."

I believe that the need to insure adequate housing for the people of this Nation during this period of inflationary crisis heavily outweighs any slight imposition to be borne by the property owners in the disposition of their property.

I would like, now, to turn to other areas that I think should be covered in any legislation that this Subcommittee acts upon. First, consider the problems and abuses concerning recreational fees, where such fees are tied directly to the mortgage on the condominium unit. Why should, for example, an elderly couple be forced to pay for the use and upkeep of a swimming pool or tennis court if they are unable to use them, and if the cost of using the facility was not included in the initial purchase price? However, in a number of instances the recreational facility fee—although separate from the initial purchase price and purchase agreement—is tied directly to the mortgage of the unit in the way of a lien on the property. If the owner does not pay the recreational fee, it is considered to be a default on the property; thus, the owner loses everything. This when the developer expects to make a profit on the recreational facilities alone of around 50,000 percent!

Secondly, many condominium developers have established management companies to run the property for the unit owners. The management contract allows the developer to run the condominium development for "x" number of years (some running anywhere from 2 to 99 years) giving the developer absolute control over how money is spent for repairs, as well as who will be hired or fired to care for the whole development. In other words, the developer retains absolute control over property that he has already sold to other persons.

Both my bill and the Proxmire-Brook bill provide protections for the condominium unit owners against the two abuses I just mentioned—recreational fees and management contracts. I hope that this Subcommittee will keep these views in mind when it decides what legislation is needed in the area of condominiums.

In closing, I thank you again for giving me the opportunity to present my views on this subject to you. I have attached a copy of H.R. 15071. My introductory remarks on the bill can be found in the May 30 *Congressional Record* pps. H. 4616–H. 4621. You might be interested in noting that two very excellent articles are included in those remarks: one, an article by Mr. Leonard Downie, from NATION, entitled "Condominiums: New Ripoff," and the other a transcript from a 60 minutes News program entitled "Condo Craze". Both of these point out some of the many abuses that have gone on within condominium developments.

I commend all of you for taking an active interest in the problems associated with condominium developments. The Chairman of the Housing Subcommittee in the House of Representatives has promised me that hearings will be held on this same issue early in the first session of the 94th Congress. It is my hope that sometime before the end of the 94th Congress, we, as members of this branch of government, will be able to say to both prospective purchasers of condominiums and tenants of buildings that are to be converted that they will be offered at least minimal protections.

If, after you have had a chance to review this material, you have any questions about what I have said here today or about my bill in general, my office and I will be more than happy to try to answer them for you.

[From the Congressional Record, May 30, 1974]

H.R. 15071, NATIONAL CONDOMINIUM ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Mrs. COLLINS) is recognized for 60 minutes.

Mrs. COLLINS of Illinois. Mr. Speaker, over the last few years a new type of housing unit has gained wide notoriety. These units, known as condominiums, have become the rage of the future. They are geared to sell to those persons who do not wish to buy a house, but who want to own their own living quarters.

The condominium is attractive to persons who are tired of living and maintaining their own house or those who are just starting out in the shelter-buying market. The condominium offers apartment-type living, with recreational facilities usually shared among all of the owners. According to developers, a person

or family can have housing without some of the upkeep headaches that are normally associated with the owning of property.

About 4 months ago I was talking with some of my constituents when one mentioned that the condominium craze had become so great that many apartment dwellers were being forced either to buy the rental units in which they resided or move on extremely short notice to other quarters. Since, in Chicago, as in other large cities, the housing market has become so scarce that most of the available rental units are either in the higher income bracket or at the point of being condemned, condominium buying is on the upswing.

Upon investigation I found that there are many complicated issues with condominium developments. For example, I found that in certain instances persons who bought condominium units thought that they had also purchased a share in the recreational facilities, but after occupancy they learned this was not the case: they had to pay for the use of the facilities over a long period of time—in some instances up to 99 years—even if they did not use the facilities or face foreclosure of the mortgage on their dwelling unit. In one instance, it was ascertained that the developer will make a 50,000-percent profit on the recreational facilities alone.

Recently, an article entitled "Condominiums: New Ripoff," appeared in the Nation. Mr. Leonard Downie, Jr., the author of the article and the deputy metropolitan editor of the Washington Post, pointed out that many condominium owners, after paying between $20,000 and $100,000-plus for their units are faced not only with ramshackle construction, but with maintenance fees and real estate taxes that are reaching far beyond their expectations. On top of that, many buyers are also charged monthly fees for common areas—such as the lobby—and the recreational facilities that they thought they had already bought outright. I have received written permission from the Nation to insert Mr. Downie's article in the Record. I do so at this point:

CONDOMINIUMS: NEW RIPOFF

(By Leonard Downie, Jr.)

The condominium is the American real estate industry's newest quick-profit rage. During the 1960s, federal and state legal concessions made large-volume condominium sales feasible, and since then developers in San Francisco, Chicago, Boston, New York, Washington, D.C. and other cities, and at oceanfront and ski mountain resorts from Cape Cod south to Florida and west to the Rockies and California, have found it increasingly profitable to market apartment buildings as condominiums, selling individual apartments to home buyers. Because the demand for middle-classing housing has recently outstripped the supply of reasonably priced, conveniently located detached houses in many areas, condominium housing has found a large and lucrative market.

Unlike the steadily growing popularity of earlier housing trends, explained San Francisco mortgage broker Robert W. Gaber, "an explosion of demand [for condominiums] reached, almost overnight, boom proportions." In 1969, the year before the boom began, only 5,000 new condominium units were sold; this year the National Association of Homebuilders expects that more than 220,000 will be built and sold. In addition, thousands of existing apartment buildings are expected to be converted into condominiums.

Developers and their financial backers have quickly recognized the bonanza opportunities in the condominium boom, but public officials who are supposed to watch out for the consumers' interests were taken by surprise and have not yet caught up. As a result, for tens of thousands of Americans who have paid over their money without fully understading what they were buying, condominiums have become the newest national consumer problem. Widespread complaints of shody construction, poor maintenance, hidden costs and contract chicanery have produced hundreds of lawsuits against condominium developers, and prompted a number of state, county and city bodies to consider new legislation this year for the regulation of condominium development and sales.

Buying into a condominium means purchasing one unit of a multi-family residence—be it in a big city apartment building, a suburban "garden apartment" or "townhouse" development, or an ocean beach or mountain resort or retirement high rise—as opposed to renting an apartment or buying a traditional single-family house on its own lot. (In an earlier form of apartment ownership, the "cooperative," each tenant buys an interest in the whole building, this share

entitling him to residence in a specific apartment. This type of ownership is found principally in New York City.) Usually, the buyer of a condominium unit also buys a proportionate share of the building's common areas and facilities—from the lobby, utility plant and outdoor grounds to the swimming pool, tennis courts or other leisure amenities that often are the heavily advertised selling points of new condominiums.

What the salesmen emphasize most enthusiastically is the idea of owning your own apartment rather than renting it. The changes in federal and state laws during the 1960s made condominium buyers eligible for the same FHA mortgage insurance and the same attractive income tax deductions for mortgage interest and real estate taxes as are enjoyed by owners of single-family detached houses. Why pay out thousands of dollars in unrecoverable rent money when you can accumulate equity by buying your own apartment? And why pass up the tax benefits?

A condominium is supposed to cost less than a single-family house of the same floor space, while offering convenient recreational facilities and professional maintenance. However, many condominium buyers have found that, when all the extra fees are added up, the apartment has cost them as much as, or more than, they would have paid for a detached house. And, after paying from $20,000 to a good deal more than $100,000 for their condominium homes, they may well discover that the construction or renovation work is poor and that the maintenance fees and real estate taxes are rapidly increasing far beyond what they had expected. On top of that, many buyers are also charged monthly rental fees for the common areas and recreational facilities they thought they had already bought outright. Thousands of even more unhappy condominium customers lose their entire dow payments and months of fee payments to deveolpers who never finish condominium projects or who use one of many tricky technicalities in complicated sales agreements to swindle already resident tenants out of taking title to their apartments.

The condominium boom is also creating serious social and environmental problems. In many cities, elderly people living on fixed incomes have been summarily evicted from older, moderate-rent apartment buildings, so that these may be rapidly converted into high-priced "luxury" condominiums. On the edge of cities, the sprawl of suburbia that continues to chew up former farmland at an alarming rate has begun to take the form of condominium low-rise "garden apartments" and rows of attached "townhouses." Beyond major urban areas, ocean dunes are being lost to hastily constructed condominium high rises, and mountain forests are being similarly invaded.

Condominium housing is as old as Imperial Rome, where 2,000 years ago the scarcity of land in the crowded city-state and the Roman genius for construction produced large brick apartment buildings in which units were sold to their residents. The concept has reappeared periodically in Europe. The multi-unit housing crowded inside walled medieval cities was sometimes sold on a condominium basis. And since World War II, condominiums have been most popular form of middle-class housing in Paris and other big European cities.

Until recently in the United States, however, a seeming abundance of land and our preference for owning a bit of ground of our own left no market for mass condominium real estate sales. Residential developers made most of their money by buying rural land cheaply and putting up tract homes to be sold on the attractive terms made possible by the FHA and home owners' tax benefits that are underwritten by us all. But by the 1960s, escalating prices for increasingly distant suburban land and steadily rising material and labor costs cut the profit margin in sales of detached single-family homes, and many developers turned to building and renting apartments. While collecting rent, they were able to enjoy much of their income tax-free by claiming large depreciation deductions on their buildings.

It was also at about this time that Congress and several states extended FHA mortgage insurance and standard real estate title and mortgage rights to apartments sold as condominiums. However, not until the 1970s did developers begin to push condominium sales in large numbers. The big move came when apartment building owners found that their rental profits were being reduced by rising maintenance costs and the spread of rent controls. Furthermore, once the years of maximum depreciation had passed for any given building its owner wanted to sell, and he soon found that he would get much less by selling it to another landlord for continued rental than he could by selling individual apartments, after a little cosmetic renovation, to home buyers. Soon, builders took

the obvious profitable step of putting up apartment houses for immediate condominium sale.

Said James C. Downs, chairman of the Real Estate Research Corporation in Chicago, "Rental properties are obsolete in an inflationary economy. You simply cannot make any money on them because rents are too low and you can't raise rents fast enough to keep up with rising costs." In Washington, D.C., the return on investment for rental property has suddenly dropped from around 12 percent to 5 percent and lower, according to John T. O'Neill, head of the local Building Owners and Managers Association in what had been the best rental housing market in the country. But an apartment building that was not making much money on rentals could easily be turned into a gold mine by converting it to a condominium.

"Take a property with units currently worth $10,000 to $20,000" each for rental purposes, O'Neill said. "You can put in a new kitchen, new appliances, carpets, drapes, better bathroom fixtures, and sell the units for $25,000 to $28,000" each. The average cost of improvements made in the typical converted condominium apartment selling for $25,000 last year, according to the National Association of Homebuilders, was only $1,200. So, even after paying for the cost of marketing the apartments, a developer can often clear a profit of 25 percent or more by converting the average apartment building into a condominium.

And just because the seller spends as little as he can get away with, condominium buyers often inherit heating, wiring, waterpipe and other building problems that will cost them dear once they collectively own the building. Misrepresentations about the extent of renovation and the true condition of a converted building are among the most common complaints. As a result, local governments are now considering regulations to require condominium salesmen to prove that the buyers were provided with, and understood, an accurate, detailed engineer's report on the building's condition.

Many condominium sales agreements require that the monthly maintenance fee be paid to the developer selling the condominium or to a building management subsidiary he has set up. Thus, the developer can insure himself a continuing profit over the years by keeping the management fees higher than the actual cost of maintaining the building. By the time apartment buyers come to understand this arrangement, usually after watching their maintenance fees steadily increase, it may be too late for them to break the management contract. And if they do succeed in breaking the contract or in keeping the developer out of the management of their building in the first place, how do condominium buyers go about choosing a better manager? How can they properly supervise the upkeep of boilers, air-conditioning and roofs?

In addition to unanticipated maintenance costs, buyers of converted condominium apartments are often surprised by large immediate increases in their property taxes. The reclassification of a building from rental to home ownership often doubles its taxable market value, making each new apartment owner liable for real estate taxes twice or more as large as he expected. And, as the building's market value continues to increase with inflation, so does the tax bill.

It is not unusual for an apartment buyer, who was told at purchase time that he would pay $250 a month on his mortgage, plus $60 for maintenance and $40 for real estate taxes, to find himself in a year or two paying more than $100 each for maintenance and real estate taxes—the equivalent of having his "rent" suddenly jump from $350 to $450 a month. Of course, that sum is not supposed to be rent. The buyer expects to build equity with his mortgage payments and to deduct from his taxable income each year the mortgage interest and real estate taxes (but not maintenance fees).

However, purchasers of converted condominium apartments are apt to find that they cannot begin to accumulate equity and enjoy tax benefits as soon as they had expected. In many states more than half of a building's units must be sold before it can legally become a condominium. Some sellers manage to use trick clauses in long, complicated sales agreements to delay the transfer of title to individual apartment buyers even longer than that. In one Washington apartment building, recently converted to a condominium, a number of buyers did not discover until nine months after they had moved in that they still were legally only renters, pending title settlement, and that each had lost hundreds of dollars in payments not applied to their mortgages and in home owners' deductions they were not able to take on their income taxes. Instead, the building's landlord was keeping their payments as rent and using the building for his own tax deductions. It was all perfectly legal.

Worse things have happened to prospective purchasers of apartments in brand-new buildings, especially in Florida, where condominiums account for 75 percent of all for sale housing going up in the state. In Dade County (Miami and environs) the number of condominium building permits doubled from 1971 to 1972; in November 1972 the state Pollution Control Department banned further granting of permits until more sewage treatment plants could be built. North of Miami in Broward County (the Fort Lauderdale area), land that had been selling for $1,500 to $15,000 an acre in 1970 is now selling for $25,000 to $80,000 an acre to condominium developers. Philip Montante, the local prosecutor, said that more people are swindled buying condominiums in Broward County "than anywhere else in the United States."

To begin with, most condominiums there and elsewhere in Florida are sold, frequently to out-of-state buyers, before construction begins or is very far along. The developer uses the deposits and down payments to defray some land purchase and construction costs, with a construction loan from a bank or savings and loan association covering the rest of the "front money." That way, he need put no money of his own into the venture. Then, if the developer fails to finish the project, as has happened in Florida and elsewhere, and someone else takes it over through foreclosure, buyers may lose their entire deposits and down payments.

More common are agonizing delays of construction, and still more waiting after the buyer moves in before he gains legal title. Furthermore, thanks to hidden escalator clauses in many Florida condominium purchase contracts, the monthly payment after title settlement is often much higher than originally stated or than it would have been, according to the contract, if the building had been finished and fully occupied on time.

Buyers into most Florida condominiums discover too late that they did not buy a share of the building's recreational facilities along with their units. The developer has retained ownership of these facilities and, under a ninety-nine-year lease, rents use of them to each tenant at from $25 to $100 or more a month. As *Dun's*, the financial journal explains, "For the developer, the leasehold clause means an enormous windfall, spread over a long period. He may spend $300,000 for recreation facilities and lease the facilities to condominium owners for $100,000 a year; in three years he has his investment back and goes on to collect $100,000 a year for the next ninety-six years for doing nothing."

To make certain that they collect this rent and that the condominium apartment owners never successfully revolt, many Florida developers have the leasehold written into each deed as a mechanic's lien, which takes precedence under Florida law over even the mortgage on each unit. If the apartment buyer doesn't pay the facilities rental fee, his apartment can be sold out from under him. And in many of the leasehold clauses, there is a "cost-of-living" escalator that steadily raises the recreation facilities rental fee. Recently, attempts have been made in the Florida legislature to modify or outlaw this "release" clause, but they have thus far been unsuccessful.

Buyers of new condominium apartments protest against poor construction work and broken promises made by salesmen. A frequent complaint made of Mayor Milton Weinkle of Hallandale, a booming Broward County condominium community, is that room sizes are much smaller than promised by the salesmen and that many touted features are missing or of poor quality. "Sure we have abuses that may constitute fraud," Weinkle said, "but that's the business of the State's Attorney, not us." But the prosecutor explains that, because of inadequate Florida laws and the legality of book-size condominium sales agreements that take precedence over salesmen's oral promises, there is little he can do about the abuses.

Poor construction is a national complaint about new condominiums, especially in the increasingly numerous attached "townhouse" developments going up in the suburbs, according to a national survey made of condominium buyers by the Urban Land Institute, a nonprofit housing research organization based in Washington, D.C. Developers are building more and more townhouse condominium communities because they require less land per unit than detached homes and cost much less per unit than either detached homes or high-rise buildings that require elevators and must comply with the structural and fire prevention requirements of most local building codes. Often the less expensive construction of these townhouses translates to "cheap and shoddy" in the terminology of home buyers quoted in the Urban Land Institute survey of condominiums in several price ranges built and sold recently in suburbs outside San Francisco, Los Angeles, San Diego and Washington, D.C.

Belatedly, government officials are beginning to consider ways to curb the excesses of condominium developers. A new national model building code being urged on the states by federal officials could help improve construction quality. The Securities and Exchange Commission has ruled that sellers of certain kinds of condominiums must register their offerings and submit to SEC regulations on sales practices. The Department of Housing and Urban Development is cracking down on sales practices for recreation and vacation developments that are registered with it; these include some condominiums.

Several states—New York, Maryland and Virginia, among others—are considering protective measures for tenants of apartment buildings about to be converted to condominiums, including ninety-day notice for evictions and restrictions on the conversion of buildings in which a certain percentage of tenants oppose conversion or have not been offered a realistic opportunity to buy their own apartments. Some states are studying ways to simplify condominium sales agreements and to increase buyers' defenses against entrapment. Although too few know it, condominium buyers in many places already have the right to abrogate their purchase agreements at any time before enough units have been sold to make a building legally a condominium.

As of this writing, however, none of the proposed state or local condominium regulations has been approved. In their absence, as Florida state Rep. Alan Becker of Miami said after the bill to outlaw ninety-nine-year recreation leasehold clauses in condominium agreements was defeated last year: "What we have seen is free enterprise temporarily prevailing over justice."

On April 21, 1974, Mike Wallace, of the "60 Minutes" program of CBS, presented a segment entitled "The 'Condo' Craze."

The "60 Minutes" reporters interviewed condominium owners and developers in order to ascertain whether sharp practices of condominium sellers really do result in a "ripoff to the buyer." The result of Mr. Wallace's investigation showed that "in condominiums, promises are too frequently better than performance."

One of the interesting problems that arises in condominium purchasing is the purchase agreement itself. Since condominiums are really an alternative to single-family housing units, one could probably presuppose that the contract to purchase the unit would be similar to that of a single-family housing unit. Not so. According to Mr. Wallace:

Chances of a misunderstanding in buying a condominium are considerable if you're not careful. . . . Say that you were to buy a $100,000 home in Florida. The contract could be on just two sides of this single sheet. Now, then, this 12-page agreement contains all of the legal language necessary for the purchase of a commercial building that sold for five million dollars. But, to buy a condominium costing a mere $29,900, you have reams of legal language to wade through. First of all: a ten-page purchase agreement. But then: an encyclopedic volume called the Declaration of Condominium—over 100 pages worth of restrictions and clauses and sub-clauses, some of it so finely printed that even some one with 20/20 vision has trouble reading it without a magnifying glass.

One lawyer said:

The documents themselves are impossible to read by a layman. They're difficult to be read by a lawyer.

Aside from the fact that a condominium buyer may never be sure when the building may become 100 percent complete, or what portion of the building is held in joint ownership or leased from the developer, or what guarantees exist for the heating, plumbing, electricity, airconditioning, ventilation, elevators, and/or roofing, or of what services are provided by his mortgage, one of the more interesting aspects of purchasing a condominium unit before the building is completed is the lack of a guarantee that an owner get his or her money back if the venture fails. Some developers take the money paid down on condominium units and use it to build the structure. This is unsound financial backing for the developer whose risks are often unknowingly assumed by the buyer.

Inasmuch as the transcript of the "60 Minutes" show is enlightening, I have obtained written permission to place it in the CONGRESSIONAL RECORD and do so at this point.

[Reprint of Transcript from the "60 Minutes" Show]

THE "CONDO" CRAZE

WALLACE. The biggest single expenditure most of us will ever make is for a home of our own. And they're getting more expensive all the time. So, the real

estate developers—always resourceful—came up with a wrinkle new to the United States: the condominium. From Maine to California, Americans are caught up in a condo craze. But it turns out all is not gold that glitters. 60 Minutes went behind the facade of the condominium.

Industry observers tell us the condominium is the wave of the future in the housing market. There are condos for everyone; if you're married and have children; or if you are single; condominiums for retired folks; if you are a golf nut. Is it boating that turns you on just sunning by the pool? Most important, there is a condominium for just about every pocketbook.

What's a condominium? It's a piece of real estate, an apartment or a townhouse, a unit, what have you. Unlike a rental apartment, you own your condominium outright and you pay the taxes on it. You share with your neighbors the upkeep of the common elements: lobbies, lawns, corridors. The lure of the condominium is that you can get a big mortgage on it; you can deduct your property taxes from your income tax; you can make a profit when you sell it if the market goes up. The condo first came to the United States in Florida. That's where most of them are today. So, 60 Minutes went to Florida to film a condominium buyers' guide.

The idea of condominium is hardly new. It goes back to Roman times. In Latin it means joint domain. There is an ancient Latin admonition that applies here: caveat emptor. In Roman days, it was a phrase that fully amplified, meant: let the purchaser beware, for he ought not to be ignorant of the property which he is buying from another party. First off, be skeptical of any promises that are not in writing. The sales brochures and the scale models aren't always accurate representations of what you're going to get if you buy. Down here, the developer has the right to change things even after he has started his advertising campaign. It is in the sales office that the buyer should begin to beware.

WOMAN. These are the four buildings: Building 1, 2, 3 and 4. These two buildings will be ready about March of 1975; this one, about the middle part; and this one, about the end part of 1975.

WALLACE. That sales lady may be a trifle over-optimistic. She tells her prospects that Plaza of the Americas will be ready for occupancy a year from now. What she doesn't tell them is that not all of the necessary building permits have yet been issued nor, indeed, has a spadeful of earth yet been turned here.

In condominiums, promises—it turns out—are too frequently better than performance. Now, all that is perfectly legal and the developer suffers no penalty if he doesn't finish construction when promised.

But once the developer gets a document called a certificate of occupancy from the local government, he can force the buyer to close the deal, although the condominium is not necessarily completely finished—far from it. And the buyer may find himself battling with the developer—like the folks here at Building 300 of Winston Towers, who moved into their condominium ten long months ago.

MAN [Over loud speaker]. Now what in heaven's name does it take to make a corporation like Centex—on the Board, recognized all over the country—what does it take to make them stand up and pay or give what you paid for? For the life of me, I haven't been able to find out. The air conditioning pipes and connections on the roof were corroded. You remember what happened with the people from the 18th floor up? They never told them that the apartments were not up to standards, that doors were missing, that refrigerators were missing, that the electric ranges had no doors on them, that the lights were out. This, Centex didn't tell them. And this, they found out when they took title and moved in.

WALLACE. The developer, however—in this case, the Centex Corporation, a nationwide building firm—sees the problem from a different point of view. Alan Grossman is vice president in charge of their Miami operation.

One of the things that the people in Building 300 complain about is this: they say, "We were promised that we were going to move into a building—a finished building," and they come in there and are—and the building isn't finished.

ALAN GROSSMAN. Well, what you say is partially correct. The building is not through nor will it be through for approximately another month. It is scheduled as an 18-month project and it should be through at the end of this month. Unfortunately, many of these people may believe that they were promised they would move into a building that is 100% complete. This is not a promise we made. Or, if it was made, it was done inadvertently or in error.

WALLACE. Either you promised or you didn't promise that they were coming into a finished building.

GROSSMAN. We—We did not promise. I—I can only assume that there was a misunderstanding between the home owner or the prospective purchaser and the sales person at the moment of sale.

WALLACE. Chances of a misunderstanding in buying a condominium are considerable if you're not careful, which brings us to a fascinating part of our story. Say that you were to buy a $100,000 home in Florida. The contract could be on just two sides of this single sheet. Now, then, this 12-page agreement contains all of the legal language necessary for the purchase of a commercial building that sold for five million dollars. But, to buy a condominium costing a mere $29,900, you have reams of legal language to wade through. First of all: a ten-page purchase agreement. But then: an encyclopedic volume called the "Declaration of Condominium"—over 100 pages worth of restrictions and clauses and subclauses, some of it so finely printed that even someone with 20/20 vision has trouble reading it without a magnifying glass.

Alan Becker is a Florida State Legislator who wants to change the condominium law. One gets the impression that this huge contract of the condominium developer—condominium builder—puts in front of his client is almost calculated to obfuscate, to make life a little bit more dim and difficult for the buyer.

ALAN BECKER. If it isn't intended to, it certainly has that effect. The documents themselves are impossible to be read by a layman. They're difficult to be read by a lawyer. With the time limitations, they almost aren't ever read by the people who are buying the condominium when they should read it. Now, the law gives you 15 days from the time you get this to back out of the contract. But I don't think you'll ever find a developer who will tell you that and you don't see on any of the contracts that you have the right to back out. So most people are afraid. And, in fact, they're told that they're going to lose their deposit if they try to back out and they've put down substantial deposits. If you look at the contract, advance payments made pursuant to this contract may be used for construction purposes.

WALLACE. What you're saying is that when I go into a sales office and see a brochure with a condominium I like, I give the fellow a down payment, he uses my money to build his building?

BECKER. It's a great business, isn't it? Yes, he does. The only thing he has to do is tell you on the contract that he's going to do it. But what he doesn't tell you is that in no way is your money really protected.

WALLACE. Another item the prudent buyer should be well aware of before he makes his purchase is one of the most despised—though perfectly legal—devices the developer uses to keep on making money from condominium owners long after he has sold them their apartments. The most notorious additional payment that many condo owners have to make is something called the "Recreation Lease". For instance, here at Guilford House: this swimming pool. It is the sole recreational facility in the building. And yet, the 72 owners of the condominiums here have to agree by contract to rent this swimming pool for $25,000 a year for 99 years. They have to agree to that by contract before the developer will sell them an apartment. "Take it or leave it," says the developer. The condo owners here at Guilford House took it. As a result, each one of them pays about $40 a month to rent this swimming pool.

Mr. Grossman, one of the joys of condominium living is that you're supposed to own your own home. And it turns out you own your own apartment, but you—you've got to pay a fee for recreation. Whether you use it or not, you still have to pay the fee for recreation. You sign the contract and that's what it is.

GROSSMAN. You read the contract and then you sign the contract. And I think that anyone with any intelligence can go through it and basically understand the fundamentals of condominium ownership.

BERNARD FAGEN. Well, it's a very limited ownership when you begin to analyze the thing. You find that the recreation area that you see here does not belong to you. It's subject to a 99-year lease that we pay $115,000 a year for.

WALLACE. Attorney Bernard Fagen is President of Building 300 Homeowners Association. He and 416 condominium owners here are party to a typical recreation lease which says that if Mr. Fagen and the rest don't pay their monthly recreation fees, their apartments can be foreclosed—taken away from them.

FAGEN. He doesn't maintain; he doesn't take care; he doesn't develop. We must take care of it. In other words, this is net to him of $115,000. We even pay the taxes for this area. As an attorney, 40 years in practice—in excess of 40 years in New York—I have never seen anything like this until I've come down here to Florida.

BECKER. Some developers have said that they—for a recreation facility, they look for a 50,000% profit.

WALLACE. A what profit?

BECKER. 50,000%. You can build a beautiful recreation facility for a million dollars and then, over the course of a 99-year lease, bring back five million dollars a year in rentals on that facility. And over 99 years, you've got roughly 50,000% return on your money.

WALLACE. There is still another clause to watch out for. It's called the "Management Contract" and it can cost a lot of money over a long, long time. What you're looking at are checks representing management fees for a three and a half year period—money paid out by the apartment owners to the manager, who also happens to be the developer. Here's how it works.

BECKER. The developer sells you the apartment. You're supposed to live in the condominium community, run your own affairs. But you don't really run your own affairs. The developer reserves, by contract with himself, the right to manage this place for *x* number of years—two years, five years—I've seen them up to 99 years.

WALLACE. For a good fee?

BECKER. For a good fee, yes. And with absolute control over how your money is spent and who is fired and who is hired to run your building.

WALLACE. So he gets it coming and going—the builder—the developer.

BECKER. Yes, he gets it. So does the purchaser.

WALLACE. To Leonard Schreiber, an early developer of condominiums in Florida, the management contract is a form of insurance. I suppose the bottom-line question is: Why should Leonard Schreiber have a 25-year contract to manage and a 99-year contract for a recreation lease? Why, just for putting up those buildings, should he have this golden contract in what seems like, then, to be perpetuity?

LEONARD SCHREIBER. Well, Mr. Wallace, it's not only Leonard Schreiber that has 25-year management contracts. You must remember, going back quite a few years when the developments were first starting to be built, lending institutions wanted to know: Who's going to manage these developments? Who's going to oversee all of the things that come into the managing of the development, from the repairs of things to the repainting of buildings to the mowing of the lawns to the taking care of the pools to—

WALLACE. But you don't do that. You hire people to do that for you and you sit up front and take 6% off the top of all expenses of management.

SCHREIBER. That is very true. But we guide the people that we hire.

WALLACE. That's a pretty high price to pay—6%—for a little guidance. Would you agree with me, Mr. Schreiber, that the day of the management contract is probably past?

SCHREIBER. I would say that the type of people coming into condominiums today are very astute people and that the day of the management contract is—has served its purpose.

WALLACE. What about the day of the recreation lease?

SCHREIBER. I do not think that that is over. I think that a man has a right to build what he wants to build as long as he is doing it legally and as long as there is full disclosure as the law prescribes. And I think that people have a right to either purchase from him or not purchase from him.

WALLACE. A recreation lease in which the developer gets back—and this is—this happens, as you well know—a third or a half of the entire cost—in some cases 100% of the entire cost—of the recreational facilities in one year's time and keeps getting 35, 50 or 100% back every year—moral? Legal?

SCHREIBER. I would not pass upon the moral portion of it. Legal? Yes.

WALLACE. The condominium buyers we met in Florida—lots of them—are savvy businessmen who think now that they were taken. They failed to read the fine print. Take Ernest Samuels, a 67-year-old retired executive.

Mr. Samuels, you're a grown man. You ran a furniture business. You came down here; you signed a contract. A contract is a contract.

ERNEST SAMUELS. That's correct, sir. We did sign it. But unfortunately, when we signed that contract which was 120 pages long, we didn't know exactly what the terms of that contract were because I don't think that anybody ever read it.

WALLACE. What do you mean, nobody ever read it? You have lawyers who have bought condominiums here. You ran a business in New York. You mean to say that you signed a 120-page document for your condominium without reading it?

SAMUELS. Well, the document itself was never presented to us when we were

signing the deed to the apartment. This 120-page document was usually either mailed to the people who bought the apartment or delivered to them at the time that the signing was taking place.

WALLACE. But you had the right to back out?

SAMUELS. Yes, you did. You had the right to read it, of course—take a few weeks to read it. And then either sign or not sign.

WALLACE. Well, why didn't you take a few weeks to read it? Now you're complaining.

SAMUELS. They didn't look like really a legal document that you're bound by in the purchase of a home.

WALLACE. Well, you were wrong.

SAMUELS. We certainly were. Yes, sir.

WALLACE. And what you're saying is to other people who might be buying condominiums in the future, "Look out!"

SAMUELS. I would say look out for the management agreements and look out for the leases and get your lawyer to check them carefully.

WALLACE. Since we filmed that report, many of the complaints by the owners of Building 300, Winston Towers, have been taken care of by the developer.

Today a number of states are considering legislation to correct the kind of abuses we've just seen. But until these condominium reform bills are passed into law, we would still caution, "Caveat emptor—let the buyer beware."

Mr. Speaker, what with all of the abuses that I have discovered in the condominium phenomenon. I decided to write legislation which I believe will protect the condominium buyer and/or the residents of units that are being converted to condominiums, and establish reasonable minimum national standards for condominium developments which are financed with Federal assistance in any form.

The bill, H.R. 15071, National Condominium Act, would provide for the establishment within the Department of Housing and Urban Development of an Assistant Secretary for Condominiums. The assistant secretary will be responsible for, first, coordinating all of the housing programs involving condominiums within the Department; second, receiving and reviewing all plans involving condominiums which are to be developed, constructed, or purchased with financial or other assistance from the Department; third, will be regularly consulted with respect to all other programs of the Department to the extent that they affect or otherwise involve condominiums; fourth, coordinate the activities and programs of the Department which involve condominiums with related activities and programs of the Veterans' Administration and other Federal departments and agencies, and with the corresponding activities of lenders making federally assisted condominiums housing loans; fifth, carry out studies and make recommendations for appropriate administrative or legislative action with respect to condominiums; and sixth, provide a central source and clearinghouse of information with respect to condominiums. Further, the Secretary of Housing and Urban Development is authorized under this legislation to make grants to State and local governments and agencies to help them establish special offices to administer and enforce the procedures, standards, and requirements established in the bill.

H.R. 15071 requires that no federally assisted condominium housing loan shall be made unless the developer, first, submits the names of all of the owners of the development, the terms of the sales contract, and the ownership documents; second, provides satisfactory assurances that all purchasers of dwelling units will be given a full 1-year warranty on all electrical, heating, air conditioning, ventilation units, roofing, and elevators; and third, submits the estimated operating and maintenance costs of the project, as well as any other costs which may be passed on to the owners of the dwelling units in the project whether in the form of recreational fees, maintenance fees, or otherwise. Additionally, recreational fees shall be stated separately from any other fees to be charged purchasers, shall be applied only on a unit-by-unit basis reflecting the recreational facilities to be furnished the occupants of each such unit at the occupants' option, and may be taken into account in determining the right of unit owners to use such facilities but shall not be considered a part of such owners' required mortgage payments.

The bill also provides some measure of protection of those persons who reside in buildings which are being converted into condominium units. It allows that, first, each tenant of a unit shall have first priority to purchase dwelling units

in the project; second, all tenants of the structure or structures involved will have been given at least 6 months in which to decide whether or not to purchase; and third, more than half of the tenants of the structure or structures involved will have freely agreed—before the conversion to condominium use can occur—either to purchase their dwelling units or to move from the structures; fourth, tenants will receive a 90-day written notice requiring them to move if they do not decide in the 6-month period allowed to buy; and fifth, no lease agreement outstanding at the time of conversion shall be abridged without the consent of both the lessee and the developer.

I strongly feel that this legislation is needed to protect both the many honest condominium developers around this country as well as the potential buyers who might, inadvertently, assume that they will receive more than is the case. It is designed to ward off possible future abuses in condominium sales.

A copy of the bill is submitted to be printed at this point in the Record.

H.R. 15071

A BILL to protect purchasers and prospective purchasers of condominium housing units, and residents of multifamily structures being converted to condominium units, by providing for the establishment of national minimum standards for condominiums (to be administered by a newly-created Assistant Secretary in the Department of Housing and Urban Development), to encourage the States to establish similar standards, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "National Condominium Act".

PURPOSE

SEC. 2. The Congress finds and declares that in view of the current difficulty in finding decent housing which exists throughout the country, and with the increasing urge for owner-managers of multi-unit rental housing to convert such housing into purchased-unit housing and to sell the units on the open market rather than leasing them, it is necessary that the Congress protect both the residents of leased units to be converted and the potential purchasers of such units from undue hardships and unexpected economic expenses. It is therefore the purpose of this Act to establish minimum national standards for all condominium units the sale of which is financed with Federal assistance in any form, and to encourage the States through a new program of Federal grants to establish minimum standards for the offering of condominium units.

DEFINITIONS

(1) the term "Secretary" means the Secretary of Housing and Urban Development;

(2) the term "developer" means any person who owns or constructs a condominium project (or converts or proposes to convert a multifamily rental housing project to condominium ownership) and who offers or proposes to offer dwelling units in such project for sale;

(3) the term "condominium project" means a multifamily housing project, consisting of one or more buildings and related property, facilities and appurtenances, in which the dwelling units are held in condominium ownership;

(4) the term "condominium ownership" means ownership by each of two or more persons of an estate in residential real property consisting of a separate interest in one or more dwelling units in such property, either in fee or for a term of not less than 30 years, together with an undivided interest in the common elements, areas, and facilities which are appurtenant to such dwelling unit or units;

(5) the term "dwelling unit", with respect to a unit in any condominium project, includes any undivided interest in the common elements, areas, and facilities which are appurtenant to such unit;

(6) the term "federally-assisted condominium housing loan" means a loan which is made to finance the transfer of condominium ownership to an individual or family or the purchase, construction, rehabilitation, or conversion of a condominium project by a developer, and which—

(A) is made in whole or in part by a lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by a lender which is itself regulated by any agency of the Federal Government; or

(B) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary of Housing and Urban Development or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary of Housing and Urban Development or a housing or related program administered by any other such officer or employee; or

(C) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(D) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act of 1968 (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year;

and the term "federally-assisted condominium project" means a condominium project (i) the purchase, construction, rehabilitation, or conversion of which was financed in whole or in part with a federally-assisted housing loan a portion of which remains outstanding, or (ii) dwelling units in which are currently (as determined by the Secretary) being sold with the aid of federally-assisted housing loans; and

(7) the term "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

ASSISTANT SECRETARY FOR CONDOMINIUMS

SEC. 4. (a) The first sentence of section 4(a) of the Department of Housing and Urban Development Act is amended by striking out "six" and inserting in lieu thereof "seven".

(b) Section 4(b) of such Act is amended by inserting "(1)" after "(b)" and by adding at the end thereof a new paragraph as follows:

"(2) One of the Assistant Secretaries provided for in subsection (a) shall be designated Assistant Secretary for Condominiums. All of the functions and duties vested in the Secretary by the National Condominium Act, and any other program or part thereof which is administered by the Department to assist in the planning, development, construction, or operation of condominiums or the purchase of condominium units, shall be administered by and through the Assistant Secretary so designated. In the exercise of this authority, the Assistant Secretary shall—

"(A) coordinate all of the housing programs involving condominiums within the Department;

"(B) receive and review all plans involving condominiums which are to be developed, constructed, or purchased with financial or other assistance from the Department;

"(C) be regularly consulted with respect to all other programs of the Department to the extent that they affect or otherwise involve condominiums;

"(D) coordinate the activities and programs of the Department which involve condominiums with related activities and programs of the Veterans' Administration and other Federal departments and agencies, and with the corresponding activities of lenders making federally-assisted condominium housing loans;

"(E) provide a central source and clearinghouse of information with respect to condominiums; and

"(F) carry out studies and make recommendations for appropriate administrative or legislative action with respect to condominiums."

(c) Paragraph (87) of section 5315 of title 5, United States Code, is amended by striking out "(6)" and inserting in lieu thereof "(7)".

REQUIREMENTS FOR FEDERAL ASSISTANCE TO CONDOMINIUMS

SEC. 5. (a) No federally-assisted condominium housing loan shall be made unless (1) the developer of the project involved submits, along with the application for such loan, a statement containing (or accompanied by) the information specified in subsection (b), and (2) the Secretary approves such statement as being accurate, complete, and in accordance with the purpose of this Act.

(b) The statement required by subsection (a) shall contain (or be accompanied by) the following:

(1) the name and address of each person having an interest in or lien on the project covered by the statement and the extent of such interest (including any interest to be retained by the developer);

(2) a statement of the terms of any contract or agreement under which the developer (or his successor in interest) is to provide any services to the project or any part thereof or to the owners of the individual dwelling units therein (and including a copy of each such contract or agreement);

(3) a legal description of the project and the land on which it is situated, in sufficient detail to identify the common elements and units in the project and their relative locations and approximate dimensions, together with copies (signed by a professional registered engineer or architect or both) of all engineering and architectural plans for the construction or conversion of the project;

(4) satisfactory assurances that all purchasers of dwelling units in the project will be given a full one-year warranty on all electrical, heating, air-conditioning, and ventilating equipment and on the roofing and elevators;

(5) the estimated operating and maintenance costs of the project, as well as any other costs which may be passed on to the owners of the dwelling units in the project whether in the form of recreational fees, maintenance fees, or otherwise;

(6) satisfactory assurances that no certificate of occupancy will be presented by the developer, or utilized to compel the signature of any prospective purchaser, until the structure involved is 95 percent completed;

(7) a clear statement of the responsibility of the developer for any structural or engineering defects in the project;

(8) satisfactory assurances that (A) the owners of the dwelling units in the project will be permitted to form an owners' association, and select the prjoect management, no lattr than one year after initial occupancy of the project or (if earlier) as soon as 80 percent of the units in the project are occupied, and (B) the developer will not establish a management lease which is enforceable against the owners of the units in the project beyond the earliest date on which such owners are authorized to select the project management under clause (A);

(9) satisfactory assurances that the date on which each structure in the project is to be completed will be clearly set forth in each purchase agreement covering a dwelling unit in such structure, and that if such structure is not completed by the date set forth in such purchase agreement—

(A) the purchaser may revoke and cancel the agreement and receive a refund of 95 percent of the purchase price, or

(B) the principal amount of the purchaser's mortgage obligation shall be reduced by 2 percent for each month (or part thereof) occurring after the date so set forth and prior to completion of the structure, at the option of the purchaser; and

(10) such other information, documents, and certifications as the Secretary may require in order to assure that purchasers are protected in a manner consistent with the purpose of this Act.

Recreational fees shall be stated separately from any other fees to be charged purchasers of dwelling units in the project, shall be applied only on a unit-by-unit basis reflecting the recreational services or facilities to be furnished the occupants of each such unit at the occupants' option, and may be taken into account in determining the right of unit owners to use such services and facilities but shall not be considered a part of such owners' required mortgage payments. Each prospective purchaser of a dwelling unit in the project shall be informed in writing of (A) the extent to which (and the basis on which) the purchase of such unit would include the use of the project's recreational services and facilities and (B) the nature of the interest in such services and facilities which the purchase of such unit would confer.

(c) In any case where the project involved is a leased-unit structure to be converted to condominium use, the statement required by subsection (a) shall also include satisfactory assurances that—

(1) existing tenants will have fiirst priority to purchase dwelling units in the project;

(2) each prospective purchaser of a dwelling unit in the project will be furnished with a copy of the purchase agreement at least 15 days prior to signing, and in addition will be furnished with—

(A) a statement of the total operating and maintenance costs of the structure, and of the operating and maintenance costs per unit, on a monthly and yearly basis, for the preceding three years;

(B) a statement of the costs to be assumed by the owners of dwelling units in the project, both on a unit-by-unit basis and for the project as a whole;

(C) a list of the services to be offered to owners of dwelling units in the project and a statement of any changes to be made in the structure, with floor plans showing the contemplated alterations; and

(D) a description of any new additions to be made to the structure (including recreational facilities) and the cost thereof;

(3) more than half of the tenants of the structure or structures involved will have freely agreed (before the conversion to condominium use can occur) either to purchase their dwelling units or to move from the structure;

(4) all of the tenants of the structure or structures involved will have been given at least six months, after notification of the proposed conversion, to decide whether or not to purchase their dwelling units;

(5) no tenant will be required to move from the project upon its conversion without 90 days' written notice; and

(6) no lease agreement outstanding at the time of conversion (and covering a dwelling unit in the project) shall be abridged without the consent of both the lessee and the developer.

(d) Any person who signs an agreement to purchase a dwelling unit in a federally-assisted condominium project shall have a period of at least 30 days after signing the purchase agreement (excluding Sundays and holidays) in which to revoke and cancel such agreement. The right of the purchaser to revoke and cancel the purchase agreement within a specified period, as described in the preceding sentence, shall be prominently set forth in large bold-face type within the body on the first page of the agreement and also at the end of the agreement immediately below the signatures of the parties.

GRANTS TO STATE AND LOCAL GOVERNMENTS

SEC. 6. (a) The Secretary shall take all possible steps to encourage and assist State and local governments and agencies to establish procedures, standards, and requirements with respect to condominiums, similar to and no less stringent than the corresponding procedures, standards, and requirements provided by this Act, designed to protect purchasers and prospective purchasers of condominium housing units and residents of multifamily structures being connected to condominium units.

(b) The Secretary is authorized to make grants to State and local governments and agencies, in such amounts as may be appropriate, to help them establish special offices to administer and enforce the procedures, standards, and requirements referred to in subsection (a) and in general to oversee the development and construction condominiums and condominium conversions. Grants under this subsection shall be made on such terms and conditions, consistent with the purpose and objectives of this Act, as the Secretary may deem necessary or appropriate.

(c) There are authorized to be appropriated such sums as may be necessary to enable the Secretary to carry out this section.

PENALTIES

SEC. 7. Any person who willfully violates any of the provisions of this Act shall be fined not less than $5,000 and be imprisoned for not less than 2 years.

STATEMENT OF COMMUNITY MANAGEMENT CORPORATION

Community Management Corporation (CMC) was the first and is now the nations largest and most experienced firm specializing in the planning, establishment and management of condominium and homeowner associations. In almost four years of operating out of offices in Reston, Virginia, CMC has performed professional consulting services for over 130 communities in 24 states and Puerto Rico.

One of our stated and primary corporate goals is to continuously work towards creating a better living environment in condominium and homes association com-

munities. In working to reach this goal we have done extensive research on resident attitudes and on how associations actually operate under varying conditions and stages of development. It is an ongoing process and we continue to translate the input we receive into operating handbooks, forms, amenities planning, budgets, and resident training programs which all result in better planned, established, and managed associations.

As a result of our work, CMC is now nationally recognized by many as a highly qualified expert in the area of condominium and homeowner associations.

Our unique experience in dealing with both developers and residents brings us into frequent contact with the many problems that are both related to, and inherent in, the resident association concept. In addition to our direct insight into the operational problems, we are highly interested observers of the housing industry as a whole and are sensitive to the underlying economic conditions that have caused the rapid expansion of conversions and new attached unit construction. The following comments are made in view of our stated experiences.

As household words go few other words have risen faster in America's consciousness than the word "condominium." The word itself refers not to a particular kind of physical structure but, is a legal concept. One does not buy a condominium, one buys a home or office that is legally defined as being part of a condominium regime. This is not a new concept. There is evidence that the ancient Romans recognized it as a form of ownership. In addition, the concept has been used in several European countries since about the twelfth century and in South America since the early 1900's.

Population growth and economics have caught up to us in the United States in the last half of the 20th century. We are now faced with the necessity of building higher density stacked or attached units. The ownership scheme will vary but will be primarily condominium or homes association in nature. The single family home, unless costs come down, is simply going to be beyond the affordable price range of most Americans.

CMC views this movement favorably in two ways. First, the physical construction of a planned unit community results in a more efficient use of resources. This conclusion was recently substantiated by the results of the HUD, CEQ study on housing. Secondly, the planned unit development with townhouse, condominium, and other types of housing, creates in a very real sociological sense, a community. The inclusion of swimming pools, clubhouses, playgrounds, schools, community newsletters, and participation in ones own government brings back the sense of community and belonging to many that we once had in this country in our small towns and cities. CMC feels this is a healthy phenomenon for America.

Two factors have brought the present attention to the condominum concept. They are the rapid rate of conversions in our cities and the lack of knowledge of the concept in face of a rapid growth of new home construction under the condominium or homes association scheme.

First conversions. Conversions are taking place for several reasons all related directly to basic economic pressures. Rent ceilings in the face of rising operational costs, tenant militancy, less favorable depreciation laws, and the opportunity to sell the building unit by unit allowing the owner to make a significantly greater profit than by selling the building in its entirety have all contributed to the conversion boom.

Two significant problems are caused by conversions. In most conversions present tenants are given a choice of buying or moving out by a certain date. This becomes significant when the tenants cannot pay the price of the converted units and cannot find alternative housing in terms of either price range or availability. Nationwide very few apartment units are being built. This forces up the price of existing rental units and further exacerbates the problem.

The public sector must be careful not to favor either private or public interest to the overall detriment of the whole. By providing alternative housing at an affordable price, the pressure would be relieved against conversions thereby allowing the building owner also with a legitimate concern, that is the protection of his investment, to freely transfer his property to another form of ownership. The residential use characteristics remain the same and the undesirable impacts to both the public and private interests are reconciled.

In essence we feel the public sector should work to solve the problems by fairly recognizing the equities to both tenants and apartment owners alike. Many feel that if conversions are prevented, building owners faced with all the problems

stated earlier may simply walk away leaving the apartment building to deteriorate. This is a result no one wants.

The second part of the problem we feel is the lack of knowledge of the concept on the part of all concerned. This includes consumers, builders, lenders, and others. There is a need for adequate disclosure laws to protect consumers from falling into unwanted situations. In addition, there is also a great need for some regulatory protection. This is particularly important in light of the present consumer ignorance on the subject. Disclosure offers little protection to a consumer when he has no idea of what is being disclosed or what it means. Some regulation is needed then to prevent certain unfair or unwise practices that even though disclosed may not be recognized by a purchaser of a unit.

The form of any disclosure and/or regulation should be carefully designed so as not to cause unnecessary increases in costs that will ultimately and unavoidably be passed on to the consumer. It must also be designed so as not to discourage construction either of a particular kind of housing or on an overall basis.

Regarding disclosure and regulation, the former should outweigh the latter. However, attention must be given to the length and complexity of disclosure statements so as not to discourage their reading by the consumer. Both S-3658 and S–4047 address themselves to what should be disclosed and regulated. We won't try to add to or subtract from the list but we have listed below under the two catagories the areas we feel should receive special attention in any such legislation. These lists are not intended to be all inclusive.

DISCLOSURE REQUIREMENTS

1. Total number of units and buildout period.
2. Assessment Level.
3. Budget projections for eight years.
4. Developer obligations to pay assessments.
5. Recreational and other facilities that will be provided. Who will own them and how their operation will be funded.
6. What convenants bind the land.
7. Legal documents—Declaration or Master Deed, By-laws, Articles of Incorporation, supplementals to these documents and any amendments.
8. Information about the owners association.
9. Explain the developer's relationship and control over the association and when it will end.
10. Statement of security, bonds, local regulations, etc., that guarantees to the extent possible completion of the project, its facilities and amenities.
11. Statement of physical condition of conversions and statement of compliance with present standards.
12. Associations insurance coverage and a statement that the condominium policy does not cover unit owners personal losses.

REGULATORY REQUIREMENTS

1. Insurance requirements both from the point of view of proper coverage and to insure reconstruction of damaged units or common areas.
2. Licensing of professional community managers.
3. Strengthening of licensing requirements for real estate agents.
4. Proper recognition of certain Planned Unit Developments with owners associations as governmental entities.
5. Requirements for professional management.
6. Creation of workable methods to collect unpaid assessments and to enforce covenant provisions.

In summary, we feel there is a need for certain disclosure and regulatory laws. This need is becoming more and more apparent as the resident association scheme of living continues to grow. It is estimated that in the next few years as much as 70% of all new home construction will be of this type.

However, we submit that any further legislative action, particularly Federal action of wide ranging impact in this issue, await the results of the congressionally mandated study on the overall problem.

ADAMS, LANCASTER, SEAY, ROUSE & SHERRILL,
P.O. Box 18807,
Raleigh, N.C., November 19, 1974.

Subject: Proposed legislation to regulate condominium sales.

Senator JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Senate Office Building, Washington, D.C.

DEAR SENATOR SPARKMAN: It has come to my attention that two bills are now pending before the Subcommittee on Housing and Urban Affairs relating to Federal regulation of condominium sales. According to the information that I received, both bills are similar in scope to the Interstate Land Sales Full Disclosure Act.

Articles appearing in newspapers and other publications have reported development and sales practices on the part of certain developers and promoters that have been detrimental to purchasers of condominium units, particularly in some resort areas. Although I am unaware of any such questionable practices in the State of North Carolina, the Subcommittee may find evidence that such practices are sufficiently widespread as to require some type of regulation.

I would like to suggest that the most effective type of regulation, if the Subcommittee finds regulation to be necessary, would be to promulgate guidelines for adoption, within a reasonable period, by the States of legislation providing adequate safeguards to the public. This approach appears to have worked well in the field of environmental protection, with particular reference to water pollution control. I would recommend to the Subcommittee legislation regulating condominium development recently adopted by the Commonwealth of Virginia, which provides substantial buyer protection without overwhelming the developer with bureaucratic control.

I would strongly oppose any legislation regulating condominiums patterned upon the Interstate Land Sales Full Disclosure Act. That legislation was undoubtedly enacted in good faith to protect the public against some very substantial existing abuses. As administered by the Department of Housing and Urban Development, however, the Act has been extended far beyond what I believe was its intended original scope (i.e., high pressure interstate sales of resort and retirement properties, and has imposed a very substantial and unjustified burden upon reputable local residential developers.

If the Subcommittee finds it appropriate to recommend any Federal legislation similar to the Interstate Land Sales Full Disclosure Act, I hope that the proposed legislation contains language that will make it abundantly clear to the administrative agency that it is to apply only to interstate sales of resort, retirement, and investment condominium property, and not to condominiums consructed to provide housing for local residents. Regulation of the latter can best be done by state and local authorities.

Very truly yours,

HENRY T. ROSSER.

CONDOMINIUMS

THURSDAY, OCTOBER 10, 1974

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,
SUBCOMMITTEE ON HOUSING AND URBAN AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m., in room 5302 of the Dirksen Senate Office Building, Senator Joseph R. Biden, Jr., presiding.

Senator BIDEN. The hearing will come to order, please.

I would like to apologize for the 10-minute or 15-minute delay in starting, and explain that the reason why we are late is the leadership of both the House and the Senate and the minority and majority leadership in the Senate had a meeting and we met this morning in Democratic caucus to respond to or react to the President's call for immediate action in the economy, and it was announced that, in effect, there will be no recess at all for the U.S. Senate.

We are going to go straight through until the next Congress. I hope that means we are going to do something worthwhile while we are here. But, at any rate, that is why we are late. I apologize.

Our first set of witnesses are representing the National Association of Condominium Owners—Mr. Rosenbloom, president; Mr. Samuels, chairman of the Florida chapter; and Mr. Semer, the counsel for the organization.

Gentlemen, good morning. Welcome. Proceed in whatever way is most suitable to you. In fact, if you want to, your entire statement may be placed in the record and you need not refer to that specifically. That is possible, too. Or proceed any way you would like, Mr. Rosenbloom.

STATEMENT OF LAWRENCE ROSENBLOOM, PRESIDENT, NATIONAL ASSOCIATION OF CONDOMINIUM OWNERS, ACCOMPANIED BY ERNEST SAMUELS, CHAIRMAN, FLORIDA CHAPTER, AND MILTON P. SEMER, COUNSEL; AND WILLIAM LEHMAN, REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. ROSENBLOOM. Thank you.

Mr. Chairman, members of the committee, first of all I would like to acknowledge Congressman Lehman joining us at the table.

Senator BIDEN. Congressman, I would like to acknowledge you, too.

Mr. LEHMAN. Thank you.

Mr. ROSENBLOOM. My name is Lawrence Rosenbloom, president of the National Association of Condominium Owners. I am accom-

panied by Mr. Ernest Samuels, of Florida; Mr. Samuels is also honorary chairman of our Florida chapter. I am also accompanied by Mr. Milton Semer, Washington counsel.

We appear in support of S. 3658 and S. 4047.

The National Association of Condominium Owners is incorporated under the nonprofit corporation law of California. Membership is limited to condominium owners who are the consumers of this type of housing. We do not include the producers, such as builder-developers, financial institutions, and the like. We represent the owner who has purchased a condominium converted from an existing rental unit as well as the owner who has bought a condominium that was newly constructed.

We are especially pleased that this committee is taking the leadership in looking into the condominium field, for it was in this committee that the major breakthroughs in pioneering for the consumer—such as truth-in-lending legislation—took place.

We are proud of the fact that Senator Paul Douglas, the original sponsor of truth-in-lending, is the honorary chairman of our national advisory board.

Our testimony this morning highlights six topics which we represent as being the major problem areas in the condominium field:

(1) The ownership of supportive facilities.

(2) Control of management.

(3) Management improvement.

(4) A moratorium on new condominiums, especially conversions, until abuses are cleaned up.

(5) Developing viable resale market.

(6) Eliminating inequities in taxation.

As concerns the ownership of supportive facilities, the nature of the abuses in this phase of condominium ownership has been ably and factually described by Senator Proxmire in his remarks of September 26. Excessive rental fees frequently have been obtained by deception, which can be dealt with to some extent by more understandable and strictly enforced legislation.

Gentlemen, it is time to call a halt to falsehood that is buried in a voluminous sales contract and public reports. It is also time to blow the whistle on the promoter who may disclose the facts of ownership but establishes a very low and misleading rental fee for the use of the facilities during the initial period of occupancy when the builder-developer is still selling the units and then radically increasing the rental fees when the development is finally sold out.

In the vast majority of instances when buying a single family unit in the form of a house, the builder of that house does not retain ownership of its supportive facilities, such as the garage, when he sells the house.

The basic concept of a condominium is that each unit is an opportunity for home ownership. Thus, we strongly urge this committee to use the definition of condominium ownership as synonymous with private home ownership.

We feel so strongly about this qustion of ownership of supportive facilities that we not only recommend preventing builder-developer ownership in future projects, but divesting them of their ownership in existing projects as well.

As regards control of management, we feel of primary importance to condominium owners is the policy that any contracts for management or services entered into by the builder-developer should be limited to 1 year. We want to underscore the importance of the provision in S. 4047, section 5(a)(12)(A). That section covers this point very well.

This provision will go a long way toward separating the unscrupulous builder-developers from projects they have built and continued to control to the detriment of the new owners. Our Florida chapter chairman, Mr. Samuels, is especially knowledgeable on this matter and will expand on the problem from his own personal experience.

Regarding the management improvement area, I will use as an example that when I bought my first condominium residence, I had no expertise whatsoever in property management, nor did any other owner in our development. We had no reliable source from which to gain that expertise. Since condominium management is unique in its requirements, there was no way to factually discern whether those we turned to were really equipped professionally or ethically to help us.

Thus, we were potential victims of "rip-offs" regardless of the existence or lack of builder-developer arrangements to provide these services.

Any studies initiated by the Federal Government, as authorized by section 821 of the Housing and Community Development Act of 1974 and proposed by section 11 of the Proxmire-Brooke bill, to obtain such information would not only provide State and local agencies the potential for eventually licensing professionals in condominium property management, but they would also give the consumer the opportunity to gain the knowledge necessary to manage his property.

The National Association of Condominium Owners is pursuing, to the best of its ability, the objective of up grading the standards of management services available to condominum associations.

Gentlemen, we call for the consideration of a moratorium. The wide prevalence of abuses, coupled with the short supply of management services of a high professional quality, prompts us to recommend that the committee consider adopting on a national basis the approach of the District of Columbia when confronted by this problem particularly in the area of conversions—the declaration of a moratorium on all further condominium development.

This should be done until matters are straightened out.

A moratorium, no matter how drastic this measure is, certainly at the Federal level, may turn out to be a more prudent course than to permit abuses to be locked in and to permit the proliferation of projects without adequate regulation or management support.

I might leave my prepared text for one second, Senator. We heartily agree with the remarks of Assistant Attorney General Clurman of New York yesterday, and we want to join with him and other individuals in stressing the need for immediate action in this area of legislation.

We see no reason as to why the studies being performed by HUD and other bodies cannot be conducted concurrently with action to satisfy the already proven need to halt the blatant abuses.

I don't think it's necessary to continue on with the prepared testimony, Senator. You have it in front of you, and I would like to leave time for questions, knowing your pressing business today.

Senator BIDEN. Fine.

[The prepared statement of Mr. Rosenbloom and the attachments therewith are printed at p. 201.]

Senator BIDEN. Do either of the other gentlemen have any prepared statements?

Mr. ROSENBLOOM. Mr. Samuels of Florida does.

Senator BIDEN. Why don't we hear from Mr. Samuels first.

Mr. SAMUELS. Mr. Chairman, members of the committee, my name is Ernest Samuels. I am the president of the Point East Condominium Complex of 1270 apartment units. I am also the president of and speak for the Condominium Executives Council of Florida, an organization of more than 150 condominium associations throughout the State of Florida, having approximately 35,000 apartment units or abut 70,000 residents. And I am chairman of the Florida chapter of the National Association of Condominium Owners.

I am here to discuss the many problems besetting condominiums. Our complaints range from poor construction to nonexistent appliance guaranties, but most center on the following major items:

Developers retaining control of management until all apartments are sold. Some rent out a few apartments and use the excuse that not all the apartments are sold to keep control of lucrative management contracts.

Developers who dissolve corporations after all the apartments are sold, leaving the buyers wit hno one to turn to when defects are found in the buildings.

Developers who advertise monthly maintenance contracts at deliberately underestimated prices to entice people into buying apartments, then raise the price after the buyer moves in.

Vague descriptions of condominium facilities in advertising brochures and legal contracts, which allow developers to erect structures that are not what the buyer was promised and build recreation facilities far too small for the number of people in the condominium.

Very poor construction and cheap materials are common. But most flagrant and serious are the latent—that is, unseen and hidden—defects in building construction and materials. These do not come to light until after the irresponsible builder has hit the road with the buyer's hard-earned money. Then the unwary unit owner is left holding the proverbial bag and is put to heavy costs and assessments.

The most serious problem derives from the 99-year recreational facility and ground leases which are imposed by almost every developer in Florida on unsuspecting buyers. We have seen these leases termed in the newspapers as well as by reputable developers, legislators, attorneys, as well as the vast majority of the almost 400,000 condominium buyers upon whom they were imposed, as tricky, one-sided, small-print, unconscionable, illegal.

When you read and understand any of them, you read them all. In spite of what some real estate developers or their agents say, they contain provisions which, if clearly understood, would make all buyers horrified. I have yet to find one buyer who was fully aware of the

implications when accepting this lease, or who was aware prior to his purchase of exactly what he was getting into.

To understand how these leases operate, let me briefly describe some of their standard conditions.

They are for 99 years, and they are a lien on every apartment sold in the condominium. In some instances they also contain a pledge agreement. They have a standard escalation clause based on the cost of living index but with no de-escalation.

They provide for the payment of every expense on the property, including but not limited to taxes, maintenance, replacement, insurance of every nature, and contain many restrictions as to use, which in some instances is limited in the sole discretion of the developer to specific activities.

Under these conditions, one may pay for the replacement of obsolete facilities many times before the expiration of the lease.

The developers and their agents are correct that these conditions are spelled out in a clear, legal, unambiguous language in a 120-page document which a man with about 40 years of legal experience can understand if he devotes several weeks to studying it.

Nowhere in any of the newspaper ads, or in the developer's brochures, is there a mention of long term management agreements, or 99-year recreational facility leases. No mention is ever made of the size, capacity, or furnishings of the leased facilities. They are merely described in glowing, general terms, calculated to mislead the buyer into believing in the adequacy of the facility.

To say that those documents are given to all people prior to their purchase is also totally untrue. They are unaware of the total obligation. They do not know the nature of the lease facilities other than by a vague description. The size, its furnishings, how many people will make use of them, are they adequate, will they be built by the time they occupy their apartment—all this is vaguely brushed aside with, "Everybody signs the same contract. You will get it at the closing."

I have seen and read contracts which provide that "in the sole discretion of the developer" the recreational leased facilities will not be built for approximately 1 year but the lease rental payments will commence upon signing of the agreement.

Amazingly, thousands sign.

The legislature, the courts permit these leases and management agreements and term them legal because they are in print and signed by consenting parties.

The Federal Trade Act prohibits these deceptive practices and it also prohibits tie-in sales. Clearly, condominium apartments should be sold in fee simple title without any long term management agreements and 99-year leases tied in with the purchase of these units.

Recently I have drawn an analogy: "Suppose most automobile manufacturers got together and sold their cars with the proviso that the transmission is leased to you for 25 years at $200 per year and that regardless of whether or not you use the car for the entire leased period, you must pay the rental even though you know in advance that you will never make use of the transmission for 25 years."

Surely such a tie-in sale would never be made legal. How can you expect a cardroom or a sauna or a swimming pool to last 100 years and

the use of which to be conditioned upon the sale of a home to an unsuspecting retiree 70 years of age for 100 years?

If all of these conditions are legal, then the law of public policy, Federal Trade Commission rules or fair trade practices are all meaningless to the hundreds of thousands of consumers looking to their legislators, the courts, and their elected officials for protection.

Our association will be glad to cooperate with your committee to help solve these problems.

Thank you very much, Mr. Chairman.

Senator BIDEN. Thank you very much, Mr. Samuels.

Maybe you all in Florida have figured out something we haven't. What did you say? A retiree 70 years old is tied in for 100 years? Good luck.

Mr. SAMUELS. Mr. Chairman, one of our engineers has also developed an incredible chart indicating how much a developer will get in the 99 years for a facility that costs, say, $100,000. You would be surprised to note with the escalation clause contained in here on $100,000 he will collect over a period of 99 years $248,478,500.

Senator BIDEN. If he lives for 99 years.

Mr. SAMUELS. Yes, sir.

Now, the results that flow from this 99-year lease even the legislators of the State of Florida never know. And when we showed them this chart, which I will be happy to give you some copies of, Mr. Chairman, they were amazed themselves and they said they never believed that such a condition existed.

In our own condominium, Mr. Chairman, for instance, the escalation clause is coming into effect as of January 1, 1975, and on a $221,000 yearly recreation rental we will be paying about 65 percent escalation, or about $350,000 annually on a recreation facility that probably cost between $500,000 and $750,000.

Senator BIDEN. Congressman, did you have any prepared statement at all?

Mr. LEHMAN. I do not have a prepared statement.

I just want to reconfirm from my own experience the statements of these gentlemen, in particular Mr. Samuels, whose leadership in his particular condominium and also in the condominium executive group has been the forerunner in trying to secure some relief either administratively or legislatively for the people in the condominiums.

Senator BIDEN. From what I understand, Congressman, you haven't been silent on this point for some time.

Mr. LEHMAN. No.

Senator BIDEN. And I appreciate your interest in coming over here to bring Mr. Samuels and to lend your knowledge to this problem.

I would like to ask a few questions if I may. I am going to sort of scatter the questions, if I may, as they come up in your statements.

First of all, in your statement, Mr. Rosenbloom, you set out the six topics that you want to highlight, and the one I suspect where the text of your statement goes into some detail—and probably Mr. Semer would be the better one to respond to it—is eliminating the inequities in taxation.

Could you, Mr. Semer, or whomever, elaborate on that just a moment?

Mr. ROSENBLOOM. Very basically as far as that is concerned, Senator, we have a situation that is almost a double taxation on condominium owners as compared to the single-family detached home.

In the case of a single-family owner, the detached homeowner, not a condominium, he will budget his expected cost for the year. And let's assume for a second that he estimates those costs are going to be $600 a year for maintenance, insurance, things to run his home from a physical standpoint, maintenance standpoint.

He might budget $50 per month, and at the end of the year if he only has spent $500, he puts that extra $100 hopefully into a savings account or saves it. No effect from taxation at all.

As far as the condominium owner is concerned, let's assume that each owner pays monthly to the association a maintenance fee of $50, the same $600 a year. At the end of the year if the association in his behalf has only spent $500, that extra $100 is taxable starting at a rate of 22 percent.

Multiply that out in Mr. Samuels' case, about 1,200-plus units, and that is a considerable amount of money that there is double taxation on.

Senator BIDEN. Now, there are a couple of things in your statement, Mr. Rosenbloom, which have gone further than others who have testified. One is at the bottom of page 3 you say, "We feel so strongly about this question of ownership of supportive facilities that we not only recommend preventing builder-developer ownership in future projects, but divesting them of their ownership in existing projects as well."

How do you suggest we go about doing that?

Mr. ROSENBLOOM. I suggest that first of all, if legislation is the appropriate manner, to set this principle clearly forth as being an aim of the bill.

No. 2, I then suggest it be negotiated between the association and the property owner. We don't anticipate that we would take the man's property away from him, because he has an inalienable right to that. But there should be a method whereby the condominium owners and the association would be able to negotiate with him and purchase that.

Senator BIDEN. But I wonder how we retroactively as a Congress go back and nullify existing contracts that are on the boards. Maybe counsel knows how that could be done. It seems a bit extreme to me.

Mr. ROSENBLOOM. Indeed we recognize that as being a major problem, Senator, and it is something though I think that could be worked out with negotiation, for the simple reason that it is not in the best interest of the public and we should try——

Senator BIDEN. I may very well agree with you, or I wouldn't have introduced the bill, that it is not in the best interests of the public, but I don't see how we do that without vitiating all the basic principles of contract law in the country.

If we can do that, then we can go on, and depending on who is in the legislature next time around say, "What we want to do, we want the contract you have on the sale of your house for such and such a price—we'd like to go back and change that now because it looks like things are different."

So I would be very leery of that kind of proposal, as well-intended as it is.

Mr. ROSENBLOOM. We would like the opportunity to explore it with you.

Senator BIDEN. I would be very happy to hear what you have to say in terms of backup testimony or any evidence you have.

Mr. SAMUELS. May I say a few words in that connection, Senator?

Senator BIDEN. Surely.

Mr. SAMUELS. I think that to declare it unconscionable—99-year recreational leases—as against public policy—would be one step in the right direction, in that these 99-year leases would not be made any longer. At least to that extent I think a bill could be introduced.

And then we have initiated an investigation of the Federal Trade Commission in connection with violation of the antitrust laws with these tie-in sales, in that a fee simple ownership of an apartment is tied in to a lease for 99 years with a lien on the apartment, and therefore the owner actually never owns his apartment. All he actually is is a renter.

And if eventually that rent is exceeding his pocketbook, then he will be losing his apartment. He will be losing his home.

Senator BIDEN. As an attorney I have considerably less problem with that proposition than I do with the former proposition which I think is, quite frankly, on its face—well, I will wait to hear what you have to say on that.

Mr. ROSENBLOOM. Thank you.

Senator BIDEN. I would like to ask you all a very general question. We heard a good deal of testimony yesterday, and I thought excellent testimony, from the State of New York, the attorney general's office, and there was discussion as to where the control should lie in any legislation, whether it should be at the Federal level in HUD or should be at a local level or State level.

Do you fellows have any opinion as to—assuming all the regulations you recommended were put into law—at what level of government you would like to see that enforcement mechanism? State? Federal? Or do you have any?

Mr. SAMUELS. In order to solve the problem nationally, I believe it should be done on a national level. The States individually will never pass uniform laws in that respect.

I know in the State of Florida we have tried in the legislature, and we are still trying. As a matter of fact, we almost passed a law last year outlawing recreational facility leases. However, after it passed the House, it died in the senate committee by one vote.

The house passed it by an overwhelming majority of 94, I think, to 10 to outlaw recreational leases because they recognize that is one of the principal problems in the ownership——

Senator BIDEN. Well, my question was more with regard to the administration of whatever legislation is passed. Assume the U.S. Congress passes uniform legislation that sets out general guidelines. Should the enforcement be at HUD level, or should we delegate that responsibility of enforcement to the States or whatever?

I would like you all maybe to think about that a little bit, and any supplemental comment you would like to submit we would like to hear.

I would like to move back to taxes for a moment. You talked about double taxation, Mr. Rosenbloom, and you made a good point. But you know the tax break that a renter gets by moving into a condominium. The national average is close to $300 a year.

If a million renters become condominium owners the Federal Government loses directly on its return $300 million yearly if they move out of single-family homes and move into condominiums this year or next year.

It seems to me this is a substantial break we give largely to middle-income buyers at the expense of renters.

Do you think condo legislation should try to recognize this inequity or do you recognize it as an inequity?

Mr. ROSENBLOOM. We recognize it as an inequity against the condo owner for the simple reason many of the condominium owners have come out of single-family homes, and condominiums are still a form of home ownership. It has always been a principle of our Government to encourage home ownership among all the people.

Senator BIDEN. See, everyone is pushing toward seeing to it that we treat condominium homeowners in the same way that we treat single family homeowners, and it has always made the comparison that a single family homeowner has a less complicated choice to make than a condominium homeowner because he can go look at the heating facility, he can look at the recreational facility. He knows it's just him. And we go on about, you know, at least giving him the same treatment, same protection, plus additional protection.

And the more testimony I hear, the more I hear people say, "Treat them like homeowners," if you treat them like homeowners all the way down the line, isn't what is good for the goose also good for the gander? You know—that we also treat you like homeowners in ways that aren't so beneficial?

Mr. ROSENBLOOM. All we are asking on that point, Senator, is to be treated like homeowners, to be taxed as homeowners.

Senator BIDEN. Sir, why do you think it necessary to bar by law the developer ownership of common space and multiyear management contracts? Can't this abuse be handled in other ways rather than us passing a Federal law?

Mr. ROSENBLOOM. Thus far, the States have not responded to a need to cut out this particular type of abuse, and the only place that we really come is to the Federal Government for this type of legislation.

Senator BIDEN. On page 5, you talk about a moratorium which is sort of, I think, a second relatively drastic recommendation you have made in your well-presented statement. Don't you think we can avoid the need for a moratorium if we pass legislation now, if we——

Mr. ROSENBLOOM. Senator, if legislation could be effectuated right now, then a moratorium would not be necessary. But in the next year there will be another 100,000 families in the United States at least affected by the abuses that are going on right now. It is only going to compound the problem for the future.

Senator BIDEN. Is there anything you can recommend to us that would aid in establishing the condominium resale market?

Mr. ROSENBLOOM. Considerable thought has gone into this, and it is necessary to almost—and I hate to coin an expression—a "Connie Mack" type of legislation.

Senator BIDEN. What type?

Mr. ROSENBLOOM. Connie Mack, if we may. [Laughter.]

Financing has become a bit of a problem, in that many, many lenders don't understand fully the problems of condominiums or the

concept of condominiums. As a result, being conservative institutions, they just steer away from them, particularly in today's tight money market. Financing for condominiums is the last thing that is happening.

We need to develop a total, viable resale market if for no other reason than to continue the mobility of the people in this country.

Senator BIDEN. In your statement you set out six areas, and in the two major pieces of legislation that have been introduced thus far on the Senate side—Senator Proxmire's bill and my bill—they sort of are broken out into two general areas.

One deals with disclosure, and the other deals with regulatory legislation, if you were going to make two general categories.

Would you think that it would be important—assume that we could not get either of the two pieces of legislation which contain the whole ball of wax through this year. Would you think it would be wise for us to take what we could get now—that is, the disclosure side of the legislation—and go after the rest later? Or would you recommend that it be held firm and take it all or none? Do you see any merit——

Mr. ROSENBLOOM. We would rather have all than none, but something is better than nothing. We do need controls. We do need Federal controls at this point.

Senator BIDEN. Mr. Rosenbloom, you probably stated it, but I would like you to restate it for me if you could. How large is your association?

Mr. ROSENBLOOM. I'm sorry, Senator?

Senator BIDEN. How large is your association?

Mr. ROSENBLOOM. Our association presently is in excess of 500 members, association members.

Senator BIDEN. 500 members?

Mr. ROSENBLOOM. Association members. They go from coast to coast. We have been in contact with many more than that, and our association was formed July 2—or incorporated, I should say, July 2—of this year.

Senator BIDEN. July 2 of this year?

Mr. ROSENBLOOM. Of this year. So we are a new association.

Senator BIDEN. Have you been receiving many inquiries?

Mr. ROSENBLOOM. Continually. Every time a piece appears any place around the country on us or somebody finds out about us we do receive inquiries from them. This is the prime source, because, frankly, we have no mailing list to go after because many of the States—I shouldn't say "many"—most of the States cannot supply you with a list of condominium associations. And this is after checking with the real estate departments, corporation commissions, and the secretary of state offices in most States.

This might be just another indication of how ill-prepared the States are to face the problems of condominiums today.

So bear in mind that the membership that we do have at this particular point has come from voluntary inquiry, just people finding out that we are in existence and contacting us. And bear in mind that that number is associations.

Senator BIDEN. When I introduced my bill, I said I hoped these hearings would be the start of some homework on the part of the Congress in order to go into more detail in depth as to what was needed in the area and didn't expect that it would be the be-all and end-all.

On page B–13 of your statement you say, "It should not be necessary to choose between a disclosure/limited-antifraud bill (Biden) and a limited-regulation/fuller-disclosure bill (Proxmire-Brooke), when all three protective concepts can logically and consistently be combined into a strong disclosure/antifraud/regulatory bill which does not unduly interfere with the business operations of the developer."

My question is: Would your group be willing to undertake further efforts to cooperate with this committee in helping us meld those three concepts together?

Mr. SEMER. We certainly would, Mr. Chairman, and this process is already underway. It is technically difficult, but as far as the policy is concerned, if you will give us the signals from here, this could be put together quite rapidly.

Senator BIDEN. I would appreciate that very much, and I am sure the chairman of the committee, Mr. Proxmire, would also appreciate that. It would be very helpful to us.

Senator BIDEN. Mr. Semer, I understand that you are one who should be given a good deal of credit for the truth-in-lending legislation that eventually passed this Congress. Can you tell me what impact, if any, that has had on condominium sales?

Mr. SEMER. I don't think it has had any.

You worked on it for 9 years.

It has been absorbed into the money market. People now live with it.

I would like to mention two things about this proposed legislation.

One is that my client, NACO, recommends some approaches, two of which are rather pointed—the divestiture proposal and the moratorium proposal.

These reflect the frustration of people who are themselves owners.

The other is, I don't think it ought to take 9 years. Senator Douglas told us when he agreed to become the honorary chairman of the national advisory committee that at long last, perhaps, there is a consumer movement in housing at the level of the middle class.

He had hoped in 1960 that the middle class would recognize the value truth in lending and help it along. And he now hopes that condominium owners largely middle and upper-middle class, would also see themselves as consumers.

Senator BIDEN. One thing we didn't talk about in the statement—and this will be my last question—is the problem of conversion, which isn't one that directly affects your association but I suspect you come in contact with the problem.

That is the displacement of people who aren't in that upper or middle class, who aren't capable when the owner says, "Well, you have been paying $200 a month rent for the last 5 years. You are 65 years old. You have got 3 weeks to buy this place at $40,000. What are you going to do?"

Now, there has been various legislation in States, particularly in New York, and there is a requirement of 35 percent of the tenants of an apartment building must agree before the building may be converted—for the owner to be able to convert it.

Do you think that the Federal Government—do any or all of you think that the Federal Government—should move into the area of saying that the owner of an apartment building or complex now be

required to have a certain percentage of those presently living in that apartment complex—have a certain percentage of their consent before he or she be able to convert that complex to a condominium complex?

Mr. SAMUELS. Well, in Florida there was legislation passed at the last session, and, if I may, I will give you the latest disclosure bill and legislation affecting this.

Senator BIDEN. I would like this to be submitted to the record.

Mr. SAMUELS. I will be happy to give it to you.

[The material referred to follows:]

FLORIDA

(Florida Session Law, c. 74-104

Ch. 74-104 1974 REGULAR SESSION

CONDOMINIUMS AND COOPERATIVE APARTMENTS—AMENDMENTS

CHAPTER 74-104

HOUSE BILL NO. 2155

An Act relating to condominiums and cooperative apartments; amending section 711.03(7), (9) an (13), Florida Statutes, and adding new subsections 711.03(3), (12) and (17), to define the terms "board of administration", "developer" and "residential condominium"; amending section 711.04(1), Florida Statutes, relating to the term "condominium parcel", to include certain leaseholds within its meaning; amending section 711.06(1)(a), Florida Statutes, relating to the term "common elements" and adding a subsection to accommodate the use of a leasehold and to provide for enlarging of the common elements by amendment to the declaration; amending section 711.08, Florida Statutes, to incorporate the use of certain leaseholds and to provide for the contents of the declaration of creation; amending section 711.10(3), Florida Statutes, relating to amendment of the declaration, to provide that a unit owner's share in common expenses and surplus may not be changed unless the unit owner joins in the amendment; providing for scrivener's error; amending section 711.11(1) and (2), Florida Statutes, to provide for inclusion of certain provisions in the bylaws of a condominium; amending section 711.12, Florida Statutes, to permit an association to operate more than one (1) condominium and to provide certain other powers for condominium associations; repealing section 711.13(4), Florida Statutes, as amended, which relates to cancellation of contracts for maintenance, management, or operation of a condominium; amending section 711.15(6), and adding section 711.15(8), Florida Statutes, relating to assessment liability, to provide protection for certain purchasers at mortgage foreclosure sales; repealing section 711.19(3), Florida Statutes, which relates to the application of homestead exemption from taxation; redesignating section 711.23, Florida Statutes, as section 711.62 and amending said section to provide for obligations for unit owners and associations and penalties for violations; repealing section 711.24, Florida Statutes, which relates to full disclosure prior to sale; redesignating section 711.25, Florida Statutes, as section 711.67, Florida Statutes, and amending said section to provide for escrow accounts and the use of proceeds from sale of condominiums and cooperative apartments prior to closing; repealing sections 711.30, 711.31 and 711.32, all Florida Statutes, which relate to maintenance, disclosure prior to sale, and deposits for cooperative apartments; creating sections 711.41, 711.42, 711.43, 711.44, 711.45, 711.46 and 711.47, Florida Statutes, relating to cooperative apartments; providing for cooperative parcels, appurtenances, possession, and enjoyment; providing for bylaws; providing for cooperative associations; providing for common expenses and common surplus; providing for assessments and liabilities; creating sections 711.61, 711.63, 711.64, 711.65, 711.66, 711.68, 711.69, 711.70, 711.71 and 711.72, Florida Statutes, relating to creation, sale and lease of condominiums and cooperative apartments; providing for contents of leases; providing for enforcement of liens for rent; providing that the terms and conditions of lease on common elements shall be disclosed; providing option to purchase the leased property; providing for completion of phase projects; providing warranties at sale; providing for transfer of association control; providing for contents of prospectuses; providing for disclosure; providing for publication of false or misleading information; providing for corrections by the associations or courts; providing a severability clause; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 711.03(3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14) Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), (15) and (16) respectively, new subsections (3), (12) and (17) are added and subsections (7), (9) and (15) of said section are renumbered and amended to read:

711.03 Definitions

As used in this law:

(3) Board of administration means the board of directors or other representative body responsible for administration of the association.

(8) Condominium is that form of ownership of condominium property under which units are subject to ownership by one or more owners, and there is appurtenant to each unit as part thereof an undivided share in the common elements.

(10) Condominium property means and includes the lands and leaseholds that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

(12) Developer means a person who creates a condominium, or who offers condominium parcels owned by him for sale or lease in the ordinary course of business, except that the term developer shall not include the owners or lessees of units in condominiums who offer the units for sale or lease or their leasehold interests for assignment, when they have acquired or leased the units for their own occupancy. This definition shall be construed liberally to accord substantial justice to a unit owner or lessee.

(15) Unit means a part of the condominium property which is to be subject to private ownership. A unit may be in improvements, land, or land and improvements together, as specified in the declaration.

(17) Residential condominium means a condominium comprising condominium units any of which are intended for use as a private residence, domicile or homestead, except that a condominium shall not be deemed a residential condominium if the use for which the units are intended is primarily commercial or industrial and not more than three (3) units are intended to be used for private residence, domicile or homestead and are intended to be used as housing for maintenance, managerial, janatorial or other operational staff of the condominium. In the event that a condominium shall be a residential condominium under the definition herein contained, but otherwise have units whose use is intended to be commercial or industrial, then in such case the condominium shall be deemed a residential condominium with respect to those units which are intended for use as a private residence, domicile or homestead, but not a residential condominium with respect to those units which are intended for use commercially or industrially.

Section 2. Subsection (1) of section 711.04, Florida Statutes, is amended to read:

711.04 Condominium parcels; appurtenances; possession and enjoyment

(1) A condominium parcel is a separate parcel of real property, even though a leasehold, the ownership of which may be in fee simple, or any other estate in real property recognized by law.

Section 3. Paragraph (a) of subsection (1) of section 711.06, Florida Statutes, is amended and subsection (3) is added to said section to read:

711.06 Common elements

(1) Common elements includes within its meaning the following items:

(a) The land or leasehold on which the improvements are located and any other land or leasehold included in the condominium property whether or not contiguous.

(3) The common elements designated by the declaration may be enlarged by an amendment of the declaration that includes the description of land owned by the association and submits the land to the terms of the declaration. The amendment shall be approved and executed in the manner required by the declaration and shall be executed by the association. Such an amendment shall divest the association of title to the land and shall vest the title in the unit owners, without naming them and without further conveyance, in the same undivided shares as the undivided shares in the common elements that are appurtenant to the units owned by them.

Section 4. Section 711.08, Florida Statutes, is amended to read:

711.08 Creation of condominiums; contents of declaration

(1) A condominium may be created on lands owned in fee simple or held under a lease, that contains the provisions required by § 711.63, having a term initially in excess of ninety-eight (98) years and having an unexpired term of fifty (50) years or more by recording in the public records of the county wherein the land to be included is located a declaration executed with the formalities of a deed by all persons having title of record to the interest in such land being submitted to condominium ownership and all persons having any interest under mortgages of record that encumber any portion of the common elements that are not satisfied prior to the closing of any sales of units, except that in lieu of joining in the execution of the declaration the owner of interests being submitted and the mortgagee thereof may execute appropriate consents or subordination agreements with the formalities required for deeds. The declaration shall contain or provide for the following matters:

(a) A statement submitting the condominium property to condominium ownership.

(b) The name by which the condominium is to be identified, which name shall include the word condominium or be followed by the words a condominium.

(c) Legal description of the land or leasehold included.

(d) An identification of each unit by letter, name, or number, or combination thereof, so that no unit bears the same designation as any other unit.

(e) Survey of the land and a graphic description of the improvements in which units are located and a plot plan thereof which together with the declaration are in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions. Such survey, plot plan and description may be in the form of exhibits consisting of building plans, floor plans, maps, sketches, surveys or other means, provided that there shall be included or attached a certificate or certificates of an architect, engineer or surveyor authorized to practice in this state that the construction of the improvements described is sufficiently complete so that such material, together with the wording of the declaration, is a correct representation of the improvements described, and that there can be determined therefrom the identification, location, and dimensions of the common elements and of each unit.

(f) Creation of easements for ingress and egress, which may be exclusive or non-exclusive, over such streets, walks and other rights-of-way serving the units of a condominium as part of the common elements as shall be necessary to provide reasonable access to the public ways, or a dedication of such streets, walks and other rights-of-way to the public. In the event that said easements for ingress and egress shall be encumbered by leasehold or lien, other than those on the condominium parcels, such leaseholds or liens shall be required to be subordinate or made subordinate to the use rights of any condominium unit owner or owners whose condominium parcel is not also encumbered by said lien or leasehold, or in the alternative, an appropriate non-disturbance agreement may be executed and recorded providing at least

in part that the use rights shall not be terminated with respect to any unit owner or owners who in the case of the leasehold have not been evicted for reason of their default under the lease and in the case of a mortgage whose units have not been foreclosed for default.

(g) The undivided shares, stated as percentages or fractions, in the common elements which are appurtenant to each of the units.

(h) The proportions or percentages and manner of sharing common expenses and owning common surplus.

(i) Voting rights of owners of units.

(j) Method of amendment of declaration. If a declaration fails to provide a method of amendment, the declaration may be amended if the amendment is approved by owners of not less than two thirds (⅔) of the units.

(k) Bylaws, but defects or omissions in the bylaws shall not affect the validity of the condominium or the title of condominium parcels.

(*l*) The name of the association and whether or not it is incorporated. If the association is not incorporated, the name and residence address of the person designated as agent to receive service of process upon the association. Such agent must be a resident of the state.

(m) Such other provisions not inconsistent with this law as may be desired, including but not limited to those relating to amendment of the declaration, values of the condominium property and of each unit or condominium parcel, statement of purpose for which condominium property and units are intended, designation of limited common elements, responsibility for maintenance and repair of units, insuring of the condominium property against loss and the owners and association against liability, reconstruction or repair after casualty and votes required in connection therewith, use restrictions, limitation upon conveyance, sale, leasing, purchase, ownership and occupancy of units, termination of the condominium.

(2) The declaration provided by subsection (1) may include such covenants and restrictions concerning the use, occupancy and transfer of the units as are permitted by law with reference to real property; provided, however, that the rule of property known as the rule against perpetuities shall not be applied to defeat a right given any person or entity by the declaration for the purpose of allowing unit owners to retain reasonable control over the use, occupancy and transfer of units. If the transfer or lease of units is subject to approval of any body, no fee shall be charged in connection with a transfer or approval in excess of the expenditures reasonably required for credit report expense, and this expense shall not exceed fifty dollars ($50). No charge shall be made in connection with an extension or renewal of a lease.

(3) A person who joins in the execution of a declaration subjects his interest in the condominium property to the provisions of the declaration and the provisions of this chapter.

(4) All valid provisions of the declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until the declaration is revoked.

Section 5. Subsection (3) of section 711.10, Florida Statutes, is amended to read:

711.10 Amendment of declaration

(3) Unless otherwise provided in the declaration as originally recorded, no amendment shall change the configuration or size of any condominium unit in any material fashion or materially alter or modify the appurtenances to such unit, nor change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner thereof and all record owners of liens thereon shall join in the execution of the amendment. If it shall appear through scriv-

ener's error that all of the common expenses or interest in the common surplus, or all of the common elements in the condominium have not been distributed in the declaration, such that the sum total of the shares of common elements which have been distributed or the sum total of the shares of the common expenses or ownership of common surplus fail to equal one hundred percent (100%) (or if it shall appear that through such error more than one hundred percent (100%) of common elements or common expenses or ownership of the common surplus shall have been distributed) such error may be corrected by the filing of an amendment to the declaration executed by the association, and the owners of the units and the owners of liens thereon for which modifications in the shares of common elements or shares of common expense or the common surplus are being made. No other unit owner shall be required to join in or execute such an amendment.

Section 6. Subsections (1) and (2) of section 711.11, Florida Statutes, are amended to read:

711.11 Bylaws

(1) The administration of the association and the operation of the condominium property shall be governed by bylaws, which shall be set forth in or annexed to the declaration. No modification of or amendment to the bylaws shall be valid unless set forth in or annexed to a duly recorded amendment to the declaration.

(2) The bylaws shall provide for the following matters, and if they do not do so, the bylaws shall be deemed to include the following matters:

(a) The form of administration of the association shall be described, indicating the title of the officers and board of administration, and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five (5) members, except in the case of condominiums having five (5) or fewer units, in which case one (1) owner of each unit shall be a member of the board of administration. In the absence of provisions to the contrary contained in the bylaws, the board of administration shall have a president, a secretary and a treasurer, who shall perform the duties of such offices customarily performed by like officers of corporations in the state of Florida, such officers shall serve without compensation and at the pleasure of the board of administration. Furthermore, the board of administration, in the absence of a provision in the bylaws to the contrary, may appoint and designate other officers and grant them such duties as it deems appropriate.

(b) The percentage of unit owners or voting rights required to make decisions and to constitute a quorum shall be stated; and in the absence of such provisions the owners of a majority of the units shall constitute a quorum, and decisions shall be made by owners of a majority of the units represented at a meeting at which a quorum is present. In addition, provision shall be made for definition and use of proxy; provided however, that no one person shall be designated to hold more than five proxies.

(c) Meetings of the board of administration shall be open to all unit owners and notices of meetings shall be posted conspicuously forty-eight (48) hours in advance for the attention of unit owners except in an emergency.

(d) Unit owners shall meet at least once in each calendar year and such meeting shall be the annual meeting. Unless the bylaws shall provide for their election at another meeting, the annual meeting shall be the time of the election of members of the board of administration whose terms have expired. In the absence of a provision in the bylaws setting forth the terms of some or all of the members of the board of administration which shall expire, the terms of all members of the board of administration shall expire on the date of the annual meeting, upon the election of their successors. The bylaws shall provide the method of calling and summoning the unit owners to assemble at meetings, including annual meetings, which

method shall require at least fourteen (14) days written notice to each unit owner in advance of the meeting, and the posting at a conspicuous place on the condominium property a notice of the meeting at least fourteen (14) days prior to said meeting. In the absence of a provision to the contrary, the notice of the annual meeting shall be sent by certified mail to each unit owner, which mailing shall be deemed notice. The foregoing requirements as to meetings are not to be construed, however, to prevent unit owners from waiving notice of meetings or from acting by written agreement without meetings, if so provided in the bylaws, the declaration of condominium, or this law.

(e) Minutes of all meetings of unit owners and of the board of administration shall be kept in a businesslike manner and available for inspection by unit owners and board members at all reasonable times.

(f) A copy of a proposed annual budget of common expenses shall be mailed to the unit owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a notice of that meeting. If the bylaws or declaration provide that the budget may be adopted by the board of administration, then the unit owners shall be given written notice of the time and place at which such meeting of the board of administration to consider the budget shall be held, and such meeting shall be open to the unit owners. If a budget is adopted by the board of administration which requires assessment against the unit owners in any fiscal or calendar year exceeding 115% of such assessments for the preceding year, upon written application of ten (10%) percent of the unit owners, a special meeting of the unit owners shall be held upon not less than ten (10) days written notice to each unit owner, but within thirty (30) days of the delivery of such application to the board of administration or any member thereof, at which special meeting unit owners may consider and enact a revision of the budget, or recall any and all members of the board of administration and elect their successors. In either case, unless the bylaws shall require a larger vote, the revision of the budget or the recall of any and all members of the board of administration shall require a vote of not less than a majority of the whole number of votes of all unit owners. The board of administration may in any event propose a budget to the unit owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the unit owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be reexamined by the unit owners in the manner hereinabove set forth nor shall the board of administration be recalled under the terms of this section. In determining whether assessments exceed 115% of similar assessments in prior years, there shall be excluded in the computation any provision for reasonable reserves made by the board of administration in respect of repair or replacement of the condominium property or in respect of anticipated expenses by the condominium association which are not anticipated to be incurred on a regular or annual basis and there shall be excluded from such computation, assessment for betterments to the condominium property if the bylaws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the board of administration. Provided, however, that so long as the developer is in control of the board of administration the board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the unit owners.

(g) Manner of collecting from the unit owner their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less frequently than quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expense previously incurred.

(h) The method by which the bylaws may be amended consistent with the provisions of this law shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than two-thirds (⅔) of the units.

Section 7. Section 711.12, Florida Statutes, is amended to read:

711.12 The association

(1) The operation of the condominium shall be by the association, the name of which shall be stated in the declaration. The declaration may require the association to be organized as a particular entity, such as but not limited to a corporation for profit or corporation not for profit, in which the owners of units shall be stockholders or members. The officers and directors of the association shall have a fiduciary relationship to the unit owners. An association may operate more than one (1) condominium.

(2) The association, whether or not incorporated, shall be an entity which shall act through its officers and shall have the capability of contracting, bringing suit and being sued with respect to the exercise or nonexercise of its powers. For these purposes the powers of the association shall include, but not be limited to, the maintenance, management and operation of the condominium property. When the board of administration is not controlled by the developer the association shall have authority and the power to maintain a class action and to settle a cause of action on behalf of unit owners of a condominium with reference to matters of common interest, including but not limited to the common elements, the roof and structural components of a building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from mechanical elements serving only a unit. In any case in which the association has the authority and the power to maintain a class action, the association may be joined in an action as representatives of that same class with reference to litigation and disputes involving the matters for which the association could bring a class action. If not incorporated the association shall be deemed to be an entity existing pursuant to this act and shall have power to execute contracts, deeds, mortgages, leases and other instruments by its officers, and to own, convey and encumber real and personal property. Service of process upon the association if not incorporated may be had by serving any officer of the association or by serving the agent designated for the service of process. Service of process upon the association shall not constitute service of process upon any unit owner. Nothing herein shall limit any statutory or common law right of any individual unit owner or class of unit owners to bring any action which may otherwise be available in any court.

(3) No unit owner, except as an officer of the association, shall have any authority to act for the association.

(4) The powers and duties of the association shall include those set forth in this law. The powers and duties of the association shall include also those set forth in the declaration and bylaws, not inconsistent with this section.

(5) The association shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common elements or to another unit or units.

(6) The association shall have the power to make and collect assessments, and to lease, maintain, repair and replace the common elements.

(7) The association shall maintain accounting records according to good accounting practices which shall be open to inspection by unit owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to unit owners or their authorized representatives. Failure of the association to permit inspection of its accounting records by unit owners or their authorized representatives shall

entitle any person prevailing in an action for enforcement to recover reasonable attorney fees from the association. Such records shall include:

(a) A record of all receipts and expenditures.

(b) An account for each unit which shall designate the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due.

(8) The association, whether or not incorporated, shall have the power unless prohibited by the declaration of condominium, articles of incorporation, or bylaws of the association, to purchase units in the condominium and to acquire and hold, lease, mortgage and convey the same.

(9) In any legal action in which the association may be exposed to liability in excess of insurance coverage protecting it and the unit owners, the association shall give notice of the exposure within a reasonable time to all unit owners who may be exposed to the liability and they shall have the right to intervene and defend.

(10) A copy of each insurance policy obtained by the association shall be made available for inspection by unit owners at reasonable times.

Section 8. Subsection (4) of section 711.13, Florida Statutes, as created by chapter 70-274, Laws of Florida, and as amended by chapter 71-277, Laws of Florida, is hereby repealed.

Section 9. Subsection (6) of section 711.15, Florida Statutes, is amended and subsection (8) is added to said section to read:

711.15 Assessments; liability; lien and priority; interest; collection

(6) Where the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the condominium parcel as a result of foreclosure of the first mortgage, or if the declaration so provides, as a result of a deed given in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be liable for the share of common expenses or assessments by the association pertaining to such condominium parcel or chargeable to the former unit owner of such parcel which became due prior to acquisition of title as a result of the foreclosure, unless such share is secured by a claim of lien for assessments that is recorded prior to the recording of the foreclosed mortgage. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the unit owners including such inquirer, his successors and assigns. If the declaration so provides, the foregoing provision may apply to any mortgage of record and shall not be restricted to first mortgages of record. A first mortgagee acquiring title to a condominium parcel as a result of foreclosure or a deed in lieu of foreclosure, may not during the period of its ownership of such parcel, whether or not such parcel is unoccupied, be excused from the payment of some or all of the common expenses coming due during the period of such ownership.

(8) Except as provided for in subsection (6) above, and in this subsection, no unit owner may be excused from the payment of his proportionate share of the common expense of a condominium unless all unit owners are likewise proportionately excused from such payment, except in the following cases:

(a) A developer or other person owning condominium units offered for sale may, if the declaration so provides, be excused from the payment of the share of the common expenses and assessments related thereto for a period subsequent to the recording of the declaration of condominium and terminating not later than the first day of the fourth calendar month following the month in which such declaration is recorded, or for a period terminating with the first day of the month of the third succeeding calendar month after the closing of the purchase and sale of any condominium unit within the condominium to a unit owner who is not the developer, the nominee

of the developer, or a substitute or alternative developer, whichever shall be the later date; or,

(b) A developer or other person owning condominium units may be excused from the payment of his or its share of the common expense in respect of those units during such period of time that he or it shall have guaranteed that the assessment for common expenses of the condominium, imposed upon the unit owners other than the developer or such person making the guarantee, shall not increase over a stated dollar amount, and obligate himself or itself to pay any amount of common expenses incurred during that period and not produced by the assessments at the guaranteed level receivable from other unit owners.

Section 10. Subsection (3) of section 711.19, Florida Statutes, is hereby repealed.

Section 11. Section 711.23, Florida Statutes, is redesignated as section 711.62 and amended to read:

711.62 Obligations; remedies for violation; restrictions upon waiver

(1) Each unit owner and each association shall be governed by and shall comply with this law and the declaration and bylaws or cooperative documents as they may exist from time to time. Failure to do so shall entitle the association or any other unit owner to recover sums due for damages or injunctive relief or both. Such actions may be maintained by or against a unit owner or the association or in a proper case by or against one or more unit owners, and the prevailing party shall be entitled to recover reasonable attorney fees. Such relief shall not be exclusive of other remedies provided by law.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of administration may waive notice of meetings in writing at or after said meeting in the manner permitted by law or under the terms of the declaration of condominium, the bylaws of the association, or, if the condominium association be incorporated, under the provisions of the corporate charter. Any instructions given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent whether or not such instruction and the payment of funds might thereunder constitute a waiver of any provision of this chapter.

Section 12. Section 711.24, Florida Statutes, as created by chapter 70-274, Laws of Florida, and amended by chapters 71-277 and 72-201, Laws of Florida, is hereby repealed.

Section 13. Section 711.25, Florida Statutes, is redesignated as section 711.67 and amended to read:

711.67 Sales; use of proceeds prior to closing

(1) If a developer contracts to sell a condominium or cooperative parcel in a building that has not been completed, established, furnished and landscaped substantially in accordance with the plans and specifications and representations made by the developer in the disclosures required by this chapter, and if there is no payment and performance bond in the amount of the construction contract price that covers such completion and equipping, the developer shall establish an escrow with a bank or trust company having trust powers, an attorney who is a member of the Florida Bar or a title company authorized to do business in the state of Florida, with whom shall be deposited all payments received by the developer from the buyer of such parcel upon the sale price of the parcel until the amount deposited shall equal five percent (5%) of the sale price. The escrowed funds may be deposited in separate accounts, or in common escrow or trust accounts or commingled with other escrow or trust monies handled by or received by the

escrow agent. The conditions for the release of funds from the escrow shall conform to the following:

(a) Funds deposited from payments made by a buyer who properly voids his contract shall be paid to the buyer free of all costs of the escrow.

(b) Prior to the closing of the transaction of purchase and sale, no funds shall be paid to the developer from the escrowed funds except in case of default by buyer.

(c) The escrow agent may disburse the escrowed funds paid or deposited by the buyer at or after the closing of the transaction of the purchase and sale of the parcel in accordance with written instructions from the buyer.

(d) Unless the funds of a buyer have been previously disbursed in accordance with the provisions of this subsection (1), such funds shall be disbursed to the developer by the escrow agent upon the expiration of six (6) months after the closing of the transaction of sale and purchase, unless prior to such disbursement the escrow agent has received from the buyer written notice of a dispute between buyer and developer.

(e) If the escrow funds shall earn interest, the interest shall be paid or credited to the developer if he is entitled to receive the principal, or paid to the buyer if he properly voids the contract and is entitled to return of the principal. The reasonable expenses incurred by the escrow agent in discharging his duties shall be an expense of the escrow.

(2) Whenever money shall be paid to a developer on a contract for the purchase of a condominium or cooperative parcel prior to commencement of construction such money in excess of five percent (5%) of the sale price of the parcel shall be held in a special account by the developer or his duly authorized agent and shall not be used by developer prior to closing of the transaction, except as provided in subsection (3), or for refund for the buyer. If such money shall remain in this special account for more than three months and if it shall earn interest, the interest so earned shall be added to the principal and paid or credited to the buyer or developer, as the case may be, who is entitled to receive the principal upon closing or upon breach of the contract.

(3) When the construction of improvements has commenced, and if the contract for sale of the condominium unit or cooperative parcel so provides, the developer may withdraw funds from the special account and use such funds in the actual construction and development of the condominium or cooperative property in which the unit to be sold is located, except that no part of such funds may be used for salaries of salesmen, commissions or expenses of salesmen, or for advertising purposes. In every such case when the contract permits use of the advance payments upon a sales contract for such purposes, there shall be printed or clearly stamped immediately above the place for signature of the buyer the following legend: ADVANCE PAYMENTS MADE PURSUANT TO THIS CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER. This legend shall be conspicuously printed or stamped in bold-faced capital type as large as or larger than the largest type used in the text of the contract. Failure to comply with the provisions of this subsection shall render the contract voidable at the option of the buyer, and all sums deposited or advanced under the contract shall be refunded with interest thereon at the highest rate then being paid on savings accounts, not inclusive of certificates of deposit, by savings and loan associations in the area in which the condominium or cooperative property is located. However, nothing herein shall be construed as vesting in the buyer any lien rights not otherwise provided by law or contract.

(4) If a developer fails to establish the escrow required by subsection (1) or if any portion of the funds withdrawn from the special account required by subsection (2) is used by the developer prior to closing of the transaction for any purpose other than as provided herein, with intent to defraud

the prospective buyer, the developer shall be deemed guilty of embezzlement and upon conviction shall be punished in a manner provided by law.

Section 14. Sections 1, 2, and 3 of chapter 70–135, Laws of Florida, appearing as sections 711.30, 711.31, and 711.32, Florida Statutes, are hereby repealed.

Section 15. Sections 711.41, 711.42, 711.43, 711.44, 711.45, 711.46, and 711.47, Florida Statutes, are created to read:

711.41 Application of §§ 711.42–711.47

The provisions of §§ 711.42 through 711.47 apply to cooperative ownership.

711.42 Definitions

As used in §§ 711.43 through 711.47:

(1) Assessment means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner.

(2) Association means the entity that owns the record title or a leasehold of the property of a cooperative and that is responsible for the operation of the cooperative.

(3) Board of administration means the board of directors or other representative body responsible for administration of the association.

(4) Bylaws means the bylaws for the government of the cooperative as they exist from time to time.

(5) Common areas means the portions of the cooperative property not included in the units.

(6) Common expenses means the expenses for which the unit owners are liable to the association.

(7) Common surplus means the excess of all receipts of the association, including but not limited to assessments, rents, profits and revenues on account of the common areas, over the amount of common expenses.

(8) Cooperative is that form of ownership of improved property under which units are subject to ownership by one (1) or more owners, which ownership is evidenced by a lease or other muniment of title or possession granted by the association as the owner of the cooperative property.

(9) Cooperative documents means the documents that create a cooperative, including but not limited to articles of incorporation of the association, bylaws, the ground lease or other underlying lease, if any, the document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession of his unit.

(10) Cooperative parcel means a unit together with the undivided share in the assets of the association that is appurtenant to the unit.

(11) Cooperative property means the property subject to cooperative ownership and all other property owned by the association.

(12) Developer means a person who creates a cooperative, or who offers cooperative parcels owned by him for sale or lease in the ordinary course of business, except that the term developer shall not include the owners or lessees of units in cooperatives who offer the units for sale or lease or their leasehold interests for assignment, when they have acquired or leased the units for their own occupancy. This definition shall be construed liberally to accord substantial justice to a unit owner or lessee.

(13) Operation, or operation of the cooperative, means and includes the administration and management of the cooperative property.

(14) Unit means a part of the cooperative property which is to be subject to private ownership. A unit may be improvements, land, or land and improvements together as specified in the cooperative documentation.

(15) Unit owner or owner of a unit means the person holding a lease or other muniment of title or possession of a unit that is granted by the association as the owner of the cooperative property.

(16) Residential cooperative means a cooperative comprising cooperative units any of which are intended for use as a private residence, domicile or homestead, except that a cooperative shall not be deemed a residential cooperative if the use for which the units are intended is primarily commercial or industrial and not more than three (3) units are intended to be used for private residence, domicile or homestead and are intended to be used as housing for maintenance, managerial, janitorial or other operational staff of the cooperative. In the event that a cooperative shall be a residential cooperative under the definition herein contained, but otherwise have units whose use is intended to be commercial or industrial, then in such case the cooperative shall be deemed a residential cooperative with respect to those units which are intended for use as a private residence, domicile or homestead, but not a residential cooperative with respect to those units which are intended for use commercially or industrially.

711.43 Cooperative parcels; appurtenances; possession and enjoyment

(1) A cooperative parcel is a unit and its appurtenances.

(2) There shall pass with a unit as appurtenances thereto:

(a) Evidence of membership or of ownership of shares or of other interest in the association.

(b) An undivided share in the assets of the association.

(c) The exclusive right to use such portion of the common areas as may be provided by the cooperative documents.

(d) The undivided share in the common surplus attributable to the unit.

(e) Such other appurtenances as may be provided in the cooperative documents.

(3) The owner of a unit is entitled to the exclusive possession of his unit. He shall be entitled to use the common areas in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of owners of other units.

711.44 Bylaws

(1) The bylaws or other cooperative documents shall provide for the following matters, and if they do not do so, the bylaws shall be deemed to include the following matters:

(a) The form of administration of the association shall be described, indicating the title of the officers and board of administration, and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five (5) members, except in the case of cooperatives having five (5) or fewer units, in which case one (1) owner of each unit shall be a member of the board of administration. In the absence of provisions to the contrary contained in the bylaws, the board of administration shall have a president, a secretary and a treasurer, who shall perform the duties of such offices customarily performed by like officers of corporations in the State of Florida, and such officers shall serve without compensation and at the pleasure of the board of administration. Furthermore, the board of administration, in the absence of a provision in the bylaws to the contrary, may appoint and designate other officers and grant them such duties as it deems appropriate.

(b) The percentage of unit owners or voting rights required to make decisions and to constitute a quorum shall be stated; and in the absence of such provisions, the owners of a majority of the units shall constitute a quorum, and decisions shall be made by owners of a majority of the units represented at a meeting at which a quorum is present. In addition, pro-

vision shall be made for definition and use of proxy; provided however, that no one person shall be designated to hold more than five proxies.

(c) Meetings of the board of administration shall be open to all unit owners and notice of meetings shall be posted conspicuously forty-eight (48) hours in advance for the attention of unit owners except in an emergency.

(d) Unit owners shall meet at least once in each calendar year and such meeting shall be the annual meeting. Unless the bylaws shall provide for their election at another meeting, the annual meeting shall be the time of the election of the members of the board of administration whose terms have expired. In the absence of a provision in the bylaws setting forth the terms of some or all of the members of the board of administration which shall expire, the terms of all members of the board of administration shall expire on the date of the annual meeting upon the election of their successors. The bylaws shall provide the method of calling and summoning the unit owners to assemble at meetings, including annual meetings, which method shall require at least fourteen (14) days written notice to each unit owner in advance of the meeting, and the posting at a conspicuous place on the cooperative property a notice of the meeting at least fourteen (14) days prior to said meeting. In the absence of a provision to the contrary, the notice of the annual meeting shall be sent by certified mail to each unit owner, which mailing shall be deemed notice. The foregoing requirements as to meetings are not to be construed, however, to prevent unit owners from waiving notice of meetings or from acting by written agreement without meetings, if so provided in the bylaws, the other cooperative documents, or this law.

(e) Minutes of all meetings of unit owners and of the board of administration shall be kept in a businesslike manner and available for inspection by unit owners and board members at all reasonable times.

(f) A copy of a proposed annual budget of common expenses shall be mailed to the unit owners not less than thirty (30) days prior to the meeting at which the budget will be considered, together with a notice of that meeting. If the bylaws or other cooperative documents provide that the budget may be adopted by the board of administration, then the unit owners shall be given written notice of the time and place at which such meeting of the board of administration to consider the budget shall be held, and such meeting shall be open to the unit owners. If a budget is adopted by the board of administration which requires assessment against the unit owners in any fiscal or calender year exceeding 115% of such assessments for the preceding year, upon written application of ten (10%) percent of the unit owners, a special meeting of the unit owners shall be held upon not less than ten (10) days written notice to each unit owner, but within thirty (30) days of delivery of such application to the board of administration or any member thereof, at which special meeting unit owners may consider and enact a revision of the budget, or recall any and all members of the board of administration and elect their successors, unless at that time the developer is in control of the board of administration. In either case, unless the bylaws shall require a larger vote, the revision of the budget or the recall of any and all members of the board of administration shall require a vote of not less than a majority of the whole number of votes of all unit owners. The board of administration may in any event propose a budget to the unit owners at a meeting of members or by writing, and if such budget or proposed budget be approved by the unit owners at the meeting, or by a majority of their whole number by a writing, such budget shall not thereafter be examined by the unit owners in the manner hereinabove set forth, nor shall the board of administration be recalled under the terms of this section. In determining whether assessments exceed 115% of similar assessments for prior years, there shall be excluded in the computation any provision for reasonable reserves made by the board of administration in respect of repair or replacement of cooperative property or in respect of anticipated expenses by the association which are not anticipated to be incurred on a regular or annual

basis, and there shall be excluded from such computation, assessment for betterments to the cooperative property if the bylaws so provide or allow the establishment of reserves, or assessments for betterments to be imposed by the board of administration. Provided, however, that so long as the developer is in control of the board of administration, the board shall not impose an assessment for a year greater than 115% of the prior fiscal or calendar year's assessment without approval of a majority of the unit owners.

(g) The manner of collecting from the unit owners their shares of the common expenses shall be stated. Assessments shall be made against unit owners not less frequently than quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current operating expense and for all of the unpaid operating expense previously incurred.

(h) If the transfer of units is subject to approval of any body, no fee shall be charged in connection with a transfer or approval in excess of the expenditures reasonably required for credit report expense, and this expense shall not exceed fifty dollars ($50). No charge shall be made in connection with an extension or renewal of a lease.

(i) The method by which the bylaws may be amended consistent with the provisions of this law shall be stated. If the bylaws fail to provide a method of amendment, the bylaws may be amended if the amendment is approved by owners of not less than two thirds (⅔) of the units.

(2) The bylaws may provide for the following:

(a) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas.

(b) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas, not inconsistent with the cooperative documents, as are designed to prevent unreasonable interference with the use of the units and common areas.

(c) Such other provisions not inconsistent with this law or with the cooperative documents as may be desired.

711.45 The association

(1) The operation of the cooperative shall be by the association, which may be organized as a corporation for profit or a corporation not for profit, in which the owners of units shall be stockholders or members.

(2) The association shall have the irrevocable right to have access to each unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any structural components of the building or any mechanical, electrical or plumbing elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the building or to another unit or units.

(3) The association shall maintain accounting records according to good accounting practices which shall be open to inspection by unit owners or their authorized representatives at reasonable times and written summaries of which shall be supplied at least annually to unit owners or their authorized representatives. Failure of the association to permit inspection of its accounting records by unit owners or their authorized representatives shall entitle any person prevailing in an action for enforcement to recover reasonable attorney fees from the association. Such records shall include:

(a) A record of all receipts and expenditures.

(b) An account for each unit which shall designate the name and address of the unit owner, the amount of each assessment, the dates and amounts in which the assessments come due, the amounts paid upon the account and the balance due.

(4) A copy of each insurance policy obtained by the association shall be made available for inspection by unit owners at reasonable times.

711.46 Common expenses and common surplus

(1) Common expenses shall include the expenses of the operation, maintenance, repair, or replacement of the cooperative property, costs of carrying out the powers and duties of the association and any other expense designated as common expense by this law, or the cooperative documents.

(2) Funds for the payment of common expenses shall be assessed against unit owners in the proportions or percentages of sharing common expenses provided in the cooperative documents.

711.47 Assessments; liability; lien and priority; interest; collection

(1) A unit owner, regardless of how title is acquired, including without limitation a purchaser at a judicial sale, shall be liable for all assessments coming due while he is the owner of a unit. In a voluntary conveyance the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

(2) The liability for assessments may not be avoided by waiver of the use of enjoyment of any common areas or by abandonment of the unit for which the assessments are made.

(3) Assessments and installments thereon not paid when due shall bear interest from the date when due until paid at the rate provided in the cooperative documents, not to exceed the rate allowed by law, and if no rate is provided then at the legal rate.

(4) The association shall have a lien on each cooperative parcel for any unpaid assessments, and interest thereon, against the unit owner of such cooperative parcel. If authorized by the cooperative documents said lien shall also secure reasonable attorney's fees incurred by the association incident to the collection of such assessment or enforcement of such lien.

(5) Liens for assessments may be foreclosed by suit brought in the name of the association in like manner as a foreclosure of a mortgage on real property. In any such foreclosure the unit owner shall be required to pay a reasonable rental for the cooperative parcel, if so provided in the cooperative documents, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The association shall have the power, unless prohibited by the cooperative documents, to bid on the cooperative parcel at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid assessments may be maintained without waiving the lien securing the same.

(6) Any unit owner shall have the right to require from the association a certificate showing the amount of unpaid assessments against him with respect to his cooperative parcel. Any person other than the owner who relies upon such certificates shall be protected thereby.

Section 16. Sections 711.61, 711.63, 711.64, 711.65, 711.66, 711.68, 711.69, 711.70, 711.71 and 711.72, Florida Statutes, are created to read:

711.61 Application of Sections 711.62–711.72

The provisions of sections 711.62 through 711.72 apply to condominium ownership and to cooperative ownership.

711.63 Creation of condominium and cooperatives; contents of leases

If any portion of the common elements or common areas or any other property serving the unit owners of a condominium or cooperative is subject to a lease, and the rent under the lease is payable by the association or by the unit owners, or if a developer leases a unit for a term of more than five (5) years or sells a unit subject to a lease with a remaining term of more than

five (5) years, the terms of the lease shall comply with the following requirements:

(1) The leased land must be described by a legal description that is sufficient to pass title, and the leased personal property must be described by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility, or in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the description of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements or common areas. This provision shall not prohibit the adding of additional land or personal property in accordance with the terms of the lease provided that there is no increase in rent nor material increase in maintenance costs to the individual unit owner.

(2) The lease shall contain no reservation of the right of possession or control of the leased property in favor of the lessor or any person other than unit owners or the association, and shall create no rights to possession or use of the leased property in any parties other than the association or unit owners of the condominiums or cooperatives to be served by leased property unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by other than unit owners of the condominiums or cooperatives to be served by the leased property shall be subject to cancellation by the unit owners in the manner elsewhere provided after the transfer to unit owners other than the developer of control of the association operating the leased property. This requirement shall not preclude a developer from showing the leased property to prospective purchasers of units at reasonable times.

(3) Unless the lease is of a unit, the lease shall determine the minimum number of unit owners that will be required directly or indirectly to pay the rent payable under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in its capacity if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association.

(4) The lease shall provide, and if it does not so provide, shall be deemed to provide, that in any action by the lessor to enforce a lien for rent payable with respect to leases under this section or any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner may interpose any defenses, legal or equitable, that he may have with respect to the lessor's obligations under the lease. If the unit owner interposes any defense other than payment of rent under the lease, the unit owner shall pay into the registry of the court the accrued rent as alleged in the complaint, or as determined by the court, and the rent which accrues during the pendency of the proceeding, when due. Failure of the unit owner to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the unit owner's defenses other than payment and the lessor shall be entitled to an immediate default. When the unit owner has deposited funds into the registry of the court as provided herein, the lessor may apply to the court for disbursement of all or part of the funds as may be shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities. The court, after preliminary hearing, may award all or any part of the funds on deposit to the lessor or may advance the cause on the calendar and to a final resolution of the cause.

(5) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facili-

ties are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value when completed of all of the facilities that are leased. For the purposes of this subsection, a completed recreational facility or other commonly used facility means a facility that is completed and is available for use.

(6) If a lease is of a residential unit or of recreational facilities or other commonly used facilities serving residential units, the rent shall be a stated sum payable periodically that may be adjusted only at intervals of not less than ten (10) years. If the rent is adjusted, the adjustment shall be by increase and decrease in accordance with the changes in a nationally recognized and conveniently available commodity index except that the lease may preclude a decrease below the rent originally required.

(7)(a) A lease of recreational facilities or other commonly used facilities shall grant to the lessee an option to purchase the leased property payable in cash on any anniversary date of the beginning of the lease term after the tenth anniversary at a price then determined by agreement, and if there is no agreement then by arbitration under the Florida arbitration code; provided that in the event of arbitration, the arbitrators shall take into account the capitalization of the current rent but shall not take into account the discounted rent for the unexpired term of the lease.

(b) In the event the lessor wishes to sell his interest and shall have received a bona fide offer to purchase same, such lessor shall notify the association and each unit owner with an executed copy of such offer and the terms thereof. The association shall have the option, following receipt of such offer to purchase the interest on the terms and conditions set forth in the offer, for a period to extend until ninety (90) days following receipt of the offer by the association. Said option shall be exercised, if at all, by notice in writing given to the lessor within said period. If the association does not exercise the option herein granted, the lessor shall have the right for a period of sixty (60) days after receipt of the notice not to exercise the option within which to complete the transaction described in the offer to purchase named therein. If for any reason such transaction is not concluded and notice of such fact given to the association within said sixty (60) days, the offer shall be deemed to have been abandoned and the provisions of this subsection shall be reimposed on the interest in question.

(c) The options shall be exercised upon approval by owners of seventy-five percent (75%) of the units served by the leased property.

(8) Any lien for rent or other monies or exactions due and payable under a lease and encumbering a unit shall be subordinate to any mortgage encumbering a condominium or cooperative parcel, made to a bank, savings and loan association, insurance company, trust company or other institutional lender selected by the mortgagor. Alternatively, the lease or subordination agreement may provide, however, that upon the foreclosure of any such mortgage that the lien for the unit owner's share of the rent and/or other exactions, shall not be extinguished but shall be foreclosed and unenforceable as against the mortgagee, with respect to that parcel's share of the rent and other exactions due and payable under the terms of the lease which mature and/or become due and payable on or before a date which is not sooner than the date of the final judgment of foreclosure, in the event of foreclosure, or on or before a date which is not sooner than the date of the delivery of the deed in lieu of foreclosure, in the case of a deed given to the mortgagee in lieu of foreclosure. Said lien may, however, automatically and by operation of the lease or other instrument, re-attach to the parcel and secure the payment of the parcel's proportionate share of the rent and/or other exactions coming due under the terms of the lease which mature or come due subsequent to a date which is not sooner than the final decree of foreclosure, or not sooner than the date of delivery of the deed in lieu of foreclosure, in the case of deed in lieu of foreclosure.

711.64 Creation of condominiums and cooperatives; completion of phase projects.

(1) The purpose of this section is to assure unit owners of the extent of condominium and cooperative developments that will be served by recreational and other facilities used in common with other persons.

(2) This section applies to each condominium and to each cooperative in which the unit owners will be required to pay as a condition of unit ownership directly or indirectly for the privilege of using recreational or other facilities in common with the occupants of other condominiums or cooperatives or other developments, or for the maintenance and operation of such commonly used facilities.

(3) An exhibit shall be attached to the prospectus as required by section 711.69, Florida Statutes, which shall be entitled "Developer's Commitment to Phase Development", hereafter in this section called developer's commitment, and shall contain or provide for the following matter:

(a) A legal description of all of the land that may be ultimately included in the proposed condominiums or cooperatives to be served by the commonly used facilities and a legal description of the land that will contain the proposed commonly used facilities, all of which land is hereafter in this section called the land.

(b) An opinion by an attorney-at-law or a title insurance policy showing that the record title of the land, or of a leasehold of the land having a term initially in excess of ninety-eight (98) years with an unexpired term of more than fifty (50) years, is in the developer, and that the land is zoned so as to allow the proposed use.

(c) The developer may provide that additional lands not legally described as required above may be added to the proposed project by indicating the general location and maximum number of acres which may so be added. Provided, however, that in such case the developer shall also set out the minimum dollar amount that the developer will be obligated to expend or cause to be expended in the providing of additional facilities which he is not otherwise obligated to provide, which dollar amount shall be on a per acre basis or on a per additional condominium or cooperative unit basis for condominium or cooperative units contained within such additional lands, or on a per acre or a per additional dwelling unit basis if residential units other than condominium or cooperative units are involved and contained within such lands.

(d) A legal description of the land that will contain the proposed commonly used facilities to the extent that such land is not included in the land described in paragraph (a).

(e) A statement of the minimum and maximum quantity of land intended to be used for commonly used recreational facilities.

(f) A plot plan or alternate plot plans of the land described in paragraphs (a) and (b) showing the approximate location of the recreational and other facilities intended to be used in common other than rights-of-way.

(g) A general description of the items of personal property and the number of each item of personal property that is to be furnished by the developer for each room or other facility in the commonly used facilities.

(h) A statement as to whether the recreational and other commonly used facilities will be owned by or for the benefit of the unit owners, or whether these facilities will be owned by others and leased to unit owners or the association. If these facilities are to be leased to unit owners or the association, a proposed lease or alternate leases, but no more than three (3) lease forms, stating all of the proposed terms and conditions of the leases shall be attached as part of the developer's commitment.

(4) A developer who makes a developer's commitment shall not be committed to construct improvements in addition to the improvements required by the

declaration or cooperative documents, but the developer shall be restricted in the development as hereafter provided.

(5) The effect of a developer's commitment shall be contractual and shall survive the closing of the unit and may be enforced by injunction and its contents shall be deemed a part of the developer's contract obligations in respect of the contract for the sale of each condominium or cooperative unit to which the commitment shall be applicable. The representations made by a developer in the developer's commitment as required by this section shall, however, be only for the benefit of unit owners in cooperatives or condominiums for which the disclosures are required to be made, and the developer's commitment with respect to the representations made in accordance with the requirements of this section shall be actionable only by unit owners or the association in condominiums or cooperatives for whom the disclosure is required to be made under the provisions of the section and by no other persons.

(6) Nothing contained herein shall prohibit the developer from building or including additional facilities, land, structures or personal property as part of the common facilities unless a material increase in the cost of maintenance to each of the unit owners would result therefrom.

711.65 Sales; warranties

(1) An implied warranty of fitness and merchantability shall attach:

(a) To each condominium or cooperative parcel that is created a condominium or cooperative parcel within five (5) years after the completion of the building containing the units,

(b) To the personal property that is transferred with or is appurtenant to each of such parcels, and

(c) To all improvements and personal property provided for the use of unit owners of a condominium or cooperative that is created a condominium or cooperative prior to the date that is five (5) years after the completion of such improvements. For the purpose of this subsection (1), completion of the building means issuance of a final certificate of occupancy for the entire building or the equivalent authorization issued by the governmental body having jurisdiction, and in areas where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of the building according to the plans and specifications.

(2) This implied warranty shall inure to the benefit of each owner and his successor owners, and to the benefit of a developer, as follows:

(a) As to the roof and structural components of a building or other improvement, and as to mechanical, electrical and plumbing elements serving an improvement or a building as distinguished from mechanical elements serving only a unit, there shall be the following warranties:

1. From the developer for the period beginning with the date of the first occupancy or use of a building or other improvement by a unit owner other than the developer, and ending in five (5) years or ending in six (6) months after unit owners other than the developer elect a majority of the board of the administration of the association, whichever period is the lesser, but in no event in less than three (3) years. Provided, however, that if the developer secures reports from registered engineers dated after the three (3) year period beginning with the date of the first occupancy or use of a building or other improvement by a unit owner other than the developer, and the reports certify as to the condition of warranted items, the period of the warranties as to the items covered by the reports shall end six (6) months after the date of mailing by certified mail of a copy of such reports to each unit owner.

2. From the contractor, subcontractors and suppliers for a period of three (3) years from the completion of construction or installation.

(b) As to all other property there shall be the following warranties:

1. From the developer for a period of one (1) year beginning with the closing of a sale of a unit or with the date of first occupancy of the unit, whichever shall first occur, as to property that is a part of or passes with a condominium or cooperative parcel, and as to all other property beginning with the date of first use of the property by a unit owner other than the developer.

2. From the contractor, subcontractors and suppliers for a period of one (1) year from the completion of construction of improvements or from the installation of personal property.

(3) The warranties herein provided to the unit owner or the association shall be conditioned upon routine maintenance being performed.

711.66 Sales; transfer of association control

(1) When unit owners other than the developer own fifteen percent (15%) or more of the units that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one third (⅓) of the members of the board of administration of the association. Unit owners other than the developer shall be entitled to elect not less than a majority of the members of the board of administration of an association three (3) years after sales by the developer have been closed of seventy-five percent (75%) of the units that will be operated ultimately by the association, or three (3) months after sales have been closed by the developer of ninety percent (90%) of the units that will be operated ultimately by the association, or when all of the units that will be operated ultimately by the association have been completed and some of them have been sold and none of the others are being offered for sale by the developer in the ordinary course of business, whichever shall first occur. The developer shall be entitled to elect not less than one (1) member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business any units in a condominium or cooperative operated by the association.

(2) Within sixty (60) days after unit owners other than the developer are entitled to elect a member or members of the board of administration of an association, the association, shall call and give not less than thirty (30) days nor more than forty (40) days notice of a meeting of the unit owners for this purpose. Such meeting may be called and the notice given by any unit owner if the association fails to do so.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

(a) Assessment of the developer as a unit owner for capital improvements.

(b) Any action by the association that would be detrimental to the sales of units by the developer; provided, however, that an increase in assessments for common expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) Prior to or within a reasonable time after unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association and shall deliver to the association all property of the unit owners and of the association held by or controlled by the developer, including but not limited to the following items, if applicable, as to each condominium operated by the association or as to the cooperative.

(a) The original, a certified copy or a photocopy of the recorded declaration of condominium; if a photocopy is provided, the same shall reflect the recording information and shall be certified by affidavit by the developer or officer or agent of the developer as being a true and complete copy of the actual recorded declaration; the association articles of incorporation, if it

be an incorporated association; bylaws; minute books and other corporate books and records of the association, if any; the cooperative documents; and any house rules and regulations which may have been promulgated.

(b) Resignations of officers and members of the board of administration who may be required to resign for reason of the requirement that the developer relinquish control of the association.

(c) An accounting or accountings for association funds. The developer shall be liable to the association for all of the funds of the association that are not properly expended and which were collected during the period of time that the developer controlled the board of administration of the association.

(d) Association funds or control thereof.

(e) All tangible personal property that is represented by the developer to be part of the common elements or cooperative property, or that is ostensibly part of the common elements or cooperative property, or that is property of the association, and inventories of these properties.

(f) A copy of the plans and specifications utilized in the construction of improvements and the supplying of equipment to the condominium or cooperative and for the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer or of his agent or of an architect or engineer authorized to practice in this state that such plans and specifications represent to the best of their knowledge and belief the actual plans and specifications utilized in and about the construction and improvement of the condominium or cooperative property and for the construction and installation of the mechanical components serving the improvements. In the event that the condominium or cooperative property shall have been declared a condominium or cooperative more than three (3) years after the completion of the construction of the improvements, then the requirements of this subsection (f) shall not apply. If, however, the improvements on the condominium or cooperative property submitted to condominium or cooperative form of ownership shall have been remodeled within three (3) years prior to the date of the creation of condominium or cooperative, then the requirements of this paragraph (f) shall apply to the plans and specifications utilized in and about the remodeling.

(g) Insurance policies.

(h) Copies of any certificates of occupancy which may have been issued within one (1) year of the date of creation of the condominium or cooperative.

(i) Any other permits issued by governmental bodies applicable to the condominium or cooperative property and which are currently in force or were issued within one (1) year prior to the date upon which the unit owners other than the developer took control of the association.

(j) Written warranties of the contractor, subcontractors, suppliers and manufacturers that are still effective.

(k) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's records.

(l) Leases of the common elements, or in which the association is lessor or lessee.

(m) Employment contracts in which the association is one of the contracting parties.

(n) Service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have directly or indirectly an obligation or responsibility to pay some or all of the fee or charge of the person or persons performing the services.

(o) Other contracts in which the association is one of the contracting parties.

(5) Any grant or reservation made by a declaration or cooperative documents, lease or other documents, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, that provides for operation of a condominium or cooperative or for maintenance, management, or operation of condominium or cooperative property or of property serving the unit owners of a condominium or cooperative shall be fair and reasonable, and may be canceled by unit owners other than the developer under the following circumstances:

(a) If the association operates only one (1) condominium or a cooperative and the unit owners other than the developer have assumed control of the association, or if unit owners other than the developer own not less than seventy-five percent (75%) of the units in the condominium, the cancellation shall be by concurrence of the owners of not less than seventy-five percent (75%) of the units other than the units owned by the developer. If a grant, reservation or contract is canceled under this provision and the unit owners other than the developer have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management or operation in lieu of the canceled obligation at the direction of the owners of not less than a majority of the units in the condominium or cooperative other than the units owned by the developer.

(b) If the association operates more than one (1) condominium and the unit owners other than the developer have not assumed control of the association, and if unit owners other than the developer own not less than seventy-five percent (75%) of the units in a condominium operated by the association, any such grant, reservation or contract for maintenance, management or operation of buildings containing the units in that condominium or of improvements used only by unit owners of that condominium, may be canceled by concurrence of the owners of not less than seventy-five percent (75%) of the units in the condominium other than the units owned by the developer; but no grant, reservation or contract for maintenance, management or operation of recreational areas or any other property serving more than one condominium may be canceled except as elsewhere provided after the unit owners other than the developer have assumed control of the association. If a grant, reservation or contract is canceled under this provision, the association shall make a new contract or otherwise provide for maintenance, management or operation in lieu of the canceled obligation at the direction of the owners of not less than a majority of the units in the condominium other than the units owned by the developer.

(c) If the association operates more than one (1) condominium and the unit owners other than the developer have assumed control of the association, the cancellation shall be by concurrence of the owners of not less than seventy-five percent (75%) of the total number of units in all condominiums operated by the association other than the units owned by the developer.

(d) If a condominium or cooperative project contains more than one (1) condominium or cooperative and they are operated by more than one (1) association, no such grant, reservation or contract for maintenance, management or operation of a recreational area or any other property serving more than one (1) condominium or cooperative may be canceled until unit owners other than the developer have assumed control of all of the associations operating the condominiums or cooperatives that are to be served by the recreational area or other property, after which such cancellation may be effected by concurrence of the owners of not less than seventy-five percent (75%) of the total number of units in those condominiums or cooperatives other than the units owned by the developer.

(e) Any grant or reservation made by a declaration or cooperative document, lease or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer shall be fair and reasonable.

711.68 Sales and leases; generally

(1) No person shall be denied the right to purchase or lease a unit because of race, religion, sex or national origin; nor shall any advertising be permitted that indicates such denial.

(2) If a building is converted from a rental operation to condominium or cooperative ownership, each tenant of the building shall have the right to extend an expiring lease or tenancy upon the same terms for a period that will expire no later than one hundred twenty (120) days after the mailing of a notice of the intended conversion to the tenant, providing, however, that any tenant must give notice to the developer of his intention to extend his lease as permitted in this subsection (2) not later than thirty (30) days after the mailing of the notice of the intended conversion to the tenant.

(3) It is the policy of this state that provisions of contracts, leases or other undertakings which allow landlords or developers at their option to cancel and terminate the term of such leases upon the conversion of the property and improvements to condominium or cooperative form and upon short notice to the tenant, to be unenforceable and against public policy. Therefore, any provision in any contract, lease or undertaking executed after the effective date of this act which provides for the early cancellation or early or advanced termination of the term of any lease for an apartment or other residence at the option of the landlord or developer for reason of its intended conversion to condominium or cooperative form of ownership, shall be unenforceable except in the following cases:

(a) If the lease shall provide for a notification to the tenant of a minimum of one hundred fifty (150) days notice before such cancellation or termination shall become effective; or,

(b) If the term of the lease has less than one hundred fifty (150) days remaining after such notification is given; or,

(c) If the lease grants the tenant therein an option to purchase the apartment or other residence in which he resides at some substantially perferred rate, which option is exercisable by the tenant during a period of not less than ninety (90) days of the mailing of a notice of the intended conversion to the tenant by certified mail; or,

(d) If the lease provides that the lessor or developer shall not convert to condominium or cooperative format except with the consent of the tenants of not less than sixty (60%) percent of the apartments or other dwellings in the buildings intended to be converted. For the purpose of this vote, unoccupied apartments or dwellings shall be counted and the developer or lessor may vote those apartments; or,

(e) If the lease shall provide for a notification to the tenant which does not meet the requirement of paragraph (3)(a) above, and if the term of the lease has more than one hundred fifty (150) days remaining after such notification is given, such notification to the tenant of early cancellation or early or advanced termination of the term of the lease may nevertheless be effective if the notice provides that the lease notwithstanding, the tenant shall have one hundred fifty (150) days before such cancellation or termination shall become effective, or a longer period of time if the developer or landlord shall so provide in the notice.

(f) Leases executed subsequent to the announced intention of the developer or landlord to convert to a condominium or cooperative format may contain provisions for the early or advanced termination of the term of such leases or the early cancellation of such leases upon not less than sixty (60) days notice to the tenant, providing that the lease shall conspicuously disclose the fact that it is the landlord's or developer's intention to convert the property containing the leased premises to a condominium or cooperative form of ownership, and that the lease may be cancelled upon as little as sixty (60) days notice to the tenant of the landlord or developer's exercise of the right of cancellation.

(g) Whenever in this subsection (3) a notice to a tenant shall be required to be given, said notice shall be deemed given when deposited in the United States mail addressed to the tenant at his last known residence (which may be the address of the property subject to the lease) sent by certified or registered mail with sufficient prepaid postage affixed to carry it to its destination.

(h) Except in the cases provided for in paragraphs (3)(b) and (3)(d) above, the provisions of and rights granted in subsection (2) shall not apply.

(4) Notice as provided herein shall be non-waivable to each tenant in the building to be converted unless the tenant's leasehold agreement clearly states that the building is to be so converted.

711.69 Sales and leases; disclosure materials—prospectus or offering circulars

Before a developer offers residential condominium or residential cooperative parcels for sale, or for lease for an unexpired term of more than five (5) years, in a residential condominium or residential cooperative containing more than twenty (20) residential units, or in a group of residential condominiums or residential cooperatives containing more than twenty (20) residential units that will be served by property to be used in common by unit owners of more than one condominium or cooperative, the developer shall prepare a prospectus or offering circular in addition to such other circulars, bulletins or disclosure materials as are required by this chapter, all of which together are defined as disclosure materials, concerning each condominium or cooperative in which units are offered. The materials may, at the developer's option, include the required information pertaining to more than one (1) condominium or cooperative, or the developer may prepare separate disclosure material for one or more condominiums or cooperatives, notwithstanding the fact that units in the condominiums or cooperatives for sale or lease are not all being offered for sale or lease at the time of preparation of the documents or of their distribution. The prospectus or offering circulars shall contain so much of the following described information as is applicable in outline, summary or question and answer form.

(1) A caveat on the first page in bold-faced type or capital letters no smaller than the largest type on the page in the following words: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS REFERENCE SHOULD BE MADE TO THIS PROSPECTUS (OFFERING CIRCULAR) AND ITS EXHIBITS.

(2) A brief description of the condominium or cooperative which shall include but not be limited to the following information:

(a) Name and location.

(b) Maximum number of units that will use facilities in common with the subject condominium or cooperative. The prospectus or offering circular may reflect that the maximum number of units will vary in accordance with a stated formula in which the developer agrees to expend a stated minimum amount in dollars on a per unit basis for additional recreational facilities, or enlargement of such facilities, and providing the addition or enlargement of such facilities when produced does not result in a substantial increase of the maintenance expense or rental expense (if any) to each unit owner, unless the amount of that increase and limitations thereon are disclosed and set forth with particularity.

(3) A statement as to whether the developer's plan includes a program of leasing units rather than selling them. With respect to units which are being offered and sold subject to a lease, the number and identification of the units shall be set forth with particularity and a statement in bold-faced type or capital letters no smaller than the largest type in the context where used, in substantially the following form, shall be included: THESE UNITS WILL BE TRANSFERRED SUBJECT TO A LEASE THAT EXPIRES _____

AND THE LESSEE'S INTEREST WILL TERMINATE ON THE EXPIRATION OF THE LEASE. In lieu of identifying the units which will be sold subject to a lease and including the foregoing required statement in the disclosure materials, the developer may include a statement, conspicuously displayed, in the first page of the purchase agreement for a unit being sold subject to a lease, which shall be in bold-faced type or capital letters no smaller than the largest type used in the text of the first page of the purchase agreement, in substantially the following form: THIS UNIT WILL BE TRANSFERRED SUBJECT TO A LEASE THAT EXPIRES _____ AND THE LESSEE'S (UNIT OWNER'S) INTEREST WILL TERMINATE UPON EXPIRATION OF THE LEASE.

(4) A description of the condominium or cooperative, which shall include but not be limited to the following information:

(a) Schedule of buildings showing the number of units in each building and the number of bedrooms and bathrooms in each unit, which designation shall not be deemed to preclude rooms in a given unit from being combined or to prevent or require the use of any specific room in any manner which is otherwise lawful and permitted, nor the conversion of any such room into a bedroom or to another use.

(b) Total number of units, which shall not prevent nor prohibit the combining of two or more units into one unit, or if combined, the severance of those units into their component parts.

(c) Reference to the volume and page of the condominium or cooperative documents in which can be found a copy of a survey or site plan of the condominium or cooperative showing the location of all residence buildings and recreational and other facilities used only by the unit owners of the condominium or cooperative. If this survey or site plan does not designate the portions of such property that are owned by unit owners or the association and the portions that are owned by others, a copy of a sketch of the plot plan showing this information shall be an exhibit to the prospectus or offering circular.

(d) Estimated latest date of completion. In lieu of including the latest date of completion of a given condominium or cooperative in the prospectus or offering circular, the developer may include that information in the purchase agreement in which case there shall be included in the prospectus or offering circular a statement to the effect that the estimated date of completion of the building or buildings contained within the condominium or cooperative is set forth in the purchase agreement and a reference to the article or paragraph in which that information is contained.

(5) A description of the recreational and other commonly used facilities that will be used only by unit owners of the condominium or cooperative, including but not limited to the following information:

(a) A description of each room as to its intended purposes, location, approximate floor area and capacity. This statement or description shall not prohibit the association when controlled by other than developer from changing usages or purposes, or from modifying such rooms as permitted under the declaration, bylaws or cooperative documents.

(b) Description of each swimming pool as to its general location, approximate pool size and depths, approximate deck size and capacity, and whether heated.

(c) Description of additional facilities as to the number of each facility, its approximate location, approximate size and approximate capacity.

(d) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility, or in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(e) The approximate capacity (in numbers of people) that can reasonably be expected to be served by each room or other facility at any one time.

(f) The estimated date when each room or other facility will be available for use by the unit owners.

(g) An identification of each room or other facility that will not be owned by the unit owners or the association, and a reference to the volumes and pages or paragraph numbers of the condominium or cooperative documents and of the exhibits to the prospectus or offering circulars at which a copy of each lease or other document providing for use of such facilities can be found.

(h) The length of the term of such lease or other document.

(i) The rent payable directly or indirectly by each unit owner and the total rent payable to the lessor under each of such leases stated in monthly and annual amounts, as well as in amounts payable at times stated in the leases.

(j) A description of any option to purchase the property leased under any such lease as to the time the option may be exercised, the purchase price, the manner of computing the same, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(k) The developer may provide that additional facilities not legally described as required above may be added to the condominium or cooperative property or constructed thereon, by indicating the general location, the various types of facilities that may be involved, improvements that may be made or changes that may be made, the approximate dollar amount the developer intends to expend in providing such additional or modified facilities, and a fair estimate of the maximum additional common expense or cost to the individual unit owners that may fairly be anticipated to be experienced by the unit owners during the first annual period of operation of the modified or added facilities.

(l) Description as to locations, areas, capacities, numbers, volumes or sizes may be stated as approximations or minimums, provided that the facilities when produced nevertheless substantially conform to such approximations and meet or exceed such minimums.

(6) A description of the recreational and other facilities that will be used in common with other condominiums or cooperatives when the use or payment of the maintenance and expenses of such facilities either directly or indirectly by the unit owners is a mandatory condition of unit ownership, which description shall include but not be limited to the following information:

(a) A general description of each building and other facility and their general location, if committed to be built.

(b) A statement as to what facilities are not committed to be built except under certain conditions and a statement of those conditions or contingencies.

(c) The approximate year in which each facility will be available for use by the unit owners, or in the alternative, the maximum number of unit owners in the project at the time each or all of the facilities is committed to be completed.

(d) As to any facility committed to be built, a description of each room as to general purpose, approximate location, minimum floor area and approximate capacity. As to any pool facility committed to be built, a description of each swimming pool as to approximate location, minimum pool size and depth, approximate deck size, approximate pool capacity (in. number of people) and whether heated.

(e) As to any facilities not committed to be built, but which may be committed to be built upon the happening of contingencies as set forth in accordance with the requirements of subsection (6)(b), a description of such additional facilities as to the minimum number of each facility, the nature of the

facility, its approximate location and its approximate capacity. Alternatives may be stated.

(f) A general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility, or, in the alternative, a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility.

(g) A statement as to each facility committed to be built, or which will be committed to be built upon the happening of one of the contingencies identified in accordance with the provisions of subsection (6)(b) describing whether it will be owned by the unit owners having the use thereof or by an association or other entity which will be controlled by them, or others; and a cross reference to the location in disclosure materials or among the exhibits to the prospectus or offering circulars in which the lease or other document providing for such of those facilities as are included therender or will be included thereunder can be found.

(h) The length of the term of each of such leases or other documents.

(i) The rent payable under each of such leases directly or indirectly by each unit owner that ultimately may use the facilities, except that if the rent is a common expense of the association, the rent payable by the association shall be stated and the rent payable by each unit as part of the common expense due from the unit may be stated as an average for each unit in a condominium or a cooperative in that association, stated in monthy and annual amounts, as well as in the amounts payable at the times stated in the leases.

(j) A description of any option to purchase the property leased under any such lease as to the time the option may be exercised, the purchase price or the formula for ascertaining the purchase price, the manner of payment, and whether the option may be exercised for a unit owner's share or only as to the entire leased property.

(k) Description as to locations, areas, capacities, numbers, volumes or sizes may be stated as approximations or minimums, provided that the facilities when produced nevertheless substantially conform to such approximations and meet or exceed such minimums.

(7) If the condominium or cooperative is part of a phase project subject to the provisions of Section 711.64 and for which a developer's commitment is required, there shall be stated that the condominiums or cooperatives are part of a phase development and that there is a developer's commitment to phase development attached to the prospectus or offering circulars as an exhibit, or otherwise required to be distributed to the buyer. The developer's commitment to phase development shall be, whenever it is required under Section 711.64, part of the disclosure materials required to be distributed to prospective buyers.

(8) The following information shall be supplied concerning the improvements if the condominium or cooperative is created by conversion of an existing building:

(a) Date and type of construction.

(b) Description of prior use.

(c) A statement as to the condition of the roof, mechanical, electrical, plumbing and structural elements, which statement shall be substantiated by attaching a copy of a certificate of a registered architect or engineer.

(d) A statement as to whether there is termite damage and that termite infestation, if any, has been properly treated. The statement shall be substantiated by attaching a copy of an inspection report by a certified pest control operator.

(e) A caveat that there are no warranties unless they are expressly stated in writing by the developer.

(9) Reference to the volumes and pages or paragraph numbers of the condominium or cooperative documents and of the disclosure materials containing provisions relating to control by any person other than unit owners, of the association, of any part of the condominium or cooperative property, or of any property that will be used by the unit owners that is not part of the condominium or cooperative property (for which the expenses of maintenance, upkeep, operation or fees for use are paid by the unit owners directly or indirectly as a mandatory condition of unit ownership) that are contained in the cooperative documents or the declaration, articles of incorporation or bylaws, constitution of the association, if any, any lease of the condominium or cooperative property or any other property serving the unit owners, and any form of proposed lease of condominium or cooperative parcels if the offer is of a leasehold.

(10) A summary of the restrictions, if any, concerning the use of condominium or cooperative parcels, particularly as to whether and to what extent there are restrictions upon children and pets, and reference to the volumes and pages of the condominium or cooperative documents at which such restrictions are found.

(11) If there is any land that is offered by the developer for use by the unit owners that is neither owned by them nor leased to them or to the association, or to an entity controlled by condominium or cooperative unit owners and other persons having the use rights to such land, a statement shall be made as to whether such land will serve the condominium or cooperative. If any part of such land will serve the condominium or cooperative, the statement shall describe the land and the nature and term of service and the declaration or other instrument creating such servitude shall be part of the disclosure materials and shall be an exhibit to the prospectus or offering circular.

(12) The manner in which needs for utility and other services will be met, including but not limited to sewage and waste disposal, water supply and storm drainage.

(13) The arrangements for management of the association and maintenance and operation of the condominium or cooperative property and of other property that will serve the unit owners of the condominium or cooperative property as a mandatory condition of unit ownership, and a description of each contract for these purposes having a service period in excess of one (1) year, as to the following information:

(a) Names of contracting parties.

(b) Term of contract.

(c) Nature of services included.

(d) Compensation stated on a monthly and annual basis and provisions for increases in the compensation.

(e) Reference to the volumes and pages of the condominium or cooperative documents and of the exhibits to the prospectus containing copies of such contracts.

(f) For the purpose of this subsection (13) a contract shall be deemed to have a term of service in excess of one (1) year if it is renewable without the consent of the association.

(14) An explanation of the manner in which the apportionment of common expenses and ownership of the common elements or cooperative property has been determined.

(15) An estimated operating budget for the condominium or cooperative and the association and a schedule of unit owner's expenses shall be an exhibit to the prospectus and shall contain the following information:

(a) Estimated monthly and annual expense of the condominium or cooperative and the association that is collected from unit owners by assessments.

(b) Estimated monthly and annual expenses of each unit owner on account of his unit for assessments payable to the association, for items of expense that are payable by the unit owner to persons or entities other than the association, and the total estimated monthly and annual expense. There may be excluded from this estimate items of expense that are personal to unit owners or which are not uniformly incurred by all unit owners or which are not provided for nor contemplated by the condominium or cooperative documents, including but not limited to private telephone costs, costs of maintenance of the interior of condominium or cooperative units to the extent that such maintenance is not the obligation of the association, the costs of maid or janitorial services privately contracted for by the unit owners, costs of utility bills billed directly to each unit owner for utility services or supply to his unit, insurance premiums other than those incurred in respect of policies obtained by the condominium or cooperative association and applicable to the condominium or cooperative property in general, debt servicing upon any mortgage encumbering the individual unit but not encumbering the condominium or cooperative property as a whole, and like personal expenses of the unit owner may be excluded. A unit owner's estimated payments for assessments shall also be stated in the estimated amounts for the times when they will be due.

(c) The estimated items of expense of the condominium or cooperative and the association and, except as excluded under subparagraph (b), of the unit owners shall include but not be limited to the following items, which shall be stated either as an association expense collectible by assessments or as unit owners' expenses payable to others than the association:

1. Expenses for the association and condominium or cooperative:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserve for deferred maintenance.

l. Reserve for depreciation.

m. Other reserves.

2. Expenses for a unit owner:

a. Rent for the unit if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and which rent is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

(d) The estimated amounts shall be stated for the period which need not exceed the first annual accounting period prior to the time unit owners other than the developer elect a majority of the board of administration and also for the period after that date which need not exceed an annual accounting period, if that date can be reasonably ascertained at the time of the publication of the disclosure material applicable to that association or that condominium or cooperative. If that date cannot reasonably be ascertained at the time of publication of the disclosure materials applicable to the condominium or cooperative or association involved, there shall appear im-

mediately preceding the beginning or at the end of the budgetary material a statement in bold faced type or capital letters at least as large as the text contained on the page in substantially the following form: DEVELOPER MAY BE IN CONTROL OF THE BOARD OF ADMINISTRATION OF THE CONDOMINIUM (OR COOPERATIVE) DURING THE PERIOD OF OPERATION FOR WHICH THIS BUDGET HAS BEEN RENDERED.

(16) A schedule of estimated closing expenses to be paid by a buyer or lessee of a unit, and advice as to whether a guaranteed title opinion or title insurance policy will be furnished at the expense of the developer.

(17) The identity of the developer and the chief operating officer or principal directing the creation and sale of the condominium or cooperative and a statement of its and his experience in this field.

(18) The developer shall provide, as part of the disclosure materials, as an exhibit to the prospectus or offering circular, a separate document which shall be entitled: IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM (COOPERATIVE) UNIT.

(a) This document shall on its cover page, in addition to its title hereinabove required, identify the condominium project, the developer offering the units for sale, the condominium (cooperative) buildings and phases to which the document is applicable, and then the following information which shall commence not later than the second page of said document:

1. A statement in bold-faced type or capital letters describing whether the condominium or cooperative is created and being sold on fee simple interests or on leasehold interests. If the condominium or cooperative is created or being sold on a leasehold interest, reference shall be made to the articles, paragraphs or pages in the disclosure materials in which a description of the lease shall be found.

2. If any recreation facilities or other facilities offered by the developer and available to or to be used by unit owners are on lease or club format, a statement in bold-faced type or capital letters shall be included in substantially the following form: THERE IS A RECREATION FACILITIES LEASE ASSOCIATED WITH THIS CONDOMINIUM (COOPERATIVE); or, THERE IS A CLUB MEMBERSHIP FORMAT ASSOCIATED WITH THIS CONDOMINIUM (COOPERATIVE). Immediately following the appropriate statement there shall be a reference to the articles, paragraphs or pages in the disclosure materials where the recreation leases or other formats are described in detail.

3. If as a mandatory condition of unit ownership unit owners must pay a fee, rent, dues or other charges under a recreation facilities lease or club format associated with the use of recreation facilities or other facilities to be used by unit owners, then there shall be a statement in bold-faced type or capital letters in substantially one of the following forms, reflecting the applicable situations: MEMBERSHIP IN THE RECREATION FACILITIES CLUB IS MANDATORY FOR UNIT OWNERS; or, UNIT OWNERS ARE REQUIRED AS A CONDITION OF SUCH OWNERSHIP TO BE LESSEES UNDER THE RECREATION FACILITIES LEASE; or, UNIT OWNERS WILL BE REQUIRED TO PAY THEIR SHARE OF THE COSTS AND EXPENSES OF MAINTENANCE, MANAGEMENT, UPKEEP, REPLACEMENT, RENT AND FEES CALLED FOR UNDER THE RECREATION FACILITIES LEASED OR THE OTHER INSTRUMENTS PROVIDING THE RECREATION FACILITIES AS A MANDATORY CONDITION OF UNIT OWNERSHIP; or a similar statement clearly expressing the nature of the organization or manner in which the use rights are created and the fact that unit owners' participation therein is mandatory. Immediately following the applicable statement, there shall appear a reference to the articles, paragraphs or pages in the disclosure materials where the format is described in detail.

4. If the developer or any other persons, other than the association, associations or homeowners' or similar association whose membership is com-

posed solely of unit owners and other persons having use rights in the facilities, shall reserve to itself or themselves or be entitled to receive a rent, fee or other payment in respect of the use of the facilities (which payment or fee is in the nature of a reserved rent or a land use fee), then a statement in bold-faced type or capital letters in substantially the following form shall be included: THE UNIT OWNERS OR THE ASSOCIATION(S) WILL PAY RENT OR LAND USE FEES FOR RECREATION OR OTHER COMMONLY USED FACILITIES. Immediately following this statement there shall appear a reference to the articles, paragraphs or pages in the disclosure materials where the rent or land use fees are set forth or described in detail.

5. If in any recreation format, whether leasehold, club or other, a person or persons other than the association shall have the right to a lien on the units to secure the payment of assessments, rent or other exactions reserved in such leases or otherwise called for under the applicable format, then there shall appear a statement in bold-faced type or capital letters in substantially the following form: THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF RENT AND OTHER EXACTIONS UNDER THE RECREATION LEASE AND THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN; or, THERE IS A LIEN OR LIEN RIGHT AGAINST EACH UNIT TO SECURE THE PAYMENT OF ASSESSMENTS OR OTHER EXACTIONS COMING DUE FOR THE USE, MAINTENANCE, UPKEEP OR REPAIR OF THE RECREATION OR COMMONLY USED FACILITIES. THE UNIT OWNER'S FAILURE TO MAKE THESE PAYMENTS MAY RESULT IN FORECLOSURE OF THE LIEN. Immediately following the applicable statement, there shall appear a reference to the documents, articles, paragraphs or pages in the disclosure materials where the lien or lien right is set forth or described in detail.

6. If the developer or any other person shall have the right to increase or add to the recreation facilities at any time after the establishment of the condominium(s) or cooperative(s) whose unit owners have use rights therein without the consent of the unit owners or associations being required, then there shall appear a statement in bold-faced type or capital letters in substantially the following form: RECREATION FACILITIES MAY BE EXPANDED OR ADDED WITHOUT CONSENT OF UNIT OWNERS OR THE ASSOCIATION(S). Immediately following this statement, there shall be a reference to the documents, articles, paragraphs or pages in the disclosure materials where a description of such reserved rights may be found or is set forth.

7. If there is a contract for the management of the condominium or cooperative property, then a statement in bold-faced type or capital letters in substantially the following form shall appear, identifying the proposed or existing contract manager: THERE IS (IS TO BE) A CONTRACT FOR THE MANAGEMENT OF THE CONDOMINIUM (COOPERATIVE) PROPERTY WITH (NAME OF THE CONTRACT MANAGER). Immediately following this statement, there shall appear a reference to the documents, articles, paragraphs or pages in the disclosure materials where the contract for management of the condominium or cooperative property is set forth or described in detail.

8. If the developer or any other person or persons other than the unit owners has the right to retain control of the board of administration of the association for a period of time which can exceed one (1) year after the closing of the sale of a majority of the units in that condominium or cooperative to persons other than successor or alternate developers, then a statement in bold-faced type or capital letters in substantially the following form shall be included: THE DEVELOPER (OR OTHER PERSONS) HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER A MAJORITY OF THE UNITS HAVE BEEN SOLD. Immediately following this statement, there shall appear a reference to the documents, articles, paragraphs or pages

in the disclosure materials where this right to control is set forth or described in detail.

9. If there are any restrictions upon the free sale, transfer, conveyance or leasing of a unit, then a statement in bold-faced type or capital letters in substantially the following form shall be included: THE SALE, LEASE OR TRANSFER OF YOUR UNIT IS RESTRICTED OR CONTROLLED. Immediately following this statement, there shall appear a reference to the documents, articles, paragraphs or pages in the disclosure materials where the restriction, limitation or control on the sale, lease or transfer of units is set forth or described in detail.

10. A developer shall set forth after all the statements required in this subsection (18) have been included, a statement in substantially the following form which at developers option may be in bold-faced type or capital letters: THE STATEMENTS SET FORTH ABOVE ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES AS WELL AS THE ENTIRE SET OF DISCLOSURE MATERIALS AND HIS CONTRACT OR PURCHASE AGREEMENT. ALL DISCLOSURE MATERIALS, CONTRACT DOCUMENTS AND BROCHURE MATERIALS ARE IMPORTANT LEGAL DOCUMENTS AND IF NOT UNDERSTOOD, PROSPECTIVE PURCHASER SHOULD SEEK LEGAL ADVICE.

(b) In lieu of a separate document, the statements required by this subsection (18) may be included in the developer's offering circular or prospectus, providing that on the cover page of such materials there shall conspicuously appear the statement in bold-faced capital type: IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM (COOPERATIVE) UNIT ARE SET FORTH COMMENCING ON PAGE TWO OF THIS DOCUMENT. The information and statements required in this subsection (18) shall then commence on Page 2 (the inside front cover) of such offering circular or prospectus.

(c) No other information except of a title nature shall appear on the page on which the required statements appear after the first such statement until all of the applicable statements and items required in this subsection (18) shall have been set forth. In all cases the particular required statements shall be conspicuously displayed in bold-faced capital type larger than the largest type used in any other text on the pages on which the statements appear.

(d) The conformity of any statement to the particular wording set forth in this subsection (18) shall not be required. Any statement utilized shall be required to clearly and fairly state the information, and the information given must be accurate in all material aspects respecting the units being offered.

(19) A schedule of the exhibits to the prospectus, a copy of each of which shall be delivered with each copy of the prospectus. The schedule shall include but not be limited to copies of such of the following items as are applicable:

(a) Declaration of condominium, or the proposed declaration if the declaration has not been recorded, or the cooperative documents.

(b) Articles of incorporation or charter or constitution of the association, if an incorporated association or if there is a charter or constitution.

(c) Bylaws.

(d) Ground lease or other underlying lease of the condominium or cooperative property.

(e) Management, maintenance and other contracts for management of the association and operation of the condominium or cooperative and facilities used by the unit owners having a service term in excess of one (1) year. Such contracts as are renewable without the consent of the association being required shall be deemed to have a term in excess of one (1) year.

(f) Estimated operating budget for the condominium or cooperative and the required schedule of unit owners' expenses.

(g) Lease or recreational and other facilities that will be used only by unit owners of the subject condominium or cooperative.

(h) Lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums or cooperatives.

(i) Form of unit lease if the offer is of a leasehold.

(j) Declaration of servitude of properties serving the condominium or cooperative but not owned by unit owners or lease to them or the association.

(k) Developer's commitment to phase development.

(l) The statement of condition of existing building or buildings if the offering is of units in a rental operation being converted to condominium or cooperative ownership.

(m) Statement of inspection for termite damage and treatment as to existing building if the condominium or cooperative is a conversion of a rental operation.

(n) Form of agreement for sale or lease of units.

(20) If the buyer requests the buyer shall be given a copy of the agreement for escrow of payments made to the developer prior to closing, if any such agreement is being used, and/or a copy of the performance and payment bond for completion of the building containing the unit being purchased, if there is such a bond.

(21) Each volume containing one (1) or more than one (1) of the separate documents required to be distributed to prospective buyers as disclosure materials or containing one or more of the items required as exhibits to the prospectus or offering circular, except for the volume containing the document entitled IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM (COOPERATIVE) UNIT, required under subsection (18), shall contain beginning with the first page of the volume a table of contents for each of the following documents contained in the volume: cooperative documents or declaration; articles of incorporation or charter or constitution of association; bylaws; and copy of form of lease. If the statements required under subsection (18) shall be included in a volume of other documents or disclosure materials, that index shall begin on the page immediately succeeding the information required to be included under subsection (18). Each table of contents shall contain in bold-faced type or capital letters no smaller than the largest type in the text material on that page, references to all provisions in the documents to which that table of contents is applicable relating to ownership or control by any person, other than unit owners or an association or entity controlled by them, of any part of the condominium or cooperative property which will be used by the unit owners as a mandatory condition of unit ownership.

(22) If a developer in good faith has attempted to comply with the requirements of this act and, in fact, has substantially complied with the disclosure requirements of this act, nonmaterial errors or omissions in the disclosure materials shall not be actionable.

711.70 Sales and leases; disclosure

(1) Before a developer's contract for the sale of a residential unit or for the lease of a residential unit for an unexpired term of more than five (5) years, in a residential condominium or residential cooperative becomes binding upon the buyer, the developer shall deliver to the prospective buyer or lessee a copy of the floor plan of the unit and a copy of the prospectus or offering circular, if required, and if a prospectus or offering circular is not required, then a copy of the applicable items required by subsection 711.69(19).

(2) If a developer contracts for the sale of a unit, or for the lease of a unit for an unexpired term of more than five (5) years, prior to closing the contract may be cancelled at the election of the buyer or lessee by written

notice delivered to the developer within fifteen (15) days after the execution of the contract or within fifteen (15) days after the delivery of all of the items required to be delivered by the developer under this section, whichever shall be the later date. At the option of the purchaser or lessee, the contract time of closing shall be extended for this fifteen (15) day period that begins with the delivery of all of the items required. The contract shall contain within the text a legend in bold-faced type or capital letters no smaller than the largest type in the text and in words with the following effect: THE BUYER HAS THE RIGHT AND OPTION TO CANCEL AND TERMINATE THIS AGREEMENT BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN FIFTEEN (15) DAYS OF THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, OR IF BUYER HAS NOT RECEIVED ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER FLORIDA STATUTES SECTION 711.70(1), THEN AT ANY TIME PRIOR TO FIFTEEN (15) DAYS AFTER THE BUYER RECEIVES THE LAST OF THE ITEMS TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER SAID SECTION 711.70(1) WHICHEVER SHALL BE THE LATER DATE. THE BUYER'S RIGHT TO TERMINATE MUST BE EXERCISED HOWEVER PRIOR TO THE CLOSING. THE CONTRACT TIME FOR CLOSING MAY AT THE OPTION OF THE BUYER BE EXTENDED FOR A PERIOD OF NOT MORE THAN FIFTEEN (15) DAYS AFTER THE BUYER HAS RECEIVED THE LAST OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER SECTION 711.70(1). Voiding of a contract under the provisions of this subsection shall entitle the buyer or lessee to receive repayment of all moneys paid by him under the contract together with interest thereon at the highest rate then being paid upon savings accounts other than certificates of deposit by savings and loan associations in the area in which the unit is located.

(3) The items required to be furnished to a buyer or lessee under this section shall constitute a part of the contract for sale or lease, and no change may be made in any of the items required to be furnished which would affect materially the rights of the buyer or lessee or the value of the unit without approval of the buyer or lessee.

(4) A contract for sale or lease made by a developer shall include the following provisions in addition to provisions elsewhere required:

(a) A caveat in bold-faced type or capital letters no smaller than the largest type on the page shall be placed upon the first page of the contract in the following words: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY FLORIDA STATUTES SECTION 711.70(1) TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

(b) If the contract is for the sale or transfer of a unit subject to a lease, or if the contract is for a lease rather than a sale, the contract shall contain within the text a statement in bold-faced type or capital letters no smaller than the largest type in the text and in words with the following effect: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT SUBJECT TO A LEASE THAT EXPIRES _____, AND THE LESSEE'S INTEREST WILL TERMINATE UPON EXPIRATION OF THE LEASE.

(c) Whether the unit that is the subject of the contract has been occupied.

(d) If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, the contract shall contain within the text a statement in bold-faced type or capital letters no smaller than the largest type in the text, and in words with the following effect: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE

UNDER A LEASE OF A RECREATIONAL FACILITY, AND FAILURE TO PAY THIS RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

(5) If condominium or cooperative parcels are offered for sale or lease prior to completion of construction of the units and of improvements of the common elements, or prior to completion of remodeling of an existing building, the developer shall make available to each prospective purchaser or lessee for his inspection at a place convenient to the site a copy of the complete plans and specifications for the [construction] [1] or remodeling of the unit offered to him and of the improvements of the common elements or common areas appurtenant to the unit.

(6) Sales brochures, if any, describing the condominium or cooperative property and the units to be sold or leased, shall include a description and location of recreation facilities committed to be provided by the developer, parking facilities and other commonly used facilities, together with a statement indicating which of the facilities will be owned by unit owners as part of the common elements or common areas and which of the facilities will be owned by others. A caveat in bold-faced type or capital letters no smaller than the largest type of text material on the page shall be conspicuously placed on the inside front cover, or on the first page containing text material, of the sales brochure, or otherwise conspicuously displayed in the following words: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS REFERENCE SHOULD BE MADE TO THIS BROCHURE AND TO THE DOCUMENTS REQUIRED BY FLORIDA STATUTES SECTION 711.70(1) TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

(7) If units are sold subject to a lease, or if units are leased rather than sold, all written or printed advertising of the units shall contain a statement in bold-faced type or capital letters no smaller than the largest type in the context where used and in words with the following effect: THESE UNITS WILL BE TRANSFERRED SUBJECT TO A LEASE.

711.71 Sales and leases; publication of false or misleading information

(1) Any person who, in reasonable reliance upon any material statement or information that is false or misleading published by or under authority from the developer in advertising and promotional materials, including, but not limited to a prospectus, the items required as exhibits to a prospectus, brochures and newspaper advertising, pays anything of value toward the purchase or lease of a condominium or cooperative parcel located in this state shall have a cause of action to rescind the contract or collect damages from the developer for his loss prior to the closing of the transaction. After the closing of the transaction, the purchaser or lessee shall have a cause of action against the developer for damages under this section from the time of closing until one (1) year after the date upon which the last of the events described in paragraphs (a) through (d) shall occur:

(a) The closing of the transaction;

(b) The first issuance by the applicable governmental authority of a certificate of occupancy or other evidence of sufficient completion of construction of the building containing the unit to allow lawful occupancy of the unit. In counties or municipalities in which certificates of occupancy or other evidence of completion sufficient to allow lawful occupancy are not customarily issued, for the purpose of this section, evidence of lawful occupancy shall be deemed given or issued upon the date that such lawful occupancy of the unit may first be allowed under prevailing applicable laws, ordinances, or statutes;

(c) The completion by the developer of the common elements or common areas and such recreational facilities, whether or not the same are common elements or common areas, which the developer is obligated to complete or

provide under the terms of the written contract or written agreement for purchase or lease of the unit; or

(d) In the event there shall not be a written contract or agreement for sale or lease of the unit, then the completion by the developer of the common elements or common areas and such recreational facilities, whether or not the same are common elements or common areas, which the developer would be obligated to complete under any rule of law applicable to the developer's obligation. Under no circumstances shall a cause of action created or recognized under this section survive for a period of more than five (5) years after the closing of the transaction.

(2) In any action for relief under this section, the prevailing party shall be entitled to recover reasonable attorney fees.

Section 17. Section 711.72 is created to read:

711.72 Corrections by the association; corrections by the courts; limitations on action

(1) Whenever it shall appear that there is an omission or error in a declaration of condominium, cooperative documents, or in other documentation required by law to establish the condominium or cooperative form of ownership as the case may be, the association may correct such error and omission by an amendment to the declaration of condominium or to the cooperative documents or the other documentation required by law, in the manner provided for in the declaration or cooperative documents or other documentation required by law, to effectuate an amendment for the purpose of curing defects, errors or omissions. Such an amendment need not require the same vote of approval of the members of the association as other amendments and such an amendment shall nevertheless be effective when duly passed and approved and recorded among the public records when recordation is required, if property rights of the unit owners are not materially adversely affected. This subsection shall not be deemed restrictive of the powers of the association to otherwise amend the declaration, cooperative documents, or other documentation, but shall be construed to authorize a simple process of amendment requiring a lesser vote for the purpose of curing defects, errors or omissions when the property rights of unit owners are not materially adversely affected.

(2) Whenever it shall appear that there is an omission or error in a declaration of condominium, cooperative documents, or in other documentation required by law to establish the condominium or cooperative form of ownership; as the case may be, the circuit courts of this state for the circuit in which the condominium or cooperative property lies, shall have jurisdiction to entertain petitions of one or more of the unit owners therein, or of the association, to correct the error or omission, and the action may proceed by way of a class action. The court may consider all pertinent matters brought before it in rendering its decision and may require that one or more methods of correcting the error or omission be submitted to the unit owners to determine the most acceptable correction. The court shall correct the error or omission in the exercise of its reasonable discretion upon finding that the corrections shall not substantially interfere with the property rights of any of the unit owners not consenting to the correction, and upon finding that the correction may not be made by ordinary amendment to the declaration or other documentation for reason that the necessary number of unit owners do not, or will not, approve, or for reason that the amendatory process cannot cure the error or omission without unanimous approval by the unit owners. It shall not be necessary for all unit owners or for the association to be joined as parties to said suit, but all unit owners and the association shall have the right to intervene. Any unit owners not joined and served with process as provided by law shall, nevertheless, be entitled to have mailed to them, by certified mail, return receipt requested, or by registered mail, return receipt requested, at their last known residence address, which may be their unit address, a copy of the petition and a copy of any other pleading or other document which

the court may order to be distributed, including but not limited to any rules to show cause issued by the court.

(3) Suit may not be brought subsequent to three (3) years after a condominium declaration is filed of record or a cooperative regime is established to determine whether the declaration, cooperative documentation or other documentation substantially complies with the mandatory requirements of this chapter for the formation of a condominium or cooperative regime. If suit to determine whether the declaration or other condominium or cooperative documentation is not brought within three (3) years of the filing of the declaration or establishment of a cooperative regime in the applicable case, the declaration, cooperative documentation and other documentation shall be deemed effective under this law to create a condominium regime or cooperative regime, as the case may, whether or not the documentation substantially complies with the mandatory requirements of this chapter. Nevertheless, both before and after the expiration of this three (3) year period, a circuit court of this state shall have jurisdiction to entertain petitions for the correction of the documentation permitted under subsection (2) above, and other methods of amendment may be utilized to correct such errors or omissions at any time.

Section 18.

In the event that any provision or application of this act is held to be invalid, it is the legislative intent that the other provisions and applications hereof shall not be thereby affected.

Section 19.

This act shall take effect October 1, 1974; provided however that nothing contained in sections 711.63, other than 711.63(4), and 711.64, Florida Statutes, shall affect:

(a) Rights established by contract for sale of a unit by a developer to a prospective unit owner prior to July 1, 1974.

(b) A condominium or a cooperative as to which rights are established by contract for sale of a unit in the condominium or cooperative by the developer to a prospective unit owner prior to July 1, 1974.

(c) The form of a lease that would be otherwise subject to the requirements of section 711.63, Florida Statutes, if the lease form is established by contract for sale of a unit in any condominium or any cooperative by the developer to a prospective unit owner prior to July 1, 1974, which lease form may be used in the making of all leases of the leased property and as to such other property that may be added to the leased property in accordance with the terms of the lease;

(d) And provided further that if on October 1, 1974 there are less than six remaining unsold units in a condominium or cooperative in which there have been binding contracts for the sale of other units executed prior to October 1, 1974, then the requirements of 711.69, Florida Statutes, shall not be applicable to the sale or offering of such remaining unsold units; and provided further that nothing contained in section 711.65, Florida Statutes, shall affect a condominium or a cooperative as to which rights are established by contracts for sale of ten percent (10%) or more of the units in the condominium or cooperative by the developer to prospective unit owners prior to July 1, 1974, or as to condominium or cooperative buildings on which construction has been commenced prior to July 1, 1974.

Approved by the Governor May 30, 1974.

Filed in Office Secretary of State May 30, 1974.

CONDOMINIUMS—DISCLOSURES

CHAPTER 74-75

HOUSE BILL NO. 1459

An Act relating to condominiums and cooperative apartments; amending the introductory paragraph of § 711.24(3), Florida Statutes, 1972 Supplement, to clarify language relating to prohibited misleading statements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The introductory paragraph of subsection (3) of section 711.24, Florida Statutes, 1972 Supplement, is amended to read:

711.24 Full disclosure prior to sale; publication of false or misleading information

(3) Any person who, in reasonable reliance upon any material statement or information that is false or misleading, published by or under authority from the seller, in advertising and promotional materials, including, but not limited to, brochures and newspaper advertising, pays anything of value toward the purchase of, or acquiring an interest in, a condominium or cooperative apartment located in this state shall have a cause of action to rescind the contract or collect damages from the seller for his loss prior to the closing of the transaction by which he purchases or acquires the interest. After the closing of the transaction, the purchaser shall have a cause of action against the seller for damages under this section from the time of closing until one year after the date upon which the last of the events described in paragraphs (a) through (d) below shall occur:

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor May 24, 1974.

Filed in Office Secretary of State May 24, 1974.

Mr. SAMUELS. I think this would give you good insight as to the legislative process that has taken place there. And there, of course, condominiums and conversions have been ongoing for the last 5 or 6 years, and they have some experience with it.

I think there are some things in the law regarding conversions that would give the people living in the apartments, the renters, about 60 to 90 days to make up their minds as to whether they wish to purchase or not, and existing leases, of course, will not be affected by it. And so forth. There is some area where legislation was put into effect.

Senator BIDEN. What has occurred, at least in my limited experience and from some of the testimony we heard yesterday and from the people that I spoke with while preparing my legislation—and I know that Senator Proxmire had the same experience—is that many of those who are presently renting now under the threat of having to purchase at a price which they can't possibly afford are dislocated.

Even without going to the point of converting the building and the effect of moving out, you know, disclocating particularly older tenants, people on fixed incomes, the other side of that problem is the threat of going condo has an impact on the rental market.

You know, you say to the elderly couple who is paying $200 a month now, "Well, look, we're going to turn this, convert this into a condominium complex because I'm not making x amount of dollars."

They say, "Oh, my God, we can't do that. Where are we going to go?"

And they say, "The only thing that will keep me in this building is if we raise the rents 30 percent or 50 percent or whatever."

You know that particular tack is used in some States. And it seems to me a lot of people are hostages to that kind of reasoning. They have got no place to go, and they have little alternative.

I wonder whether or not you think the Federal Government should specifically step in and say that:

You cannot convert your building, Mr. Landlord, to a condominium complex unless you get 35 or 50 or 75, whatever percentage of the owners to say, "Yes, we in this building want to go to a condominium complex."

Mr. SAMUELS. I think that would be a solution, Senator, because I don't think there is any other way actually. The people get 60 days. They have an investment in the apartment already, probably carpeting and drapes and all that kind of stuff, which is very costly and which they probably invested 4 or 5 years ago, and they are not in a position to move it. And then moving is very expensive.

If they purchase the apartment, usually their cost of carrying it would go up 100 percent probably. I have seen instances where it would with the higher interest rates that they have to pay on mortgages and the maintenance costs.

And then, of course, the buildings themselves are usually so deteriorated that the builder or the owner of the building is very glad to get rid of it by that time, you see. The building may be 15 years old and in need of many, many, very expensive repairs and replacements.

Senator BIDEN. Well, the thrust of what I am trying to get at is it seems to me there are two problems. Not the person who has the investment and is forced into buying. I am even more concerned about the person who has the investment and has absolutely no possibility of

being able to buy it, who lives on a fixed income, who doesn't have the $10,000 or $20,000 or $30,000, depending on the cost, to put down as a down payment who doesn't want to get into this market today of 10- and 10.5-percent mortgage money for *x* number of years, who can't get the banks to give him a mortgage even if they have it when they are 65 years old and in effect are just displaced.

The other side of it—and I just raise it for the record, because I expect because of the type of association you have that you have a different problem with what you have been dealing with—is the problem of what do we do at a government level with regard to dislocations when it does occur. What happens?

Do we provide any service? Or do we require the owner to? What do we do with regard to those persons that are dislocated?

Mr. SAMUELS. New York State I think has a regulation whereby rents are regulated. In the State of Florida just recently the supreme court held the rents cannot be regulated. So presumably the landlord, as you said before, may raise his rent by 100 percent unless you vote to convert into condominium ownership.

And that does give a problem. And I think by a vote of say 50 percent or so of the existing tenants conversion to condominiums should be restricted.

Senator BIDEN. Go ahead. Yes?

Mr. SEMER. I have a slightly different perspective on this. And this would be possible if the Government in carrying out your direction in section 821 to study condominiums and cooperatives were to give the highest priority to the market analysis that would have to be done in the principal metropolitan areas.

Certain matters will resolve themselves by a market process. If you have a glut of both apartments and condominiums, prices will start to come down, and people would have a choice, and we wouldn't have the relocation problem that has plagued this committee for 20 years in programs such as urban renewal.

You have directed the executive branch to do a study, and I urge that you suggest to them that they give this the top priority, because we are all flying blind here.

In preparing for the hearing, your commitee staff asked, "Have you any information on how conversions impact the rental market or how condominium construction impacts it?" We are trying as best we can to find that out for you.

Senator BIDEN. Are you suggesting there be some sort of index that in addition to having *x* number of people, *x* percentage of people in the condominium complex before you can convert, you suggest that there be a district in which that condominium or that building is located where there be some sort of formula whereby you determine what percentage of units there are available for rental, and if it reaches a certain percentage then they can convert?

If there are no available rental units, that there be an additional burden placed on the developer before he can convert?

Is that the kind of thing you are talking about?

Mr. SEMER. I think so, Mr. Chairman. You have quite a number of precedents you have worked out over the years in the committee guiding the executive branch in giving its help to communities depending on whether or not they have relocation resources, and so on.

Senator BIDEN. In New York, for example, they have a law which says that when, in fact, an owner of an apartment complex converts, that anyone not wishing to convert at that point be given 2 years to continue to live there, a 2-year lease, rather than be given the 60 or 90 days, assuming their lease is expiring within those 60 or 90 days.

And they are also attempting to regulate harassment of present tenants by various means.

Do you think that those two concepts should be built into this legislation?

Mr. SEMER. I think yes. I would have some trouble deciding on the spot how much you put in the statute and how much you would hope would be carried out by good administration.

Senator BIDEN. Because of your expertise, Mr. Semer, and the number of years you served so well on this committee, I would like to ask you specifically a question I have already asked but I would like to hear your response for the record.

In terms of the administration of the legislation, assume that either of the two versions that have been introduced are passed or some hybrid of these two. Do you think HUD is capable of being the one to administer this legislation? Or do you think we should somehow be thinking about how we get more authority and autonomy at the State level in order to administer it?

Mr. SEMER. I would never give up on the Federal Government as a place where you could get good administration.

I spent 6 years on the Hill here as a staff member, and I spent 6 years in the executive branch, and on balance I would say that with good legislation you can make them do what you want them to do.

And I would like to see you try to write this legislation so that HUD could administer it.

Senator BIDEN. Thank you. I have no further questions, gentlemen. I thank you very much. And, Congressman, thank you for taking time out of your busy schedule to come over here.

Mr. ROSENBLOOM. Thank you, Mr. Chairman.

Mr. SAMUELS. Thank you.

Mr. SEMER. Thank you.

Senator BIDEN. Thank you very much.

[Statements and attachments of the previous witnesses follow:]

STATEMENT OF LAWRENCE ROSENBLOOM, PRESIDENT, NATIONAL ASSOCIATION OF CONDOMINIUM OWNERS, ACCOMPANIED BY ERNEST SAMUELS, CHAIRMAN, FLORIDA CHAPTER, AND MILTON SEMER, WASHINGTON COUNSEL

Mr. Chairman and members of the committee: I am Lawrence Rosenbloom, President of the National Association of Condominium Owners. I reside in Los Angeles, California, where my principle business is Chairman of the Board of Adams, Scott and Conway, a nationwide insurance brokerage firm. I am accompanied by Ernest Samuels, Chairman of our Florida Chapter, and Milton Semer, our Washington Counsel.

We appear in support of S. 3658 and S. 4047.

The National Association of Condominium Owners is incorporated under the Non-Profit Corporation Law of California. Membership is limited to condominium owners, who are the consumers of this type of housing, and does not include the producers, such as builder-developers, financial institutions and the like. We represent the owner who has purchased a condominium converted from an existing rental unit as well as the owner who has bought a condominium in a brand-new structure.

We are especially pleased that this Committee is taking the leadership in looking into the condominium field, for it was in this Committee that you pioneered major breakthroughs for the consumer, such as the truth-in-lending legislation. We are proud of the fact that Senator Paul Douglas, the original sponsor of truth-in-lending, is serving as Honorary Chairman of our National Advisory Board.

Our testimony this morning highlights six topics which represent what we regard as the principal problem areas in the condominium field:

1. Ownership of supportive facilities,
2. Control of management,
3. Management improvement,
4. A moratorium on new condominiums, especially conversions, until abuses are cleaned up,
5. Developing viable resale market, and
6. Eliminating inequities in taxation.

OWNERSHIP OF SUPPORTIVE FACILITIES

The nature of the abuses in this phase of condominium ownership have been ably and factually described by Senator Proxmire in his remarks of September 26. Excessive rental fees frequently have been obtained by deception, which can be dealt with to some extent by more understandable and strictly enforced disclosure rules. It is time to call a halt to falsehood that is buried in a voluminous sales contract and public report. It is also time to blow the whistle on the promoter who may disclose the facts of ownership but establishes a very low and misleading rental fee for the use of the facilities during the initial period of occupancy when the builder-developer is still selling the units and then radically increasing the rental fees when the development is finally sold-out.

In the vast majority of instances when buying a single family unit in the form of a house, the builder of that house does not retain ownership of its supportive facilities, such as the garage, when he sells the house. The basic concept of a condominium is that each unit is an opportunity for home-ownership. Thus, we strongly urge this Committee to use the definition of condominium ownership as synonymous with private home ownership, to dramatically limit a builder-developer's ability to retain ownership of a condominium's common supportive facilities or amenities.

We feel so strongly about this question of ownership of supportive facilities that we not only recommend preventing builder-developer ownership in future projects, but divesting them of their ownership in existing projects, as well.

CONTROL OF MANAGEMENT

Of primary importance to condominium owners is the policy that any contracts for management or services entered into by the builder-developer should be limited to one year. We want to underscore the importance of the provision in S. 4047, Section 5(a)(12)(A), that "satisfactory assurances" be given that:

"Owners of the condominiums in the project will be permitted to form an owners' association, to select the project management, and to establish appropriate employment contracts and other contracts or agreements affecting the use, maintenance, or access to all or a part of the project no later than one year after the initial occupancy of the project or as soon as 80 per centum of the units are occupied as condominiums, whichever is earlier;"

This provision will go a long way toward separating unscrupulous builder-developers from projects they have built and continued to control to the detriment of the new owners. Our Florida Chapter Chairman, Mr. Samuels, is especially knowledgeable on this matter and will expand on the problem from his own personal experience.

MANAGEMENT IMPROVEMENT

When I bought my first condominium residence, I had no expertise in property management nor did any other owner in our development. We had no reliable source from which to gain that expertise. Since condominium management is unique in its requirements, there was no way to factually discern whether those we turned to were really equipped professionally or ethically to help us. Thus, we were potential victims of "rips-offs" regardless of the existence or lack of builder-developer arrangements to provide these services.

Any studies initiated by the Federal government, as authorized by § 821 of the Housing and Community Development Act of 1974 and proposed by § 11 of the Proxmire-Brooke bill, to obtain such information would not only provide state and local agencies the potential for eventually licensing professionals in condominium property management; they would give the consumer the opportunity to gain the knowledge necessary to manage his property. The National Association of Condominium Owners is pursuing, to the best of its ability, the objective of upgrading the standards of management services available to condominium associations.

MORATORIUM

The wide prevalence of abuses, coupled with the short supply of management services of a high professional quality, prompts us to recommend that the Committee consider adopting on a national basis the approach of the District of Columbia when confronted by this problem—the declaration of a moratorium on all further condominium development, particularly conversions, until matters are straightened out. A moratorium, no matter how drastic this measure is, certainly at the Federal level, may turn out to be a more prudent course than to permit abuses to be locked in and to permit the proliferation of projects without adequate regulation or management support.

RESALE MARKET

Since condominium owners are typically middle and upper-middle class families, who, like the majority of American families, enjoy a high degree of mobility, it is important that the condominium have available a viable resale market.

TAXATION

The tax problem, which we appreciate is the primary jurisdiction of other committees, is discussed in Attachment A. In general, the problem is one in which the condominium owner is subject to double taxation in contrast to the ordinary home owner for money set aside in anticipation of maintenance and repairs.

In addition, in Attachment B we have prepared an analysis of the disclosure, anti-fraud and regulatory aspects of S. 3658 and S. 4047, which we hope will be helpful to you.

Attachment C contains the statement of our Florida Chapter Chairman, Mr. Ernest Samuels.

Attachment D is an affidavit given by Mr. Samuels to the Federal Trade Commission.

This concludes my prepared statement, Mr. Chairman. We will do our best to answer your questions and to develop legislation to serve the public interest.

ATTACHMENT A

TAXATION OF CONDOMINIUM ASSOCIATIONS

Current federal tax law, as interpreted by the Internal Revenue Service, places an inequitable burden on the condominium owner compared with the ordinary home owner.

In a condominium, the home owner pays a monthly assessment to his association, which is a non-profit entity, for the maintenance and upkeep of the areas owned in common by the association including the exterior of the units, for utility services for the common area, for fire insurance for the units and common area, for public liability insurance for the association and the individual owners, and for materials and supplies. If these monthly assessments are totally expended by the association, it has no tax to pay. However, to the extent the proceeds from the assessments are not spent, the amount left over is taxed at the rate of 22 percent on the amount up to and including $25,000 of taxable income and at 48 percent on amounts over $25,000.

In effect, the condominium owner is being double-taxed.

First, the condominium owner is not allowed to deduct his monthly assessment which he pays to the association; he pays taxes on the amount of the assessment.

Second, the association also has to pay taxes on the amount of the assessments left over at the end of its taxable period.

For example, in the Sagewood Condominium Association of which I am president, the association at the end of its first fiscal period of approximately 5 months had to pay $327 in federal income taxes. In its second fiscal period, of one year, it had to pay $385 in federal income tax. The condominium owners were therefore in essence penalized a total of $712 in the first two fiscal periods of the association's existence.

Let me put it in the form of a comparison of the tax status of the home owner and the condominium owner. Assume that the home owner has determined that he will have to budget $50 per month to cover maintenance, and the cost of repainting his home two years in the future. Assume further that each month he deposits that sum in a separate account. And finally, assume that at the end of the year he has spent only $500 of the total $600 deposited. The tax consequence is that he does not have to pay any tax on the $100 that is left over; he simply carries it over to the next year.

Now, in contrast, assume the same set of circumstances with respect to a condominium owner. In his case, the $50 per month, or $600 a year, is paid to his association for the same purposes. At the end of the year his condominium association has to pay a tax of 22 percent on unexpended funds set aside for known future needs, whereas the home owner does not. What this amounts to is that the condominium owner is charged an additional $22 the next year to meet budget projections—a penalty imposed on him simply because he owns a condominium rather than a home. For an association of 100 owners this would mean an added burden of $2,200 a year.

The plight of the condominium owner has not escaped the attention of the Internal Revenue Service, but unfortunately the Service has done nothing to resolve the inequities. In Revenue Ruling 70–604 the Service ruled that if an association votes to return the excess assessments to its members or to apply the excess to reduce next year's assessments then such excess would not be taxable. But that obviously doesn't meet the problem which is to build cash reserves today to meet anticipated future expenses.

More recently the Service has been even harsher. In Revenue Rulings 74–17 and 74–99 the Service has for all practical purposes precluded tax exempt status for any owners association which has been created to operate and maintain a condominium project or any planned development unless the association maintains *only recreational facilities*, or if the property owned and maintained by the association is open for use by the general public.

The National Association of Condominium Owners submits that such treatment is not equitable and that condominium owners should not be penalized by the Internal Revenue Service. We submit that legislation is necessary to remove the existing inequities. We propose that such legislation should provide that non-profit housing associations should not be taxed on the proceeds of members' assessments which are to be used for operating expenses or capital improvements for the association in the future. In essence such legislation would allow such associations to establish non-taxable reserves for such future expenditures.

Such legislation would not go so far as to provide tax exempt status for such associations. We don't believe that is necessary. We are not seeking to give condominium owners tax benefits that are not available to home owners. We simply want the condominium owner to receive equal treatment.

The condominium owner also has the very same problem at the state level with respect to state taxes. Since many states pattern their tax codes on the federal code, such legislation would hopefully also benefit the condominium owner at the state level.

ATTACHMENT B

ANALYSIS OF THE DISCLOSURE, ANTI-FRAUD AND REGULATORY ASPECTS OF S. 3658 AND S. 4047

This paper analyzes and comments on the more significant differences between S. 3658 (the Biden bill) and S. 4047 (the Proxmire-Brooke bill), with particular emphasis upon the degree to which each bill performs a function of regulation, protection against fraud or disclosure, in the interest of protecting the condominium buyer and owner. It concludes that each bill is in need of revision in order to implement the philosophical concepts on which it is premised, and suggests the desirability of effectively utilizing all three approaches—disclosure, anti-fraud sanctions, and regulation—by combining certain features of the two bills.

The Biden bill has been based upon and follows the outline and in substantial part the language of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.* Other than adaptations essential to focusing the language on condominium sales rather than land sales, the most significant difference between the Biden bill and the Land Sales Act is the omission, in the Biden bill, of any express provision for civil liability on the part of developers. Unlike the Biden bill, the Land Sales Act expressly authorizes suit against a developer by a lot purchaser, for monetary damages, in the event that the developer has failed to make full and true disclosure.

It appears that the only other important departure from the Land Sales Act is in § 6(10) of the Biden bill, which requires that in the event of a condominium conversion, the statement of record must contain "satisfactory assurances" that tenants will be given 90 day notice of intent to convert and a 60 day exclusive option to buy their units. Unlike the remainder of the Biden bill, which embraces a disclosure and anti-fraud philosophy, this proviso seems to imply authority in HUD to assure that those assurances will be met, though just how the authority is to be exercised is not indicated.

The Proxmire-Brooke bill differs from the Biden bill in a number of important respects. While it omits anti-fraud sanctions as well as any provision for civil liability, it does build upon the technique, used only in § 6(10) in the Biden bill, of requiring developer assurances so as to have a more substantial regulatory effect, in addition to serving disclosure functions. But it does so without furnishing a mechanism for regulatory implementation. Moreover, it implies, but does not satisfactorily explicate, an authority on the part of the Secretary of HUD to approve the substance of developer filings.

Specific differences between the two bills which appear to be of substantial import are as follows:

The Biden bill, in § 2(4), defines "project" as 20 or more condominium units; § 2(4) of the Proxmire-Brooke bill defines "condominium project" as any "multifamily housing project" in which all dwelling units, regardless of number, are to be sold or held as condominiums, and gives the Secretary of HUD almost unfettered discretion, under § 10(a)(2), to so modify the bill as to make it apply where less than all units are to be condominiums. If uncertainties as to the desired scope of coverage or difficulties of drafting necessitate such a delegation of authority, then it would be helpful to require the promulgation of implementing regulations within a fixed time after effectivenesss of the Act. Since the "prohibitions" sections of both bills speak in terms of sales of condominiums in "projects," these definitions are important to the scope of the legislation.

The "prohibitions" sections of the bills also speak of sales by "developers." The Biden bill defines "developer," in § 2(6), as one who sells or leases, or offers or advertises for sale or lease, any condominium in a "project"; § 2(6) of the Proxmire-Brooke bill defines it as one who "owns or constructs a condominium project (or converts or proposes to convert a multifamily rental housing project to condominium ownership) and who offers or proposes to offer dwelling units in such project for sale."

The Biden bill, in § 3, exempts from the Act the following: certain sales not pursuant to a common promotional plan; sales or leases solely for commercial or industrial purposes or uses; sales or leases under or pursuant to court order; sales or leases by any government agency; and condominiums or projects as to which the Secretary of HUD finds enforcement unnecessary in the public interest or for the protection of purchasers. The only exemption contained in the Proxmire-Brooke bill is § 13(b), which empowers the Secretary to exempt sales "within any state or locality" where there are similar or more stringent state or local laws. It should be noted that the omission of an exemption for sales under or pursuant to court order may discourage foreclosing lenders from protecting their interests by completing unfinished projects; if so, inclusion of the exemption would be beneficial, not detrimental, to condominium owners.

The "prohibitions" section of the Biden bill tracks with that of the Land Sales Act, which in turn seems to have been based on conjoint use of prohibitions derived from: (1) § 5(a) of the Securities Act of 1933, 15 U.S.C. 77e(a), (making it unlawful to sell or deliver securities unless a registration statement is in effect); and (2) Regulation 10b–5 under the Securities and Exchange Act of 1934, 17 C.F.R. § 240.10b–5 (making illegal schemes to defraud, untrue statements of material fact, omissions to state material fact, and practices operating as fraud or deceit), itself a heritage of the common law. The Proxmire-Brooke

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bill retains the former prohibition, but abandons the latter one. It perhaps is anomalous, then, that the Proxmire-Brooke bill does retain in § 8(a) a mandate to the Secretary of HUD to investigate "material misrepresentation."

The Proxmire-Brooke bill introduces in § 2(8) the term "federally related condominium housing loan," broadly comprehending: loans from lenders whose deposits or accounts are Federally insured or which are themselves Federally regulated; Federally-assisted loans; loans pertaining to Federally-administered housing or urban development programs; loans eligible for purchase by F.N.M.A., G.N.M.A., the F.H.L.M.C., or by any institution from which the F.H.L.M.C. could purchase them; and loans by a defined class of "creditors" under the Consumer Credit Protection Act of 1968. Section 3(b) of the Proxmire-Brooke bill forbids the making of any such loans unless the condominium project is registered and a statement of record in effect.

Section 4(a) of the Proxmire-Brooke bill goes beyond the Biden bill in requiring that, to be registered under the Act, a statement of record for a project not only must meet the requirements of the Act, but must be "approved by the Secretary as being accurate, complete, and in accordance with the purposes of this Act." This would seem to impose a regulatory burden on the Secretary to make a discretionary judgment. If that is the intention, it suffers from a lack of further detail as to what is to be involved in that judgment and there is some doubt as to whether that fact is what is intended, especially in light of the arguably conflicting provision, in § 5(c) (also § 10 of the Biden bill) that effectiveness of a statement of record shall not be deemed a Secretarial finding that the statement of record is accurate or that the Secretary has given his approval to the project.

With regard to the content of the statement of record, the Proxmire-Brooke bill requires that considerably more information be furnished. Subsections (a)(1), (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12), (b)(2), (b)(4), and (b)(5) of the Proxmire-Brooke bill either are more stringent than their counterparts in the Biden bill in what they require of developers, or else are not in the Biden bill at all. The only documentation required by the Biden bill seemingly not required by the Proxmire-Brooke bill is management agreements, employment contracts, and other relevant contracts, §6(6) of the Biden bill; *cf.* § 5(a)(12) of the Proxmire-Brooke bill, which fails to cover the initial one year period of occupancy.

From the standpoint of potential regulatory impact, several of these Proxmire-Brooke bill provisions are of special interest for their adoption and multiple use of the semiregulatory "satisfactory assurances" technique of § 6(10) of the Biden bill. Specifically, the statement of record is to contain: "satisfactory assurances" that a structure will be 95% complete before presentation or use of a certificate of occupancy, § 5(a)(9); "satisfactory assurances" of a 1-year warranty, § 5(a)(11); "satisfactory assurances" that condominium owners can within one year form an owners' association (in which each owner shall have one vote) to select project management and contract for employment and for use, maintenance or access, with the developer participating on behalf of unsold units after one year, and further, that no management lease will be enforceable against the owners after that one year, § 5(a)(12).

Similarly, in the case of a condominium conversion, the Proxmire-Brooke bill, in § 5(b), displaces the Biden bill's simple § 6(10) requirement of "satisfactory assurances" concerning notice of intent to convert and an option to buy, with a long list of "satisfactory assurances" which must be given: that first priority, with 6 months' notice (rather than 90 days' notice, and 60 days to buy), will be given to purchase, § 5(b)(1), (2); that 90 days' notice to move will be required, § 5(b)(3); that leases will not be abridged, § 5(b)(4); and that the purchase agreement, public offering statement and extensive other documents will be furnished 15 days before signing, § 5(b)(5).

The "public offering statement" to be provided buyers also is to contain, under the Proxmire-Brooke bill, certain information not necessary under the Biden bill; a projected budget for the second (as well as the first) year of operation, § 7(a)(3); "satisfactory assurances" that the date on which each structure "will be completed" shall be clearly set forth in each purchase agreement, § 7(a)(6); "the provisions of the warranties required by section 5(a)(10)" (here, as in § 7(a)(4), there is a reference to the wrong section of the bill), § 7(a)(9); and such other information as the Secretary may require, § 7(a)(11). (It may be asked why § 5 of the Proxmire-Brooke bill and § 6 of the Biden bill, governing contents of the statement of record, do not contain this last provision.

Section 10(b) of the Proxmire-Brooke bill directs the Secretary of HUD to promulgate a standardized form for the statement of record.

The Proxmire-Brooke bill calls, in § 10, for a one-year study of rental housing and tenant relocation problems.

In § 13(a), the Proxmire-Brooke bill purports to give the Secretary of HUD authority to determine whether the Act conflicts with state or local laws, invalidating the state or local laws only to the extent of a conflict. It says that he may declare an inconsistency if he finds that the Federal law gives greater protection to the consumer. The Constitutionality of this Congressional delegation of power to the Secretary would seem open to question. Be that as it may, Senator Proxmire's statement on September 26, 1974, that under his bill "State or local laws shall prevail" where not inconsistent with this Act, 120 *Cong. Rec.* S. 17548, would seem to be correct only in the sense that the state or local law would not be invalidated. Compliance with the Federal Act still would be necessary unless the Secretary granted an exemption under § 13(b).

Section 15 of the Proxmire-Brooke bill gives the Secretary power to establish new agencies, use unpaid volunteer employees or "utilize such Federal officers and employees and (with the consent of the State involved) such state and local officers and employees" as he thinks necessary to carry out the provisions of the Act.

Both the Biden bill and the Proxmire-Brooke bill recite, in their preambles, that their purpose is to protect condominium purchasers through disclosure and regulation. The Biden bill mentions disclosure first; the Proxmire-Brooke bill reverses the order. But these descriptions do not adequately convey what the two bills do.

If the Biden bill, the 1968 Interstate Land Sales Full Disclosure Act, and the Securities Act of 1933 are examined side by side, the conclusion is inescapable that there is a direct line of descent from the 1933 Act, through the Land Sales Act, to the Biden bill. All three measures have as their primary philosophical purpose, that of assuring full disclosure. But the Proxmire-Brooke bill, though more prone to speak of "assurances," is the more thorough of the two bills in requiring disclosure of a maximum amount of information helpful to the condominium purchaser.

The Land Sales Act added to the disclosure concept an anti-fraud function derived from the S.E.C.'s Rule 10b-5 under the 1934 Securities and Exchange Act, along with express provision for privately enforced civil remedies. If condominium legislation is to benefit the condominium buyer *after* he has made his purchase, it seems important that the legislation perform some function other than disclosure, and fraud sanctions would be useful in this regard. The Biden bill would perform an anti-fraud function, but the bill lacks express provision for a private civil remedy. This is a weakness, since an extremely large staff would be necessary if exclusive HUD enforcement of the anti-fraud section were to be made a remedy meaningful to condominium owners.

Indeed, it would be interesting to know whether, and if so to what extent, HUD has instigated public actions against developers under 15 U.S.C. § 1704 (a)(2), the anti-fraud provision of the Land Sales Act. It must be remembered, of course, that the 1933 Securities Act also lacked express provision for a private remedy; this did not prevent the Federal Courts from recognizing a private action, implied from language paralleling that § 4(a)(2) of the Biden bill. *See* 3 *Loss on Securities Regulation* 1761 *et seq.* (2d. ed. 1961). However, there is no advantage in leaving the matter in doubt. This does not necessarily mean that condominium legislation must spell out the amount of damages to be recovered, as the Land Sales Act attempts to do in 15 U.S.C. § 1410(c) and (e). Rather, a right to sue for damages could be expressly recognized, and the Federal Courts left to ascertain the quantum of damages on traditional grounds. In addition, it could be left to the Courts to apply traditional standards to private condominium owner actions for rescission or specific performance.

The Biden bill is a disclosure measure with an anti-fraud remedy (whether it is a private remedy or solely a public one is an open question). Conceptually, the Proxmire-Brooke bill hovers somewhere between disclosure (fuller disclosure than the Biden bill) and regulation, while unfortunately omitting anti-fraud prohibitions and a private remedy. This is so because, in the first place, the bill seems to establish, but does not clearly delineate, a discretionary power of the Secretary of HUD as to whether to approve a statement of record, depending on whether the statement is "accurate" and "complete" (which would seem to entail independent investigation of the project itself on his part), and

more broadly, whether it is in accord with "the purposes of this Act" (*viz*, to protect condominium purchasers).

Secondly, as discussed above, the Proxmire-Brooke bill requires in a number of instances that the developer give "satisfactory assurances" that certain things will be done. In introducing the bill, Senator Proxmire stated that it:

Places requirements on the developer which are designed to protect the consumer from abuses often associated with condominium purchases. These include a 1-year warranty on the structure and mechanical and other systems, coupled with a statement of the responsibility of the developer for any structural or engineering defects; assurances that the owners will be able to form an owners' association within 1 year to select the management and will not be bound by any long-term management contracts; and a requirement that recreation fees be stated separately, with an indication of the extent to which purchase of the condominium includes use of the project's recreational facilities. (120 *Cong. Rec.* S17547, September 26, 1974)

This is, of course, a laudable purpose, though it is regrettable that the "assurances" technique has not been used more generally with regard to the representations made by the developer in the statement of record, in particular, with regard to § 5(a)(8), requiring detailing of the purchaser's interest in, and fees to be charged him for, recreational facilities. The bill, however, fails to indicate: (1) how the "satisfactoriness" of these "assurances" is to be adjudged; and (2) how the "assurances" are to be enforced. As to the first omission, will HUD, for example, look into the scope or terms of the warranties provided for by § 5(a)(11)? If that seems unlikely, does it mean that these assurances will be merely *pro forma*?

But the second omission is of greater concern, from the standpoint of the condominium owner. Suppose that following the sale of some or all condominiums, the developer fails to honor an assurance he has given. Is it intended that HUD will go into court to require him to do so? Is the condominium owner to have the right to go into court? Is the developer to be subject to criminal penalties for subsequent willful violation of an assurance which he cannot be proved to have intended to violate at the time his statement of record was filed? Or is there to be some other sanction available to HUD, besides suspension of the statement of record, a practice which can in effect penalize innocent existing condominium owners at the same time it penalizes the developer? The bill does not say. In summary, there is a need to think through the mechanism for making the developer's "assurances" real protection for the condominium purchaser. And when this has been done, the specific "assurances" and the method for enforcing them should be set out in the public offering statement so that the condominium buyer will be aware of them.

There are, then, defects in both bills which deserve further attention. There also are strengths in each bill which the other bill lacks. It should not be necessary to choose between a disclosure/limited-anti-fraud bill (Biden) and a limited-regulation/fuller-disclosure bill (Proxmire-Brooke), when all three protective concepts can logically and consistently be combined into a strong disclosure/anti-fraud/regulatory bill which does not unduly interfere with the business operations of the developer.

Such a combination of features, properly revised to overcome the inadequacies detailed, would be a substantial advance, but still would fail fully to protect condominium buyers and owners from misrepresentations and abuses. For example, individual corporate insulation of a project is often utilized, to a degree that lessens the analogy with the securities business, where full disclosure and statutory sanctions against fraud are more adequate assurance against mispractices. And where a project is sold or foreclosed, the new owner is not bound by the information contained in the developer's statement of record and public offering statement.

In some instances, attempting to bind him will be of dubious advantage to the condominium owner, because a foreclosing lender may be less willing to regroup and go forward with an unlucrative project if he is bound to the commitments of his mortgagor-developer to complete the project as theretofore described. One further regulatory feature that would help overcome this problem would be to provide that HUD shall look behind the corporate registrant to the real financial party in interest, and as a precondition to approval of the statement of record, require that party to certify to the accuracy and completeness of the statement of record and public offering statement.

The purpose would not be to so pierce the corporate veil as to commit the financial principal's assets to completion of the project, thereby eliminating the advantage of separate incorporation and perhaps discouraging new condominium construction, but rather to expose those assets to suit by condominium owners in the event that the anti-fraud provisions are violated.

ATTACHMENT C

STATEMENT OF ERNEST SAMUELS, CHAIRMAN, FLORIDA CHAPTER, NATIONAL ASSOCIATION OF CONDOMINIUM OWNERS

Mr. Chairman and members of the Committee, my name is Ernest Samuels. I am the President of the Point East Condominium Complex of 1270 apartment units. I am also the President of and speak for the Condominium Executives Council, Inc., an organization of the executives of more than 150 condominium associations throughout the State of Florida, having approximately 35,000 apartment units or about 70,000 residents. And I am Chairman of the Florida chapter of the National Association of Condominium Owners.

I am here to discuss the many problems besetting condominiums. Our complaints range from poor construction to nonexistent appliance guarantees, but most center on the following major areas:

Developers retaining control of management until all apartments are sold, some rent out a few apartments and use the excuse that not all the apartments are sold to keep control of lucrative management contracts;

Developers who dissolve corporations after all the apartments are sold, leaving the buyers with no one to turn to when defects are found in the buildings;

Developers who advertise monthly maintenance contracts at deliberately underestimated prices to entice people into buying apartments, then raise the price after the buyer moves in;

Vague description of condominium facilities in advertising brochures and legal contracts, which allow developers to erect structures that are not what the buyer was promised and build recreation facilities far too small for the number of people in the condominium.

Very poor construction and cheap materials are common. But most flagrant and serious are the latent, that is unseen and hidden defects in building construction and materials. These do not come to light until after the irresponsible builder has hit the road with the buyers hard earned money. Then the unwary unit owner is left holding the proverbial bag and is put to heavy costs and assessments.

The most serious problem derives from the 99 year recreational facility and ground leases, which are imposed by almost every developer in Florida on unsuspecting buyers. We have seen these leases termed in the newspapers as well as by reputable developers, legislators, attorneys, as well as the vast majority of the almost 400,000 condominium buyers upon whom they were imposed, as tricky, one-sided, small print, unconscionable, illegal. When you read and understand any of them, you read them all. In spite of what some real estate developers or their agents say, they contain provisions, which, if clearly understood, would make all buyers horrified. I have yet to find one buyer who was fully aware of the implications when accepting this lease, or who was aware prior to his purchase of exactly what he was getting into.

To understand how these leases operate let me briefly describe some of their standard conditions.

They are for 99 years and they are a lien on every apartment sold in the condominium. In some instances they also contain a pledge agreement. They have a standard escalation clause based on the cost of living index but with no de-escalation. They provide for the payment of every expense on the property, including but not limited to taxes, maintenance, replacement, insurance of every nature and contain many restrictions as to use, which in some instances is limited in the sole discretion of the developer to specific activities.

Under these conditions, one may pay for the replacement of obsolete facilities many times before the expiration of the lease.

The developers and their agents are correct that these conditions are spelled out in a clear, legal unambiguous language in a 120 page document which a man with about 40 years of legal experience can understand if he devotes several weeks to studying it.

Nowhere in any of the newspaper ads, or in the developer's brochures, is there a mention of long term management agreements, or 99 year recreational facility

leases. No mention is ever made of the size, capacity or furnishings of the leased facilities. They are merely described in glowing, general terms, calculated to mislead the buyer into believing in the adequacy of the facility.

To say that those documents are given to all people prior to their purchase is totally untrue. They are unaware of the total obligation, they do not know the nature of the lease facilities other than by a vague description. The size, its furnishings, how many people will make use of them, are they adequate, will they be built by the time they occupy their apartment, all this is vaguely brushed aside with, "Everybody signs the same contract, you will get it at the closing."

I have seen and read contracts which provide that "in the sole discretion of the developer" the recreational leased facilities will not be built for approximately one year but the lease rental payments will commence upon signing of the agreement.

Amazingly, thousands sign.

The Legislature, the Courts, permit these leases and management agreements and term them legal because they are in print and signed by consenting parties.

The Federal Trade Act prohibits these deceptive practices and it also prohibits tie-in sales. Clearly condominium apartments should be sold in fee simple title without any long term management agreements and 99-year leases tied in with the purchase of these units. Recently I have drawn an analogy: "Suppose most automobile manufacturers got together and sold their cars with the proviso that the transmission is leased to you for 25 years at $200.00 per year and that regardless of whether or not you use the car for the entire leased period, you must pay the rental even though you know in advance that you will never make use of the transmission for 25 years." Surely such a tie-in sale would never be made legal. How can you expect a cardroom or a sauna or a swimming pool to last 100 years and the use of which to be conditioned upon the sale of a home to an unsuspecting retiree 70 years of age for 100 years?

If all of these conditions are legal then the law of "public policy", "Federal Trade Commission rules" or "Fair Trade Practices" are all meaningless to the hundreds of thousands of consumers looking to their legislators, the courts and their elected officials for protection.

Our association will be glad to cooperate with your committee to help solve these problems.

Thank you.

ATTACHMENT D

AFFIDAVIT OF ERNEST SAMUELS, GIVEN TO ARTHUR ANGEL, FEDERAL TRADE COMMISSION, IN FEBRUARY 1974, AT POINT EAST CONDOMINIUM, NORTH MIAMI BEACH, FLORIDA

1. Ernest Samuels, residing at 3861 Leonard Drive, North Miami Beach, Florida, depose as follows:

1. That I am a resident of the Point East Condominium Complex since June 30, 1967, at the above address.

2. That some time during the middle of 1966, following advertisements in the *Miami Herald* for the sale of apartments at the Point East Community under development, I came to Florida and negotiated the purchase of an apartment for occupancy at a later date.

3. That at the time of the purchase of the apartment I signed a Purchase Agreement believing that I would be the Fee Simple owner of an apartment, never having been advised that there are other conditions connected with the purchase, such as a 99 year Recreational Lease covering the Recreational facility; a 25 year Management Agreement and a so-called "Documentation" containing these agreements. I placed a deposit on the apartment of $500.00 and was told that some time within the next 30 days I would have to pay for the total purchase unless I chose to obtain a mortgage for part of the purchase price, in which case the difference would have to be paid in full.

Following the letter I received from the Point East Developers, Inc., I have paid the full amount less the mortgage to the developer by check through the mail. Subsequently on or about June 1, 1967, I was advised by mail that the closing takes place in the office of the corporation on June 30, 1967. I appointed my brother-in-law to attend the closing, and I was not personally present at the closing. My brother-in-law obtained the so-called "documentation" at that time and mailed it to me in New York.

The document was a bound book of 105 pages of closely typed legal document containing a Declaration of the Condominum which seemed to have had the

purpose of submitting the condominum to the ownership of the buyer forming an association of the condominium to conduct the affairs and manage the property—a 99 year Recreational Lease; a 25 year Management Agreement and a set of By-laws governing the Condominium. I looked at this document but did not pay much attention to any of its terms and provisions for I assumed that it is a legal document connected with the purchase of my apartment which is given to all buyers.

When the final closing papers were presented to me through the mail I found that there was included in the closing fees a sum of money equal to 4 months of initial maintenance called a "Funding Fee" which, on later inquiry, was also termed a "Security deposit for payment of maintenance," an "escrow fund," or an "initial capital fund." These terms were given to me by various purchasers whom I later inquired as to the nature of this additional payment not heretofore known to any of the buyers. I was told by some buyers that they were told that this money is theirs, that it is in escrow, and will be returned to them as soon as the condominium is fully operating.

The ads offering the sale of this condominium to prospective buyers indicated variously depending upon the time and date of the ad that there will be a Community Clubhouse, Health Pavilion with Medical Clinic, two full size Gyms, Olympic Swimming Pools, Full time Social Director, two Sand Beaches, Boat Rides, Water Shows, Fashion Shows, Coffee Shop open daily, Weekly Lectures, Forums and Instructional Classes, Golf Instruction, Weekly Stage Shows and Dancing, and many other amenities including a 1200 seat Auditorium.

An ad dated December 8, 1966, estimated the cost of the facilities at $300,000.00. One of January 14, 1968, spoke of a $500,000.00 Health Pavilion. It spoke of a Physical Fitness program under the directorship of a full time Medical Director, the cost to be included in your regular monthly payment. The enclosed ads indicate the nature and complexity of the offer always mentioning the fantastic facilities that will await the buyer, never in any of these ads is there any reference that the buyer would also be saddled with a 99 year Lease, having a cost of living escalation tied to the Government cost of living index and the cost of food, a 25 year Management Agreement giving the Manager absolute and total power over the affairs, expenses and management of the condominium property to the exclusion of all the associations and/or its members.

After having moved into Point East some time in September, 1967, I found much to my amazement first, that the Clubhouse having been advertised as a 1200 seat Auditorium was only an Auditorium seating 900 in a complex having over 2500 residents; that the free medical examination and clinic was actually not free, for the doctors, nurses, first-aid men, were paid by the Management Corporation from the existing maintenance receipts and that the sole purpose of the medical examination was to determine the fitness of a person annually to use the Gym.

I also found that this Medical Pavilion is costing the condominium owners approximately $120,000.00 annually to maintain. All of this was brought out at a time when the total condominium was already occupied and we had been asked for an increase in the maintenance of 40% to 45% of the initial assessments. Inquiry as to the reason for the increase elicited the reply that the management, in its sole discretion, has the right and power to make assessments as it sees fit and that no one member of the Association may interfere with its powers and duties.

It was at that point that we started to read the so-called documentation with more care and attention and to find the true nature of the purchase of the apartment and the true conditions of the purchase. It was at that point also that each of the 17 buildings in our complex have elected a Director in accordance with the Documentation to act as their representatives and have started discussions with management towards assuming and deciding their duties and obligations under the documentation by the take over of the Associations. It was at this point that we found, upon lengthy discussions with attorneys that the Direcors of the building may assume control of the associations after all the apartments have been sold and occupied.

We also found that we were now, by these documents, saddled with some highly complex and grossly unconscionable agreements which were tied in with the purchase of our apartments and that in addition to this, these agreements made the developer the manager of our destiny and that regardless of whether or not we have the directorship of our associations, we still had no power of any kind over our future destiny. Not being able to assist in any manner whatsoever in the op-

eration of our own homes, we granted the increase and assumed the directorates of the associations.

It was at this point that we could begin to examine into the operation of the condominium by the manager only to find that a sum of $244,000.00 taken in by the developer as a 'funding fee for escrow' was turned over to the manager and completely expended by January 1, 1969, and that the condominium was operating at a loss of $10,000.00 monthly. Examination and careful analysis of the operation of the condominium by its manager, who was getting 6% of the total assessments as his fee, revealed to us that monies were expended without regard to prudent business practices and that the manager was indeed and in fact mismanaging the property solely for his own benefit and with the ultimate goal of obtaining a fee based on his percentage to the total assessments.

Since our suggestions for the reduction of these expenditures fell on deaf ears, we have instituted a law suit for the cancellation of the management agreement, the cancellation of the lease and damages for misappropriation of funds, etc. We prevailed in the Circuit Court in a decision in connection with the Management Agreement only, in that the Court held that the management agreement was cancelled as a matter of law. We quote from the decision of the Circuit Court as follows:

"The Management Agreement in this case, considered in light of their specific provisions and the length of their terms, completely and effectively delegate and abdicate the Associations to the defendant. This delegation and abdication of responsibility and control exceeds the bounds of statutory authority and defeats the purposes of the Condominium Act."

The Courts refused to cancel the Lease on the grounds of estoppel.

In a subsequent appeal to the District Court of Appeals, this decison resulted in an appeal by the developers and Management Corporation to the Florida State Supreme Court which in their decision dated July 31, 1973, reversed the ruling of both lower courts and declaring this Management Agreement legal, upheld the legality of the Lease and put us back again in the same position that we occupied 6 years ago. It is noteworthy to read the dissenting opinion of Judges Ervin and Boyd, copy of the opinions is enclosed herewith. Having gone through 6 years of condominium living and having been the President of the Point East Condominium Owners Association those 6 years, I recognize that the condominium build-of condominium living and having been the President of the Point East Condominium Owners Association those 6 years, I recognize that the condominium building industry in Florida is a tremendous asset to the State and did bring in perhaps 100's of 1,000's of residents into the State from other States to make their home here, mostly in retirement.

I had also recognized from my association with various other condominiums in and about our area here, and discussion with their residents and executives that there are tremendous problems plaguing the industry as a result of unconscionable, illegal, improper agreements, surreptiously foisted upon the unsuspecting buyers that tie them into these agreements for generations to come. Nowhere in any of the ads inviting these people to come to Florida and buy their retirement homes is there a mention of these tie in contracts.

The Legislature of Florida is under enormous pressure from these wealthy developers. No appropriate legislation was ever passed although much of it was contemplated and proposed to protect the buyers against these sharp practices. It seems that the law gives them a license to steal, which thought was expressed by many of the Legislators of the State on a number of occasions and was in the newspaper articles in the past several years. In the year 1972 the Legislature appointed a Condominium Commission to look into these sharp practices and recommend legislation into 1973 legislature to alleviate some of them. Again the powerful lobby of the developers and builders killed all proposed legislation.

It was in January, 1973 that some of the executives, including myself, of condominiums recognized the need of an organization to try to overcome some of these sharp practices and organized the Condominium Executives Council, Inc. It is extremely difficult for people who are in retirement to organize for the protection of their civil rights for they have neither the time, nor the power, nor the money to pursue their just goals. Nevertheless we have been able to enroll 220 condominium associations throughout the State of Florida, with an approximate population of 100,000 residents into a group, to try to do something on the state level for the furtherance of our cause. Unfortunately the State Legislature did not listen to us. We pleaded with the Legislature to pass

some law restricting tie-in sales of condominium apartments with these unconscionable additional agreements.

We have likened these agreements to the possibility that all automobile manufacturers may someday get together and lease the transmission of their car to the purchaser. What would the people say if they have to pay $25.00 a month for the lease of a transmission in their car for say, 10 to 20 years, during which time the car would become obsolete anyway and would need replacement two to three times?

These leases that are foisted upon the unsuspecting buyers provide for the maintenance operation, taxes, replacement and redelivery of the leased property with all its appurtenances to the lessor at the expiration of 99 years while this same lessor receives in some instances 100% return of his original investment annually for the same 99 year period. Surely the law never intended such fraud to be foisted upon consumers. Not having been able to do anything in the Florida Legislature to overcome this fraud, we have appealed to the Federal government for relief.

Clearly the Federal law prohibits "unfair methods of competition in commerce, or unfair deceptive acts in commerce." As President of the Condominium Executives Council, Inc., I have discussed this problem with dozens of condominium executives whose contracts of purchase of their apartments are also tied in with similar gimmicks and who are crying out for relief. The condominium industry in Florida must be saved by legislation that would permit buyers of homes to buy in fee simple ownership and to have a free choice of rejecting any agreements tied in with the sale of the units as a condition of the purchase.

Deceptive ads should be outlawed and buyers should be given an opportunity to buy their apartments separately from unconscionable management agreements and leases. All illegal contracts should be held illegal and reformed.

The question came up a number of times by developers, "Why did you buy if you read or should have read the agreement and knew that it was unconscionable?" The answer to that is that for years condominiums were not sold under any other condition excepting by being tied into these additional agreements. Only recently a few condominiums being aware of the unconscionability of the leases and management contracts are advertising some condominiums for sale without any gimmicks, land or recreational leases or management contracts. The enclosed ads clearly indicate this condition but for years the choice was not the consumers, almost every condominium was sold with the tie in only.

Senator BIDEN. Our next witness is a very distinguished member of the Virginia House of Delegates who has been working in this field for some time. He is also an attorney. Mr. Ira Lechner, would you please come forward?

It is good to see you again.

STATEMENT OF IRA M. LECHNER, MEMBER, VIRGINIA HOUSE OF DELEGATES

Mr. LECHNER. Thank you, Senator.

Senator BIDEN. Thank you for taking your time to come up here.

Mr. LECHNER. Thank you for holding these hearings.

Senator BIDEN. I understand you sponsored legislation to protect condominium purchasers by requiring full disclosure of building conditions, restrictions and conversion of apartments to condominiums, and we are looking forword to your insight into this problem in helping us formulate our final legislation.

Mr. LECHNER. Thank you very much.

Senator BIDEN. Please proceed at your own pace.

Mr. LECHNER. Thank you.

Mr. Chairman, I enthusiastically support your bill with some modifications which I will suggest in my testimony, because I think it is a

rational exercise of Federal law to help put an end to the many abuses in the sales of condominiums across the Nation.

Many citizens are, in the vernacular, being "ripped off" when they buy a condominium unit. In almost every State they are not given any meaningful description of the real condition of the building or the unit they are buying. In the case of conversions, they are not given past operating budgets so that they can see for themselves whether the developer's projections of expenses and assessments is realistic, and whether in the past money has been spent or not spent on maintenance.

Control of the developer has not been limited so that he can sign long term—and in some documented cases for 99 years—contracts for management of the property or for lease of the swimming pool or parking lots.

Warranties are often not provided so that unit owners make probably the biggest investment of their lives when they buy their condominium, but are not protected if the developer fails to deliver the unit or the project in the condition they were led to believe it would be when finished.

Tenants are evicted when a building is converted, often with inadequate notice, and rarely are they compensated for their moving costs, their dislocation, or the higher rent they will be forced to pay in another apartment.

In short, many condominium sales are simply a mess, and the buyer and the displaced tenant are both being victimized.

S. 3658 is a good start to help correct these abuses.

In the Virginia Legislature we have enacted a new reform condominium act which I am told is now a model for the rest of the Nation. But time is passing us by quickly. Condominiums are being sold by the hundreds if not the thousands each day and week, and the State legislatures across the country are simply too slow in response, and the Congress should act and act now.

I would like to suggest these following provisions be added to your bill, Senator Biden, as an effort to strengthen that legislation and to perhaps deal with it in a comprehensive fashion.

The first is a cooling-off period of 10 days in which the buyer can revoke his contract, for any reason whatsoever. These reasons I am suggesting are already in the Virginia law, Senator. And I am told that the industry feels that these are fair.

We did not get any opposition in the Virginia Legislature from the industry when we proposed these, and we got great support from both consumer groups and tenant groups.

But I think these provisions have reached their time, if you will, and that most fairminded people in and out of the industry now agree that these are necessary and they do not unduly add to the costs of the development.

I might add as well that the most responsible members of the industry have made it quite clear to me and in the legislature that unless the industry itself supports rational legislation, the name "condominium" is rapidly going to take on a symbol of being a ripoff kind of purchase and sale, and, hence, the most responsible members of the industry realize that they themselves have to support good legislation in the disclosure area and in the regulatory area, and they have been doing so.

I think that you will find that if you really get any significant opposition to this kind of disclosure and regulatory proposals it will not be from the good sellers, from those who are doing a good job in the market place. It will be from perhaps those who are "quick money" boys.

I suggest as well that the bill should provide that the developer should provide the Secretary and the prospective buyer in the case of conversions with past operating budgets broken down by category and by unit for the 3 years preceding the conversion.

Now, the purpose of this would be so that a prospective purchaser at a glance could see what kind of money has been put into this condominium development over the course of the last 3 years. Has money been spent for maintenance of the boiler system? Has money been spent for maintenance of the air-conditioning system?

Or, indeed, why are there such high expenses for those items? Does it mean that those units are perhaps defective?

Taken by itself the 3-year past operating budget would not tell you enough. Together with several other provisions the buyer would be able to compare it, and that would be the 1-year budget for the future so that he is able to stack up the 3 years in the past against the 1 year in the future and thereby be able to say, "Well, Mr. Condominium Seller, you are saying here that our management fee, our condominium fee, is only $60 a month, but it's obvious looking at the past 3 years in the management of this complex that it's going to cost each unit owner far more than $60 a month."

So that the 3-year budgets are a good test of the projected budget of the condominium seller.

As well, if the law provides that the developer must provide the purchaser with a statement under oath by a licensed engineer or architect who is not employed by the developer as to the condition of each one of the major common elements in the complex, as to what are the useful lives of each of the major elements, what would be the projection in today's dollars cost of repairing and replacing those useful lives, to each one of the purchasers by unit and by project, now you can take the three things together, the 3-year back budget, the 1-year future budget, the statement of useful life, the estimate of cost of repair and replacement, and I would submit then that any prudent buyer would have all of the necessary information to make a wise choice or an unwise choice, as they see fit.

And I don't think we can tell or not tell people to buy condominiums. We can simply provide the laws are such that people get the information, so that those who are prudent can exercise that information, and those who wish to be unwise and buy into a bad building, so be it. That is not our responsibility, if you will.

But it is our responsibility to provide them with the information.

The third suggestion I have is that the developer should provide a warranty of 1 year with respect to the purchaser's own unit and a warranty of at least 1 year or until 60 percent of the units in the project have been sold and settled as to all the common elements.

This would at least provide every buyer with some cushion, at least a year, on his own unit, perhaps more than a year depending on the number of units sold as to the common elements, to become adjusted to the situation and not find himself suddenly confronted with every

kind of an assessment right on the heels of having bought their own unit.

I submit as well that the bill should provide that the developer give guarantees that the purchasers will be able to sell their units freely without discrimination of all kinds, race and sex and age and religion. There is sometimes a tendency to try to turn these condominium units and projects into private country clubs, and I think we have enough of that.

I think that free salability by the purchaser of his unit is very important, particularly in terms of the elderly who might be caught in a bad situation if they aren't able to sell them freely.

Finally—and you have heard a lot of testimony about this—restrictions on the control by the developer should be regulated so he can't enter into long-term management, swimming pool or parking contracts without consent of a majority of the unit owners.

The way we handled that in the Virginia legislation was we mandated a specific time when a developer loses control of the project. Generally speaking, it's 2 years. There are different formulas. From the time that he puts the project on the market. And he, therefore, may not enter into any contract beyond that 2-year period.

Therefore, at the expiration of that 2 years, that swimming pool contract, that management contract, that parking lot contract, the garage, whatever, would then come up for renegotiation automatically by force of law, and the unit owners would then have control of the project and they would then be able to negotiate with the developer or with the holder of that contract for any renewals thereof and for the number of years. And then you will have a good contractual situation.

I think then the forces that play in the marketplace would then come to bear, and the unit owners would have a fair shot at it.

That concludes my formal testimony, Mr. Chairman. I would like to comment if I might on two questions that you addressed to the previous witnesses.

With respect to conversions, the New York law on the 35 percent—and, incidentally, the New York Times has editorially endorsed raising that to 50 percent consent by the tenants before conversion can take place—that cannot operate effectively unless you have rent control.

In my view, such provision if adopted in Virginia—and I have toyed with that in terms of getting it into the Virginia bill—could have been very destructive because if we could have promised tenants in effect by passing that kind of legislation that they will have some control over conversion prices—and they would—but they might not have any control over the rental prices and someone in a $200-a-month apartment might suddenly find himself in a $400-a-month apartment because the developer wants to clean the project out in order to get the requisite percentage—and there was some initial experience in New York along these lines. There were all sorts of problems in terms of harassment. There were problems in terms of the developer offering a better price to people if they would vote for conversion.

It can lead to some very serious difficulties, and unless it is coupled with rent control nationwide, which I don't believe the Senate or the Congress is about to adopt, the 35 or 50 percent provision is simply not a viable provision to adopt in the Federal law—unless you are go-

ing to have Federal rent control, which I would doubt you are about to go to.

Senator BIDEN. Very good point.

Mr. LECHNER. I think that really, if you will, Mr. Chairman, I am a believer in terms of this kind of legislation that we should never promise or adopt legislation that raises the expectations of citizens beyond the level to which we can really deliver.

If we are going to adopt regulations in disclosure or regulatory sense and we are not sure that we are going to have the proper enforcement or if we adopt regulations without recognizing the interplay that they have on other situations, practical situations, such as the difference between the 35 percent rule and no rent control, we may actually hurt the cause more, because we will raise the expectation of the citizens that we are solving their problems when, in fact, we wouldn't be.

I think the bill that you have proposed, the bill that Senator Proxmire has proposed have provisions in it that don't do that. They raise expectations to the level that you can deliver. And I think we have proven that now in Virginia and some other States.

But I hesitate to go beyond the level to which we can be sure we are going to deliver.

Thank you very much.

Senator BIDEN. I would like an explanation of the Virginia law which makes a conversion conform to the present zoning, land use and city planning regulations. How do you think that will help slow down conversions?

Mr. LECHNER. I think that is the most significant provision of my of my bill there, Senator.

You get the problem, of course, of vested rights. Someone builds an apartment project of several thousand units, and we have a number of them in Arlington and Alexandria that you may be familiar with, the Parkfairfax development, the Buckingham development in Arlington.

These are very large, moderate-income, garden apartment projects. These were built some 20, 30 years ago. My fear was they would be turned into condominiums rather quickly and they would displace the very people you talk about, the elderly, the people on fixed income, the young family.

Those buildings were built when there were virtually no zoning regulations, no land use planning, no restrictions by the counties or cities involved.

So that there is, for instance, very little offstreet parking in those developments.

Now, Arlington County and Alexandria City, both areas which I represent, have regulations which require any developer to provide 1½ parking units of offstreet parking for each unit that they build. And by putting in the condo bill a requirement that a conversion be treated as if it were a new building, a new structure, which it really is as far as land use is concerned, those older developments will now have to meet today's land use requirements if they want to convert.

That will mean that they will have to go before the county board of supervisors in Arlington or the city council in Alexandria and seek either special use permit or an exception or permission, and then the citizens will therefore have some play in the notion of conversion.

And what we have now is, frankly, conversions the citizens have nothing to say about.

The Virginia bill provides there shall be no vested rights, and it makes good sense from a land use point of view, Senator Biden, that if you are going to convert several thousand units from rental units where you perhaps have elderly couples or single people living in them to condominiums, you are now going to suddenly find far more cars on your public streets, you are going to find far greater demand for services on schools and roads and sewers and water use in those new buildings.

Therefore, why shouldn't the Arlington County Board of Supervisors and the city council of Alexandria have something to say about the impact of that?

Senator BIDEN. Having been a county councilman for 2 years and having dealt almost exclusively with zoning and land use, I am particularly intrigued with that suggestion. I like it primarily because it keeps the Federal Government out of determining where you are, and it makes that decision at a local level.

Mr. LECHNER. That is right.

Senator BIDEN. I think it is a very, very interesting way.

Mr. LECHNER. Frankly, it was the only way I could think of.

Senator BIDEN. If you think of any better way, they are going to appoint you Governor.

Now a few more questions. It has been suggested by some—as a matter of fact, I believe it was Mr. Morris of Virginia—that a bond would be a better way of going at it than a warranty. In your suggestion No. 3 you talk about warranty—warranty for at least 1 year.

Mr. LECHNER. Yes.

Senator BIDEN. There are two parts to that question. No. 1, is there a distinction between the way we treat a conversion and a new construction with regard to bond and warranty? And if so, how?

Mr. LECHNER. No.

Senator BIDEN. And then, just generally, discuss bond and warranty for me.

Mr. LECHNER. There is no distinction in the Virginia law. Perhaps you really need both bonds and warranties.

Of course, we have very stringent regulatory provisions with respect to the developer himself. We require every conceivable disclosure with respect to the interests of the developer and his interest in the land, et cetera. We ask for virtually everything but the cereal that he eats for breakfast.

And we have very specific and very stringent criminal penalties for violation of the act, $50,000 fines and 5-year prison terms. No $1,000 slap on the wrist and goodbye stuff.

I think you need both bonds and warranties. It would be helpful to have both. Put it that way.

Certainly again just providing the warranty and then not having the means of delivering the warranty when the developer may skip——

Senator BIDEN. And that has been a problem according to the testimony we have received.

Mr. LECHNER. That is exactly right.

Senator BIDEN. The Washington Post reported recently that certain condominium owners were disturbed by sort of the opposite side of

this coin. That is, they were disturbed by the fact that owners were continuing to rent apartments affecting their lifestyle and investments of the owners who have purchased the properties. Does Virginia law speak to that question at all?

Mr. LECHNER. No.

Senator BIDEN. Or is it worth speaking to?

Mr. LECHNER. It doesn't. And I can't conceivably see how we could address that problem. I think as time goes on in the Washington area if the condo craze is not regulated we may be up to 50 percent of our apartment units being condominiums, and what I suspect may happen in the next 5 to 10 years is that those units in turn will be rented out by the people who have purchased them, and instead of having a market now with say 100 major landlords, we may have a market of 25,000 landlords.

And most of the laws regulating landlord performance are limited—don't start unless you own so many units. In Virginia you don't get under our new act until you own 10 units or more.

So it's going to be a very serious problem. I don't frankly know how to deal with it quite yet, but, obviously, people are going to start renting these things out in greater numbers.

Senator BIDEN. Our previous witness indicated we should have, if I understood correctly, an absolute prohibition on ownership of common space by the developer or the one converting. You take issue with that in your statement, I believe No. 5, and you talk about concern over long-term management, swimming pool, parking contracts, restrictions on control by the developer to enter into these long-term contracts should be made.

What type of restrictions?

Mr. LECHNER. Our bill provides the developer cannot in effect enter into a long-term contract beyond 2 years. At the expiration of the 2-year period he has to give up his control to the unit owners' association, and then all contracts that he entered into, no matter how many years he entered into them for, simply must then receive the consent of the unit owners, so you have to renegotiate it.

Let's assume he rented out the swimming pool for 10 years at an exorbitant rate. The 2-year provision would cut it off at 2 years. The swimming pool operator would have to come in and negotiate. Maybe they'd have a stalemate. Maybe the operator would say, "I want so much," and the unit owner would say, "No."

He would say, "OK. Don't use my swimming pool."

And they would say, "Fine. You won't have anybody to pay you any money for it either."

Senator BIDEN. What happens if he goes out and does what has been done in other places and he says, "I'm going to rent out the swimming pool in the neighborhood"?

Mr. LECHNER. In our community you couldn't do that under our zoning laws, because then he would find himself running a commercial swimming pool, and in Arlington or Alexandria—and I submit in probably most jurisdictions—he couldn't do that without a special use permit.

So I think you would find that the marketplace would have such an impact and the local zoning laws would be such that he could not

do that, and they would enter into a contract that would be fair pretty much to both sides.

Senator BIDEN. Two provisions were raised by the previous gentlemen who testified, one of which was the absolute prohibition, and the other was the moratorium on conversions. Do you see any merit in us imposing a moratorium?

Mr. LECHNER. I see a merit to moratoriums. I am frank to say I don't practically see the Senate doing that on a nationwide basis.

I wish we could have a moratorium on conversions in the Metropolitan Washington area. I think it's desperately needed.

Senator BIDEN. I ask you to go back to the percentage provision for conversions and I ask whether or not it is likely to work if we say no conversion unless 35 percent of the tenants approve in conjunction with a provision saying that there will be no conversion within x number of years or a rent hike over a certain amount.

Mr. LECHNER. I could see where you are going to have some serious difficulties in enforcing that well. And you may create some serious inequities.

We witnessed what happened to rents in part by virtue of the oil crisis in this last winter. Some responsible managers of rental property were faced with four times the oil and heating costs that they had in previous years, and they raised rents.

I am no advoate of higher rents, but the fact of the matter is I don't want to remove the proper incentives from the marketplace to operate buildings well, because what happens then is that buildings get operated poorly, and the people who suffer most from those are the tenants.

So I would hate to structure something so rigidly in terms of rents and that's what leads you into the difficulty.

That's why there is the problem with rent control. You would have to almost have all the passthroughs in that provision that you have in the local rent control ordinances, let's say, in Montgomery County, et cetera. There has to be some provision for passthroughs.

Senator BIDEN. Two more questions, prefaced by a comment.

You and I share an overriding concern that sometimes I don't think is shared by many legislators, and that is the overpromising aspect of our function where we go out and tell you, "We have solved your problem and we are going to deliver the whole moon," and we don't even deliver a piece of the moon.

And we sort of walk around doing that now in inflation. We say we're going to balance the budget, and it won't mean a damn thing if we do. And the average American thinks we're going to be squared away now once we do that.

In that regard it worries me in this bill—and in our discussions previous to this we have discussed this slightly—that we not overpromise again.

And one of the things I am extremely worried about, which is probably the most blatant and most obvious bad side effect of converting to condominiums, is the displacement aspect of it.

Sure, a lot of people do get, as they say, ripped off. But the most blatant thing is to see that old man or woman out there with their bags in the lobby wondering, "Where the hell am I going to go? I just got put out." And we are very concerned about that.

But I am almost as much concerned about what we try to promise to do to solve that person's problem.

Let me just ask you candidly, is there anything we can do in your opinion?

Mr. LECHNER. Yes; there is, in my view. The first is to make it more difficult to convert the older building. The land use planning provision of the Virginia law is one example of that.

I have said that we should throw every rock, every stone, every impediment we can into the conversion process legally to slow it down, stop it wherever we can.

But we are not going to stop all of it. That is obvious. The marketplace is going to overcome our ability to slow it down.

So that is the first thing you can do—is try to slow it down legally.

The second thing you can do is try to deal with the problem of the people who are being affected, home in on that problem, and there is a way to do that.

Under Federal law now if the Federal Government came along and took an area for a highway or for a defense establishment, and in the process it took an apartment building area, those tenants who live in that building have a right to three things:

One, moving costs of up to $300.

Two, a dislocation allowance of up to $200.

And, three, the difference between their current rent and the rent that they would have to pay in another apartment for a period of 4 years, not to exceed a total of $4,000 in the difference in rent.

In other words, it is a Federal recognition that, "We have done this to you. Now, you have a leasehold interest. You don't own the land, but you are a tenant there. We are going to not only compensate the landlord for taking the property, we are also going to compensate you for displacing you."

That would deal in some degree with those people of whom you speak, and in that I share your concern.

In Arlington County we have already converted almost 10 percent of the apartment buildings in our community and 67 percent of Arlington citizens live in apartment buildings.

Senator BIDEN. It sure would solve some of it. But you use that editorial "we." When "we" come through with a highway, we, the Federal Government, do it. When Charley Smedlap comes through with a conversion, it "ain't" we that's doing it. It's Charley Smedlap that's making a buck, and we're going to ask the taxpayers to say, OK, Charley, you made your big buck, and now we're going to hit the double dip. We're going to hit the taxpayer to compensate you, Charley, and the people moving."

Mr. LECHNER. The answer, if you will—and I failed on this in the Virginia legislation—never got out of committee on this provision—is to require the developer to do that. He must provide that kind of dislocation payment to the people who he dislocates.

And I had it originally as a palliative people 60 years of age and older and I had some income levels—had to make less than $10,000 a year and they had to have assets of less than $35,000, which is our tax relief provision in Virginia.

Senator BIDEN. Would the idea that we have, sort of like we have, with regard to much of our legislation, like the Community Development Act and other pieces of Federal legislation, where we define areas,

geographic areas, as being a certain type, and we say that when anything from unemployment to a lack of housing starts reaches a certain percentage, then such and such a mechanism goes into effect—what about the approach that I can see in an area in some parts of my State where the rental market isn't in short supply, where there are plenty of homes for rent? It's much less of a concern that we go out and say to a developer, the Federal Government or the State government, "You have got to compensate Mrs. Smith who is going to be displaced," because Mrs. Smith will have no problem moving.

And there are other areas in other parts of my State where you put Mrs. Smith out and she's going to have to move to another part of the State or to Pennsylvania in order to find housing.

Now, do you think it workable that we deal with that kind of framework?

Mr. LECHNER. Yes. Kay McGrath, who testified before you yesterday, presented that idea, and she has when she ran for the City Council here in the District of Columbia.

I think you can easily do that in terms of what is the vacancy rate within a metropolitan area. And let's say if the vacancy rate in the metropolitan area is less than 2 percent, 3 percent, you know—you can play with the numbers—the economists would have to get into this——

Senator BIDEN. That would really fix it. [Laughter.]

Mr. LECHNER. That really would mess it up, wouldn't it? [Laughter.]

You can set metropolitan areas according to the Statistical Abstract of Metropolitan Areas, and that would be the only areas in which it would operate. And it makes great sense. And then in those cases the developer in order to convert would have to provide, if you will, this kind of already federally-established dislocation and rent cushion allowance.

Now, isn't that the right place for it? The guy who is making the big buck by converting? And I think that anyone who testifies before you that he is converting because of more stringent laws about tenants and landlords, that he is converting because he can't make a profit, et cetera, is frankly telling you an untruth.

He is converting because he is making a phenomenal profit in converting, and because people are willing to pay—and God knows why; I don't know—just phenomenal prices. A hundred times the rent that they are paying is the standard rule, only it has gone well beyond that.

So he is the guy who is making the big profit.

Senator BIDEN. Part of the reason is we have a policy of the Federal Government the last couple of years that says we are not going to build houses.

Mr. LECHNER. That is part of it. There is a great demand. So they have to sop it up somehow. I agree with that. And in this year it is certainly true.

The young family can't buy a house, so they buy a condominium at an inflated price.

It's that developer who then has to pay that dislocation money to Mrs. Smith who is dislocated. Then you are putting the burden at the right place. And that is good economic sense to me. It is good governmental sense. And I think it would help those people significantly.

Senator BIDEN. Your testimony I think has been particularly helpful. I especially am delighted it got into the record about the use of the local zoning aspect as being the best existing tool to at least slow down this kind of displacement. And there are some very legitimate reasons for that.

I think you brought this hearing a particular expertise which we didn't have at this point and a different point of view that I hope all my colleagues are going to read in the record, and maybe we will see some of your recommendations incorporated into Senator Proxmire's and my legislation before it is over.

Mr. LECHNER. Thank you very much.

Senator BIDEN. We would like to ask as we did previously, but to you especially, that the staff be enabled to badger you a little bit back in Virginia——

Mr. LECHNER. I would be delighted.

Senator BIDEN [continuing]. Because, as you have said, you have just gone through this, and I think you have done a really great job.

Mr. LECHNER. Thank you very much. And I am really pleased you have taken this kind of interest in it on a national basis because the State legislatures, frankly, are just not able to move that quickly, and you are going to get a hodgepodge of regulation, and people in our mobile society are going to move from Delaware and become my constituents and some of my constituents will become your constituents.

[Remarks off the record.]

Senator BIDEN. Our next witness is Mr. Robert Cagann who is testifying on behalf of the Institute for Real Estate Management.

Mr. Cagann, please proceed at whatever rate you would like to.

STATEMENT OF ROBERT A. CAGANN, ON BEHALF OF THE INSTITUTE FOR REAL ESTATE MANAGEMENT

Mr. CAGANN. Thank you very much. Good morning.

I would like to begin by acknowledging you and your committee for inviting me to appear here this morning, and I would like to state for the record that I am here in part for the Institute of Real Estate Management es well as myself and my firm.

Senator BIDEN. Yourself and your firm you say?

Mr. CAGANN. Yes.

Senator BIDEN. Would you identify your firm?

Mr. CAGANN. Robert A. Cagann & Associates, Inc., Arlington Heights, Ill.

Regarding two bills before you, I would like the committee to understand initially that in their present form I am neither an opponent nor a proponent, but, rather, I would like to offer some practical insight into the condominium association operations as well as some expansion and clarification of this proposed legislation.

You have a copy of my written testimony, Senator.

Senator BIDEN. I do. Thank you.

Mr. CAGANN. In the interest of time and brevity, I do not propose to read my statement, but, rather, I would like to summarize for you the salient points and then be in position to respond to questions that you might have.

Senator BIDEN. Fine.

[See p. 230 for full statement of Mr. Cagann.]

Mr. CAGANN. As I read it, the legislation basically addresses itself to abuses and proposed remedies, and you have addressed yourself to this this morning. Some of the points that have been proposed are indeed excellent. I think that others need to be clarified.

Listening to Mr. Lechner's testimony just preceding mine, I agree with a considerable amount of what he says.

One of the items which is touchy—and I know that—is the question when do you hold back the developer, the converter, from converting a development? I think it is a difficult problem.

From my own personal standpoint I feel that I want to stress the free enterprise part of the market interplay.

I am not a developer. I am not lobbying for the developer. But working closely with them, I believe the great majority of developers are honorable and honest and make a sincere attempt to provide good housing for the people.

Senator BIDEN. I want to make it clear that this committee shares that point of view.

Mr. CAGANN. I am sure they do, Senator. And the ones—the few—that have flagrantly violated some of the moral precepts must be dealt with very harshly.

But as we begin looking at the condominium—you were talking earlier this morning referencing the way that many people look at condominiums as single family homes, the home ownership concept. This is very true. But I think it is also true that there is a very tenuous balance between condominium home ownership (the single family adage), and the multiple family rental property. And this balance basically exists because there is an ongoing responsibility that exists in the operation and the management of the condominium, and this, of course, begins with the documentation.

You have well addressed yourself to this documentation. But I am referring to the documents, and I have for a long time, as living documents, because it is the documents that are established at the very outset that actually control the operation and management of the condominium association in perpetuity.

For this reason I think that we have got to look at these documents from a practical standpoint, and it should be understood that the best planned, the best developed from the standpoint of sound construction and everything else can be destroyed if the documents are impractical for the operation and if the association is initially underfunded.

And this leads me to the subject of budgets and funding of the association.

The legislation refers to initial budgets. They should be prepared and submitted as part of the full disclosure proviso. But the legislation also talks in terms of words like "license" and/or "certified," "registered," "attorneys," "engineers," to deal with the legal and the engineering factors related to the development.

But the real question is, you know, who is the one that is going to prepare these particular documents and these budgets?

In line with the budget, I would like to read just a short portion of the statement we have as it relates to the Institute of Real Estate Management's position on reserves, because I believe, and the institute shares my belief, that reserves are keenly important. I am on page 6 of my statement.

I would like to make you aware of a statement of policy adopted by the governing council of the Institute of Real Estate Management in May 1974. This policy is in regard to an Internal Revenue Service ruling, concerning the taxable status of reserves for condominium associations.

Whereas recent rulings by the Internal Revenue Service have unduly restricted, the tax exempt status of condominium and homeowner associations, which is expected to adversely affect Institute of Real Estate Management members in the conduct of their property management activities; and whereas HB 13800 has been introduced to reverse the impact of these rulings, now then it is resolved that the Institute of Real state Management supports the passage of HB 13800, or similar legislation, insofar as they restore the tax exempt status of condominium and homeowners associations.

Now, I would like to speak for myself solely and not representing the Institute of Real Estate Management nor the National Association of Realtors and stress three points for you this morning, Senator.

First, I would like to stress the practicality of the living document, which is the declaration. Many condominium developments have truly had a hard time in their operational status because these documents, the declaration and the bylaws specifically, were not practical and were not really workable, and this has had a great effect on the budgets.

As far as the budgets are concerned, I would like to suggest that as you have set forth in terms of attorneys and engineers that you also set forth for an independent third party other than the developer to provide the initial budgeting and set the budgets for funding of the condominium association.

A real paradox exists, and in the conduct of our management activities I have seen this where the budgets were underfunded initially and by being underfunded the association has truly never been able to catch up with the rising costs and the necessary and proper maintenance of the common areas and common elements.

And when we look at condominiums we are looking at the proof of a successful condominium in the long run as its enhancement in value in the market, in the real estate market. And when someone comes to look at the condominium the interior of the unit may be fine but if the common areas and common elements are not properly maintained, the whole development suffers. This leads to less assessments, difficulty in collection of maintenance assessments, and as a result of this the entire association suffers.

Finally, the third point is a guideline for the management responsibility.

I think in terms of last week when I was getting a haircut. I looked on the barber's wall, and he had to be licensed and certified to be able to cut my hair.

Senator BIDEN. I look on the barber's floor when I get a haircut. [Laughter.]

Mr. CAGANN. That is true. That is absolutely right. But I look at this and I look at the situation and I think—And I'm not advocating licensing, but I am saying that there is no standard for the condominium management in our State.

To be a broker, which I am, licensing is required if I am going to deal with rental property or the sale of property; But, in condominiums, no guidelines are set forth establishing who can be the condomin-

ium manager. After all, once the developer has finished the buildup period, this responsibility lies with management, and there are no guidelines.

This means by using your example before of Charley whoever he was that he can be the manager too with no criteria, no parameters of operation, and he is entrusted with millions of dollars both in real estate and in monies to utilize for the ongoing maintenance of the condominium association.

Senator BIDEN. Why aren't you recommending licensing if you are that concerned about it?

Mr. CAGANN. I am very concerned about it, but at this particular point I just hate to see additional legislation.

I really do not know the answer. But when you look at the fact that there are no guidelines, I am suggesting at this point just the word guidelines as opposed to licensing.

Senator BIDEN. What kind of guidelines? Who draws the guidelines?

Mr. CAGANN. Well, if it is going to be incorporated in your legislation, maybe it's important that this aspect should be given some thought.

Your legislation, as I see it, brings it up to the point of development but drops it short of the ongoing responsibility, and this is what I am trying to draw your attention to.

Senator BIDEN. You have drawn our attention now. Now what I am trying to draw your attention to is some suggestions you might have for us with regard to those guidelines.

Mr. CAGANN. This is in my final thought which I was going to say—that after your committee delves into this that I would be prepared to sit down with you and see if guidelines are practical and workable from the standpoint of either national legislation, statewide legislation, or if this is not a practical aspect. I don't know.

I just want to address ourselves to it, that it is an ongoing responsibility, and I don't know the answer sitting here this morning.

Quite frankly, those are the three points that I wanted to bring to your attention.

Senator BIDEN. I would like you to elaborate on the tax exempt status being sought again. Elaborate on that comment, on that quotation you read from your statement, please.

Mr. CAGANN. You are aware the Internal Revenue Service came up with a provision saying reserve funds placed in condominium association accounts were considered as income and would be taxed on that basis and the associations would lose nonprofit status as far as reserves were concerned.

There were apparently some loopholes that have allowed the associations to declare it as paid in capital surplus and therefore only be taxed on any interest that was paid on these funds.

We are advocating that we don't want to sneak in the back door, that reserves are keenly important for the ongoing maintenance of an association, and, therefore, they should be treated as tax exempt.

I might mention that under HUD projects they have set forth that reserves are essential in rental properties as well as condominiums to be able to get the approval to build such federally insured project.

Senator BIDEN. You wrote a very good article in, I guess, the magazine Journal of Property Management.

Mr. CAGANN. That was in 1972, I think, the article that you are referring to.

Senator BIDEN. In your article the title was "Maximizing the Profit Potential in Condominium Management." Could you help us out a little bit and tell us some of the practical problems that a condominium manager runs into—you know—in a good faith effort to manage the project?

Mr. CAGANN. Well, the best way to sum it up is the fact that you are dealing with multiple-family projects where the owner lives on the premises, and as a result of the owner living on the premises anything that you do, don't do, mistakes that are made, flaws that are inherent in the project are seen instantly by this owner, as these gentlemen from Florida, the first witnesses, were saying. They live there and they can see these things.

Therefore, the condominium property manager must be very astute to follow through on handling these problems that come up, be they in the form of landscape maintenance, elevator maintenance, whatever type of maintenance we are talking about.

Senator BIDEN. Some of the things that the condominium owners, those who live there, complained about to us are the everyday noises where apartments aren't soundproofed. Again we get back to this "treat it as a home," but yet it is, you know, still an apartment. Lack of flexibility. You can't add a room to a condominium, nor can you set aside a part of the basement for woodworking or that kind of thing, you know, a shop. Lack of privacy. The communal living problem. And they go on.

After I read the complaints, I wonder why they move in. I'm not trying to be sarcastic. I really mean that I don't know how anybody expects to move into a condominium and have it be a house. Obviously you can't add a room on the 19th floor, you know.

Mr. CAGANN. This has been one of the problems, Senator, as far as the condominium concept is concerned. People have been extremely naive. Not so much today as they were going back 6 or 7 years, but they didn't understand what they were getting into. They were touted on many things.

Many early developers talked about the carefree living concept and it was a utopian concept whereby you move into a condominium and all your worries and cares are over. And that doesn't exist.

People are more knowledgeable today than they ever were before. I think Mr. Lechner alluded to this in his testimony too.

Senator BIDEN. Can you explain for the record why a developer that owned a rental unit now with 100 rental units—why it is so profitable for him or her to convert to a condominium?

Mr. CAGANN. I don't think it is necessarily as profitable as some might think any more. I was thinking about this question when you asked it of Mr. Lechner before. In thinking about it I believe that the bloom is off the rose in condominiums, if you want to call it that.

I think that people have become more knowledgeable. The market has matured, if you want to say that, because the people understand they have to have proper assessments. They don't get this total carefree living concept any longer.

Some of the things that have forced conversion, quite frankly, have been the high carrying cost, the increases in real estate taxes and, therefore, the yield to the entrepreneur has lessened, and, therefore, they sought opportunity to convert.

Conversion has been easy in most cases because the developer has been able to get separate legal descriptions and say it's going to be a condominium.

There has been a tremendous demand for housing. You brought it up too—the fact that the housing starts for single-family houses are down, the fact that the costs of houses have gone up so much that many people that would like to have equity in a property are gravitating to condominiums because they can have an equity here.

They are also saying in turn that part of the rental market is gravitating to the condominium because they also feel that they can change and get an equity position that they have never had before.

Senator BIDEN. What do you think of the idea of saying if you have got to convert that if you are going to new use you require a new zoning application?

Mr. CAGANN. I was thinking about that question also. I don't necessarily agree with Mr. Lechner. You asked the question and he responded by saying he wanted to impede and this would slow down the conversion process. But he also is dealing in his conversation with the market, and I think the market is going to dictate.

I think we are dealing in pretty much a purely competitive situation, and I am a believer in free enterprise and letting the market dictate what is going to happen.

Some changes are necessary, and possibly—I think of parking requirements. Parking has always been a problem, and sometimes rental units were developed on maybe a one parking space per unit requirement, and the new ordinance requires 1½ parking spaces or 2.

Senator BIDEN. Isn't it true the use patterns of a development that is peopled with condominium owners as opposed to renters are different patterns, different style?

Mr. CAGANN. Absolutely.

Senator BIDEN. So isn't there a good deal of justification from the standpoint of the local councilman or the city councilman that the whole idea behind zoning regulations is to accommodate the use of that property and to adjust to the use of that property?

And if we admit the use is different, whether it is peopled by owners as opposed to renters, then isn't there justification from the point of view of the local official to have a new requirement when we make that switch?

Mr. CAGANN. Can I answer your question in a roundabout way?

Senator BIDEN. Sure. Everybody answers them that way. [Laughter.]

Mr. CAGANN. Okay. Fine. Thank you.

First of all, coming back to the market again, today the cost of money is extremely high. A developer cannot afford to have these inordinate amounts of carrying charges, and, therefore, he has to look at his absorption period to be as short as possible, and, therefore, it is requiring a great deal more expertise in developing properties today, because the market has got to be read very, very carefully by the developer.

When the developer misreads the market and he has a long absorption period, if he doesn't have the ability to carry himself on the project, the project is in trouble.

So if you have a lot of rental units in an area and a developer wants to convert, if he doesn't have these patterns as you refer to them in the proper perspective, then the property is going to be a slow sell, maybe a no sell, and his absorption period at best is going to be slow, reducing his profits and hurting him very much.

So I think the market is going to dictate whether or not this guy is going to convert or not.

Senator BIDEN. You have considerably more faith in the market than I as an observer of that market, as a real estate attorney, and then as a county councilman. I have a good deal less faith in the wisdom of the market than you do, but that is probably why I ran for the Senate and why you run a business.

But I just don't see the market dictating. That was the same argument used when we came out with a new zoning code in the State:

> Well, obviously the market will dictate. Why do you need this flood plain legislation, Mr. Biden? There is no need for that. Nobody will buy a home in the flood plain. You know that. So the market will dictate that. The market will dictate. I am a believer in the free market system, free enterprise.

It smacks of that kind of logic to me.

Mr. CAGANN. Then let me try to change the smack, if I may.

Senator BIDEN. OK. It's probably not a good word to use today. I'm glad this isn't the Judiciary Committee.

Mr. CAGANN. Yes; I do have faith in the market. I deal in it, and I know the market is not pure. We talk about purely competitive. I don't necessarily mean pure in ethics and pure in logic.

People sometimes will buy anything, and there is need to have certain rules set down, because we are not going to build factories next to single-family residences hopefully, and this is what zoning ordinances were set forth to do, to have an orderly growth of land use.

And the only thing that scares me, and it really does—I think something has to be done and I think you're on the right track of doing this—but I am fearful to say let's go all the way and just get all kinds of legislation which hamstrings and doesn't allow the market to move.

Senator BIDEN. So am I. I share that concern. I didn't mean to overstate where I was before. It concerns me a great deal. We have seen some of the backlash of that when we decided to control the economy—how we I think produced some shortages.

I think you can impede the market to such a degree that it is counterproductive. But I also think that when you start talking about the market making a determination as to where people want to live and how they are going to live, I don't think people, quite frankly, have much choice today. They are really put between the rock and the hard spot.

Well, we could go on. I have three more witnesses, and we are just supposed to be a morning hearing.

I would like again to ask if we could draw on your expertise, maybe submit some written questions to you while we are making final preparations for a final bill.

Mr. CAGANN. I would consider it an honor. I would be more than happy to do that.

I want to end with one thought. On the idea of this ongoing management responsibility, there were some questions talked of referencing the long-term management contracts, and I as a person who is managing in the—do I dare use the word "market"——

Senator BIDEN. Sure.

Mr. CAGANN. I don't believe in long-term management contracts either.

There are some points which we won't go into now, but maybe we can get them later, referencing how management should fit into this early development pattern, because I am a believer that management should be involved at the outset because it helps the development, it helps the confidence of the people, and it helps for smoother transition.

This has been one of the big problems. I didn't even discuss it this morning. But the turnover of the developer to the homeowners can be helped by competent management assisting in a way and——

Senator BIDEN. How many competent managers, trained managers, do you think there are in the United States?

Mr. CAGANN. That is what I call a loaded question, Senator. I don't know. I know our Institute of Real Estate Management recognized this need and I was fortunate to coauthor a course in condominium management which we began offering throughout the country in 1973.

We have had good attendance by people who need to know.

I can assure you there are a lot of people who don't know that are getting involved in condominiums—who don't know and want to understand these things.

The question you asked me referencing what is it like to manage condominiums, that could go on for hours on what it is like. It is not an easy management at all, and it is a management that does require I think some expertise which I hope that your committee will address itself to in your future considerations.

Senator BIDEN. Thank you very much.

Mr. CAGANN. Thank you very much, Senator. I appreciate the opportunity of being here.

[The prepared statement of Mr. Cagann follows:]

STATEMENT OF ROBERT A. CAGANN, ON BEHALF OF THE INSTITUTE FOR REAL ESTATE MANAGEMENT

Although the Condominium form of homeownership as we know it today, is relatively new in the United States, all states have enacted enabling legislation providing for the development of Condominium projects. With rising costs and the desire for more leisure time, this form of ownership has created considerable excitement nationwide. Attendant with the acceptance relative to the Condominium field, volumes have been written extolling the virtues of Condominium ownership, as well as discussing certain pitfalls relating to this form of ownership. My personal involvement with Condominiums began in 1964 and during the past ten years as I have witnessed ever-increasing sophistication in Condominium developments on the part of both developers as well as the buying public.

As this Committee is aware, certain abuses invariably manifest themselves in any relatively new endeavor. The two bills before this committee address themselves to certain abuses and recommended legislation to correct them. Certain flagrant violations of basic morality on the part of an isolated few in the home building industry have caused undue hardship to some unsuspecting Condominium purchasers. It is my belief that the unscrupulous few who have flagrantly vio-

lated the precepts of moral ethics must be dealt with sternly and with dispatch. There are many honest and forthright developers, however, who have made unknowing mistakes because they have developed Condominiums under the same concepts as single-family, detached dwellings and multi-family apartment rental projects have been developed. Condominium developments represent a tenuous balance between detached single-family dwellings and rental apartment buildings. The balance exists because of the ongoing responsibility of operations for owner-occupied properties. I have seen my own building industry make concerted efforts in the past several years to set up standards for development. Standards for the ongoing operation and management of Condominium developments have, for the most part, been overlooked.

As you are aware, all Condominium documents (Declarations, By-Laws, etc.) must meet the legal reqirements of each state's enabling legislation before they may be recorded. The preparation and recording of these documents sets forth the parameters under which the Condominium Association will operate to perpetuity. I have long referred to these documents as "living documents" because they set forth the operational guidelines. It is critical to understand that the best-planned Condominium development in terms of construction and esthetic appeal can be destroyed if the operational and management process is underfunded or incompetent. These are responsibilities that continue long after the developer has concluded the sell-out period and has left the project. It is this subject of ongoing responsibility for the management of Condominium Associations that I wish to address my remarks. I believe that portions of the pending legislation before this Committee dealing with the management of Condominiums needs to be expanded and clarified. During the course of my experience in the day-to-day management of Condominiums over the past ten years, I have been fortunate to have been involved with many types of Condominium developments and have seen the need for strong, competent, professional property management in the Condominium field.

The Institute of Real Estate Management, the leader nationally in the field of Real Estate Management of all types of property, representing over 3,000 Certified Property Managers throughout this country, recognized the need to establish guidelines and parameters for dealing with Condominium management specifically. As a member of the Institute of Real Estate Management, holding the CPM designation (Certified Property Manager), I co-authored a course on Condominium Management which has been offered in major cities in this country, since the Spring of 1973. My teaching experience with this course has given me the opportunity to travel the major urban centers of this country and to observe all types of condominium developments. This experience has further served to amplify my strong feelings that managers, as well as developers, need assistance in the form of guidelines to handle a field of management which is different from all other types of income property management. Questions from Condominium managers seem to run along the same lines regardless of the section of the country. Last week I was privileged to speak on Condominiums in San Francisco and again in Richmond, Virginia on Monday of this week. Let me relate the overriding concerns of Condominium managers. We are concerned about initial underfunding of the maintenance budget which establishes the assessment schedule for the orderly operation and maintenance of a Condominium Association. We are concerned about documents that meet the legal requirement with reference to the enabling legislation of the particular state, but are not practical for the ongoing responsibilities for the management and operation of the Association. We are concerned with the lack of parameters set forth by the documents which, in many instances, precludes the orderly operation of the Association.

It is important that disclosures be made at the outset by the developer. The legislation before you would require that developers furnish a statement of condition of title to the project for one year proceeding the date of application, furnished in a titled opinion by a *licensed* attorney who is not a salaried employee or officer or director of the developer. With regard to conversions, this legislation would require a statement of condition and rated life and expected useful life of such items as roofs, foundations, external and supporting walls, mechanical, electrical, plumbing and other structural elements in the common facilities, be provided by a *licensed* engineer. This legislation would require that a legal description be provided, identifying the project and the common elements in detail and signed by a *professional, registered* engineer or architect or both.

This legislation would require that an estimate of operating and maintenance costs of the project, as well as any other costs which may be passed on to the

owners of the dwelling units in the project, be stated at the outset. There is no mention, however, who shall provide this estimate for operating and maintenance costs of the project. I believe, and my belief is shared by the leadership of the Institute of Real Estate Management, that an independent third party should provide such budget estimates initially and that they be certified as to their accuracy and completeness. Attendant with these budgets must be the establishment of reserves, since the orderly and ongoing operation of Condominium associations require the establishment of adequate reserves to meet future needs for repairs and replacements to common areas and common elements.

The lack of proper reserves has a stifling effect on the appearance, acceptability and market value of individual Condominium units, and has caused many underfunded Condominium Developments to fall into a sad state of disrepair. In this regard, I would like to make you aware of a statement of policy, adopted by the Governing Council of the Institute of Real Estate Management in May, 1974. This policy is in regard to an Internal Revenue Service ruling, concerning the taxable status of reserves for Condominium Associations. "Whereas recent rulings by the Internal Revenue Service have unduly restricted the tax exempt status of Condominium and Homeowner Associations, which is expected to adversely affect Institute of Real Estate Management members in the conduct of their property management activities; and whereas HB 13800 has been introduced to reverse the impact of these rulings, now then it is resolved that the Institute of Real Estate Management supports the passage of HB 13800, or similar legislation, insofar as they restore the tax exempt status of Condominium and Homeowners Associations."

Speaking for myself individually, and for my firm at this time, and not necessarily on behalf of the Institute of Real Estate Management of the National Association of Realtors, I offer to this Committee my recommendations. I cannot over-stress the ongoing responsibility created by the "living documents," the Declarations and By-Laws, in the conduct of Condominium Associations. There is a need to have the Declaration and By-Laws examined as to their practicality for smooth and viable operations of Condominium Associations by a practitioner, who deals with the ongoing responsibilities of a Condominium Association. Secondly, budgets should be prepared by an independent third party who has the expertise to attest to their accuracy, completeness and compliance with the enabling statutes. Finally, guidelines should be established for the ongoing management responsibility for Condominium Associations. No state in this country has, to my knowledge, any statutory provisions which establish criteria for Condominium Management. There is significant variation among the states regarding the licensing of property managers, and a dearth of recognition of the Condominium Management field. Most states cover the property manager, if at all, under the real estate "broker" and "salesman" provisions.

The national BOCA Code establishes minimum acceptable building practices for the construction of Condominiums, and there are national requirements set forth by the Federal Housing Administration and other Federal Agencies regulating the financing of Condominiums. The proposed legislation recognizes these areas and, in fact, attempts to reconcile these regulations with regard to Condominium development.

Although the property manager for Condominium developments is entrusted with millions of dollars of real property to protect and maintain, as well as thousands of dollars in maintenance assessments for the orderly operation of Condominium Associations, no minimum standards exist which provide a basic criteria for the Condominium manager.

I recommend that this legislation be expanded to incorporate a set of minimum standards as to the requirements for, and the conduct of Condominum managing agents which would further protect the Condominium purchaser through the tenure of his ownership of the unit and his relationship with the Condominium Association. The effort has been made in a sincere way, through this proposed legislation, to redress wrongs which have been the result of innocent error, as well as serious misconduct, in the past by developers. Thus it seeks to provide the Condominium purchaser with assurances that the property rights he receives as a result of his purchase are what the developer represented to him. I strongly recommend, in addition to these assurances, that the purchaser be assured an ongoing protection of his property rights as will endure long after the developer has departed; and that you therefore incorporate certain minimum

standards into the proposed legislation using the vehicle of the Condominium Association.

Senator BIDEN. Our next witness is Mrs. Frances West, Delaware Consumer Protection Association, director of the Division of Consumer Affairs.

Welcome. Thank you very much for sending my office some of the copies of some of the complaints which we receive in Delaware, which I should point out was the impetus for us getting underway back in July, June, or I guess it was earlier than that, in May, to draft such legislation.

Any way you want to proceed, go ahead.

STATEMENT OF FRANCES M. WEST, DELAWARE CONSUMER PROTECTION ASSOCIATION

Mrs. WEST. I would like to get back to the point at hand, which is specifically as to the two bills that have been introduced by you and by Senator Proxmire.

Representing a consumer agency as I do, we handle three things—complaints, consumer education, and consumer legislation. When we find that complaints can't be easily resolved through existing enforcement or existing legislation, we seek two things—one, to better educate the consumer—and I think that is part of what this disclosure bill attempts to do—and, two, to find some new consumer legislation that will make the marketplace more equitable than we found it.

Our paricular concern today deals with condominium problems. And although Delaware is a small State and has only recently had a condominium problem, we have a very similar checklist, which is in the prepared statement, of the same kinds of problems that other States have had.

In Delaware so far, though, the two primary complaints that stand out are the shoddy construction that developers are allowed to construct and the total lack of truthfulness in the sales pitch by the salesman, the total lack of disclosure of contract terms prior to signing.

In fact, we had one developer who required a $100 deposit just for the consumer to get a copy of the contract to take home to read.

So, obviously, anything which would deal with more disclosure, more easily gotten by the consumer, would be a good thing.

Our consumers really were unhappy because they didn't get all that they were promised orally, what the glossy folder held out to be new, and we are still using the "carefree life" concept in Delaware.

I agree with the expectation problem. The expectations of consumers in Delaware were really raised by the outlandish advertising which was permitted to happen. And since we had never had townhouse or condominium concepts before, we really couldn't be sure that they were in fact deceptive until after the fact.

I for one really am always amazed at the marketing techniques.

We did a survey in Delaware of what it is the salesmen were saying and the consumers were asking, and, by and large, the colors and kinds of styles of floor covering, cabinet styles, and so forth, were much more discussed than the basic construction and specifications of any unit, whether it's a condominium or other home construction.

In Delaware, as in most States—and I think that is what has brought us here today—the consumer got very angry when he found out that such a major purchase involved so many problems. I am sure he was angry at himself, or they were in our office, for being so gullible.

They really got after us as a representative of State government as to how can it happen?

And one of the reasons I am here today as a representative of a small State is simply to urge the fact that States like ourselves do not pass consumer legislation swiftly or easily or unless a great deal has happened, and so my main purpose for coming is to support the kind of bill that you are attempting to have enacted to better disclose to the consumer what is going on before he gets himself involved.

I do not foresee when we are going to pass it in Delaware.

And the other comment made about the mobility of the population also is our concern. We have a very mobile population in Delaware which only has 565,000 people. About half of them have moved into the State in the last 20 years. They come from other States which have had more regulation for the consumer. And many of our young people go to college and leave.

So with our mobile society we do also have a great deal of incoming condominium buyers for summer vacation purposes.

And we desperately need some kind of uniform legislation to prevent some of the over-the-border problems that we do have.

So I would recommend as a representative of a small State that Federal legislation be passed to insure disclosure to the consumer in an industry which we find is not strictly local.

In investigating a number of condominium complaints in Delaware we find out that the financing agency may be in New York or Florida, that the managers may come out of Pennsylvania, that the architect may have come from New Jersey, and, in fact, about the only thing local is the land on which the condominium rests.

So I think I will stop there because it's getting late and answer some questions.

Senator BIDEN. First of all, off the record——

[Remarks off the record.]

Senator BIDEN. Back on the record.

It was suggested earlier, Mrs. West, by one of the witnesses—and I can't recall which one now—that there be a 10-day cooling-off period in the signing of a contract where for whatever reason the purchaser could vitiate that contract within a 10-day period. Would you support such a provision?

Mrs. WEST. Yes; I would. A cooling-off period for any major purchase is certainly a good idea.

There has been a particular problem with all of the home construction we have found in Delaware, and that has been the buyer's remorse.

The only problem that you would run into in terms of supply and demand in a major urban area where there is not much supply is I think you may not find consumers taking advantage of that provision as much as they might in a more suburban type or agricultural type State such as ours, in which consumers are more motivated to go to the proper local government officials and check out signing and check out financing and whatever.

I think it would have limited use in some areas with some kinds of populations as opposed to others.

Senator BIDEN. In our State is the problem more one that is associated with new construction of condominiums or conversion of existing apartments?

Mrs. WEST. The problems which I listed in the statement dealt mostly with new condominium construction. In listening to today's testimony I checked my notes and we do have two apartment units in Wilmington which are being now converted into condominiums, and we have already gotten a number of questions.

So I do anticipate that problem to be one in Delaware in future years.

The last thing I had written down here which you don't have in front of you is kind of an old adage which is rather trite but in fact makes good sense for the consumer, in that we are here as government officials, some of us, and hopefully we will act in a timely manner to close the barn door before all the horses are stolen.

So often we get involved in consumer legislation that solves the problem long after it ceases to be one.

Senator BIDEN. You can tell you have been working in the consumer side because that old adage says before the horses get out, not stolen. So things can change. I can see your perspective is slightly different than some of the people who come before us.

You mentioned education as one of the functions of your office. Is there anything you see that we could do at the Federal level along the line of educating the consumer to protect the consumer?

Mrs. WEST. Well, a number of the Federal agencies, notably the U.S. Consumer Product Safety Commission, have deemed it to be one of their responsibilities to educate the consumer about not only the new laws and enforcement procedures but where the problems lie.

In addition to the enforcement responsibility we have in Delaware, we are doing quite a bit to inform the consumer so as to prevent the problem from occurring.

Certainly written into regulations by HUD could be an education requirement to probably fund some kind of information which would get out to every condominium buyer.

In Delaware to get around that we passed a new tenant-landlord law and we prepared a 6-page summary from the extensive law, and we made it mandatory that every landlord give every tenant a copy at the time he signed the lease, so that he would be aware of his rights and obligations.

Your bill here addresses itself to disclosure before, and that is education in itself of a sort. But there has been quite a bit put out in the last year or so by magazines and other publications. HUD has a booklet. Certainly a greater attempt though should be made to inform the consumer what he is getting into.

Senator BIDEN. Our first witness stated that even under Florida law there may very well be full disclosure but you get a 200-page prospectus and he summed it up saying if you were an attorney with 30 years' experience you might understand it.

Then there was an article in U.S. News and World Report, which has never been accused of being a left-wing organization, that states that maybe we should "write it in English," and a quote from a gentle-

man from Arlington, Va., Chairman of the State Real Estate Commission, explains:

"We are requiring full statement very much like that for a stock prospectus with all details spelled out. We hope to make the developers write it in English, not legal terminology, so buyers can understand it."

Is that a problem at home?

Mrs. WEST. Well, no, this is exactly what I said. We prepared the 6-page summary of the tenant-landlord code written in English, and as the State agency behind it we do answer hundreds of questions a month for consumers to further explain their rights and obligations.

If someone is going to write consumer information, it has to be written in English, but it has to have some kind of official backing for it to be well used.

Senator BIDEN. One last question on displacement. Have you been receiving any complaints about that to date where a retired couple or a young couple renting are being told, "We are going to convert this building"? Has that become a problem yet?

Mrs. WEST. Yes. The two condominium units I spoke of that we are aware of that are converting—or I should say apartment units that are converting to condominiums—both involve a large number of retired people who live there.

Displacement is going to become a factor in the months to come. And in the absence of a great deal of senior citizen housing or alternative places for them to move that have access to transportation and shopping, and so forth, we assume it will be a problem.

Again, it very much depends upon the population and the geographics you are talking about.

Senator BIDEN. This is a little out of your bailiwick but in your opinion should we require a conversion to be treated as a change in use and requiring new zoning regulations?

Mrs. WEST. Yes. It is not out of my bailiwick. I was chairman of the zoning committee, and one of the problems we had was apartments that had minimal requirements, and in this case it is going to be the same problem—no parking, among others.

Senator BIDEN. I apologize for implying it was out of your bailiwick. That comes from my Democratic background and your Republican appointment. So I am sorry for that. I didn't realize it was in your bailiwick. I should have known. I'm sorry.

I don't have any further questions. Do you have any comments you would like to make to sum it up?

Mrs. WEST. Well, again, in summary, my main concern is that there is Federal legislation passed in this area because of the interstate nature of the problem and because we don't hope to get it in Delaware too soon.

Senator BIDEN. Do you have any experience with your counterparts in Pennsylvania and New Jersey and Maryland areas?

Mrs. WEST. Yes.

Senator BIDEN. Do they expect it to happen soon?

Mrs. WEST. Our closest contacts are generally Pennsylvania and New Jersey. We speak at great length to the AG's office in New Jersey who supports this concept as well for the problems they are having, and they have the same kinds of checklists we do.

Senator BIDEN. Thank you very much.

[The prepared statement of Mrs. West follows:]

STATEMENT BY FRANCES M. WEST, DIVISION OF CONSUMER AFFAIRS, DELAWARE

Senator Sparkman, Members of the Committee, ladies and gentlemen: Thank you for allowing me, as a representative from the State of Delaware, to speak to the issue of condominium regulation as proposed in bills introduced by Senators Biden, Proxmire, and Brooke.

Those of us who are involved in the day to day handling of consumer dissatisfactions have the same goals—

Speedy and satisfactory resolution of complaints, whether through mediation or enforcement,

Encouraging the consumer to become better informed as to the realities of advertising, buying or selling in today's marketplace (and encouraging the merchant to provide information), and,

When the above prove inadequate, passage of comprehensive, enforceable consumer legislation to regulate the business practices of a particular industry.

Our concern today is the protection of condominium consumers from the promises of the dishonest salesman and negligent builders.

Our checklist of complaints in Delaware is similar to that of most states which have undertaken investigations of the "condominium" problem:

Salesmen who are untruthful and unknowledgeable,

Promises of recreation facilities which have not been built or made available on a supposedly exclusive basis, and,

Shoddy construction,

Cheap appliances and fixtures,

Inability to get service on appliance and system warranties,

Lack of sound-proofing (which elicited some embarrasingly frank remarks concerning the nocturnal activities of noisy neighbors),

Lack of adequate insulation and fire walls between units,

Lack of low-maintenance masonry construction,

Bouncy floors,

Wet basements,

Substandard grading, landscaping, and paving,

Monotonous exterior design,

Lack of adequate parking,

Lack of privacy,

Too much mix of families with and without children and/or pets,

Lack of adequate storage space,

Lack of promised recreational areas for *all* age groups,

Monthly association fees which skyrocket after the developer pulls out,

Out-of-state corporations who pull out after the last unit is sold,

Disillusionment with the supposed "tax savings" of "home ownership",

Et cetera, et cetera.

Our consumers are unhappy because they didn't get what they expected, what they were promised, and what the glossy folder held out to be "new", "the ultimate in privacy and comfort" and a "care-free" life style.

The expectations of consumers have been raised by the promises of advertising to unattainable limits. The concept of townhouses and joint ownership of living quarters is not new. The townhouse of today is the row house or brownstone that was built at the end of the last and beginning of this century that some of us grew up in. This concept has been revived, glamorized, and marketed as the something new which we are all supposed to desire.

I, for one, am always amazed at the marketing techniques in the building industry that sell. A survey done in our state indicated that salesmen emphasized, and consumers were impressed by, discussions of kitchen cabinet style, floor covering material, bathroom tile color, etc., rather than basic construction, insulation specifications, electrical system, BTU capacity of the air conditioning, etc.

When the new owner moved in and all of the problems surfaced, the consumer became angry—

at himself for being so gullible,

at the builder for being so deceitful as to produce less than what was promised,

at government which allows a rip-off of such major proportions.

Where was the building and zoning inspector?

Where were the City, County, and State and Federal officials?

As there always is, there has been a great deal of response to the growing dissatisfaction of consumers unhappy with their condominium purchases.

States have investigated the problem. Some, notably New York, Florida and Hawaii have passed laws in an attempt to regulate the industry.

Consumer publications have researched, analyzed, and informed the public as to the physical, emotional, social, psychological, financial and legal technicalities involved in condominium purchases. (HUD has produced an informative pamphlet.)

The problem is still not answered. Some complaints are resolved—some are not. In conversations with Deputy Attorney General, John Dizzia of New Jersey, he points out the difficulty of the "nickel and dime" complaint (one in which the builder's shortcuts are individually irritating but collectively not with the expense of a court battle) and the great expense that a good consumer must go through to find out what's going on. As some of the condominium contracts and agreements are hundreds of pages in length, the legal fee can be prohibitive just to have the documents reviewed *before* signing. There is also the psychology that since so many other buyers are participating in the same venture, it must be O.K.—it must be legal and so the individual consumer does not feel the need for private legal counsel as he might in a single-family dwelling purchase.

Our current recourse then is enactment of federal legislation which will mandate pertinent and complete disclosure to buyers of the legal, material, and financial aspects of condominium colonies, subject builders to administrative review of compliance with the law, and provide penalties for failure to do so. The bills introduced by Senators Biden, Proxmire and Brooke, if enacted, would go a long way to balance the scales to insure the consumer that government does care and is doing something about it.

Senator BIDEN. Our next witness will be Mr. Terry, executive vice president of the American Land Development Association. and Mr. Penwell, an attorney from Montana.

STATEMENT OF GARY A. TERRY, EXECUTIVE VICE PRESIDENT, AMERICAN LAND DEVELOPMENT ASSOCIATION. ACCOMPANIED BY ROBERT McCUNE

Mr. TERRY. Mr. Chairman, I am Gary A. Terry, executive vice president of the American Land Development Association. I regret that Mr. Penwell, Chairman of our Condominium Committee, was not able to be here. I do have with me, however, my associate, Mr. Robert McCune, of our staff.

ALDA is a national business trade association representing 900 companies in the real estate development industry. A large segment of the member companies of this organization are involved in residential planned community development where condominium real estate ownership is a principal type of newly constructed housing.

I appreciate having this opportunity to offer a few brief comments for the consideration of this committee. Because of the brevity of my oral statement today, I would like to ask the Chairman's permission to submit a more detailed analysis on the proposed condominium legislation at a subsequent date.

Senator BIDEN. Without objection, we will do that.

Mr. TERRY. This is a very specialized and important part of the housing market, and we would appreciate the opportunity to participate in an in-depth study of the proposed legislation and its possible effect on the condominium industry in the country.

We do feel that because of some consumer abuses in condominium transactions that the examination of the cause of these problems and consideration of corrective remedies is both timely and appropriate.

However, we would also encourage the committee to examine carefully the potential ramifications of new Federal regulation and disclosure requirements in connection with condomonium sales. This is not to say that we are opposed to further Federal involvement where necessary, but we would hope that any new legislation would also be considered in relationship to existing and applicable Federal regulation, to actions taken or being taken by the States in this area, and to a cost-benefit analysis of instituting further disclosure and regulatory requirements of the troubled real estate industry.

Also of concern to us is the potential of adding further expense to the already spiraling cost of housing construction. The September issue of House & Home features a number of articles on the condominium industry. One article entitled "The Legal Scene" in discussing S. 3658's disclosure requirement states that:

> It appears, from a check of knowledgeable lawyers in the trade, that the total cost of this for printing and legal fees will range from $25,000 to $60,000 . . . this would add substantially to the cost of every unit.

We note also that the same article verifies our own reading of the proposed legislation—namely, that the term "condominium" is used and defined in a manner which could actually include any housing—built for sale or long-term lease—where there is common open space or a common facility of virtually any type.

As a representative of an industry that has long dealt with many of the Federal regulations that presently apply to condominium transactions, let me briefly cite them for relevancy to this matter.

The Department of Housing and Urban Development's Office of Interstate Land Sales Registration, in its guidelines covering condominium and other construction contracts, emphasized attention to the applicability of the Federal land sales registration laws to the offer and sale of condominiums and other structures. The preamble to OILSR regulations published on September 4, 1974—38 FR 23866 et seq.—points out that condominiums are covered by the act in that a condominium is equivalent to a subdivision; each unit being a lot.

The Securities and Exchange Commission on January 4, 1973, in release No. 5437, Securities Act of 1933, stated:

> The Securities and Exchange Commission today called attention to the applicability of the Federal securities laws to the offer and sale of condominium units, or other units in a real estate development, coupled with an offer or agreement to perform or arrange certain rental or other services for the purchaser.

Another Federal agency which appears to have power to correct those abuses addressed in the bills under consideration is the Federal Trade Commission. The applicable and enabling statute of the FTC presently reads:

> Section 5(a)(1): Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are hereby declared unlawful.

Although not regulatory in nature, I believe that the criteria recently set forth by the Federal National Mortgage Association in providing supplementary mortgage assistance in a national secondary market for conventional mortgages on individual units in condominium and planned-unit developments, will probably be more effective than any regulatory mandate because of the single economic fact of survival in a tight money market. Fannie Mae will defer to HUD

on all FHA-insured condominium or PUD projects as to eligibility for the mortgage program.

On conventional loans Fannie Mae has by its own policy elected to place major responsibility for sound packaging of projects within the industry itself rather than creating detailed and cumbersome review procedures.

Fannie Mae will require an opinion of an attorney highly skilled in preparation of documents and review of legal aspects of condominium and PUD projects. This opinion will be based on what is deemed to be the legal prerequisite to prudent investment and sound protection to prospective unit purchasers.

In addition to the current applicable Federal procedures, I think it important to comment briefly on the actions taken or underway by many of the States with respect to condominium statutes.

First, the National Conference of Commissioners on Uniform State Laws is actively engaged in working on a uniform code on all land transactions under article IV of this effort. I understand that condominium transactions will receive special emphasis.

Second, the majority of States where the condominium form of real estate has grown in popularity have or are in the process of revising their first generation of condominium statutes.

Virginia's Condominium Act, referred to earlier, is by far the most sophisticated condominium statute in the United States. It will undoubtedly be the forerunner of second generation condominium legislation throughout the country.

The American Land Development Association believes that Virginia's new Condominium Act provides more protection for prospective unit purchasers than any other condominium statute. Proper balance and benefits have been accorded to developers, lenders, and unit purchasers in the Virginia law. It has provided a high degree of purchaser protection consistent with fostering, rather than chilling, condominium development.

In closing, let me say that the condominium concept has existed for centuries, and the special form of ownership it entails predates even the common law. It has many advantages and it is ideally suited to the conditions of today's housing problems.

Therefore, it would seem prudent to consider carefully both present regulation and the health of the housing and development industry before imposing new Federal statutory controls.

Both the Housing and Community Development Act of 1974 and section 11(a) of S. 4047 authorize the Secretary of Housing and Urban Development to undertake a complete and full investigation and study with respect to condominium housing. We think it would be well to await the results of this study—that it would be invaluable in the consideration of how best to enact further Federal control of condominium development, if such is then deemed necessary.

Thank you for this opportunity, Senator, to express our views.

Senator BIDEN. Thank you very much.

Quite frankly, you are the first public witness to urge we not legislate now. We have heard at least 100,000 people annually are entering condominiums. What do you think we will gain by waiting probably 2 years if things go as they have just since I have been here in terms of studies?

Assume the figures are right. We are talking about another 200,000 people.

Mr. TERRY. Well, the term has been bandied about this morning that many are being ripped off. I would guess not all the 200,000——

Senator BIDEN. I am not suggesting they are, but you're talking about 200,000 people down the road facing problems that even well-meaning developers who aren't attempting to rip anybody off are not prepared to deal with. And I just wonder, especially in light of the glowing reviews you give the Virginia legislation.

Mr. TERRY. I think the thrust of my testimony today, Senator, is that the States can indeed handle these problems and perhaps handle them better than the Federal Government.

Senator BIDEN. But they are not.

Mr. TERRY. It may be a few months in coming.

Senator BIDEN. A few months? Wait a minute. Let's be specific. How many States do you think out of 50 States even have any possibility of passing legislation affecting condominium sales in the next 2 years?

Mr. TERRY. Well, I don't know, but I don't know either how many of the 50 States really have a problem.

I think we have heard from really only three States today since I have been here. These are States all along the eastern seaboard. I would guess there are many States in the Union that have no need for legislation, and can handle their condominium problems.

Senator BIDEN. It has been predicted 50 percent of all American housing will be condominium housing in the near future. I assume that is going to affect a lot of States.

Mr. TERRY. I don't mean to be argumentative, Senator, but I don't think that that means that all of these condominium starts will create problems.

Senator BIDEN. It was pointed out that it took 20 to 25 years to develop condo insurance at the State level. I just wonder.

Well, I don't want to beat that to death. You do think the Virginia law is pretty good though?

Mr. TERRY. Yes, we have very few complaints with the Virginia law.

Senator BIDEN. And if the Virginia law is that good, I am just wondering why we would be remiss in moving along the lines on a national level that the Virginia law has moved. You indicate maybe because they don't all have the problem. You indicated there were several Federal statutes that include condominiums. What impact, if any, do you feel this legislation has on condominiums?

I should add that "if any" since the first law that you list is the Interstate Land Sales Act. To the best of my knowledge, that effectively excludes condominium developments from its consideration. Maybe you can clarify that.

Mr. TERRY. Well, under certain circumstances it excludes. But my understanding is that it would include some of the condominiums that are being built for which the abuses have been recounted.

Senator BIDEN. Do you favor an exemption from HUD for condominium registration with the SEC?

Mr. TERRY. Yes; we have in the past. If the subject matter is dealt with by both. Now, if the registration is something that is exclusively to SEC, we would recommend that HUD not be concerned with it.

Senator BIDEN. In your opinion, how successful is the Interstate Land Sales Act procedure for registration?

Mr. TERRY. I think it has been quit successful. I can't tell you in terms of numbers, but my impression certainly is that——

Senator BIDEN. That is what I was looking for.

In terms of budget, do you think its costs outweight its benefits—the Interstate Land Sales Act?

Mr. TERRY. No; I would say not.

Senator BIDEN. Would you say it has not?

Mr. TERRY. My understanding is the registration fees have paid for a great deal of the budget necessary for that office.

Senator BIDEN. Thank you very much. I don't have any further questions. I appreciate your testimony.

Excuse me one moment. Maybe I do have another question.

That U.S. News and World Report article referred to several times in the 2 days concludes by saying, "For such reasons experts say that condominiums are here to stay but in time this growing segment of the housing market seems sure to be subject to more and more Government regualtion."

It made the distinction here between regulation and disclosure. Do you make such a distinction? And if so, do you see a need for more regulation or more disclosure or neither?

Mr. TERRY. We have no argument at all with the need for more disclosure. I think that we can as clearly as anyone else see that some of the abuses that are complained about and are the subject of these bills are because the prospective buyers have not been properly informed of their obligations and of the costs.

So we feel there may very well be a necessity for disclosure.

We would object to regulation. There is a possibility if legislation were to come out of these bills that a single developer would have to register with OILSR, with SEC, and then do whatever is required on these bills, so there is a triple registration with the attendant costs which are going to be passed on to the purchaser.

Senator BIDEN. Would you be more at ease if in fact this legislation incorporated a single registration procedure whereby we combined it all in one as we are beginning to do with regard to environmental legislation, the single window concept?

Mr. TERRY. Well, perhaps so. We would have to see what the specifics were. But certainly in theory at least it would be much easier for a developer to understand one set of regulations than it would three.

Senator BIDEN. Thank you very much.

Mr. TERRY. Thank you.

Senator BIDEN. I appreciate it.

As you probably know by now, those little buzzes mean there is a vote. We can begin with our next witness, Mr. Wolcott, Governmental Affairs Committee, Florida Home Builders Association, if he is here, and warn you, Mr. Wolcott, that when we hear five buzzes it means I am going to have to go to the floor to vote and we will recess for 10 minutes.

STATEMENT OF HUNTER W. WOLCOTT, FLORIDA HOME BUILDERS ASSOCIATION

Mr. WOLCOTT. Thank you, Senator Biden.

I just came from the Senate Chamber, and I know the vote is a very important one.

I represent the Florida Home Builders Association, which is a voluntary association of 5,800 firms in the State of Florida.

The National Association of Home Builders projects that some 250,000 condominiums will be built in 1975. Last year we completed 107,640, so I think it is quite clear that Florida has been a leader in condominium development.

I have a prepared text which I request be a part of the written record of these hearings. I am going to deviate slightly from that prepared text in the interest of time.

Senator BIDEN. All right.

Mr. WOLCOTT. I will go right into my section on the regulation of condominiums because this is our key interest.

The housing industry by its very nature is consumptive of America's primary natural resource—its lands. Because of this inescapable reality, our industry has become subject to a plethora of restrictions, by innumerable bodies at all levels, producing oftentimes conflicting, or even contradictory, regulations.

While in many industries compounding regulation and regulatory bodies have spelled demise of the small businessman, the housing industry paradoxically has remained a stronghold of the independent craftsman. Nationwide, the average builder of both single and multifamily homes produces only 21.8 units per year.

Although the need to carefully monitor any essential resource is obvious, we think that a clear and fundamental question in review of S. 3658 and S. 4047 is raised: Has the propriety, responsibility, and necessity of the Federal Government to maintain and regulate trade practices in essentially local transactions been clearly demonstrated?

We think in this case that it has not.

The Interstate Land Sales Full Disclosure Act was mentioned before, and in that case we feel it was quite clear that the reliance upon interstate sales of essentially investment properties by land developers in remote areas and the supportive evidence of frequent abuse beyond the ability of State and local governments to control fraudulent activities mandated that the U.S. Government enact legislation to protect the public.

A condominium residence, however, presents an entirely different jurisdictional problem, and the resemblance of the bills under review to the Interstate Land Sales Act apparently ignores the basic business and legal realities of home buying.

A condominium is a home, not a vacant lot. And the American family takes great care in choosing what for most is the largest single investment of their lives.

Home sales traditionally have been dominated by a reliance upon local sales, and we would basically challenge the need for Federal regulation and registration of an industry so uniquely adapted to State and local control.

These governments have been effectively mobilized to protect the home buyer from abuses and will, by their inherent characteristics, almost always prove more responsive to possible problem situations.

Several examples have been offered of excellent consumer protection legislation such as Florida and New York and California. The Virginia statute I have read. It is by far the most sophisticated statute I have seen. And they will without a doubt prove to be effective in enforcement of laws against fraudulent trade practices.

Due to their access to problems and their responsiveness to their constituency, State and local officials can be more effective and at less cost to the home buyer in the regulation of local property transactions, and they have shown that they do not intend to be negligent in this field.

Great weight should be given this factor before considering the creation of additional enforcement authorities at sizable and unknown cost whose presence may prove to be redundant at best.

The concern evidenced by this committee in undertaking these hearings is well founded in the best interests of the public and we support it. It was echoed, as previous testimony stated, in the Housing and Community Development Act of 1974, wherein Congress directed the Secretary of HUD to institute studies into the problems inherent in the accelerating trend toward condominium development.

I assume that the Secretary will recommend to Congress additional controls and legislation, if any, that he finds necessary.

Before the initiation of the legislation pending now, which would create an agency which can expect to be required to regulate 250,000 housing units in 1975 alone, it would seem prudent to await the results of the Secretary's factfinding study.

One of the keys to the review of this legislation is the cost of compliance. The complexity of the Condominium Act of 1974 and the Condominium Disclosure Act could create costs of compliance——

Senator BIDEN. Excuse me. We will recess for 10 minutes, and I will be back as soon as I can. I apologize.

[Whereupon, a recess was taken.]

Senator BIDEN. Let's finish up if we can.

To explain the delay—this will affect you directly in the housing industry—the Cranston-Brooke bill on housing is being argued before the U.S. Senate this morning, and Senator Proxmire just introduced an amendment which would lower the interest rates.

There was a motion to table that, so there is going to be a series of votes very rapidly and mostly procedural motions and fights as to how we get the bill off the floor. So if you could abbreviate the remainder of your testimony as much as you can without leaving out the essential points you want to make, it will be helpful not only to me but to you, because I am going to have to be going back and forth.

Mr. WOLCOTT. All right, Senator Biden. I think we can probably do that.

We will delve directly into our comments on the problem of administration.

I feel that the administrative problems that are going to be encountered in registering and investigating every condominium development in the United States, which could amount to as many as 10,000 projects as defined in S. 3658 and S. 4047, have not even been

investigated, and I think that the need of the housing industry for prompt, concise action in their decisionmaking procedures has to be considered when looking at the administrative costs which will be incurred by the public in undertaking of this legislation.

We feel that two things are going to result if this is not done:

Misunderstandings and misintrepretations by both builders and lenders. Builders will be hesitant to undertake new projects if they don't understand the law. Lenders will be hesitant because of the teeth provided in S. 4047 to undertake new condominium projects when they are uncertain as to the status of those projects under Federal law.

This can only have two results. The number of housing units available to the public will be reduced, and the cost of every unit produced will increase unnecessarily.

As a matter of summation of my comments, I would say it is a matter of national policy that it should be first and foremost in our minds that every American has a right to enjoy in their own home the standards of living which our economy can afford.

In the absence of overwhelming effort to the contrary, it does not seem wise at this point to undertake to implement legislation that would place an additional burden of cost upon, and reduce the availability of, housing units to the people.

State and local bodies have demonstrated their willingness and ability to protect the American home buying public in their local transactions from the unlawful practices of those few individuals who plague our industry and every industry.

In addition to the demonstrated ability of local government to protect its constituency, there are very real and very effective competitive pressures which have now come to bear in every area where the home buyer is concerned. The need for Federal intervention is as yet unproven.

Although the study underway by the Department of Housing and Urban Development may prove us wrong, we firmly believe that it will never be necessary.

In any event, precipitous action based upon data which may be scattered and incomplete does not seem fitting for a body so noted for its thoughtfulness.

We urge your study of the condominium market and its problems, and on behalf of the 5,800 firms we represent, we fully endorse the study underway by HUD. In the meantime, however, we urge that caution be exercised in the matter and careful study be given so that your laudable intent does not inadvertently result in—I quote our President—excess Federal regulation, the cost of which is not commensurate with its benefits to the public.

Thank you.

Senator BIDEN. Thank you very much.

[The complete prepared statement of Mr. Wolcott may be found at p. 249.]

Senator BIDEN. I have a number of questions, most of which we are going to have to submit to you in writing in light of the time problem and the fight on the floor. But I would like to make a few comments.

First of all, you indicated that you question the propriety of the Federal Government being involved. I submit to you that the Federal

Government would not be involved, would not have been involved in anything from zoning to consumer protection, had your industry had the foresight and the ethical foundation upon which to clean its own house—and no pun intended.

But your industry has consistently demonstrated it has not. There has been a need for Federal legislation not only with your industry but with my industry, attorneys. We need more there. With doctors. And with other so-called professionals.

Because in my opinion—this is totally me speaking, not the committee—my editorial comment—the Federal Government has overreacted in many instances, and I agree, but that over-reaction has been the consequence in most instances of a void left by the industry, whatever that industry happens to be.

The home building industry nationwide has opposed way back zoning regulations as an infringement by local and Federal Government, has opposed truth in lending. It has opposed almost every piece of so-called consumer legislation on the grounds of added cost.

Yet we don't have ever any estimates of the cost. You don't come before us and tell us it is going to increase the price of housing *x* percentage or *x* number of dollars or have any backup to substantiate that, in my limited experience at the local level and the Federal level.

In addition to that, you talk about the fact the market will dictate, and market changes have occurred, and that is true. But one of the things the market dictates is a young couple can't possibly buy a home under $30,000 at least on the east coast for new construction, so if they are going to be able to buy anything that will put a roof over their head, they are considerably less concerned today with the quality of that construction than they were before because they have no alternative, because of the financing institutions, the state of those institutions, and the lack of money available to finance housing.

So although it might mitigate towards enhancing competition, it also mitigates against the buyer being more the "buyer beware" concept because of the spot that people are in today.

And I am sure you are aware of the fact that the young and old alike who are in need of housing today are really put in a hard spot. There just isn't any housing. And the housing that is available is of an incredible cost to them, and they are a good deal less selective today because of the pressures of the market than they have been in the past.

They don't have the luxury of being able to be leisurely about the way they in fact choose what kind of housing they live in.

This is not precipitous action this committee is taking. You can pick up any paper in the Nation, any major publication in the Nation for the last 2 years. They have been pointing out the inequities within the condominium development construction, lease and management arrangements. Yet I haven't seen your industry step forward and say, "Bang, we're going to promote such and such. We are going to be the ones who say you're right, U.S. News and World Report, or Washington Post, or whatever it happens to be. Yes, there are those inequities that exist and we are going to police ourselves and we are going to be doing something about it."

And you fellows—and I hate like the devil to pick on you, you know. You're the representative of the housing industry sitting there. You know, I sat on the other side of this table less than 2 years ago, and less

than 3½ years ago I sat there as an attorney in the same position you are in.

And to get my so-called clients to recognize that they had to police themselves before government stepped in was like running into that marble portion of that wall. They said, "I don't want to hear that."

I have not seen any kind of that impetus coming. So precipitous action it is not, No. 1. And, No. 2, it is perfectly understandable you are going to have do-gooders here in the Congress who are going to over-react, and we are going to build in legislation that will be counterproductive not only to your industry but to the consumer in many instances.

But I submit to you that would not occur were your industry more responsible, were my industry more responsible.

And again I mean that in an editorial sense. I am not specifically speaking to you. But, you know, it's the same thing I hear from the doctors. They are saying, "Biden, you know, we don't want you to go the full road with this medical health care."

I say, "I don't want to either," as I have demonstrated by my votes, but I said, "You guys better get together and do something. You know there is a doctor shortage in this country, and you criticize the Kennedy bill, which I voted against and worked against on the floor. You criticized it as a government infringement."

But yet the industry, the doctors, haven't done a bloody thing about the shortage.

And there are thousands and thousands of Americans who can't get a doctor.

And there are thousands of Americans in this country that have legitimate complaints about condominiums. And you guys don't do anything about it, by and large, as an industry.

So you wonder why we come in and police you. Because you don't police yourselves.

And you talk about the States doing a job. My Lord, you guys fought that bill in the Virginia Legislature. You fought it down in Florida. You fought it in New York. And now you come in and you say, "My goodness, you know, we have got State by State legislation, and we compliment them on that"—when you know bloody well there hasn't been that cooperation with regard to the legislation.

Mr. WOLCOTT. Senator Biden, you are absolutely right, and I think that the initiation of the legislation that is before this subcommittee is a shot that is heard well around the housing industry.

The national association is represented here as are separate private industry groups whose interests are tied to self-regulation. Florida Home Builders—I personally testified in favor three times before the Consumer Affairs Committee for the Condominium Act.

Senator BIDEN. Did you before it was suggested? Were you the fellows that came forward and suggested it?

And now we have got an administration that is a beautiful one. Everything is stop and wait and see. While we are going to hell in a handbasket we are going to wait and see.

I sat here for a year and a half, and the reason why your industry is in the position it is now is because in large part we had an administration that said, "We have got a pipeline and it's full of housing out there. We don't have to worry about all these housing stops across this

nation. We're in good shape. We have got to study the problem for a year and a half."

And now there is a depression in your industry nationwide. Unemployment is now up 13.2 percent in the average of metropolitan areas to 40 percent and we had a year and a half and still don't have a study. We are told we are going to wait here for a year with 200,000 additional persons who are going to go in and buy condominiums and we are going to wait.

And the Frances Wests of the world who run the consumers' agencies around the Nation are going to sit there with their thumb in their ear and say, "What can we do?"

I'm sorry you're the object of my frustration. My God, they didn't warn you about Mr. Biden when you were going to testify? And I haven't given you any specific questions, and I have got to vote. I do want to formulate some specific questions—well, I have them right here for you—and ask you to put them in writing, and also make a last-ditch plea to your industry and to the other industries that the consumers are concerned about.

I don't want to be in the business as a U.S. Senator of telling you how to run your industry. But for Lord's sake give me an excuse not to. Give me an excuse not to.

And I say that again just so you don't think that I am just picking on you. I am an attorney, I am a member of the bar association, I am a member of the Federal bar association, and we are probably more remiss than anybody. As attorneys we go out there and we rip them off in closing costs. We rip them off the way we don't divulge as to, you know, the shady deals that we have.

They indicted in our State five real estate developers and attorneys, leading members of the community, who have been ripping off the public.

Five minutes left only to vote. So please give us some concrete suggestions. Don't tell me how to stay out of your business. Clean up your business and I won't get in your business.

Mr. WOLCOTT. Thank you.

Senator BIDEN. Because I would like nothing better than having your support. You are a powerful segment. I had no support to run for this office except for the home builders. They passed a resolution, Committee of One Hundred. They really did it as a joke, but they meant it. They said, "We have got to send Biden to Washington because if we have him here in Delaware he is fooling around with zoning and costing us money, and Lord only knows what will happen if we ever send him to Dover and he became Governor." [Laughter.]

So I have the full-fledged support of your industry. Now they're wondering about where they can send me from here. I have one suggestion but I'm not ready to say that.

Thank you.

The hearing is over. Thank you very much.

[Whereupon, at 1:17 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Complete statement of Mr. Wolcott, his subsequent answer to a letter from Senator Biden, and other material received for the record follow:]

STATEMENT OF HUNTER W. WOLCOTT, FLORIDA HOME BUILDERS ASSOCIATION

I am pleased to make this statement to the Subcommittee on Housing and Urban Affairs of the United States Senate discussing S. 3658 and S. 4047, respectively the "Condominium Disclosure Act", and the "Condominium Act of 1974".

INTRODUCTORY

The condominium form of ownership of real property is a relatively new concept, legally complex, and perhaps not easily understood as a concept by the layman. Differing policies among State Legislatures in their horizontal property Acts and the possibility of confusion on the part of the consumer about the legal consequences of condominium ownership have caused concern that unethical developers may utilize the misunderstandings of the public in an attempt at misrepresentation.

It has always been the responsibility of Government to protect the public from frauds and misrepresentations, and it is therefore quite appropriate for this Committee to explore the regulation of condominiums in the United States.

THE CONDOMINIUM APPEAL

It is a matter of the highest national priority that the needs of the American people for decent housing at moderate prices be met. Disproportionate inflationary pressures resulting from imprudent wage demands, material shortages, the failure of the traditional credit markets, and the increasing scarcity and price of buildable land have each year disenfranchised many thousands of American families from their dream of owning a home. To compound the problem, many urban areas are deliberately restricting the amount of land available for residential uses and are artificially limiting growth in their communities, again increasing the cost of home ownership and putting the dream beyond the grasp of more people. The Congress has, over the years, quite wisely done much to make decent housing available to every American, and the condominium concept of ownership has become an ever more popular tool to satisfy this basic desire.

Condominiums are a legal concept of home ownership, not an "industry", nor is the concept a new and exotic device about which the public should become alarmed.

For most of us, the possibility of owning a single family, detached house is dead. The desire for ownership of our own domicile, however, and the financial advantages connected thereto, continue unabated. In application, the condominium concept of ownership allows a family to purchase a high quality residence at a substantially lower cost than a comparable detached house.

In Florida, for example, 305,000 dwelling units were completed in 1973, of which 107,640, or 35.3%, were condominiums. These condominiums offered residential ownership at a median price of $25,500, almost 20% less than comparable competitive units, and they were the only form of ownership available to the people at a median cost under $30,000.

While substantially ahead of the rest of the nation on a percentage basis, the Florida results are demonstrative of the ever increasing popularity in the eyes of the home buying public of a condominium home. The shift among home builders from traditional single family detached housing construction to condominium production is as easily explainable as the increase in small car consumption as a result of the energy crisis.

These facts are further demonstrative of the fact that the condominium home is now the only home many Americans can afford to buy.

THE REGULATION OF CONDOMINIUMS

The housing industry by its very nature is consumptive of America's primary natural resource: its lands. Because of this inescapable reality, our industry has become subject to a plethora of restrictions, by innumerable bodies at all levels, producing oftentimes conflicting, or even contradictory, regulations. While in many industries compounding regulatory bodies and ever more complex legalities have spelled the demise of the small businessman, the housing industry paradoxically has remained a stronghold of the independent craftsman. Nationwide, the average builder of both single and multi-family units produces only 21.8 units per year.

Although the need to carefully monitor the use of any essential resource is obvious, we think that a clear and fundamental question in review of S. 3658 and S. 4047 is raised: Has the propriety, responsibility, and necessity of the federal government to maintain and regulate trade practices in essentially local transactions been clearly demonstrated? We think, in this case, that it has not.

In the case of the Interstate Land Sales Full Disclosure Act, it was quite clear that the reliance upon interstate sales of essentially investment properties by land developers in remote areas, and the supportive evidence of frequent abuse beyond the ability of State and local government to prevent fraudulent practices mandated that the United States Government enact controls to protect the public.

A condominium residence, however, presents an entirely different jurisdictional problem, and the resemblance of the bills under review to the Interstate Land Sales Act apparently ignores the basic business and legal realities of primary residence home buying. A condominium is a home, not a vacant lot, and the American family takes great care in choosing what for most is the largest single investment of their lives.

Home sales have traditionally been dominated by a reliance upon local sales, and we would basically challenge the need for federal regulation and registration of an industry so uniquely adapted to State and local municipal control. These governmental bodies have been effectively mobilized to protect the home buyer from abuses and will, by their inherent characteristics, almost always prove more responsive to possible problem situations.

Florida provides an excellent example, as do the States of New York and California, of consumer protection legislation in condominium sales. Florida's law, in particular, provides sweeping disclosure and recission rights to any condominium buyer and will, without a doubt, prove to be an effective, easily enforceable tool in use against fraudulent trade practices. Due to their ease of access to problems and their responsiveness to their constituency, State and local officials can be more effective, at less cost to the home buyer, in the regulation of local property practices, and have shown that they do not intend to be negligent of their responsibilities in this field. Great weight should be given this fact before considering the creation of additional enforcement authorities, at sizeable cost, whose presence may prove to be redundant at best.

THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

As mentioned in my opening remarks, the concern evidenced by this Committee in undertaking these hearings is well founded in the best interests of the public, and was echoed in the Housing and Community Development Act of 1974, wherein Congress directed the Secretary to institute studies into the problems inherent in the accelerating trend toward condominium ownership. The Department of Housing and Urban Development will report its findings on the effectiveness of existing legislation and recommend to Congress such additional controls and legislation, if any, that it finds necessary to protect the American people.

Before the initiation of the legislation pending now, which would create an agency which can expect to be required to regulate 250,000 housing units in 1975 alone, it would seem prudent to await the results of the Secretary's fact finding study.

THE COSTS OF COMPLIANCE

The complexity of the "Condominium Act of 1974" would create costs of compliance not directly proportionate to the size of the project involved. Since most States already have reporting and disclosure requirements, the small builder will be faced with the additional problem of meeting these and the new, far reaching federal laws and requirements at the same time. Since it is a matter of national priority that adequate housing at the lowest possible cost be provided to the most people, it seems contrary to this policy to add a large administrative cost to the price of each new unit, particularly when adequate local controls exist for the protection of the home buyer, or where such local controls could be encouraged through other channels.

Local legislation and control is ubiquitous: almost every community has rigid standards for the control and issuance of building permits, building progress inspection, building component standards, site plan review and overall project approval; every State has enabling legislation governing the creation of condo-

miniums and their documentation, all for the benefit of the buyer of the unit. Many States already have stern controls upon the sales of condominiums, and more are considering it. We do not see that a duplicate layer of control, at the expense of the buyer, has been proven necessary at this time.

ADMINISTRATION

The administrative problems of registering and investigating every condominium development in the United States have not as yet been thoroughly studied. The National Association of Home Builders projects that over 250,000 condominium units will be started next year. This could represent as many as 10,000 "projects", as defined in S. 4047, and, even if the costs of providing adequate administration as contemplated therein is fully borne by the consumer, rather than the government, it seems excessive to ask that such extensive an undertaking be initiated without a period of study. The home building industry is debt-intensive, and cannot afford administrative delays created by "trial-and-error" regulation.

Hasty enactment of legislation of this type, which must, as a prerequisite to success, be cognizant of the needs of the industry for rapid, concise action, can only lead to misinterpretation and misunderstandings disruptive to the orderly progression of business. Builders will be hesitant to undertake the uncertain risks posed by poorly researched regulations, and lending institutions, uncertain of the status of the projects with which they are involved will prove to be reticent in their lending activities. This can only have two results:

1. The number of housing units available to the public will be reduced.
2. The cost of every unit produced will increase unnecessarily.

SUMMATION OF COMMENTS

As a matter of national policy it should be first and foremost in our minds that every American family has the right to enjoy, in their own home, the standards of living for which we are so justly proud.

In the absence of overwhelming evidence to the contrary, it does not seem wise at this point to undertake to implement legislation that would place an additional burden of cost upon, and reduce the availability of, housing units to the people.

State and local bodies have demonstrated their willingness and ability to protect the American home buying public in their local transactions from the unlawful practices of those few individuals who plague every industry.

In addition to the demonstrated ability of local government to protect its constituency in the areas where it is so empowered, such as in local real estate transactions, the pressures of competition enter strongly into consideration. Consumerism and public advocates have, in every instance, benefitted the legitimate condominium developer and, accordingly, every condominium consumer. This pressure is real, and effective, in Florida and every other area where the public is discriminating in its choice of life-style.

The need for federal intervention in local home buying transactions is, as yet, unproven.

Although the study underway by the Department of Housing and Urban Development may prove us wrong, we firmly believe that it will never be necessary. In any event, precipitous action on the part of the United States Senate, based upon data which may be scattered and incomplete, seems to us to be unfitting a body noted for its thoughtfulness.

We urge your study of the condominium market and its problems, and, on behalf of the 5,800 firms we represent, we fully endorse the type of study contemplated by the Housing and Community Development Act of 1974. If such a study indicates that federal legislation is required to compel State and local bodies to take more positive action to protect the rights of the American consumer, as the Florida Legislature has done so effectively, I will come back and stand before you and fight for the adoption of that legislation.

In the meantime, however, we urge that caution be exercised in the matter, and careful study be given the situation, so that your laudible intent does not inadvertantly result in excess federal regulation, the cost of which is not commensurate with its benefits to the public.

Your recognition of this segment of our industry as deserving of attention, and your thoughtful deliberation upon the legislation in question, is appreciated.

U.S. SENATE,
Washington, D.C., October 24, 1974.

Mr. HUNTER WOLCOTT,
Vice President, the Greater York Florida Group,
Coral Gables, Fla.

DEAR MR. WOLCOTT: Thank you for writing me concerning your further interest in replying to the questions I asked during the condominium hearings on October 10.

My three questions are:

1. What percent of Florida condominiums are primary residences?
2. Do developers in Florida generally advertise rental possibilities?
3. Do you think the Florida law is adequate, or do you favor one national condominium law?

The Senate Banking Committee has informed me that it will hold open the hearing record pending receipt of your replies.

Thank you for your cooperation.

Sincerely,

JOSEPH R. BIDEN, JR., *U.S. Senator.*

FLORIDA HOME BUILDERS ASSOCIATION,
Tallahassee, Fla., December 3, 1974.

Hon. JOSEPH R. BIDEN, JR.,
Subcommittee on Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR BIDEN: Thank you for the opportunity to respond, on behalf of the Florida Home Builders Association, to the questions voiced in your letter to me of October 24, 1974.

1. It is difficult to determine the precise percentage of Florida condominiums which are used as primary residences. From building department statistics and data developed from applications under Florida's "Homestead Exemption" it is our estimate that 75% of existing condominiums are owner occupied as primary residences.

2. Concerning the general advertisement of rental possibilities on condominium sales, we find that the incidence of developers advertising the possibility of the rental income subsequent to purchase to be very small.

3. Your third question concerning the adequacy of the Florida law and our position concerning a national condominium law has been the subject of much thought within our organization and its Executive Committee. As you are probably aware, the Florida Condominium Law just became effective on October 1, 1974 and it might be too soon to pass judgment upon its merits and its effects upon the home buying public. This law represents a compromise solution to the pressures of accelerating condominium development, and we feel that it is at least adequate in its consumer protection provisions, and perhaps even overly restrictive. It appears at this time that the average additional cost of compliance with this new statute will be $100 to $200 per unit and only time will tell whether the benefits accruing from this legislation are commensurate with its cost to the home buyers.

It is important to note that this law, in addition to its consumer protection provisions, was tailored specifically to blend with such related Florida statutes as the landlord-tenant act and various hotel-restaurant regulations. This synchronization of legislation is essential to effective government and for this reason we feel that a national condominium law would not be appropriate. I am certain that you will find great differences in the approaches taken by various state legislatures in the regulation of home building, and the fact that this matter can be dealt with effectively at the State level would seem to argue against Federal intervention at this time.

Until it can be strongly demonstrated that State legislatures are unwilling or unable to deal with matters of real estate law we believe that the Federal government should defer action on a national condominium law.

We appreciate the opportunity to respond to your questions and ask that this response be made a part of the record of hearings on this matter.

Sincerely,

HUNTER W. WOLCOTT,
Governmental Affairs Committee.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,
Washington, D.C., November 15, 1974.

Hon. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: I am writing to set forth for the hearing record the preliminary views of Federal National Mortgage Association about S. 4047, the "Condominium Act of 1974".

The proposed bill contemplates the comprehensive Federal regulation of the development, financing and sale of condominiums, raising a number of policy and technical questions which should be studied thoroughly. We suggest that the bill be considered in the light of rapidly moving developments in this field, including the complete revision of condominium statutes by several states, the impact of current Federal regulatory and investigative efforts by the SEC, FTC and HUD, the proposed Uniform Land Transactions Act and the requirements FNMA has established for the purpose of mortgages on condominium units.

It occurs to us that a question of Federal policy for the Committee to consider is the wisdom of such an ambitious federal regulatory venture at this time when action on the state and local level has been taken or is being contemplated.

We will be pleased to furnish more detailed technical comments at an appropriate time. There is a great interest in promoting the viability of the condominium form of real property ownership, as it seems clear that it will become the principal means for persons of modest income to become homeowners in most metropolitan areas of the country.

Sincerely,

OAKLEY HUNTER.

STATEMENT OF FEDERAL TRADE COMMISSION STAFF

November 15, 1974

BUREAU OF CONSUMER PROTECTION DIVISION OF SPECIAL PROJECTS

The remarks in this statement represent the views of members of the Federal Trade Commission staff. They are not intended to be, and should not be, construed as representative of official Commission policy.

INTRODUCTION

I. Status Report on FTC Investigation

After a preliminary investigation and recommendation by staff attorneys, on June, 25, 1974 the Commission authorized a formal industry-wide investigation of condominium practices. The Commission also adopted a resolution empowering the staff to use the compulsory process powers of the Commission, as necessary, to carry out the investigation. Commencement of the investigation was publicly announced by a press release issued on July 4, 1974.

The purpose of the staff's investigation is to identify condominum practices which are unfair or deceptive to consumers or unfair methods of competition, in commerce, in violation of the Federal Trade Commission Act. On completion of this investigation, the staff will submit recommendations to the Commission for appropriate enforcement actions to curb the abuses uncovered by the investigation.

The work of the staff in conducting the investigation to this point has included research on the condominum industry, evaluation of consumer complaints received, and interviews with consumers, developers, state officials and others with knowledge of condominium practices. The staff has also been obtaining and reviewing legal documents, promotional materials and other information pertaining to condominium developments all over the country.

The staff's investigation is still in a preliminary stage, and recommendations for Commission action have not yet been submitted for consideration. The information we have gathered so far, however, has enabled us to outline some of the problems facing consumers in the condominum industry, and it is on this basis that we offer our comments on the bills and our additional recommendations.

II. Comments on S. 4047 and S. 3658

In its ongoing investigation, the FTC staff has found that comprehensive information disclosures of the type required by S. 4047 and, to a lesser degree, S. 3658 presently are required by only a handful of states. Moreover, few states have administrative agencies possessing adequate funds and authority to administer comprehensive condominium laws and regulations. While the proposed bills would provide substantially more information to buyers, particularly in those states with inadequate protections, the FTC staff believes that stronger regulatory measures may be necessary to provide full protection to consumers. Based on the investigation to this point, the staff feels that substantive regulation, beyond disclosure, is necessary for certain aspects of condominium transactions.

These comments are generally directed toward an assessment of the bills within their framework of public registration and disclosure Other concerns which should be addressed, and additional recommendations, are discussed in a subsequent section of this comment.

S. 4047

S. 4047 requires federal registration of condominium projects and disclosure of their primary features. While the thrust of the bill is principally in the direction of full disclosure, certain semi-regulatory "satisfactory assurances" are required. Except for section 3(a)(2), the bill's requirements are expressly enforceable only by the Secretary of Housing and Urban Development.

DEFINITIONS

The definitions of "condominium" in section 2(3) and "condominium project" in section 2(4) are not clear and are inconsistent with the terminology generally used. The definition of a "condominium" more accurately describes an individual dwelling unit within a condominium. The condominium itself is a legal framework of ownership which can be imposed on a particular parcel of property by filing certain documents as required by the state in which the property is located. As such, a condominium consists of individually owned units—a composition which appears to be the gist of section 2(4)'s definition of a "condominium project." For the sake of consistency and clarification, it may be advisable to use the definition of condominium found in section 526(d) of the Housing and Community Development Act of 1974.

The definition of "condominum project" in section (4) presents similar difficulties. A condominium development (or "project") may consist of several condominiums (e.g., a high-rise complex in which each building is organized as a separate condominium). The bill's definition of "condominium project" appears to describe a situation in which a single set of enabling documents (ie., *one* condominium) has been filed. The definition might, however, apply to a multi-condominium project. In this case, some ambiguity might exist as to the bill's requirements, particularly with respect to section 5(a)(12)'s provisions for the transfer of control and management to the individual owners.

Prohibitions

Under section 3(a)(1), the regulatory impact of the bill is achieved by prohibiting the use of any instrumentality in interstate commerce to sell a condominium unit, unless the project has been registered, a statement of record is in effect, and the purchaser has received a copy of the public offering statement in advance of closing. The corresponding section of S. 3658 contains an additional clause (section 4(a)(2) which declares unlawful any fraud or misrepresentation in the sale of a condominium unit. S. 4047 does not deal directly with pre-sale contacts between the developer (and his sales personnel) and the buyer.

The staff investigation has indicated that a consumer's expectations in a condominium purchase are usually formed from salespersons' representations, media advertising, and brochures rather than from perusal and analysis of the

intricate legal documents which actually spell out the terms of the transaction. Often, the impressions created are deceptive: described facilities may never materialize or are inadequate for the number of residents who will use them; floor plans or model apartments may differ in size, or in the quality of the appliances or fixtures, from the apartment the consumer actually receives. Inclusion of an anti-fraud provision bearing the stamp of public policy disapproval—with the corresponding sanctions of sections 8 and 9—would be useful in combating problems in an area that has been the source of numerous public complaints.

Rescission

Under Section 3(a)(2), certain rights of rescission are vested in the buyer. A "cooling-off" period should be extended to all condominium buyers. The purchase of a condominium unit involves considerations beyond those connected with the purchase of a single-family home, for it is also an investment in a collective enterprise: the operation of a residential community. Forty-eight hours is not a sufficient minimum period in which to assess the merits of such a transaction.[1] The staff of the Bureau of Consumer Protection is not prepared, at this point, to recommend a specific period, but consideration should be given to extending to all buyers section 3(a)(2)'s ten day period, the thirty day period called for in section 5(d) of H.R. 15071, or an intermediate period.

Although the developer's duty to return any deposits in the event that a purchaser exercises his right to avoid or to revoke the contract under § 3(a)(2) may be inferred, the duty to return such funds should be made explicit.[2] Although barring any forfeiture of funds pursuant to the buyer's exercise of § 3(a)(2) rights would ameliorate the immediate problem, the volume of complaints received by the FTC staff concerning loss of deposit monies underscores the need for the greater protections discussed in the section on additional recommendations.

Registration

Section 4 sets forth the registration procedure for filing a condominium offering with the Secretary of HUD. Although section 4(a)(2) requires the Secretary to approve a project, section 5(c)'s caveat leaves the role of the Secretary unclear. Moreover, the remedial powers given to the Secretary by sections 6(b) and 6(d) do not indicate whether an independent examination of each project by HUD is required or whether, in the absence of contradictory evidence, reliance on the face of the information submitted is sufficient. HUD's power and duty to examine and verify the information submitted should be clarified.

Information disclosure

Section 5 lists the disclosures which must be contained in the public statement of record filed with HUD. Because of the importance of promotional materials in forming buyers' expectations, these materials should be included in the developer's submission to HUD, and the submission should be periodically updated according to changes in the developer's advertising and sales campaign. HUD would then be able to review the materials for possible misrepresentations and material omissions. This recommendation corresponds to our suggestion on broadening the scope of the sanctions in section 3.

In addition to the information which must be disclosed, the "satisfactory assurances" device is used to achieve a regulatory effect. The extent to which this method will protect buyers, the standards by which "assurances" will be deemed "satisfactory", and the enforcement mechanism for unkept assurances are concerns which have been adequately expressed by the National Association of Condominium Owners.[3] In addition, we support specific prohibitions or requirements for the practices which the developer, under the bill's current design, must essentially promise to use or to refrain from using.

Completion Delays

Section 5(a)(9) requires the developer to include in the purchase agreement the completion dates of all structures in the project. Although failure to meet scheduled occupancy dates may result in substantial unforeseen expenses for condominium buyers, broad exculpatory clauses in sales contracts may not only

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[1] *Cf.* VA STAT § 55-79.88(b) (1974).
[2] *Cf.* Consumer Credit Protection Act § 125, 15 U.S.C. § 1625 (1970).
[3] Statement of the National Association of Condominium Owners at p. 201 of this publication.

bar the recovery of any damages caused by the delay but may also prevent the recovery of deposits by purchasers who might otherwise claim a breach of contract. Although we are not prepared to make a specific proposal, we recommend the adoption of sanctions which would strengthen section 5(a)(9) by affording consumers a remedy for undue delays beyond the projected completion date [4] and by limiting the circumstances which would excuse the developer from liability for such delays.

Warranties

Sections 5(a)(10) and 5(a)(11) set out the required disclosures as to the developer's responsibility for construction and installation defects. The present language of section 5(a)(10) can be construed to permit the developer to disclaim any responsibility for structural or engineering defects. This provision should be amended to specify that this responsibility is absolute and to require the developer to indicate the manner or program by which it will be fulfilled. Moreover, this statement of responsibility and the procedures established to resolve buyers' complaints should be included in the public offering statement given to buyers.

Similar statements should be included in the public offering statement to explain the implementation of the warranty required by section 5(a)(11). That section does not fix the point at which the warranty commences. The statute should specify (and the public offering statement should disclose) that the period during which the warranty is in effect begins to run upon conveyance of the unit.[5]

Operation and Control

Section 5(a)(12) protects the buyers' right to operate the condominium after one year from the date of initial occupancy or upon the conveyance of 80% of the units—whichever is earlier. Developers' retention of control over the owners' association and the execution of long-term management contracts by the developer on behalf of the association have generated much criticism. Control should pass to the unit owners as soon as feasible. Also, owners should not be locked into contracts made by the developer.[6]

Although the principle behind section 5(a)(12) is sound, we believe that certain clarifications are necessary (apart from the definitional problems discussed earlier). Subparagraph A suggests that the owners' association is established sometime after a number of owners move into the project. Under state condominium laws, however, the owners' association is established as the governing body of the condominium at the time the declaration of condominium is filed. At that time, no units have been sold, so that the developer is the sole owner. As such, he selects the board of directors of the association and thus controls the association. After a specified number of units are conveyed, the owners meet and elect association directors. The timing for the transition of control is dependent on the condominium instruments and/or the applicable state statute. The issue, then, is the transfer of effective control to the unit owners. The transfer may be all-at-once, it may be staggered (e.g., unit owners other than the developer may choose a growing number of directors proportionate to the percentage of units sold), or it may be according to some other procedure. In any event, the means by which control is to be transferred should be clarified in the legislation.

Subparagraph B appears to require distribution of voting rights on the basis of one vote per unit. To achieve that effect, the provision should be reworded, since the present language would permit co-owners to wield disproportionate power in association affairs. Moreover, current state laws permit a variety of formulas for determining an individual unit's undivided interests in the common estate—a ratio which determines the level of assessments for common expenses, the tax burden, and (frequently) the voting rights of each unit. So long as the developer does not retain "weighted" voting rights disproportionate to the number of unsold units, any equitable formula may be satisfactory.[7]

For the reasons discussed in connection with subparagraph A, subparagraph

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[4] *Cf.* H.R. 15071, 93rd Cong., 2d Sess. § 5(b)(9) (1974).

[5] Broader warranty protections are discussed in the discussion of additional recommendations.

[6] *Cf.* VA STAT. § 55–79.74(b) (1974). *See also* the discussion of additional recommendations.

[7] Under the one-vote-per-unit scheme, it would still be possible to use different formulas to determine the other incidents of condominium ownership.

C may be superfluous. Subparagraph D should refer to management "contracts" or "agreements" rather than "leases."

S. 3658

S. 3658 is similar in many respects to S. 4047, and many of the comments on S. 4047 apply, with equal force, to S. 3658. The disclosure requirements of S. 3658 are less comprehensive than those of S. 4047, but S. 3658 does contain antifraud protections (in Section 4(a)(2)) which are presently lacking in S. 4047. There is, however, no reason why the protections of registration, disclosures, and prohibition of certain practices cannot be combined into one cohesive regulatory framework. Several specific comments on S. 3658 follow.

Definitions

Problems in terminology in sections 2(3) and (4) of S. 3658 are similar to those in S. 4047, as previously discussed.

Conversions

Section 6(10) is the only provision of S. 3658 specifically addressed to conversion problems. The requirements of 90 days notice and a 60 day exclusive option to buy provide important protections for tenants. Other safeguards are also necessary to protect new buyers as well as existing tenants.

A high percentage of conversions involve older buildings whose condition may have deteriorated. Conversions can be accompanied by minor cosmetic alterations without putting the building structure or major elements such as the electricity, plumbing and heating systems in good repair. There should be a requirement that a converted building be in good condition when it is turned over to the unit owners from the developer. Independent engineering reports which would assure the good condition of the converted building could be required from the developer. Each prospective buyer should also receive, as part of the offering statement, reports on the condition of the common elements and estimates of their remaining useful life and replacement cost.

Another concern is that, as the basis for projected budgets, developers may provide prospective buyers with statements of expenses for several previous years when the building was a rental building. Statements of past expenses, while informative, can be misleading because operating costs can rise sharply in a newly-converted building. Thus, while requiring disclosure of past budgets might be somewhat useful, the real protection for buyers lies in a mechanism which holds the developer to his projected budget (with some margin for error). The developer should be financially liable for substantial underestimation of operating expenses in conversion projects as well as in new developments. (See discussion of additional recommendations, *infra.*)

Enforcement Powers

Section 7 and section 9 govern the main policing functions of HUD. Our doubts about the effectiveness of the enforcement mechanism adopted center on the relief it offers consumers. The only remedy provided seems to be the suspension of the statement of record should the Secretary find an omission of necessary information or inclusion of misleading information. The effect of suspension upon consumers who have already purchased in reliance on the information filed, or upon those who may purchase during the period of suspension, is unclear.[8]

Information Disclosure

Section 8 specifies the information that must be included in the public offering statement given to each purchaser before any contract is signed. The offering statement is likely to be the principal source of data on the condominium, and the information required by section 8 should be helpful to buyers. We would urge that the requirements of section 8 be expanded in several respects:

a. Section 8(a)(2) provides for a narrative description of the total number of units to be included in the project by reason of future expansion or merger. To reveal the possibility of dilution of unit owners' voting, ownership, and/or use rights in common areas by reason of phasing or expanding regimes, the public offering statement should specifically disclose to the consumer not only any expansion plans, but also the effects of such expansion on existing rights.

[8] As noted elsewhere in this statement, the Bureau of Consumer Protection believes that additional enforcement measures are necessary, including outright prohibitions of certain practices and a private right of action for individual consumers.

b. Section 8(a)(3) provides for a general narrative description of the condominium documents. Since these documents will govern a buyer's future ownership rights, it is essential that he fully understand them. There should be prominent warnings to prospective buyers to read the documents carefully before signing.

c. Section 8(a)(4) requires disclosure of developer self-dealing, recreation leases and management contracts, but it is questionable how effective a consumer protection measure this would be. Further discussion on the subject of long-term leases and developer self-dealing is included in the discussion of additional recommendations.

d. Section 8 lacks specific disclosure requirements with regard to conversions. It is strongly suggested that disclosures similar to those discussed above (i.e., Section 6(10)) be included.

III. Additional recommendations

Additional legislative provisions should be considered. Both S.3658 and S.4047 rely principally on public registration and disclosure to protect buyers, although S.4047 contains certain requirements which amount to substantive regulation. While the Bureau of Consumer Protection believes that public registration and disclosure of material facts can help to prevent consumer injury, it cautions against undue reliance on those methods alone. The effect of disclosures on a buyer's decision to purchase a condominium unit is subject to his ability to comprehend the information disclosed and to adjust purchase decisions accordingly. Lack of actual bargaining and economic pressures (such as the increasing unavailability of single-family housing to growing numbers of the population) may, however, restrict a buyer's freedom of choice. The value of public registration, on the other hand, depends largely on the zeal with which HUD examines the offerings and enforces the statutory sanctions. To increase the protection afforded to consumers, we offer several suggestions for supplementary legislation.

1. Private Right of Action

By confining the enforcement of S.3658 and S.4047 to the Secretary of HUD, the bills fail to utilize a remedy which has been of substantial impact in the enforcement of the antitrust laws: the private right of action. Although a civil cause of action based on a violation of the statute may be implied, the right of buyers to press their own claims should be explicitly recognized. Under the present bills, the Secretary may suspend the statement of record upon a finding that it contains a material misrepresentation, but the effect of the suspension on previous buyers is unclear. Likewise, the criminal sanctions imposed by both bills may still leave deceived buyers without an effective remedy (except for possible common law actions for damages based on fraud or misrepresentation).

Under the Virginia Condominium Act,[9] noncompliance with any of the condominium instruments constitutes "ground for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or equity, maintainable by the unit owners' association . . . or in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action." The Committee should consider a similar provision which would also embrace the statement of record, the public offering statement, and inconsistent or misleading information in promotional materials. While the major thrust of the Secretary's efforts, under both S.4047 and S.3658, would be directed to the initial sale of units, the developer's civil liability for publicly-made promises to buyers should continue beyond that period.

2. Ancillary Lease Obligations

Before control of the owners' association passes from the developer to the buyers, the developer may execute self-dealing leases on behalf of the association. Since buyers must ratify these leases as a condition of purchase, the association and the unit owners may be irrevocably bound to long-term agreements. The result is that the developer (or his successors), through his own prior actions as head of the association, retains a profit-making interest in the condominium long after his role as seller has expired.

Perhaps the epitome of these arrangements is the recreation lease, the source of numerous public complaints received by the Bureau of Consumer Protection. To effect these agreements, a developer retains ownership of certain recreational facilities that are or will be physically integrated with the rest of the condo-

[9] VA. STAT § 55–79.53 (1974).

minimum complex and leases them to the association (which he then controls). The initial rentals under such leases may be exorbitant, and periodic rent increases are frequently tied to rises in the cost-of-living index. In addition, many leases require the unit owners to pay all costs (including property taxes and the cost of replacement) relating to the property. Since the term of the lease is typically 99 years, the returns on the developer's initial investment can be enormous. Payment of the recreation lease is secured by a lien on the buyer's apartment.

Although recreation leases are found primarily (but apparently not exclusively) in Florida, similar arrangements have been used for parking lots and garages, laundry rooms, and other property which buyers naturally expect to be incorporated in the common elements of the condominium.

Critics of long-term leases justifiably view them as antithetical to the fundamental condominium concept of fee simple ownership and contrary to any fiduciary duties which the developer may owe to future buyers.[10] Moreover, many buyers complain that they have been deceived, for the terms of the lease are hidden amidst the complexity of the condominium's legal documents. Others, while generally aware of a lease's existence, do not comprehend (or are never told) the extent of their additional obligations.

Protection against injurious long-term agreements can be provided in various ways. Michigan, for example, refuses to permit sales of condominium projects with recreation leases.[11] In Virginia, any management contract, recreation lease, or other contract entered into during the period of developer control is binding only if renewed or ratified by a majority of unit owners after they obtain control of the association.[12]

Long-term arrangements by which the developer retains a financial interest in the condominium after the units are sold are prohibited by HUD–FHA. HUD, which must approve all organizational documents for proposed project applicants, will not permit the enabling documents or by-laws to contain any language allowing the developer to retain ownership of community facilities.[13] Moreover, the agency will not permit the developer to lock the condominium into long-term agreements or self-serving covenants prior to the assumption of control of the association by the unit owners' board.[14]

The FTC staff believes that these restrictions may be appropriate for all condominiums. In addition to the factors mentioned at the beginning of this section, parallel practices by competitors and buyers' inability to change the terms of printed-form condominium documents detract from the effectiveness of disclosure as a remedy. The primary goal is to preserve the new owners' ability to undertake the independent operation of their condominium after the developer has departed. Safeguards similar to those adopted by FHA and several states may be appropriate to insure that owners are not bound to agreements imposed without their consent and that developers do not continue to reap profits from the imposition of such agreements. S. 4047 provides this safeguard with regard to management and related maintenance contracts. The staff believes the Subcommittee should consider legislation, such as that discussed above, which would increase this protection by prohibiting the leasing arrangements described.[15]

3. *Requirement of Accurate Projected Budgets*

The estimation of future living costs is an important task for the condominium purchaser.

Although projected budgets must, under both bills, be disclosed to buyers, additional incentives to encourage the accuracy of these estimates should be

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[10] *See* Fountainview Ass'n v. Bell, 214 So. 2d 609 (Fla. 1968) (Ervin & Roberts, JJ., dissenting); Note, *Florida Condominiums—Developer Abuses and Securities Law Implications Create A Need for a State Regulatory Agency*, 25 U. FLA. L. REV. 350 (1973). The Florida Attorney General has recently filed an administrative complaint, under the state's "little FTC Act" (FLA. STAT. § 501.201–.213 (1973)), which challenges the use of a recreation lease as unconscionable, as an unfair trade practice, and as a restraint of trade. The suit seeks to relieve unit owners of any further obligations under the lease. In re Cenvill Communities, Inc., #74–10094 (Fla. Dep't of Consumer Affairs, filed Sept. 4, 1974).

[11] Interview with Mr. Hugh Makens, Director, Corporations and Securities Bureau, Michigan Dep't of Commerce, in Washington, D.C., July 31, 1974. Michigan's Real Property Act requires that all initial condominium documents be reviewed by Mr. Makens' office. *See* Mich. Horizontal Real Property Rules § 451.1356 (1972).

[12] VA. STAT. §§ 55–79.74(a),(b) (1974).

[13] Mortgage Insurance Handbook for Condominium Housing Insured under Section 234(d) of the National Housing Act, HUD Circular 4580.1, at 5–2b (June 14, 1973).

[14] *Id.* at 5–9.

[15] *Cf.* H.R. 15663, 93rd Cong., 2d Sess. (1974).

considered. Wide discrepancies between projections and actual costs might give rise to a presumption of intentional misrepresentation, for which the developer would be liable to the unit owners.[16]

4. *Protection of Deposits*

The purchase of a condominium unit usually begins with the execution of a sales contract and the deposit of a varying amount of money as a downpayment on the unit. Frequently, buildings are "sold out" long before their completion,[17] so that buyers' expectations are based on model apartments, brochures and floor plans.

Few states, however, require deposit monies to be placed in escrow accounts in order to protect buyers against the failure of the project or misappropriation of funds.[18]

Absent restrictions, deposits may be utilized by the developer for construction expenses—a use which frequently implies that the developer is undercapitalized and in danger of being financially incapable of completing the project. During the current period of high inflation and general economic malaise in the home-building industry, failures of developers and foreclosures by lenders are increasing, so that more and more buyers whose funds have been spent on construction are finding themselves with neither their savings nor their condominiums.

Loss of deposit money also frequently occurs when the buyer decides not to close the transaction. Although a few states limit the amount which may be retained, the terms of most sales contracts which the staff has reviewed state that the buyer's failure to close (except for an inability to obtain financing) will result in the forfeiture of his deposit money as liquidated damages.

At the time the sales contract is signed, however, many buyers have not yet received the condominium documents or have not received them with time to permit adequate review. Similarly, persons contracting to buy units in unfinished buildings are necessarily precluded from inspecting the premises beforehand. Later, the buyer may discover elements of the transaction which would persuade him to reject the purchase. If his objections cause him to cancel the contract, he may have to forfeit several thousand dollars.

To protect against loss of deposits and downpayments, federal legislation should require that these monies be kept in escrow accounts. This would facilitate recovery of deposit monies by purchasers who legitimately seek to rescind or revoke their purchase agreements. Further, escrow accounts would protect consumer deposits in the event the developer fails. HUD-FHA regulations already contain an escrow requirement while concurrently limiting the amount of deposits which can be collected before a project is approved.[19] The new Virginia law also specifically requires that all deposits shall be held in escrow until settlement.[20] The staff believes the Subcommittee should consider additional legislation of this sort.

5. *Abstract of Legal Terms*

Both S. 4047 and S. 3658 require that the legal terms of the condominium transaction be disclosed to buyers, before they sign a purchase agreement, through the medium of the required public offering statement. The importance of informing buyers of their rights and duties before they become legally bound cannot be gainsaid. Yet requiring that buyers be handed an offering statement which contains all the relevant legal documents does not by itself assure comprehension of the salient terms of the transaction. Condominium legal documents are typically lengthy, complex, and technically written. To facilitate buyer comprehension, there should be a requirement that the core terms of the transaction be culled from the legal documents and listed on a one or two page abstract, with appropriate references to the full text of the provisions in the documents. The abstract should occupy a prominent place in the offering statement to direct buyers' attention to what they ought to know about the legal provisions before they become bound by them.

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[16] Recently enacted condominium regulations for the District of Columbia create a presumption of intentional misrepresentation if actual expenses exceed the estimated operating expenses by more than 20%. *See* D.C. Council Reg. No. 74–26 § 3.1(f)(3) (1974).

[17] Under the "boom" conditions which, until recently, characterized the condominium industry in Florida, many condominiums were completely sold before construction had commenced.

[18] Moreover, most states permit the developer to retain any interest earned on the money.

[19] HUD Circular, *supra* note 13, at 2–6.

[20] VA STAT § 55–79.95 (1974).

NATIONAL ASSOCIATION OF HOME BUILDERS,
Washington, D.C., November 1, 1974.

Hon. JOHN SPARKMAN,
Chairman, Subcommittee on Housing and Urban Affairs, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: We should like to share with you our comments on S. 3658, the "Condominium Disclosure Act," and S. 4047, the "Condominium Act of 1974," and request that they be included in the hearing record on this legislation.

The National Association of Home Builders is the trade association of this nation's home building industry. We share the Housing Subcommittee's concerns about abuses which have occurred in some condominium transactions. We do, however, question whether the matters which have come to public attention are so widespread as to demand the establishment of a massive Federal bureaucracy to regulate all condominium sales, nationwide.

Furthermore, the recent wave of condominium legislation in such areas as Florida, Virginia, Maryland, the District of Columbia, New York, San Francisco, and Marin County, California, all locations where condominium activity is quite substantial, demonstrates that state and local governments are responding on their own to problems arising from condominium transactions. We understand that several other state legislatures will be considering consumer-oriented condominium legislation next year.

Also of note is the project of the National Conference of Commissioners on Uniform State laws to prepare a uniform state condominium law. Representatives of consumer organizations and the real estate industry have been meeting with a special committee of Commissioners since 1972 to develop a condominium law which will be acceptable to both condominium purchasers and developers. The Conference is expected to give final approval to this proposed uniform law at its annual meeting in 1975.

Traditionally, matters of real estate law have been resolved at state and local government levels, with direct Federal involvement occurring principally in the event of strong, overriding interstate issues, where state or local action is thwarted, or where a broader public interest is involved. We do not see these elements for Federal involvement in the issues surrounding condominium sales; and we perceive of a distinct difference between the problem of regulating condominium sales and that of regulating the sale of land for recreation, retirement and leisure use that gave rise to enactment of the Interstate Land Sales Full Disclosure Act in 1968.

With respect to interstate land sales, regulation by HUD came about in large measure because of the persuasive evidence that interstate means were employed to sell land, in remote locations, to purchasers who often never inspected it and who relied on representations that they could not or did not check to appraise the value of the offer. Furthermore, there was little activity at the state or local levels to halt the abuses. On the other hand, the vast majority of individual condominium sales do not involve highly speculative, sight-unseen purchases by buyers who must evaluate their purchase on the basis of representations supplied in interstate media. What is more, state and local governments have not shown reluctance to act to curb abuses.

Because of the heightened interest in condominium construction and conversions, NAHB has undertaken several projects to educate both its membership and the general public on the problems involved in condominium development and purchase. In addition to conducting seminars and conferences on condominium development and management, NAHB's Condominium Department has written and will soon publish a consumer's guide to purchasing a condominium.

NAHB has developed a voluntary home warranty program which provides the purchasers of newly constructed condominium units with ten years of protection against major structural defects; two years protection against malfunctioning systems: e.g. plumbing, heating, cooling; and one year of protection against defective materials and faulty workmanship. The program is administered by the Home Owners Warranty Corporation (HOW), a wholly owned subsidiary of NAHB. Participating builders may offer the coverage on all condominium buildings of three stories or less, and on buildings of any height with a value of less than $1 million. HOW hopes soon to expand its coverage to all condominiums.

Under the HOW arrangement, if the builder does not honor his warranty during the first two years of coverage, the purchaser will receive payment for any necessary corrective work from an insurance company, which is also respon-

sible for the warranty coverage from the third through tenth years. The warranty also provides for arbitration in the case of disputes. Cost of the coverage is two dollars per one thousand dollars of the purchase price, and it is included in the builder's selling price.

In 1973 NAHB, along with the Urban Land Institute, sponsored the formation of the Community Associations Institute. The Institute is a non-profit research and educational organization entirely separate and independent of NAHB. It was formed to help guide the creation of homeowner and condominium associations and to advise them in such areas as the financing, operation, and maintenance of the common facilities and services in condominiums, townhouse developments, planned unit developments, and open space communities. It has a balanced membership consisting of developers and builders, community association members and officials, community association managers, public interest groups and others.

These efforts by the industry in recognition of the need to provide adequate information and protection to the condominium purchaser, along with the growing recognition by state legislatures of their responsibility to revise their condominimum laws where necessary to assure adequate protection for the consumer, would seem to argue against any precipitate action by the Federal Government to step into a field historically reserved to the states. This is especially true in view of the complex nature of both the disclosure and regulatory requirements that would be imposed by S. 3658 and S. 4047.

Both bills would require extensive submissions to HUD, which would have to be frequently revised as circumstances surrounding the construction of condominium projects are legitimately changed. This added burden would drive up significantly the cost of constructing new condominium projects and necessitate a very substantial expansion of HUD's staff.

We estimate that 16% of all housing starts in 1975 will be condominiums. Most indications are that this percentage will increase substantially in the coming years. Based on our present estimate of 1.45 million housing units to be started during 1975, over 230,000 units would be involved during 1975 in the extensive and costly review procedures proposed by these bills.

Therefore, there would be an enormous impact on the cost of a substantial portion of the nation's new housing, with perhaps serious implications as to whether that much housing could be produced. This we believe would be unfortunate in light of the fact that, as a result of the rampant inflation of recent years, a large percentage of the modest cost ownership housing being produced today is through the condominium route.

These registration requirements appear to be the types of regulations which President Ford had in mind when he called upon Congress and the executive branch to eliminate "Federal rules and regulations that increase costs to the consumer, without good reason, . . .". Senator Proxmire, a sponsor of S. 4047, also highlighted this type of government-induced inflation in a recent Chamber of Commerce talk. He stated: "I would like to see us put into effect a cost benefit study of all of these metric things, spending measures and other measures that require some kind of regulation or expenditure on the part of industry so that we know what the inflation impact is. Let us face it squarely, and then, decide whether or not we can afford to go ahead, given the needs of our economy, the limitations on our resources."

This legislation also appears premature. It comes at a time when the Department of Housing and Urban Development, pursuant to section 821 of the Housing and Community Development Act of 1974, is just beginning an investigation of condominium activity in the United States. The HUD report is due by August 22, 1975. Furthermore, the Federal Trade Commission is currently involved in a study which should reveal the nature and extent of any abuses in condominium transactions. The Subcommittee deserves to have the benefits of these reports before deciding whether to develop a Federal regulatory apparatus of the magnitude contemplated by these bills.

NAHB urges the Subcommittee to defer action upon these bills at least until the HUD and FTC studies are completed. Beyond that, however, we do not believe that to date an adequate showing has been made of the need for Federal intervention into matters which are essentially a responsibility of the states and about which the states are demonstrating a willingness to assume their responsibility.

Cordially,

LEWIS CENKER,
President.

STATEMENT OF ANDREW J. BIEMILLER, DIRECTOR, DEPARTMENT OF LEGISLATION, AFL–CIO

The AFL–CIO welcomes the opportunity to present our views on condominium legislation presently being considered by this Committee. The Condominium Disclosure Act (S. 3658), sponsored by Senator Biden, and the Condominium Act of 1974 (S. 4047), sponsored by Senators Proxmire and Brooke, include the types of provisions for disclosure and regulation that are needed to protect the housing consumer. We applaud the efforts of these Senators in introducing this timely legislation.

At its August 5, 1974 meeting, the AFL–CIO Executive Council adopted a housing policy statement which cited the lack of adequate consumer protection with respect to condominiums at the Federal, state or local level and called upon the Congress to "adopt legislation to protect American families from abrupt displacement from apartment houses being converted to condominiums, and to protect consumers who purchase condominiums against hidden, long-term charges." A copy of the August 5th statement is appended to this statement. We commend the Committee for taking the initiative in considering legislation that would protect housing consumers against abuses that have become prevalent in connection with both condominium conversions and developments.

In the past few years, developers and builders have increasingly turned from the construction of single-family detached homes and multifamily projects to condominium development and the conversion of existing rental units to condominium ownership. An annual survey, conducted by the Department of Housing and Urban Development, reported that condominiums represented a substantial proportion of total housing units completed in 1973: almost one-quarter of the reported for-sale units completed in 292 metropolitan areas were condominium units. While this trend has been encouraged, in part, by problems of inflated operating costs and the difficulties of finding tenants with incomes high enough to pay steadily rising rental costs, an equally strong motivating factor has been speculative profits and the long-term financial benefits available to developers, through tie-in charges. While developers have frequently held out the condominium as the answer to many families' search for maintenance-free, less costly homeownership, condominium owner-occupants often find that they have entered into highly sophisticated contracts with only a minimal understanding of the monthly costs to which they have committed themselves.

In addition, the prospect of obtaining substantial profits by purchasing units and quickly reselling them at higher prices has added a new dimension to the condominium problem. The high rate of speculation that resulted from this possibility helped contribute to an oversaturation of many markets. Overbuilding, coupled with tight mortgage money and high interest rates hindering resale of units, has produced situations where persons who purchased units as their own residences now find themselves living in buildings with a large number of units remaining vacant and the high vacancies affecting both the quality of services and the facilities provided.

The conversion of rental units to homeownership condominiums has become the latest in an already long list of problems faced by low-income and elderly households. In nearly all cases, condominium conversion is synonymous with significant increases in monthly housing costs—increases that negate all hopes of many tenants that they will be able to purchase the units which they presently occupy. In the Washington metropolitan area, for example, it is expected that by the end of 1974, one out of ten existing rental units will have been converted to condominiums. In some instances the monthly carrying charges for converted units are greater than the previous rents by $100 or more per month.

In both cases—the sale of newly constructed units and the conversion of rental units—state and local governments have generally failed to enact legislation that adequately protects the housing consumer by providing for both disclosure and regulation. The time for Federal action is now. The Department of Housing and Urban Development, committed to a one-year study of the problem as a result of recently enacted legislation, contends that no action should be taken until that study is completed. But a continuation of the "buyer beware" philosophy is unacceptable to the AFL–CIO. It is objectionable to labor because there are housing consumers who need help now—the low-income and elderly persons who find themselves out on the street because of a conversion and the

condominium owners who are unable to keep pace with escalating monthly charges resulting from hidden long-term management or recreational fees.

The AFL–CIO urges and supports Congressional enactment of legislation which would have the broadest possible coverage and which would go beyond disclosure requirements. At a minimum such legislation should do the following:

1. Require that condominiums be registered with a Federal body charged with administering and enforcing condominium standards.

2. Condition the use of federally-related financing or other federal housing assistance on the fulfillment of requirements with respect to regulation and disclosure.

3. Provide for sanctions that can be levied against builder-developers who purposefully deceive the prospective purchaser or condominium owner-occupant. Appropriate remedies should be provided for aggrieved persons.

4. Require that builder-developers fully and accurately disclose—to both the administering Federal body and, well in advance of contract signing, to prospective condominium owner-occupants—information about: (a) the completion dates of the unit being purchased and the common areas and facilities; (b) the condition and life span of the physical structure and its component systems; (c) existing and planned facilities and services, including a clear statement of the owner-occupant's interest in facilities resulting from the unit purchase; and (d) current, projected and, in the case of converted units, past operating and other costs that will be paid by the owner-occupant. Pertinent information regarding the impact of current or anticipated special taxes or assessments and the relevance of other local governmental regulations should also be clearly stated. All documents and contracts should be provided to the prospective purchaser, along with a clear, narrative statement of implications of such documents for the would-be owner-occupant.

5. Require warranties on all electrical, heating, air conditioning and ventilation equipment, plumbing, roofing and elevators.

6. Prohibit long-term builder-developer management contracts and the ownership and/or leasing of supportive recreational and other facilities, so as to assure that condominium owner-occupants are not unexpectedly faced with the uncontrollable escalation of monthly costs.

7. Require that tenants of rental units to be converted to condominiums be given written notice of intent to convert, priority to purchase, an adequate amount of time (i.e. six months) to decide whether to purchase or find replacement housing and adequate written notice indicating the time within which persons not wishing to purchase must move. The abridgement of outstanding leases should be prohibited unless broken upon mutual consent of the developer and lessee. Rent increases that may be imposed by a landlord after notice of intent to convert has been given should be limited to a pass-through of increases in operating costs.

8. Assure that the Federal administering body establishes effective investigative and enforcement mechanisms that are adequately staffed and provide clear channels of communication for consumer complaints to be registered and resolved. Enforcement should include a careful review of whether or not the developer has fulfilled statutory requirements, particularly those relating to the rights of owner-occupants and the protections given to tenants in units that are being converted. The administering agency should have the authority to defer conversions in areas where extreme hardships would result. It should be required to report to Congress annually on progress made in enforcing standards and the impact of conversions on housing available to low- and moderate-income households. Reports should also include recommendations for additional Federal action required in order to protect condominium owner-occupants and persons displaced as a result of conversions.

Recognizing that the enactment of legislation such as that being considered by this Committee will be a significant step forward in protecting housing consumers, the AFL–CIO stands ready to work with you on the further development and implementation of this very important housing legislation.

STATEMENT BY THE AFL–CIO EXECUTIVE COUNCIL ON HOUSING

Results of the Nixon Administration economic policies are most apparent in the housing sector. The combination of inflation, recession and unemployment,

which characterizes the entire economy, has affected residential construction drastically.

As compared with a year ago, the average price of a comparable new house is up 10 percent, effective mortgage interest rates have risen from 7¾ to 9¾ percent, and the consumers home ownership costs, which reflect the upsurge in mortgage interest rates as well as home prices, have advanced by 11 percent.

In addition to high prices and interest rates, the Administration's phase-out of low- and moderate-income programs since early 1973 has contributed to a sharp reduction in housing market demand and construction. Housing starts during the first half of this year were 31 percent below the comparable part of 1973, and the 1973 annual housing starts total was 13 percent below 1972. An unemployment rate of 10.6 percent among construction workers has contributed significantly to the overall unemployment rate of 5.3 percent.

Price inflation and the cut-back in Federally assisted home production have also shifted production toward the high end of the price scale. Less than 5 percent of new homes sold are now priced at under $20,000 and less than 30 percent at under $30,000. The median new home sales price is up to about $36,000. As a consequence, most of the American families have been priced out of the housing market. It would now require an $18,000 income to meet total homeownership costs on a home with a $30,000 mortgage, which rules out about three-fourths of American families.

Nevertheless, the Nixon Administration persists in relying upon the general tool of tight money to fight inflation, ignoring the consequence in terms of unemployment and reduced living standards. The 1974 annual rate of 1.6 million housing starts is barely keeping pace with the annual increase in households over the past two years. It does not allow for replacement of an estimated 700,000 units lost from the housing supply annually due to demolitions, fire. flood and other causes, nor does it begin to allow for units to accommodate the mobility and migration of the population. The overall production deficiency that results creates housing shortages which breed more inflation.

The gap between housing production and housing need has been further intensified by widespread conversions of existing rental properties to condominium ownership status. In the Washington metropolitan area, for example, it is expected that by the end of 1974, one out of ten existing rental units will have been converted to condominiums. In some instances the monthly carrying charges for a converted unit are greater than the previous rents by $100 or more per month. The conversion of rental units to condominiums has presented a major problem for families—particularly low- and moderate-income households—who find themselves being forced out into a tight, high cost housing market. The conversion dilemma is another illustration of the impact of inflation: landlords, faced with rising property taxes and rapid increases in utility costs, see increased rents as the only means of keeping pace with costs; tenants, finding their incomes shrinking while day-to-day living costs continue to rise, resist rent raises; landlords then choose to leave the rental business and opt for the immediate and high profit possible through conversion and sales. The question of where low- and moderate-income households will find adequate housing is totally ignored. For such people, the Administration's decision to impound housing assistance dollars that could be providing new housing opportunities constitutes the final insult.

The increasing proportion of new housing construction for condominium sale is also raising problems. It is estimated that as much as 25 percent of all owner-occupied housing units sold in this country in 1974 will be condominiums. While condominiums are advertised as the means by which homeownership dreams can be realized, they often end up being a nightmare for potential homeowners who find themselves faced with escalating management and recreational fees under long-term contracts, in addition to normal monthly mortgage payments. There is no adequate consumer protection at Federal, state or local governmental levels.

Despite belated recognition of a need to reverse the harmful deterioration of the housing situation, the basic position of the Administration has not changed. The few actions that the Administration announced earlier in the year to provide additional support for the mortgage market have been inadequate to revive housing from the state of depression into which it has sunk. The Administration has refused to utilize established subsidized housing programs under which substantial numbers of units for low- and moderate-income families were produced in prior years. It has opposed a meaningful extension with addition authorized

funding for the programs, in pending legislation. These programs were suspended for new approvals in January 1973, following scandals which resulted from incompetent program management, including a lack of consumer counseling and a lack of Federal surveillance to prevent fraud.

In lieu of these programs, the Administration has proposed a single program—the revised Section 23 public housing leasing program—to provide for the construction of low- and moderate-income housing. This program is an untried vehicle whose viability has been questioned in many quarters. Even if it should prove workable, it will take many months before the new program can result in a sizeable volume of production. During the interim, the country suffers from a housing production shortage in relation to basic housing requirements, while large numbers of construction workers remain unemployed.

The AFL–CIO Executive Council urges that the following steps be taken in order to bring residential construction back to a level in line with the needs of the American people:

*The Administration should use the remaining unused contract authority for housing assistance payments to make new commitments that will support the construction of additional units under the Section 235 homeownership assistance and Section 236 rental housing assistance programs. It should also utilize such additional authority as the Congress may enact in support of conventional low-rent public housing and assisted housing for the elderly.

*The Congress should enact sufficient additional contractual authority for annual assistance payments under the conventional public housing, Section 235 and Section 236 programs that would permit those programs to be fully implemented during fiscal years 1975 and 1976.

*The Congress should enact pending legislation that would permit direct loans and housing assistance payments to provide housing for low- and moderate-income senior citizens.

*The Congress should enact proposed legislation that would provide for middle-income home mortgage financing at lower interest rates than those presently available, through mortgage purchases by the Government National Mortgage Association.

*The Congress should adopt legislation to protect American families from abrupt displacement from apartment houses being converted to condominiums, and to protect consumers who purchase condominiums against hidden, long-term charges.

Condominium Regulation: Beyond Disclosure

[Draft of a comment by Mark Davis to appear in the January 1975 issue of the University of Pennsylvania Law Review]

I. Introduction

Inspired by President Kennedy's call "to provide decent housing for all our people,"[1] Congress amended the National Housing Act in 1961 to allow for guaranteed mortgage insurance for the relatively untested condominium form of ownership in real property.[2] It did so with the express purpose of ["providing] an additional means of increasing the supply of privately owned dwelling units,"[3] thus responding to the increasingly serious housing problems of the nation's middle and lower income citizens.[4] In response to this federal imprimatur, most of the states subsequently approved enabling legislation providing the legal framework necessary to the development of these new and presumably low-cost projects.[5] Unfortunately, many of these state statutes were patterned on the FHA model established on the federal level[6] and were pushed

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[1] Message from the President of the United States, in hearings on amendments to the Federal Housing Laws before a subcommittee of the Senate Committee on Banking and Currency, 87th Cong., 1st sess. 8 (1961).

[2] In relevant part, the present text reads:

"The Secretary is authorized, in his discretion and under such terms and conditions as he may prescribe * * * to insure any mortgage covering a one-family unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project * * *."

12 U.S.C. § 1715y(c) (1970).

[3] 12 U.S.C. § 1715y(a) (1970).

[4] See S. Rep. No. 281, 87th Cong., 1st sess. 1–2 (1961).

[5] See, e.g., Fla. Stat. Ann. §§ 711.01–.32 (Supp. 1973–74), as amended, Fla. Stat. Ann. §§ 711.01–.71 Fla. Laws 1974, ch. 74–104 (Supp. Florida Session Law Service No. 2, 1974); N.Y. Real Prop. Law §§ 339–d to –ii (McKinney 1968); Pa. Stat. Ann. tit. 68, §§ 700.101–.805 (1971); Va. Code Ann. §§ 55–79.39 to –79.103 (Supp. 1974).

[6] U.S. Federal Housing Administration, Department of Housing and Urban Development, "Model Statute for Creation of Apartment Ownership" (form 3285, 1962).

through to legislative enactment with little independent reflection or analysis of the problems that were likely to occur. As a result, these enabling acts are often unclear in many important areas.[7] Since condominiums were virtually unknown to the American legal community before the 1960's, many of the problems inherent in this new interest in real property were not even addressed by these statutes. Consequently, many developers have succeeded in manipulating and abusing the spirit, if not the letter, of these laws to the detriment of individual purchasers.[8]

As a result of such developer abuses, demands for renewed legislative intervention have frequently arisen from an aggrieved consumer public. Although this public outcry has increased substantially in recent years, it has never been particularly well focused or articulated.[9] Despite this lack of concentrated public pressure for reform, the great numbers of complaints have had their impact. Regrettably, this confused clamor for industry supervision has been mirrored in the legislative and administrative regulatory responses. The result: a peculiar melange of haphazard, unrelated regulation which has, until recently, failed to offer substantial protection against the special problems of condominium development and ownership.[10]

This Comment will examine the numerous existing layers of public regulation as well as the recently-proposed National Condominium Acts. Do any of the existing or proposed forms of regulation effectively speak to the special problems and abuses indigenous to condominium ownership and development? Are these systems of control proper and meaningful expansions of the regulatory schemes? If not, what is an effective regulatory alternative?

II. THE PRESENT PATTERN: BACKGROUND

Although its etymological roots are to be found in the early Roman period, the condominium seems to have developed in response to a highly concentrated and growing urban population within some of the European capitals.[11] The concept of horizontal ownership has evolved to its present status, however, primarily in American land use patterns.

Common to all condominium forms and central to all modern enabling statutes is "the allowance and protection for exclusive ownership of airspace, with essential concomitants of common ownership."[12] Even in the absence of specific condominium enabling legislation, the common law provided the basic framework for individual ownership of apartment units. One could construct a fee interest in air space and also convey an undivided percentage interest as tenant-in-common in the structural parts and other facilities.[13] However, the common law was unable to resolve two specific problems. Because a tenant-in-common could always require a partition of the jointly held property,[14] any one tenant-in-common could, at his whim, bring the tenancy to an abrupt end and destroy the underlying legal structure. In addition, the common law was powerless to enforce any but the most minimal affirmative covenants providing for the maintenance and improvement of the commonly held elements.[15]

Even assuming that these problems could be solved through a system of mutual convenants and restrictions which would be understood as running with the land and thereby enforceable, the real difficulty facing the common law was to develop a mechanism which would provide for the contingency of partial or total destruc-

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[7] See, e.g., notes 151–154 infra and accompanying text.

[8] See notes 21–33 infra and accompanying text.

[9] It was recently announced that a lobby group was being formed in Washington to attempt to focus attention on the consumer problems of condominium development and sale. See [2 Current–1974] BNA Hous. & Dev. Rep. 169 (July 15, 1974). This group, which calls itself the National Association of Condominium Owners, might have an enormous impact if it can succeed in giving direction to the now amorphous special interests. For a similar example of organized consumer interests on the state level, see New York Times, Apr. 21, 1974, § 8, 1, col. 2.

[10] In introducing S. 4047 on Sept. 26, 1974, Senator Proxmire recognized the risk of poorly focused, layered regulation:

"If [regulation] is done in a piecemeal and patchwork fashion, then we will end up with a maze of differing and conflicting local standards which will cause more confusion and invite further abuses.

120 Cong. Rec. 17,548 (daily ed. Sept. 26, 1974).

[11] D. Clurman & E. Hebard, Condominiums and Cooperatives 2–3 (1970).

[12] Id. 3.

[13] See Krasnowiecki, "Townhouse Condominiums Compared to Conventional Subdivision with Home Association," 1 Real Estate L. J. 323, 324 (1973).

[14] 4A Powell, Real Property ¶ 609 (1971).

[15] Id. ¶ 604.

tion of the building by fire or other natural disaster. Although there were, perhaps, existing means of drafting a scheme of convenants answering these problems as well, the extremely fragile construction of a common law condominium resulted in negative responses from real estate developers and lenders who were doubtful about the acceptability and continued viability of this unusual form of fee ownership.[16]

Consequently, before any financing would be committed towards condominium development, builders, lenders and title companies required specific legislative approval which would assure the safety of their investments. This approval came in 1961 with the enactment of section 234 of the National Housing Act and the subsequent state enabling acts.[17]

Developers have poured money into condominiums in the last decade, but not in the anticipated manner. Instead of developing low-cost urban projects designed to be primary residences for those who could not afford traditional forms of residency ownership, the surge of condominium development has been in the high-income market: as resorts (often combined with a rental pool arrangement for the periods not owner occupied), as second homes, and as primary residences in prestige locations. Perhaps this should not have been surprising in view of the tax incentives behind condominium ownership, which are of greatest advantage to high-bracket taxpayers. Perhaps too, developers and their creditors were reluctant to try marketing this new form of housing in any but the lowest risk markets. After a decade of financially successful marketing in the high income area, condominiums today are widely predicted to become the single most widely developed form of fee ownership in densely populated urban areas.[18] Thus a gradual return to the original purpose of the enabling legislation may be approaching, with condominium developments aimed at satisfying the need for middle and low income primary residential housing. In light of this eventual transformation in the market, a fresh look at the experience under the established regulatory schemes seems appropriate.

III. DEVELOPER ABUSES UNDER CURRENT REGULATION

The condominium developer can expose the purchaser to two general classes of risks: misleading or fraudulent advertising,[19] and the more sophisticated arrangements that, although not misrepresented, may still ensure exorbitant returns to the developer at the expense of the purchaser. Generally speaking, both Federal and State regulation has been aimed at the first risk, requiring

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[16] See Krasnowiecki, Ownership and Development of Land 478 (1965).

[17] See notes 1–4 supra and accompanying text.

[18] See e.g., New York Times, June 2, 1974, § 1, at 1, col. 5 ("People who once rented apartments or lived in single family detached homes are moving into condominiums at such a rapid rate that Federal officials expect half the population to live in them within 20 years"); id. Sept. 23, 1973, § 8, at 1 (one expert "predicts that in 10 years the condominium will be the prevailing form of home ownership throughout the United States.") Id. col. 5.

[19] A favorite deceptive sales device, for example, is for the developer to grossly under estimate monthly maintenance and recreation charges. He can either put his own money in at first (so that the charges per owner appear lower than they will after the developer has departed), fail to include items in the initial charges that will have to be included later, or simply neglect to explain that the monthly charges will increase where the increases are legitimate. Cf. New York Times, Feb. 14, 1971, § 8, at 6, col. 6–7; New York Times, June 2, 1974, § 1, at 1, col. 5–6.

Senator Proxmire's remarks in introducing, along with Senator Brooke, S. 4047 are also informative:

"Open the real estate pages of any metropolitan area newspaper and you will be bombarded with advertisements that promise your dreams will come true when you buy your own condominium. Prospective buyers are told that they will have all the advantages of homeownership, without the headache of maintenance and repair. They are lured with visions of swimming pools and tennis courts—country club living at apartment prices * * *.

* * * * * * *

"But too often bright promises fade in the face of sad realities, and the condominium owner finds himself faced with unanticipated problems and unexpected expenses.

"The monthly condominium fee charged for maintaining common areas and other building expenses doubles or triples, because the developer understated the expenses in the promotional material.

"The swimming pool he though he had bought along with the house turns out to belong instead to the developer, who rents it out to the condominium owners at an exorbitant fee.

"The project's owners are locked into a long-term contract with a management company, often one in which the developer has an interest, so they are not free to select the management and negotiate the rates."

120 Cong. Rec. 17,547 (daily ed. Sept. 26, 1974).

"full disclosure" of all terms prior to sale.[20] But it is the second class of risks, those that may be disclosed but whose significance is only recognized by the sophisticated analyst, that have resulted in the more serious detrimental consequences to the condominium purchaser. For those subject to such risks, current Federal and State regulation offers little in the way of protection or remedy.

Five examples of this second class of risk will be briefly presented for purposes of illustration. They occur in the following areas: use of deposits, sweetheart leases, management contracts, extended control, and liability for shares of unsold unit expenses. Each of these practices may be technically lawful under the "full disclosure" regulation now applied by the federal and most state governments. So long as the terms of sale permitting such abuses are disclosed, the purchaser has little recourse against the unscrupulous developer for the following abuses.

Many developers must secure a minimum number of pre-construction subscriptions before a lender will commit itself to financing the project.[21] This external pressure may lead to hasty sales programs which describe, through colorful and enticing literature, the future appearance of what, at that point, will most likely be a totally unimproved or only partially excavated parcel of land. At that time, deposits will be collected from the subscribed purchasers. Most of the state statutes make no provision for the use or ultimate disposition of these deposit receipts which are, at this stage, high risk money.[22]

There is often no direct or indirect prohibition against using the money to defray construction costs of that particular project or, in fact, of any other project of the developer. Purchasers generally acquire no lien or other priority against the property [23] and may ultimately be left with nothing but a worthless general claim if the project fails and the developed becomes bankrupt. With respect to the safety of his deposits, the purchaser's lack of remedy creates a substantial risk factor in most investments in a condominium under construction. For this reason New York requires the developer to include a warning for depositors which reads, "[i]f this offering is not consummated for any reason you may lose all or part of your investment." [24]

Another area of abuse is the so-called "sweetheart lease" agreement. Here the developer keeps title to the land and leases it to the condominium at exorbitant rates.[25] According to some courts, the developer owes no fiduciary duty to the purchaser to guarantee fairness in the terms of these rental arrangements.[26] A related practice is the "sweetheart" recreation lease where the developer conveys the unit in fee but retains title to certain of the recreational common facilities and leases them back to the development at inflated values and excessively long tenancies.[27] This developer self-dealing is accomplished prior to the sale of the

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[20] See text accompanying notes 34–111 infra.

[21] Cf. Agreement of Sale, San Francisco East ¶ 10, drafted by the firm of Wolf, Block, Schoor & Solis-Cohen, Philadelphia, Pa. on file in Biddle Law Library.

[22] However, a few states have attempted to remedy this particular abusive practice by requiring escrow accounts for such prepayments. See Fla. Stat. Ann. § 711.25(1)(Supp. 1974–75), amended and redesignated, Fla. Stat. Ann. § 711.67 by Fla. Laws 1974, ch. 74–104 § 13 (Supp. Fla. Session Law Service No. 2, 1974). However, this control is limited and the funds may be used by the developer so long as he is willing to clearly disclose his intentions to the purchaser in 20-point type. Id. § 711.67(3).

Hawaii also provides for the protection of deposit money. The statute demands that "[a]11 moneys paid by purchasers prior to issuance of final reports shall be deposited in trust under escrow arrangement * * *." Hawaii Rev. Laws § 514–40 (1968).

[23] But see *State Sav. & Loan Ass'n* v. *Kauaian Dev. Co.*, 50 Hawaii 540, 445 P. 2d 109 (1968). Here the Supreme Court of Hawaii concluded "that the overall objectives of the H.P.R.A. [Horizontal Property Regime Act] will best be effectuated by recognizing the rights of purchasers under the contracts as superior to those of a subsequent mortagee with knowledge of those interests." Id. at 553, 445 P. 2d at 119.

However, no change was mandated in the junior position of purchasers with respect to mechanics' and materialmen's liens. Id. at 560, 445 P. 2d at 123.

[24] N.Y. Atty. Gen.'s Condominium Regs. § 19.2(a)(3)(1964), *reprinted following* N.Y. Real Prop. Law § 339d (Consolidated Laws Service Supp. 1974) (italics in original).

[25] Some states specifically allow a condominium to be constructed on a leasehold. See, e.g., Fla. Stat. Ann. § 711.04(1)(1969), as amended, Fla. Stat. Ann. § 711.04(1) Fla. Laws 1974, ch. 74–104 ¶ 2 (Supp. Fla. Session Law Service No. 2, 1974); N.J. Stat. Ann. § 46:8B–5 (Supp. 1974–75).

[26] *Fountainview Ass'n, Inc.* v. *Bell*, 203 So. 2d 657 (Fla. App. 1967), aff'd per curiam, 214 So. 2d 609 (Fla. 1968); cf. *Northridge Cooperative* v. *32d Ave. Constr. Corp.*, 2 N.Y. 2d 514, 141 N.E. 2d 802, 161 N.Y.S. 404 (1957).

[27] A recent New York Times article indicates that such developer abuses are one of the many about which consumers are complaining. The three basic targets of purchaser dissatisfaction are "shoddy construction, unfair increases in maintenance fees and builders who exercise unexpected control over key facilities for long periods of time." New York Times, June 2, 1974, § 1, at 1, col. 5, 6. Florida's Attorney General has recently claimed that the long term recreation leases that a major condominium development firm included in two of its largest projects violated state antitrust laws. [2 Current—1974] BNA Hous. and Dev. Rep. 409.

first unit when the sponsor is in complete control. During this time, there is no actual or implied duty to future purchasers.[28] Thus, for the most part, developers may profiteer without legal restraint.[29]

Developers have also been able, under most state statutes, to enter into lengthy management contracts with the condominium association, which they control, at inflated rates of compensation. Here also, the courts have been unwilling to interfere with these agreements. The courts have consistently failed to imply any quasi-fiduciary relationship between seller and buyer.[30]

Condominium documents are often drafted so that control effectively remains with the developer for longer periods of time than the state statutes had envisioned. For example, although most state statutes tie voting rights in the association to the percentage interest in common elements, they do not expressly require that these rights vest immediately.[31] Many developers will include a provision in the Master Plan or by-laws which prevents exercise of the franchise for a period of five years or until the last unit is sold.[32] During this time, the developer may act in his own self interest.

Finally, developers might refuse to pay their allocable share of monthly assessments as "owners" of the unsold "units". The condominium documents will limit the description of a unit to a narrow, technically-defined concept rather than to the broader definition suggested by the underlying statutes.[33] A "unit," for example, may not exist for purposes of paying monthly assessments until a certificate of occupancy is issued—an event which will not occur, according to the documents, until after sale and settlement.

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[28] See *Point East Management Corp.* v. *Point East One Condominium Corp.*, 282 So. 2d 628 (Fla. 1973), cert. denied on different issue, 415 U.S. 921 (1974); *Fountainview Ass'n, Inc.* v. *Bell*, 203 So. 2d 657 (Fla. App. 1967), aff'd per curiam, 214 So. 2d 609 (Fla. 1968); cf. *Northridge Cooperative* v. *32d Ave. Constr. Corp.*, 2 N.Y. 2d 514, 141 N.E. 2d 802, 161 N.Y.S. 404 (1967. But see Cooperatives and Condominiums 17 (J. McCord ed. 1968); Rohan, "Cooperative Apartment Transfers: Evaluation of Project Offerings and Representation Of Purchasers" 19 Stan. L. Rev. 978, 987–89 (1967).

[29] Although the concept of "abusive profits" is not specifically defined in the cases, the IRS has been able to find a "reasonable rate of return" for rental income from recreation leases above which is considered excessive. The Service has determined that 8 percent of the cost of recreation land and improvements is reasonable. All excesses are then given special tax consequences. See text accompanying notes 87–91 infra.

[30] In response to the court's unwillingness to cast a developer in the role of a fiduciary with respect to future purchasers, the Florida legislature originally amended its condominium statute to provide for cancellation of management or maintenance contracts "at any time subsequent to the time any individual uuit owners assume control of their association by vote of no less than 75 percent of said individual unit owners." Fla. Stat. Ann. §§ 711.13(4), §3 711.30 (Supp. 1974–75), repealed, Fla. Laws 1974, ch. 74–104 §§ 8. 14 (supp. Fla Session Law Service No. 2, 1974). This provision has been substantially altered in the new Florida amendments, Fla. Stat. Ann. § 711.66(5) (Supp. Fla. Session Law Service No. 2, 1974). The impact of this cancellation provision will be examined in more detail. See notes 151–154 infra and accompanying test. For a discussion of the recent changes in the Florida statute, see text accompanying notes 155–175 infra.

The recently enacted Virginia Condominium Act, Va. Code Ann. §§55–79.39 to –79.103 (Supp. 1974), has dealt with this problem of extended control more directly. By implicitly recognizing the lack of clarity in most state statutes with respect to the vesting of control, the Virginia act specifically allows for the condominium documents to provide for the developer to maintain extended control over the owners' association. This control, however, must cease "after units to which three fourths of the undivided interests in the common elements appertain have been conveyed." Furthermore, "[t]he time limit initially set by the condominium instruments shall not exceed five years in the case of an expandable condominium, three years in the case of a condominium containing any convertible land, or two years in the case of any other condominium." Id. § 55–79.74. These specific limitations have attempted to balance the conflicting interests of both parties.

The Virginia act also provides that no management contract, recreation lease, or any other contract or lease which was entered into while the developer maintained control of the association shall bind the unit owners after the expiration of the period of control unless specifically renewed or ratified by the unit owners. Id. For a more extended discussion of the Virginia act, see notes 126, 178 infra and accompanying text.

[31] See, e.g., Pa. Stat. Ann. tit. 68, § 700.312 (1971). This section requires only that at any meeting of unit owners, votes be in the same percentage as the percentage interest the owner maintains in the common elements. These "meetings" of unit owners, however, will often not occur, according to the documents, for a long period of time.

[32] See text accompanying notes 151–154 infra.

[33] Since most state statutes define a unit as a part of the property intended for individual ownership and use, a unit would exist, in the absence of any provision to the contrary, as soon as the original property is subdivided and brought under the condominium plan. See text accompanying notes 103–105 infra.

IV. REGULATORY RESPONSES

A. State

For the most part, the states have not amended their originally inadequate enabling statutes.[34] In those states that have not, as yet, drafted any additional statutory controls, legislative reluctance to interfere with a free-market philosophy as well as an implicit dedication to the common law doctrine of caveat emptor appear to be the only justifications for inaction.[35]

A handful of states have begun to impose schemes of industry regulation in response to many of the previously described abusive practices. New York construes a condominium as a cooperative interest in realty within the scope of and regulated by its securities laws.[36] In order to sell a condominium unit in the state a developer must first register an offering statement which requires a fairly detailed list of facts to be fully and fairly disclosed to any potential purchaser.[37] Although it is clear that some of the information required under the New York securities laws can be of value to the purchaser of a condominium unit, much of the information contained in an offering statement is of marginal use at best.[38] While there are aspects of a condominium which are security-like,[39] the inadequacy

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[34] See New York Times, June 16, 1974, § 1, at 1, col. 4 ("In all but a handful of states, consumers caught up in the booming condominium market can expect little protection against deception or fraud under the real estate laws.").

[35] For a discussion of the doctrine of caveat emptor and the inroads made by implied warranty and related theories in the area of real property transfers, see 6 Powell, Real Property ¶ 938.2–.3, at 370.29–.48 (1971). See also Note, "Regulating the Subdivided Land Market," 81 Harv. L. Rev. 1528, 1531 (1968).

[36] The New York Condominium Act specifically provides that "[a]11 units of a property which shall be submitted to the provisions of this article shall be deemed to be cooperative interests in realty within the meaning of section three hundred fifty-two-e of the general business law." N.Y. Real Prop. Law § 339–ee (McKinney Supp. 1974–75). Consequently, the New York Blue Sky laws control the sale of condominiums existing within its boundaries or offered to one of its citizens. New York therefore will assert jurisdiction over "securities constituted of participation interests or investments in real estate * * * when such securities consist primarily of * * * investments in one or more real estate ventures, including cooperative interests in realty * * *." N.Y. Gen. Bus. Law § 352–e 1.(a) (McKinney Supp. 1974–75).

[37] The specific requirements of the New York statute are, in relevant part, a full disclosure of:

"The detailed terms of the transaction; a description of the property, the nature of the interest, and how title thereto is to be held; the gross and net income for a reasonable period preceding the offering where applicable and available; the current gross and net income where applicable and available; the basis, rate and method of computing depreciation; a description of major current leases; the essential terms of all mortgages; the names, addresses and business background of the principals involved, the nature of their fiduciary relationship and their financial relationship, past, present and future, to the property offered to the syndicate and to those who are to participate in its management; the interests and profits of the promoters, offerors, syndicate organizers, officers, directors, trustees or general partners, direct and indirect, in the promotion and management of the venture; all restriction, if any, on transfer of participants' interests; a statement as to what stock or other security involved in the transaction, if any, is non-voting.

"A statement as to what disposition will be made of the funds received and of the transaction if not consummated, which statement shall represent that all moneys received from the sale of such securities until actually employed in connection with the consummation of the transaction as therein described, shall be kept in trust and that in the event insufficient funds are raised through the offering or otherwise to effectuate the purchase or purchases or other consummation of the contemplated transaction, or that the intended acquisition shall not be completed for any other reason or reasons, then such moneys, less such amounts actually employed in connection with the consummation of the transaction, shall be fully returned to the investor; which of the securities offered are unsecured; clearly distinguish between leasehold and fee ownership, between fact and opinion; a commitment to submit annual reports to all participants, including an annual balance sheet and profit and loss statement certified by an independent certified public accountant; clearly distinguish between those portions of promised distributions which are income and those which are a return of principal or capital; and such additional information as the attorney general may prescribe in rules and regulations promulgated under subdivision six hereof as will afford potential investors, purchasers and participants an adequate basis upon which to found their judgment and shall not omit any material fact or contain any untrue statement of a material fact."

N.Y. Gen. Bus. Law § 352–e 1(b) (McKinney 1968).

[38] It may be questionable, for example, how much practical use a potential unit owner would make of such required disclosures as the "[B]asis, rate and methods of computing depreciation; * * * a statement as to what stock * * * is non-voting * * *" or "a commitment to submit annual reports to all participants." Id.

[39] See notes 67–68 infra and accompanying text.

of an exclusively full disclosure approach to condominum regulation has been demonstrated by the abuses which have continued under it.[40]

Until 1974, Florida operated a similar full disclosure system which, while not a part of its Blue Sky laws, borrowed extensively from that regulatory philosophy. Before the sale or offer of any unit in the state, the developer was required to provide full information about certain enumerated subject areas.[41] Thus a Florida purchaser was armed with a full battery of papers and documents highly technical in character and could sue for rescission or damages if he relied, to his disadvantage, upon any "material statement or information that is false or misleading, published by or under authority from the developer." [42] The fact that Florida has substantially changed its regulatory approach to include many substantive regulations suggests that state's dissatisfaction with the previous disclosure approach.[43]

Hawaii and Michigan have adopted somewhat different methods of regulation. In Hawaii, a developer must file a notification of intention to sell,[44] complete a questionnaire,[45] and provide for a full inspection of the property by the real estate commission.[46] The commission will then issue a public report "which shall contain all material facts reasonably available." [47] In order to use a public report for selling purposes, a developer must also file a copy of a sample contract for sale and a copy of an escrow agreement for deposit money.[48] A contract for sale made under a preliminary report is not enforceable against a purchaser until he has had a full opportunity to read the final report of the real estate commission. If the final report differs in any material respect from the preliminary report, the purchaser has the right to cancel his contract.[49] Thus Hawaii differs from Florida and New York by requiring, in addition to registration and public availability of development documents, that its real estate commission issue the report itself. However, there is no provision that the underlying project be fair and equitable. The developer must disclose but need not amend.[50] Presumably, developers can continue to exploit unwary and unsophisticated purchasers so long as they do not misinform them as to material facts which are often buried within a mountain of incomprehensible legal documents.[51]

Michigan too requires submission of relevant documents to its state commission which, after appropriate inspection and investigation, isues a permit to sell.[52] This permit, however, is merely an assurance that the property conforms to its description. Thus so long as the proposal is consistent with the master deed and other papers and "clearly and fairly represents the property offered for sale and will not tend to work a fraud or imposition on the purchasers or the public * * *," [53] the commission appears to have no authority to deny approval. In essence, this system seems to operate as a disclosure statute.[54] There is no

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[40] See notes 19–33 supra and accompanying text.

[41] FLA. STAT. ANN. § 711.24, as amended, §§ 711.69–70, Fla. Laws 1974, ch. 74–104 § 16 (Fla. Sess. Law Serv. No. 2, 1974).

[42] *Id.* § 711.24(3).

[43] *See* notes 155–175 *infra* & accompanying text.

[44] HAWAII REV. STAT. § 514–29 (1968).

[45] *Id.* 514–30 (Supp. 1973).

[46] HAWAII REV. STAT. §§ 514–31 to –32 (1968).

[47] *Id.* § 514–34 (Supp. 1973).

[48] HAWAII REV. STAT. § 514–36 (1968).

[49] *Id.* § 514–38.

[50] For a closer examination of the impact and effect of full disclosure, *see* notes 139–154 *infra* & accompanying text.

[51] Full disclosure will be effective in at least warning purchasers of the potential risks involved only if most condominium investors employ an attorney or other independent advisor experienced in interpreting such documents. This reliance on independent professional advice is normal in the pure securities field; but it cannot be assumed to be the rule in the real property area, particularly when low and middle income purchasers are involved.

A purchaser may have remedies available in some circumstances even where no statutory protection exists. Courts in several jurisdictions have been willing to find implied warranties in the sale of new and improved real estate where fraud in failure to disclose material facts has been shown, Carpenter v. Donohue, 154 Colo. 78, 388 P. 2d 399 (1964); Bethlahmy v. Bechtel, 91 Idaho 55, 415 P. 2d 698 (1966), or where negligence in construction is proved, Schipper v. Levitt & Sons, Inc., 44 N.J. 70, 207 A. 2d 314 (1965).

[52] MICH. COMP. LAWS ANN. §§ 559.24–.26 (1967), *as amended, id.* § 559.24 (Supp. 1974–75).

[53] MICH. COMP. LAWS ANN. § 559.26 (1967).

[54] Virginia too has recently joined the growing group of states which regulate under a scheme of full disclosure. VA. CODE ANN. §§ 55–79.86–.103 (Supp. 1974). *See* note 30 *infra* & accompanying text.

express duty that the developer offer just and equitable terms to the purchaser, nor is there power to require that preventative affirmative actions be taken on the developer's part before a permit may issue.[55]

California, in contrast to the states previously discussed, uses a permit regulatory system which allows an administrative body to deny the required permit to build for specific grounds including inability to deliver good title, inability to demonstrate adequate financing, failure to show that the parcels are fit for the use intended, and a showing that the sale would constitute misrepresentation, deceit or fraud.[56] An additional and more general criteria applies only to out of state developments sold or offered for sale within the state—a permit may be denied if the proposed sale is not "fair, just and equitable." [57]

B. Federal

1. *Securities regulation.*—Attention on the federal level to condominium consumer protection issues has shifted over the years from the Federal Trade Commission and the Post Office Department to the Securities and Exchange Commission, the Federal Reserve Board, and to an extent even the Internal Revenue Service. In 1962, the FTC took jurisdiction over deceptive real estate sales practices accomplished through instruments of interstate commerce.[58] However, it soon relinquished its limited control to the Post Office Department whose responsibility it was to regulate mail fraud.[59] The FTC properly recognized that it was "functionally unsuited to deal with the problem." [60] The Post Office, however, could act only when the mails themselves were employed. As one commentator correctly noted, "a broader solution than mail fraud regulation [was] necessary." [61]

Attention then shifted to the SEC which, it was hoped, could provide more effective remedies.[62] The Securities Act of 1933 requires that every sale of a

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[55] However, it is not clear what additional effect may be read into the word "imposition" in § 559.26. Perhaps it could be argued that this requires the Michigan commission to scrutinize the project not only in order to ascertain accuracy of description, but also to assure fairness and equity. *Cf.* notes 56–57 *infra* & accompanying text. It is not insignificant that the section also seems to give standing to the "public." According to the language of the statute, the commission must determine if there is an imposition to the *public* as well as to the actual purchasers.

The Virginia statute, note 54 *supra*, might also be read to empower the state real estate commission to assure fairness and equity in condominium offerings. The statute authorizes the commission to prescribe rules not only for "advertising standards to assure full and fair disclosure," but also for "operating procedures." VA. CODE ANN. § 55–79.98 (Supp. 1974).

[56] CAL. BUS. & PROF. CODE § 11018 (West 1964), *as amended*, CAL. BUS. & PROF. CODE § 11018 (West Supp. 1974).

[57] *Id.* § 10249.2 (1964). *See also* 42 OP. CAL. ATT'Y GEN. 99 (1963). There is no evident reason why in-state development should not be treated in a similar fashion. A recommendation to this effect was made by the California Assembly Interim Comm. on Governmental Efficiency and Economy. *See id.* at 102.

[58] FTC Release No. 20 (March 25, 1962), 3 Trade Reg. Rep. ¶ 10,115 (1971). See generally, 15 U.S.C. § 45(a)(6) (1970).

[59] Letter from P. Dixon, FTC Chairman to Senate Committee on Banking & Currency, July 26, 1966, in Hearings on S. 2672 Before a Subcomm. of the Senate Comm. on Banking and Currency, 89th Cong., 2d Sess., at 306–07 (1966). See generally, 18 U.S.C. § 1341 (1970).

[60] Note, Regulating the Subdivided Land Market, 81 Harv. L. Rev. 1528, 1535–36 (1968).

The FTC may be about ready to again accept jurisdiction. A recent announcement indicates that the Commission is studying the industry on a nationwide scale with a view towards "'more innovative and numerous' courses of action" and, perhaps, proposing "formal regulations covering the condominium industry." [2 Current] BNA Hous. & Dev. Rep. 187 (July 29, 1974).

Although the traditional thought that the FTC was not invested with the power of rulemaking, see, e.g., Shapiro, The Choice of Rulemaking or Adjudication in the Development of Administrative Policy, 78 Harv. L. Rev. 921, 964–67 (1965), has been specifically overruled, National Petroleum Refiners Ass'n v. FTC, 482 F.2d 672 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974), the power that does exist allows the FTC to merely require complete accuracy of description. In the area of consumer protection, the FTC is only invested with the power to prohibit deception. See 15 U.S.C. § 45 (1970). In fact, the substantive regulation approved in Petroleum Refiners merely allowed the Commission to require the posting of octane ratings on gasoline pumps. It was designed to assure full and fair disclosure of exactly what the consumer was purchasing. Full disclosure, however, may not be the most appropriate regulatory response to the problems of condominiums. See sec. V. infra.

[61] Note, note 60 supra at 1537.

[62] For recent discussion of the interrelationships between the securities laws and condominium developments, see, e.g., Clurman, Condominiums as Securities: A Current Look, 19 N.Y.L.F. 457 (1974); Grimes & King, A Look at Condominium Offerings Under the Federal Securities Laws—For the Idaho Lawyer, 9 Ida. L. Rev. 149 (1973); Hoisington,

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"security" must be registered under that Act, unless an exemption is available.[63] The term "security" is defined broadly to include "investment contracts" or "certificates of interest or participation in any profit-sharing agreement" as well as stocks and bonds.[64] The leading case on the scope of these terms, *SEC v. W. J. Howey Co.*,[65] adopted a definition of "investment contract" which is now widely accepted:

"A contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise." [66]

Under this definition, it was not difficult for the SEC to conclude that an offering of resort condominiums together with a rental arrangement could constitute an "investment contract" and thus a "security." [67]

SEC jurisdiction, however, does not extend to the offer and sale of condominiums used primarily as residences.[68] Since many condominium projects fall somewhere between the pure residence and the pure resort rental pool investment, the attempts to define the SEC's jurisdiction have produced uncertainty and confusion among developers. Under present SEC criteria,[69] a condominium offering is within the agency's jurisdiction only if it involves a rental pool, a required rental agreement, or a rental arrangement sold with emphasis on the

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Condominiums and the Corporate Securities Law, 14 Hastings L. J. 241 (1963); Rohan, The Securities Law Implications of Condominium Marketing Programs Which Feature a Rental Agency or Rental Pool, 2 Conn. L. Rev. 1 (1969); Rosenbaum, The Resort Condominium and the Federal Securities Laws—A Case Study in Governmental Inflexibility, 60 U. Va. L. Rev. 785 (1974); Note, Florida Condominiums—Developer Abuses and Securities Law Implications Create a Need for a State Regulatory Agency, 25 U. Fla. L. Rev. 350 (1973); Note, Federal Securities Regulation of Condominiums: A Purchaser's Perspective, 62 Geo. L. J. 1403 (1974).

[63] If it meets the investment contract test, the Securities Act will cover practically any condominium offering. The traditional statutory exemptions—the small offering, 15 U.S.C. § 77c(b) (1970); the intrastate offer, id. § 77c(a)(11); and the private placement, id. § 77d(2)—offer little hope of escape. As a practical matter the intrastate and private placement exemptions are governed by SEC regulations. The intrastate exemption requires strict precautionary measures assuring that no security will be sold or offered to any non-resident. 17 C.F.R. § 230.147(f)(1974). With shot-gun advertising techniques and the ease of interstate mobility, it is unlikely that any developer will be able to satisfy the fairly rigid requirements. In addition, there are limitations on resale which would be wholly inconsistent with the concept of traditional home ownership. See id. § 230.147(e). Such limitations might also prove a powerful disincentive to banks who run the risk of violating the Securities Act if they are forced to foreclose.

Rule 146, adopted on June 10, 1974, requires that any offeree in a private placement be provided with sufficient information to properly evaluate his investment. Furthermore, any offeree must have a high degree of sophistication in order to understand the merits and the risks. Lastly, there is an absolute limitation of 35 purchasers and very strict resale provision. 1 CCH Fed. Sec. L. Rep. ¶ 5718B. See 17 C.F.R. § 230.144 (1974) (resale of restricted securities). These strict limitations do not readily lend themselves to the sale of a form of residential housing.

Finally, a developer may avoid registration if the project qualifies under Regulation A, 17 C.F.R. § 230.251–.263 (1974), although certain disclosure requirements still apply, and the aggregate selling price of all units must not exceed $500,000. Thus a very small project may be exempt.

[64] Section 2 (1) of the Securities Act of 1933, 15 U.S.C. § 77b(1) (1970). A virtually identical definition is contained in § 3(a)(10) of the Securities Exchange Act of 1934, 15 U.S.C. § 78c(a)(10) (1970).

[65] 328 U.S. 293 (1946).

[66] Id. at 298–99.

[67] The Commission first took this position in 1967 in connection with an offering involving a mandatory rental pool, and obtained the first registration statement covering such an offering. Hale Kaanapoli Apartment Hotel Development Co., Registration Statement No. 2–25489 (effective date April 13, 1967).

[68] *See, e.g.*, SEC No-action Letter, *In re* Culverhouse, Tomlinson, Mills, DeCarrion & Anderson (pub. avail. Nov. 5, 1973) [1973–74 Transfer Binder], CCH Fed. Sec. L. Rep. ¶ 79,612; SEC No-action Letter, *In re* Surftides Condominiums, Inc. (pub. avail. Feb. 7, 1972), [1971–1972 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 78,686. *See also* Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, 62 Geo. L. J. 1403, 08 (1974).

The SEC recently announced that it would no longer issue no-action letters, and that all past letters would be limited in application to the particular party and facts involved. *In re* The Innisfree Corp. (pub. avail. June 19, 1974), [Current] CCH Fed. Sec. L. Rep. ¶ 79,935. Query whether this change in policy portends a more rigorous application of the securities laws to condominium offerings.

[69] "Offers and Sales of Condominiums or Units in a Real Estate Development," Securities Act Release No. 5347, 38 Fed. Reg. 1735 (1973).

economic benefits to the purchaser to be derived from the managerial efforts of others.[70]

Many commentators have opposed SEC regulation of condominium sales on the grounds of legislative intent, the SEC's lack of real property expertise, and the unnecessary burdens imposed on developers.[71] The industry has also failed to voluntarily comply with the SEC efforts to impose the entire regulatory structure of the Securities and Exchange Act of 1934 on these real estate projects.[72] Developers and promoters offering condominiums with rental or "economic benefit" arrangements are required to register as securities broker-dealer under the Act,[73] which entails net capital, reporting and record-keeping rules and which requires salespersons to pass a largely irrelevant general securities examination.

Moreover, the Federal Reserve Board maintains that its regulation T,[74] which regulates the extent to which a broker-dealer may arrange for the extension of credit for the purchase of securities, is applicable to the sale of condominium "securities." The impact of this regulation can be a severe one: if the SEC has jurisdiction over the condominium offering, it is unlawful for the developer to arrange a mortgage loan for the purchase of the unit if the developer-cum-securities broker-dealer participates in the offering. Although the FRB has traditionally exempted the sale of real estate contracts from the margin requirements applicable to the sale of other forms of securities, it has recently attempted to promulgate an amendment to the margin requirements reversing this position.[75] Since a prospective condominium purchaser normally expects to give only a relatively small down payment and to finance the balance through a developer-arranged mortgage, this FRB proposal would have a drastic impact on the market.[76]

In contrast to the attempts of the SEC to adopt clear limitations on its own jurisdiction, two decisions of the Second Circuit have suggested a much broader basis for interpreting condominium offers as securities. The opinions in *Forman* v. *Community Services, Inc.*[77] and *1050 Tenants Corp.* v. *Jakobson*[78] contain language which extends the "investment contract" theory of *Howley* beyond its previous interpretation, presumably in the interests of greater consumer protection under the securities laws for purchasers of condominiums and cooperative apartments.

In *Forman*, a group of residents of New York's enormous low-middle income Co-op City development brought suit against the developer for violations of the anti-fraud provisions of the federal securities laws. Their complaint alleged that monthly carrying charges had been understated and that other misleading statements and omissions had been contained in an information bulletin that was part of the sales literature. Because interests in cooperatives are generally

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[70] *Id.* 1736.
The SEC has also specifically exempted offerings of condominiums which include commercial space, where that space is employed primarily to generate income if:
"(a) The income from such facilities is used only to offset common area expenses and (b) the operation of such facilities is incidental to the project as a whole and are not established as a primary income source for the individual owners of a condominium * * *."
Id. at 1736.

[71] *See, e.g.*, Rohan, *The Securities Law Implications of Condominium Marketing Programs Which Feature a Rental Agency or Rental Pool*, 2 CONN L. REV. 1 (1969); Rosenbaum, *The Resort Condominium and the Federal Securities Laws—A Case Study in Governmental Inflexibility*, 60 U. VA. L. REV. 785 (1974); Note, *Florida Condominiums—Developer Abuses and Securities Law Implications Create a Need for a State Regulatory Agency*, 25 U. FLA. L. REV. 350 (1973). *But see* Note, *Federal Securities Regulation of Condominiums: A Purchaser's Perspective*, GEO. L. J. 1403 (1974).

[72] By January, 1973, only 42 offerings had been registered despite some estimates that as many as 700 resort condominium projects which the SEC would consider subject to the Act had been offered. "SEC Issues Guidelines on Advertising, Sales of Condominium Units." Wall St. J., Apr .10, 1973, at 14, col. 4.

[73] 15 U.S.C. § 780 (1970).

[74] 12 C.F.R. §§ 220.1 *et seq.* (1974).

[75] The proposed amendment reads, in relevant part: "Credit for the purpose of purchasing or carrying any part of an investment contract security (for example, * * * the condominium ownership part of a program to own and rent a unit through a rental pool or otherwise) shall be deemed to be credit * * *." 38 Fed. Reg. 34988 (1973).

[76] The SEC has pressed for a delay in the effective date of the proposed amendments in order to study the possibility of an exemption. *See* [2 Current] BNA HOUS. & DEV. REP. 51 (June 17, 1974). The proposed SEC exemption is set forth in proposed Rule 3a12–5, Release No. 34–10845 (June 7, 1974), [1973–1974 Transfer Binder] CCH FED. SEC. L. REP. ¶ 78,809. The FRB has agreed to delay the effective date of the amendment to January 2, 1975. 39 Fed. Reg. 20960 (1974).

[77] 500 F.2d 1246 (2d Cir. 1974), *petition for cert. filed sub. nom. United Housing Foundation, Inc.* v. *Forman*, 43 U.S.L.W. 3140 (U.S. Aug. 22, 1974) (No. 74–157).

[78] [Current] CCH FED. SEC. L. REP. ¶ 94,702 (2d Cir. July 8, 1974).

evidenced by shares of stock, the court easily concluded that the cooperatives were subject to the securities laws.[79] More significantly, the court held further that the cooperative interests were securities under the investment contract theory even where no stock certificates were issued.[80] To support this holding, a three-way test for whether the purchaser could expect to profit from his investment was adopted. First, the cooperative contemplated that the tenant shareholders would enjoy income generated by certain commercial establishments within the cooperative community. Second, the court held that because the Internal Revenue Code grants certain tax benefits[81] to cooperative tenants in the form of a pro-rata pass through of mortgage interest and other deductions, a "profit," in the shape of a reduced tax liability when compared to traditional apartment residents, was sufficient to find a security. Lastly, the court concluded that since the cooperative tenants do not, as do apartment residents, pay any additional amount toward the lessor's profit, the cooperative is a less expensive form of property interest. These monthly savings were therefore "profits" resulting from their participation in the cooperative.[82] The Second Circuit subsequently added a fourth test for the expectation of profit in *1050 Tenants Corp.* v. *Jakobson:* the expectation of capital appreciation upon resale of the cooperative stock.[83]

These four tests go far beyond the SEC's own criteria for asserting jurisdiction over condominium offerings.[84] Although condominiums do not issue shares of stock, they share with cooperatives the possibilities of expected profit from commercial leases, tax advantages, lower monthly charges than apartments, and capital appreciation upon resale.[85] in light of these similarities, the Second Circuit might find a condominium subject to the securities laws even where the offering did not meet the SEC's own "rental pool/economic benefit as a result of the efforts of others" jurisdictional criteria.

This result may be explained on consumer protection grounds not articulated by the court's opinions. Faced with a fact situation in which unwary housing consumers had been improperly taken advantage of by a developer, and recognizing that under the SEC regulations no effective remedies existed, the court broadened the jurisdictional criteria in order to reach a just remedy for the plaintiffs before it.

This explanation illustrates the argument of this Comment. In the absence of a rational and effective regulatory scheme in one area where abuses are found to occur, a series of ad hoc judicially and administratively imposed controls from unrelated substantive areas have been applied in an effort to provide remedies and at least some indirect controls. In the condominium industry this phenomenon has resulted in a patchwork of partial controls which often appear to

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[79] "[I]f a given instrument is a share of stock 'on its face' it is literally within the ambit of the statute." 500 F.2d at 1252.

[80] Defendants had argued that even where the transfer of stock certificates was involved, the introductory phrase to the definitional sections of the 1934 Act, "unless the context otherwise requires," 15 U.S.C. § 78c(a) (1970), compelled an evaluation of the nature of the underlying transaction.

[81] INT. REV. CODE OF 1954 § 216 allows the tenant to recognize an allocable percentage of the deduction taken by the cooperative housing association for interest and real estate taxes as a direct deduction to the tenant under certain enumerated circumstances.

[82] "A third way in which it might be viewed that profits may be realized is in the savings of an expense which would otherwise necessarily be incurred. In other words, where the going rate for rents in a given area is one amount, an investment opportunity offering housing at an amount substantially below that going rate is an offer of a "profit," for housing is a necessity and any saving on that necessity is money in one's pocket." 500 F.2d at 1254.

[83] [Current] CCH FED. SEC. L. REP. ¶ 94,702 (2d Cir. July 8, 1974) at 96,332.

[84] *See* notes 69–70 *supra* & accompanying text.

[85] The SEC's own advisory committee on real estate has concluded that differences between the condominium and cooperative are illusory with respect to the securities problems involved:

> Cooperative dwelling units should be treated in substantially the same manner as condominium units inasmuch as the form of ownership . . . represents no substantial difference with relation to the securities laws. In each case, in substance, real property is being transferred through a form of real property ownership which does not, itself, create a security * * *.
>
> * * * * * * *
>
> * * * To assume that from the securities laws standpoint, a cooperative apartment and a condominium unit should be treated as different from each other is to create a legal fiction.

SEC. REPORT OF THE REAL ESTATE ADVISORY COMMITTEE TO THE SECURITIES AND EXCHANGE COMMISSION 89–90 (1972).

exceed the proper scope of the regulatory legislation. The impact on the legitimate developer has become unduly burdensome,[86] raising the cost of housing to the purchaser while at the same time failing to offer really effective protection in the context of rental pool and other covered developments, and offering no protection at all for the purchaser most in need of some—the middle and low-income purchaser of a condominium as a primary residence.

2. *Regulation through the Tax Law.*—The Internal Revenue Service may be another agency which is "stretching" the law in order to tax and deter developers whom it perceives as unduly profiting at the public's expense. Faced wiht the apparently unregulated evil of developer self-dealing prior to sales of condominium units, the Service has recently forced at least some developers to capitalize the future rental income expected from recreation leases and to treat the present value of the future income as part of the proceeds from the sale of the units.[87] The amount of capitalized rent is determined by a comparison of the actual yearly rental income with a "reasonable rate of return," established at eight percent of the cost of the recreational facilities. The difference between the two figures is treated as the yearly excess, with the present value of the right to receive this excess calculated by multiplying by ten.[88] This amount is then added to the proceeds of sale in order to determine the taxable gain.

The IRS has taxed the value of long term maintenance contracts in a similar fashion, that is, before receipt of income attributable to actual services rendered. When the developer corporation forms another corporation for the performance of the management contract, the Service has deemed the transaction a sale and has taxed the capitalized full value of the contractual rights as the (fictional) proceeds from the sale.[89]

Although these actions have not yet been fully litigated and tested in court,[90] they have been criticized on the grounds of both tax law and policy.[91] Consumer protection motives may be part of the Service's actions in this area and the result is still another layer of industry regulation which may be extending the law beyond its originally intended limits in order to deter unrelated abuses.

3. *The Interstate Land Sales Full Disclosure Act.*—The Interstate Land Sales Full Disclosure Act[92] was enacted by Congress in 1968 partly in recognition of the practical "inapplicability of securities regulations to the outright sale of real property."[93] The Act gave jurisdiction over some condominium sales to the

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[86] In light of these cases, many large institutional lenders are now refusing to grant construction money to developers who have failed to register with the SEC.

[87] According to a member of the Florida tax bar, the "IRS in Florida treats most of the rent as, 'in reality,' part of the sale price of the condominium units, and therefore taxable to the [developer] corporation in a lump immediately, before the rent is earned or received." Emanuel, *Condominium Developers and the Internal Revenue Service—The Florida Story*, 2 REAL ESTATE L.J. 760, 761 (1974).

At least one unreported case has upheld the Service's position. Fla-Mango, Inc., No. 1322–73 (Tax Court Lake Worth, Fla., filed Feb. 26, 1973) 1973–1974 CCH TAX CT. PETITIONS 5190 (holding petitioner received unreported sales income from leasing of recreation facilities).

[88] Emanuel, note 88 *supra.*

[89] *Id.* at 763. The IRS has suggested that § 482 of the Int. Rev. Code allows for such a redetermination.

[90] *Id.* at 765–83.

A recent revenue ruling by the Service may have been largely colored by the condominium industry's image. The Service has determined that a condominium association is not a tax exempt organization under INT. REV. CODE § 501(c)(4). Rev. Rul. 74–17. 1974 INT. REV. BULL. No. 1974–2, at 11; *cf.* Rev. Rul. 74–99. *id.* No. 1974–9, at 11 (homeowner's associations). Since it is not an exempt entity, there may be some special problems which arise in certain advertising practices. Condominiums are often compared to more traditional home ownership with emphasis on the equality given both forms with regard to the tax laws. However, certain assessments collected by the condominium association in the form of monthly maintenance charges may be understood as income to the association. For example, assessments often include a reserve for future repairs and capital improvements. By definition, these collections are not offset by any current expense which would result in no taxable income. Such excesses may be construed as income to the non-tax exempt association. The unit owners would, of course, be required to pay their allocable share of this tax liability resulting in a double tax to them which would not exist if they had, for example, merely saved this capital reserve fund to meet contingencies in a traditional home ownership context. *See generally* Krasnowiecki, *supra* note 13, at 346–348. *But cf.* Rev. Rul. 70–604, 1970–2 CUM. BULL. 9 (not income if, in effect, returned).

Presently, two bills are pending in Congress to reverse the position taken by the IRS in its 1974 revenue ruling and exempt condominium associations as social welfare organizations. *See* [2 Current] BNA HOUS. & DEV. REP. 23 (June 3, 1974).

[91] Only one unreported Tax Court decision is currently indexed in the tax services. *See* note 87 *supra.*

[92] 15 U.S.C. § 1701–1720 (1970).

[93] Note, *S. 275—The Interstate Land Sales Full Disclosure Act*, 21 RUTGERS L. REV. 714, 724 (1967).

Department of Housing and Urban Development, the supposed federal expert in the area of property. The Act was understood by President Johnson to be a means of "afford[ing] the public greater safeguards against sharp and unscrupulous practices."[94] It was directed primarily at abuses surrounding the advertisement and sale of undeveloped realty to an ill-informed public. Its fundamental purpose was the protection of the purchaser of unimproved parcels of land. HUD was given control over the sale, through interstate commerce, of any "lot" of land through the registration mechanism established by the Act. According to HUD, condominium units have always been within the purview of the Act.[95] Recent regulations promulgated by HUD have expanded the definition of "lot" under the Act specifically to include condominiums.[96]

Although designed to meet the special problems of real property transactions, the Act is clearly patterned after the regulatory philosophy of the securities laws[97] and functions as another full disclosure scheme. It requires the filing of a statement of record which must contain a laundry list of information designed to allow the potential investor to evaluate his purchase.[98] To this end, a property report must be received by each prospective investor.[99] Although a cause of action accrues thereunder for false or misleading statements,[100] there are no affirmative requirements that the underlying investment be fairly structured. It need only accurately describe the parcel to be sold.[101]

Whatever shortcomings may exist in the substantive regulations, a more fundamental question is whether condominiums ought to be included within the Act's scope at all. The original focus of the Act was the sale of undeveloped

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[94] 113 Cong. Rev. 3529 (1967).

[95] 38 Fed. Reg. 23866 (1973); 24 C.F.R. § 1710.1(h). *See also* Exemption Advisory Opinion—Snowmass American Corp., Office of Interstate Land Sales Registration (Sept. 5, 1969).

[96] The proposed definition would include, in part, "any portion, piece, division, unit, or undivided interest in land * * *." 38 Fed. Reg. 11097 (1973). This definition was adopted in the final regulation issued Dec. 1, 1973, 38 Fed. Reg. 23866 (1973).

[97] Note, note 93, *supra* at 715.

[98] 15 U.S.C. § 1705 (1970). The statement of record must include:

"(1) The name and address of each person having an interest in the lots in the subdivision to be covered by the statement of record and the extent of such interest;

"(2) A legal description of, and a statement of the total area included in, the subdivision and a statement of the topography thereof, together with a map showing the division proposed and the dimensions of the lots to be covered by the statement of record and their relation to existing street and roads;

"(3) A statement of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto;

"(4) A statement of the general terms and conditions, including the range of selling prices or rents at which it is proposed to dispose of the lots in the subdivision;

"(5) A statement of the present condition of access to the subdivision, the existence of any unusual conditions relating to noise or safety which affects the subdivision and are known to the developer, the availability of sewage disposal facilities and other public utilities (including water, electricity, gas, and telephone facilities in the subdivision, the proximity in miles of the subdivison to nearby municipalities, and the nature of any improvements to be installed by the developer and his estimated schedule for completion;

"(6) In the case of any subdivision or portion thereof against which there exists a blanket encumbrance, a statement of the consequences for an individual purchaser of a failure, by the person or persons bound, to fulfill obligations under the instrument or instruments creating such encumbrance and the steps, if any, taken to protect the purchaser in such eventuality;

"(7 (A) Copy of its articles of incorporation, with all amendments thereto, if the developer is a corporation; (B) copies of all instruments by which the trust is created or declared, if the developer is a trust; (C) copies of its articles of partnership or association and all other papers pertaining to its organization, if the developer is a partnership, unincorporated association, joint stock company, or any other form of organization; and (D) if the purported holder of legal is a person other than developer, copies of the above documents for such person;

"(8) Copies of the deed or instrument establishing title to the subdivision in the developer or other person and copies of any instrument creating a lien or encumbrance upon the role of developer or other person or copies of the opinion or opinions of counsel in respect to the title to the subdivision in the developer or other person or copies of the title insurance policy guaranteeing such title;

"(9) Copies of all forms of conveyance to be used in selling or leasing lots to purchasers;

"(10) Copies of instruments creating easements or other restrictions;

"(11) Such certified and uncertified financial statements of the developer as the Secretary may require; and

"(12) Such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers."

[99] 15 U.S.C. § 1703 (1970).

[100] 15 U.S.C. § 1709 (1970).

[101] 15 U.S.C. § 1707 (1970).

land. Since condominiums normally contemplate the sale of improved real estate, the central question is whether a condominium is "lot" [102] for purposes of the Act.

From a policy point of view, HUD is essentially correct in asserting jurisdiction over the sale of units in construction. Taken alone, a unit is an interest in real property much like any other and should not be permitted to escape the provisions of the Act merely because of a slight difference in form.[103] In this regard, it is interesting to note that the typical state enabling statute does not require that a unit be within a completed building. A unit is generally defined as "a part of the property intended for any type of use or uses . . ." [104] or "a part of the property designed or intended for any type of independent use." [105] If the condominium form were exempt in its entirety, and land sales offering could avoid the effect of the Act by first declaring the subdivision a condominium, filing the appropriate plans with the state, and selling the "lots" as "units." To avoid this problem, condominiums should not be given automatic exemption.

Consequently, the issue of the Act's coverage of condominium developments should focus on the specific statutory exemption of section 1403(a)(3),[106] which exempts sales when the developer is contractually bound to complete the building within two years of the sale.[107] Under this exemption, whether a particular transaction will be subject to the Act depends upon whether there is a "sale," defined as "any transaction * * * whereby a purchaser is obligated to acquire * * * a condominium unit directly or indirectly." [108] This broad definition is clearly intended to provide what protection the Act affords to purchasers who may be forced to take title to empty or only partially completed "lots." But if a purchaser is not, under the terms of the contract for sale, obligated to close in such circumstances, then it would seem that there has not been a sale as defined and the Act should not apply.

A sample contract for sale will illustrate. It provides that "Seller is obligated to erect the Building of which the Premises are a part within two (2) years from the date [of signing]."[109] The contract specifically allows the purchaser the right to terminate if the covenant is not fulfilled, at which time all deposit monies shall be returned and the contract shall be at an end.[110] It would appear that such an agreement should not fall within the purview of the Act since the terms of the contract themselves provide a sufficient degree of protection.[111]

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[102] The statutory prohibition is "to sell or lease any *lot* in any subdivision." 15 U.S.C. § 1803(a)(1) (1970) (emphasis added).

[103] In construing a California statute, the court held:

As used in the statute the word "lot" applies to any portion, piece, or division of land and is not limited to parcels of land laid out into blocks and lots regularly numbered and platted.

Bachenheimer v. *Palm Springs Management Corp.*, 115 Cal. App. 2d 580, 587, 254 P.2d 153, 157 (1953).

[104] N.Y. Real Prop. Law § 339-e 13 (1968).

[105] Pa. Stat. Ann. tit. 68 § 700.102(14) (1971).

[106] 15 U.S.C. § 1702(3) (1970) provides for an exemption where there is a "contract obligating the seller to erect * * * a building thereupon within a period of two years."

[107] The Office of Interstate Land Sales Registration clarified this exemption, stating that it would exempt a contract that had a provision allowing completion beyond the two year period if such delays are caused by conditions which would be legally supportable in the jurisdiction as impossibility of performance for reasons beyond the control of the developer. 39 Fed. Reg. 7824, 7825 (1974).

[108] *Id.*

[109] Agreement of Sale, note 21 *supra*, ¶ 5(c).

[110] *Id.*

[111] This, however, does not appear to be the present position taken by the OILSR. In the form of Guidelines, 39 Fed. Reg. 7824 (1974), the OILSR has indicated that a "sale" will exist for purposes of the act unless there is an absolute obligation that the seller "erect a building or condominium unit within a period of two years." Id. The only exception is a "reservation" whereby a purchaser merely expresses an interest and tenders a deposit held in independent escrow. There is no binding obligation and may be no formal contract for sale. *Id.* 7825.

In contrast, two years earlier the OILSR had specifically rejected this broad definition of sale:

The only [other] possible meaning * * * would be that all sales of residences * * * are covered by the Act if, at the time of signing the contract of sale, the lot is unimproved and if the date for delivery of the completed building is not firmly fixed within the two year period even though the contract would not require the purchaser to accept an unimproved lot. This would be an inconsistent result from the wording of the statute * * *. Whether it would be desirable to cover such transactions—where the contract calls for delivery after two years, of a completed building on a lot as—[*sic*] a condition precedent to the purchasers becoming obligated to take title—is not in question. * * * [A]s the Act is written, there is no jurisdiction for coverage.

(Continued)

A proper interpretation of the Act would thus lead, in most instances, to the conclusion that it will not apply to condominium developments in which there is a binding contract to construct and deliver within two years, a provision for rescission by the purchaser on default, and an escrow arrangement for the return of deposit monies. In the absence of these three essential contractual safeguards, HUD should assert jurisdiction. But where these safeguards exist, the statute should not apply.

Since two years is usually sufficient building time,[111A] the impact of the statutory exemption is to deny the protection of the Act to most condominium purchasers. Where the Act does apply, the purchaser's only remedy under it is for failure to fully disclose material terms. Adequate contractual remedies may not have been included by the developer, leaving the typical condominium purchaser with no effective remedy in many situations. All in all, the Interstate Land Sales Full Disclosure Act offers little protection for the condominium purchaser.

V. THE CONGRESSIONAL RESPONSE

Both houses of Congress now have bills before them which attempt to deal directly with the problems of condominium development and sale. Representative Collins of Illinois has introduced a bill which purports "[t]o protect purchasers and prospective purchasers of condominium housing units * * * by providing for national minimum standards, * * * to encourage the States to establish similar standards, and for other purposes." [112] The proposal, designated as the "National Condominium Act," creates, under HUD, an Assistant Secretary for Condominiums to coordinate and implement the basic program.[113] In essence, the bill would not allow any "federally assisted condominium loan" [114] to be made to a purchaser unless the developer submits a detailed statement which is approved by the Secretary.[115] The statement requires the usual full disclosure material such as names and addresses of interested persons involved in the development, legal descriptions of the land and all liens attached thereto, the estimated operating expenses, and a statement of the terms of all management contracts.[116]

However, H.R. 15071 also proposes some direct substantive regulations specifically proscribing certain of the previously enumerated developer abuses. For example, the statement requires "satisfactory assurances that all purchasers * * * will be given a full one-year warranty" on certain specific construction details.[117] The bill also guarantees that the maximum period in which a developer may maintain control of the condominium association is one year, and that no management contract may bind the unit owners beyond the period in which the developer may maintain control.[118] Finally, the bill would assist the

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(Continued)

Exemption Advisory Opinion No. 1710.1(k) (Aug. 20, 1972) at 8, 9. This apparent reversal of position may be another example of administrative overreaching. *See* text accompanying note 86 *supra*. 111A. The two year limitation may not, however, be sufficient for phase developments, for example, which contemplate the completion over longer periods of time. Since most state statutes define a "unit" to include the appurtenant common elements, *e.g.*, Pa. Stat. Ann. tit. 68, § 700.102(14) (1971), the act would seem to require that all such common elements also be finished within two years. *See* 38 Fed. Reg. 23866 (1974).

[112] H.R. 15071, 93d Cong., 2d Sess., Preamble, introduced on May 29, 1974.

[113] *Id.* § 4.

[114] "[F]ederally assisted condominium housing loan[s]" include the following:

[A] loan which is made to finance the transfer of condominium ownership to an individual or family or the purchase, construction, rehabilitation, or conversion of a condominium project by a developer which—

(A) Is made in whole or in part by a lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by a lender which is itself regulated by any agency of the Federal Government, or * * *

(D) Is made in whole or in part by any "creditor," as defined in section 103(f) of the Consumer Credit Protection Act of 1968 * * *.

Id. § 3(6). Since almost all major sources of significant mortgage money would fall within this definition, the scope of the act's coverage is quite broad.

[115] *Id.* § 5(a).

[116] *Id.* § 5(b).

[117] The warranty attaches to all "electrical, heating, air-conditioning, and ventilation equipment and [to] the roofing and elevators." *id.* § 5(b)(4).

[118] *Id.* § 5(b)(8). For a more complete discussion of the advantages of substantive regulation, *see* sec. VI *infra*.

state and local governments in implementing similar statutes for the purpose of centering the administration and enforcement of condominium regulation in the jurisdictional units and subunits best able to supervise the construction and development.[119] Finally, the bill provides for criminal sanctions [120] as well as for rescission of the purchase contract in certain situations.[121]

The advantages of the proposed national act are obvious. Most importantly, it would focus the issues in one central administrative body designed especially to provide comprehensive control. It would also create national minimum standards which are fairly clear [122] and which address most of the central problems inherent in the condominium form. Although it is essentially a full disclosure act, the bill offers certain direct substantive controls as well. In addition, the Collins bill recognizes that responsibility for enforcement of its provisions cannot reasonably be expected to rest solely in a federal agency. Any meaningful supervision must come from the state and local government which have more direct contact with the developments.

Just weeks after the introduction of the Collins proposal, Senator Biden of Delaware introduced another bill also designed "[t]o protect purchasers and prospective purchasers of condominium housing units." [123] However, unlike the Collins bill, S. 3658 is in its entirety a full disclosure statute. Known as the "Condominium Disclosure Act" [124] the bill is patterned directly after the federal securities laws and requires the usual information in its statement of record.[125] The only significant differences between this bill and other full disclosure acts is that the Biden bill would, in certain areas of disclosure, require narrative descriptions rather than the reproduction of legal documents.[126] In contrast to the House bill, the Biden proposal does not directly proscribe the most common substantive developer abuses. For example, as long as the terms of a lengthy and exploitative management contract or recreation lease are disclosed somewhere in the documents, the developer is free to reap excessive profits. Furthermore, the Senate bill does not envision any federal-state cooperation in implementing the terms of the Act.[127]

A third bill has been introduced by Senators Proxmire and Brooke.[128] It is clear that the sponsors of S. 4047 understand the basic problems inherent in the industry.[129] Senator Proxmire, speaking for himself and Senator Brooke, has recognized that condominiums today provide an attractive solution to the problems of lower income housing.[130]

In essence, S. 4047 combines most of the elements of the House bill with some of the securities-like provisions of the Biden bill. Like the Collins proposal, the Proxmire-Brooke bill requires that the statement of record contain "satisfactory assurances" that the unit owners receive a one year warranty on some basic structural components;[131] are able to form the association thereby divesting the developer of extended control within a maximum period of one year;[132] and will not be trapped into management contracts which extend beyond the period in which the owners may be excluded from association control.[133] All other problem areas are regulated by means of a system of full disclosure. Thus as long

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[119] *Id.* § 7.
[120] *Id.* §§ 5(b)(9)(A), (d).
[121] *Id.* § 6(b). Federal subsidies would provide some incentive for state activity.
[122] The act, of course, contains a catch-all section compelling the production of "such other information as the Secretary may require in order to assure that purchasers are protected in a manner consistent with the purpose of this Act." *Id.* § 5(b)(10).
[123] S. 3658, 93d Cong., 2d Sess., Preamble, introduced on June 17, 1974.
[124] *Id.*
[125] *Id.* § 6.
[126] However, the disclosures which require a narrative description are few in relative number. Copies of actual contracts and condominium documents are included in the statements. *See id.* §§ 6, 8. On the other hand, the new Virginia act requires narrative descriptions to a greater extent. Va. Code Ann. § 55-79.90 (Supp. 1974).
[127] This raises the question of whether the federal regulatory effort would be adequately funded in light of the size of the industry regulated.
[128] S. 4047, 93d Cong., 2d Sess., introduced on Sept. 26, 1974.
[129] *See* 120 Cong. Rec. 17,547 (daily ed. Sept. 26, 1974).
[130] Senator Proxmire has remarked:
"Certainly condominiums do represent an attractive housing choice for many people. They offer homeownership and its accompanying tax benefits to people whose incomes are too low to afford conventional housing."
Id.
[131] S. 4047, 93d Cong., 2d Sess. § 5(a)(11) (1974).
[132] *Id.* § 5(a)(12)(A).
[133] *Id.* § 5(a)(12)(D).

as material provisions of long term recreation leases are disclosed,[134] there is nothing to prevent developer abuses in this area.

Unlike the House bill, the Proxmire-Brooke proposal does not envision any continuing relationship between the states and the federal government. The only reference to state law in the proposed act is contained in an "inconsistency provision" which allows the state to legislate in a manner which affords "greater protection to the consumer." [135] Exemption provisions are also available to states which regulate under a "substantially similar" scheme.[136] There is however, no incentive provided the states to assume primary responsibility for regulation of the industry.[137]

In sum, although they suffer from many shortcomings in their present form, the national acts would afford the requisite and noticeably absent concentration of control in an agency tailored to deal with the special problems of the industry to be regulated. Hopefully, such concentration of control will by itself provide the impetus to reverse the current trend towards layered and unrelated systems of inadequate regulations.[138] If they accomplish nothing else, they will relieve the legitimate developer from a series of regulatory controls which have done little more than stretch laws beyond their intended scope and add further costs to the project which are, in turn, passed along the consumer without a corresponding return in protection. However, it still must be determined whether the full disclosure approach is appropriate as the exclusive regulatory response.

VI. DISCLOSURE AND ITS ALTERNATIVES

A. The failure of disclosure

Thus far it is clear that the existing regulation of the condominium industry is wholly inadequate. At the state level, the great majority of jurisdictions have failed to improve upon their original enactments which, for the most part, afford very little protection. The federal responses, while numerous, have been largely ineffectual if not entirely inappropriate. The regulation that does exist is characterized almost uniformly by full disclosure requirements. In view of the prevalence of this approach, the question which must finally be answered is whether these disclosure laws address the problems in an effective and practical way.

The philosophy of full disclosure regulation is best exemplified in the securities laws. As one commentator in that field has observed, "[e]ver since the enactment of the first federal securities law in 1933, primary regulatory reliance has been placed on a system of disclosure." [139] Disclosure was envisioned as a means of balancing the needs of the purchasing public with the conflictnig commitment to minimal governmental interference with the operation of a free market. The philosophy of disclosure is, perhaps, best explained by Justice Brandeis who concluded that "[p]ublicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants * * *." [140]

More recently, the effectiveness of a disclosure system has been seriously questioned.[141] Some commentators have pointed to the length and enormous complexity of many prospectuses, and have recognized that the potential investor is not likely to understand or properly evaluate a large percentage of the reproduced material.[142] As prospectuses and other disclosure documents have become more and

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[134] Like the Biden bill, S. 4047 envisions a two-tier process. A statement of record must be filed with HUD. *Id.* § 5. A public offering statement must then be prepared for distribution to any purchaser which contains in full and, in some instances, in narrative form as well, much of the information contained in the statement or record and "shall disclose fully and accurately * * * the characteristics of the project * * *." *Id.* § 7(a).

[135] *Id.* § 13(a).

[136] *Id.* § 13(b).

[137] Compare *id.* with H.R. 15071, 93d Cong., 2d Sess. § 6(b) (1974).

[138] Any comprehensive act should specifically amend the securities, interstate land sales, and other such pieces of legislation in order to minimize administrative confusion.

[139] Barack, Book Review, 83 Yale L. J. 1516, 1526 (1974). *See* Securities and Exchange Commission, Disclosure to Investors—A Reappraisal of Federal Administrative Policies Under the '33 and '34 Act 10 (1969).

[140] L. Brandeis, Other People's Money 62 (1913).

[141] *See, e.g.*, Kripke, The SEC, The Accountants, Some Myths and Some Realities, 45 N.Y.U.L. Rev. 1151 (1970); Mann, Prospectuses: Unreadable or Just Unread?—A Proposal to Reexamine Policies Against Permitting Projections, 40 Geo. Wash. L. Rev. 222 (1971); Barack, *supra* note 139. *See also* Heller, Disclosure Requirements Under Federal Securities Regulation, 16 Bus. Law 300 (1961).

[142] The problem of incomprehensible disclosures has been recognized by the SEC itself. *See* Securities Act Release No. 5119, Exchange Act Release No. 9040 (Dec. 16, 1970), [1970–1971 Transfer Binder] CCH Fed. Sec. L. Rep. ¶ 77,939.

more complex, the information made available has grown increasingly meaningless to the great majority of the investing public. For example, one survey reveals that from a representative sample of stockholders, "43 percent understood little or nothing from a company's formal financial statements, more than 50 percent could not define the meaning of depreciation, and virtually all were confused by the concept of cash flow." [143] This suggests that one of the fundamental assumptions of an effective system of regulation by disclosure is open to question. For the regulatory system to work, a potential purchaser must be equipped with the basic tools with which to analyze and evaluate the underlying investment. Even the most efficient scheme of full disclosure cannot be of any substantial value to an investor incapable of reacting to information in an appropriate and rational manner.

The securities regulators themselves have recognized that full disclosure is not always an adequate response to all industry problems.[144] In recent years, the SEC has taken some affirmative actions against certain industry practices understood as inherently deceptive or fraudulent. For example, proposed Rule 10b–12, under sec. 10 of the 1934 act, would directly prohibit the distribution of stock dividends by an issuer if earned surplus would not cover the value of the shares distributed. In prefatory explanation, the Commission stated:

> Pro rata stock distributions to stockholders in amounts which are relatively small in relation to the number of shares outstanding are a means of conveying [a false] impression * * *. Instances have recently come to the attention of the Commission in which such distributions were utilized * * * creating a misleading impression concerning the results of operations of the company.[145]

The proposed rule does not relate to any requirement of disclosure. The Commission has apparently taken the position that no amount of disclosure is sufficient to legitimize a practice deemed inherently deceptive or abusive.[146] Thus under certain conditions, something more than disclosure is mandated.

In the condominium industry, the objections to the almost exclusive reliance on full disclosure apply with even greater force. Investors in the securities markets are generally considered more sophisticated, affording some justification for the use of a less intrusive form of governmental intervention.[147] In the case of condominium purchasers, on the other hand, sophistication may not be assumed so easily. Many condominium purchasers do not have independent expert advice on the merits of a particular investment because they do not retain experienced attorneys to advise them. The securities investor, in contrast, will usually have the services of an independent broker available.[148] Since condominiums are increasingly likely to become a less expensive alternative to the more traditional form of home ownership, prospective purchasers may include many lower income individuals for whom will be a first and last capital investment.[149] While disclosure may be helpful as a limited part of a regulatory scheme,[150] when exclusively relied upon it is an exercise which is as likely to intimidate as it is to protect.

For example, the following provision appears in most condominium by-laws or declarations:

> "The first meeting at which members may vote shall be held within thirty (30) days after the sale by the Declarant [developer] of the last Unit owned

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[143] Barack, *supra* note 139, at 1527.

[144] The Real Estate Advisory Commission set up by the SEC to examine condominiums recognized the possible need for substantive regulation. "If improved disclosure and enforcement does not achieve this end, a regulatory approach, perhaps similar to the Oil and Gas Investment Bill of 1972 may be necessary." Preface to the Report of the SEC Real Estate Advisory Comm. Raymond Dickey, the chairman of that Committee has suggested that the Investment Co. Act of 1940 might be a model for the SEC in the control of high fees and other charges paid under rental arrangements tied to offerings of condominium units. Dickey & K-Thorpe, *Federal Security Regulation of Condominium Offerings*. 19 N.Y.L.F. 473, 491 n.79 (1974).

[145] Securities Exchange Act Release No. 8268 (Mar. 7, 1968), [1967–1969 Transfer Binder] CCH FED. SEC. L. REP. ¶ 77,537, at 83,141.

[146] Further examples of direct, prohibitory regulation by the SEC are evidenced by Rules 10b–4, 17 C.F.R. §240.10b–4 (1974) (proscribing "short tendering" in connection with a tender offer), and Rule 10b–6, *id.* § 240.10b–6 (prohibiting certain inside trading).

[147] *See* text accompanying note 143 supra.

[148] The securities laws themselves operate to interpose the securities dealer between the investor and the issuing company and its investment bankers. *See* Heller, *supra* note 141, at 301–02, n.6.

[149] *See* notes 4, 130 *supra* & accompanying text.

[150] It may be argued that the mere fact that a depeloper is required to expose the elements of his transaction accurately, on the public record, itself provides a good deal of discouragement against abusive practices. *See* text accompanying note 140 *supra*.

by the Declarant, or within five (5) years after the date of the filing of the Declaration, or within thirty (30) days after declared by the Declarant, whichever shall first occur." [151]

Such a provision enables the developer to maintain control of the project until the last possible moment. With this extended control, the developer may, through the actions of *his* Board of Directors, (1) determine the common expenses; (2) grant licenses over the common areas; (3) make any improvements and alterations; and (4) adopt and amend certain rules and regulations.[152] Will simple description in legal terms, of this seemingly innocuous maintenance of power really provide adequate protection to a lay purchaser unfamiliar with the basic legal structure? Similarly, would Florida's provision that unit owners may cancel maintenance contracts provide any real protection where those owners may not even act until such time as they have "assume[d] control of their association"? [153] The developer was able, before the recent legislative changes, to lock those owners into that contract and, apparently, into any other, for as long as the documents provided.[154]

B. The Florida response

Since full disclosure is of only limited utility to a large percentage of the condominium purchasing public, direct, substantive regulation seems to be the only sensible alternative. Such a system of substantive regulation may be justified, as it has been in the securities laws, as an exercise of the power to enjoin inherently abusive practices.[155] One possible approach is exemplified by the recent changes made in the Florida Condominium Law.[156] Effective as of October 1, 1974, the extensive amendments have substantially altered the prior law. Apparently dissatisfied with the relatively poor effectiveness of its full disclosure scheme of regulation, the new law speaks directly, and, for the most part, substantively, to the major problems of the industry. For example, the new law directly addresses the problem of the maintenance of control by the developer.[157] The developer may maintain control by electing a majority of the board of administration. Such power, however, is limited to a system of amortization. When unit owners other than the developer own fifteen percent of the total number of units, those owners are entitled to elect not less than one-third of the members of the board. After seventy-five percent of the units are sold, the developer is absolutely limited to three years of additional majority control. Finally, within three months of the time in which ninety percent of the units are sold, the developer must relinquish control.[158] Altough it may be argued that the time in which the developer may maintain control is too long, at least the Florida legislature has recognized the problem and has struck a balance of the competing interests in a direct manner providing clear minimum acceptable standard.

Similarly, Florida now provides that all management contracts be "fair and reasonable." [159] This answers the problem of sweetheart management agreements of excessive length and inflated rates of compensation.[160] Furthermore, the new law avoids the problem of cancellation only after the unit owners have assumed control.[161] It now provides that assumption of control is not a prerequisite to the power of cancellation.[162] Thus Florida has imposed certain affirmative duties on the developer which the courts refused to do under the old law.[163]

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[151] By-laws of Meadow Hill Development Corp. art. V, § 4, filed Feb. 11, 1971, Hartford County, Conn.

[152] *Id.* art. IV, § 2.

[153] Fla. Stat. Ann. § 711.13(4) (Supp. 1974), repealed by, Fla. Laws Ch. 74–104, § 16 (Fla. Sess. Law Serv., No. 2, 1974). Section 16 of the new law has added a section to the Florida Code—§ 711.66(5)—in replacement of the repealed section. This new provision requires that maintenance contracts be "fair and reasonable," besides being subject to cancellation by the unit owners after they have assumed control.

[154] The recent Virginia Act has addressed this problem directly even though it is, for the most part, a full disclosure scheme. *See* note 28 *supra*. The National Condominium Act (Collins bill) also attempts to speak to this particular practice, *See* note 118 *supra* and accompanying text.

[155] *See* text accompanying notes 144–146 *supra*.

[156] Ch. 74–104, [1974] Fla. Laws 3d Legis., 2d Sess. [hereinafter Fla. Laws].

[157] *See* text accompanying notes 31–32 *supra*.

[158] Fla. Laws § 711.66(1).

[159] *Id.* § 711.66(5).

[160] *See* text accompanying note 29 *supra*.

[161] *See* text accompanying note 153 *supra*.

[162] Once owners aggregate 75% of all units, a vote of 75% of those owners may cancel the contract notwithstanding the fact that the developer may maintain control for another three years. Fla. Laws 711.66(5)(b).

[163] *See* note 28 *supra*.

In the area of advertising abuses,[164] the Florida law now gives a cause of action to a unit owner for damages arising out of reliance on any material statement published by the developer.[165] These materials include not only the prospectus and other items of disclosure required by the statute but also "advertising and promotional materials * * * brochures and newspaper advertising." [166] Although there is no direct prohibition on the issuance of misleading information, the damage action is a powerful disincentive. The new law also includes a five-year warranty to fitness and merchantability which attaches to the unit, common properties and all improvements,[167] and specific provisions which require the developer to pay certain assessments on any units which he owns prior to sale.[168]

In reference to the sweetheart lease,[169] the Florida law requires that the rental may be adjusted only at intervals of not less than ten years and further that such adjustments may not be greater than increases reflected in a nationally recognized price index.[170]

The Florida amendments continue to rely in large measure on extensive and bold-faced disclosure provisions to afford protection in other areas. For example, although deposits collected prior to closing must be initially held in escrow, the developer may withdraw such funds for use in actual construction if such use is disclosed in the contract itself.[171] The risks of bankruptcy, however, are not subject to a similar disclosure requirement.[172] Similarly, although the statute limits increases beyond the first ten years of a recreation lease to the cost of living, there does not seem to be any prohibition against drafting an inflated *initial* rental agreement. The only means of regulation of this practice are contained in the disclosure provisions,[173] and in the option granted owners to purchase the leased property at a price which is subject to arbitration.[174]

Thus the Florida law appears to be a balance of direct substantive regulation and the more typical disclosure provisions. The Florida amendments have not, however, gone far enough in the direction of substantive regulation. Too much reliance is placed on the efficacy of full disclosure in areas of importance such as deposit money and initial terms of leaseholds. In attempting to comprehensively define and control specific abuses, the law also suffers from the dangers of inflexibility. The proscription of specific rules in advance risks the possibility that "jurisdiction would be cramped, and perpetually eluded by new schemes which the fertility of man's invention would contrive." [175] Although rules of conduct are important in allowing developers to conform their activities to the law, a degree of flexibility in regulation must also be preserved.

C. Substantive regulation under a permit system

An appropriate and effective system of comprehensive regulation which answers these problems most effectively might therefore be a permit system in which the underlying fairness of a particular development would be determined by an expert administrative body invested with the power to enjoin specifically enumerated practices found to be against the public interest after a careful investigation of all its elements. Such a system might resemble the blending together of the California permit administrative structure operating under the substantive criteria contained in the new Florida condominium law. Its basic objective would be to provide effective protection to those investors who might

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[164] *See* text accompanying note 19 *supra.*

[165] Fla. Laws § 711.71(1).

[166] *Id.*

[167] *Id.* § 711.65.

[168] *Id.* § 711.66(3)(a). However, the assessment is limited to those related to capital improvements and would therefore not appear to include normal maintenance charges. In addition, it is not clear that this provision adequately answers the problem of redefining a unit in order to limit liability for even the capital improvement assessment. *See* text accompanying note 33 *supra.*

[169] *See* notes 26–28 *supra* and accompanying text.

[170] Fla. Laws § 711.63(6).

[171] *Id.* § 711.67(3).

[172] *See* text accompanying note 23 *supra.*

[173] Fla. Laws §§ 711.60–.70.

[174] *Id.* § 711.63(7)(a).

However, the option to purchase does not adequately answer the problem. Even if a price is set through arbitration, the arbitrators are specifically directed to "take into account the capitalization of the current rent." *Id.* §711.63(7)(a). If there is, in fact, no limitation on the power to set inflated *initial* rentals, the unit owners would then be forced to pay an exorbitant purchase price based on the capitalized value of that current rent which, in the absence of self-dealing, would have more accurately reflected a true fair market value.

[175] Letter of Lord Hardwicke to Lord Kames, June 30, 1759, in PARKES, HISTORY OF THE COURT OF CHANCERY 508 (1828) (commenting on court-made rules defining fraud).

make unwise purchases in the fact of a pile of forbidding and usually unread documents.

A model regulatory scheme would require, as a condition precedent to the issuance of a valid construction permit, that a real estate commission check the accuracy of the information provided and, more importantly, that the commission possess the power to deny a permit unless it finds that "the proposed sale * * * is fair, just and equitable." The specific grounds for denying a permit should be bottomed in the practices previously described as abusive.[176] Those grounds should include, as a minimum, findings by the commission that the developer has failed 1) to maintain an escrow account for all deposit and subscription money collected with provisions for the accrual of interest; 2) to enter recreation leases or management contracts which are not, under duly promulgated standards, excessive in compensation or duration;[177] 3) to include specific time limitations for periods in which developers may maintain control of the association; 4) to advertise in such a manner that the development is not described in a false or misleading fashion; 5) to accurately disclose the full maintenance charges attributable to each unit with an explanation of the manner in which any increases may occur; and 6) to provide for thhe payment of monthly charges attributable to unsold units held by the developer. Although some of these practices have been addressed in the Florida and in various other systems of regulation now existing,[178] none has attempted to deal with them all in a comprehensive, direct manner. Finally, the proposed system of regulation must retain a degree of flexibility so that it may respond to developer practices which have not theretofore been employed, but which would conflict with the purpose of the legislation—the protection of the unwary consumer. Beyond this, many of the positive features of the disclosure systems could also be incorporated into an active permit system.[179]

In order to achieve a degree of uniformity throughout the nation and avoid the problems of multileveled regulation from fifty or more different sources,[180] it is necessary that Congress provide the guiding hand towards the development of minimum national standards. Such is the specific promise, if not the result, of all three pieces of proposed legislation.[181] However, Congress must also realize that truly effective control is only possible in a system which recognizes that the appropriate units of administration are the state and local governments.[182] There-

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[176] *See* sec. III *supra*.

[177] The statute might also cast the developer in the role of a fiduciary with respect to all future owners. *See* text accompanying note 28 *supra*.

[178] The Virginia Act speaks to these abuses through the medium of full disclosure although it attempts to answer some of the problems of complexity and length by demanding narrative descriptions. *See* VA. CODE ANN. § 55–79.90 (Supp. 1974). In addition, some problems are spoken to more directly in specific prohibitory language. *See, e.g., id.* §§55–79.74 (maintenance of developer control), 55–79.79 (One year warranty against certain structural defects).

The Condominium Disclosure Act (S. 3658) is, by its very title, a ful disclosure scheme. The National Condominium Act (H.R. 15071) and the Condominium Act of 1974 (S. 4047) are patterned after the Virginia Act and share its substantive-disclosure mix. Its primary advantage is its national focus and its creation of minimum national standards. The majority of other systems presently in existence are, in essence, full diclosure schemes. The only major exception is the California permit. *See* notes 56–57 *supra* & accompanying text.

[179] *See* notes 37, 98 *supra*. These disclosure requirements could easily be incorporated in a system which directly prohibits certain practices now only reported.

[180] In introducing S. 4047, Senator Proxmire specifically stated the need for federal intervention:

"Moreover, it is important to do this at the Federal level. If it is done in a piecemeal and patchwork fashion, then we will end with a maze of differing and conflicting local standards which will cause more confusion and invite further abuses. Developers will move from States with strong laws and into States with weaker laws. A person who moves from one place to another will find that the protections he enjoyed formerly are not longer available in his new place of residence."

120 CONG. REC. 17, 548 (daily ed. Sept. 26, 1974).

[181] *See* text accompanying notes 112, 123 *supra*. *See also* Preamble, S. 4047, 93d Cong., 2d Sess. (1974).

[182] On the federal level, this permit system could be administered either by a specially created division of the S.E.C., by a new agency established specifically for condominium regulation, or by H.U.D.

(Continued)

fore, a cooperative effort is essential. Thus any national act ought to provide for a system of financial incentives to a state which is willing to statutorily establish an agency which will assume the primary resonsibility of administering an effective regulatory scheme. Such a proposal is now contained in H.R. 15071 which envisions a system of federal standards with state administration of those or more strict standards.[183] Direct federal regulation would then only be necessary in those few jurisdictions which have failed to act themselves. An appropriate level of federal sudsidy would hopefully make this a rare exception.[184]

VII. CONCLUSION

This Comment has outlined the pressing need for effective and comprehensive regulation of condominium developments and sales. The current pattern of regulation is entirely unsuited to protect those condominium purchasers most in need of it—the low and middle income families who increasingly will be buying condominiums as primary residences due to their cost advantages compared to conventional housing.

Many states have adopted regulatory schemes which are patterned after the inadequate disclosure approach of the securities laws. The federal government has no coordinated or centralized regulatory approach: present controls are administered by a patchwork of agencies which are not primarily concerned with condominium regulation. The proposed national legislation would go far to remedy this situation, but none of the proposed bills would adequately protect the purchasing public.

A more efficient and effective regulatory approach, a permit-granting administrative commission operating within the statutory context of substantive proscriptions, is briefly suggested. The interests of the legitimate developer[185] as well as those of the purchasing public would be served by such a system. In considering regulatory legislation in this area, Congress now has the opportunity to make a significant contribution to the availability of "decent housing to all our people" on terms that are fair to them.

Notwithstanding the traditional wisdom that states should possess superiority in controlling real property development, state agencies administering condominium laws are likely to face some formidable problems. Even assuming adequate funding and personnel state commission charged with passing upon permit applications would have to deal with powerful local real estate organizations without becoming too heavily influenced by developer interests. *Cf.* Note, 81 HARV. L. REV. 1528, 1534 (1968). A federal regulatory agency can be expected to be less receptive to local developer lobbying efforts than its state counterparts. This advantage, however, could be diminished by the formation of an effective national condominium developers' lobby, or by filling the regulatory commission largely with representative of developer interests.

Also, limitations on a state's power to regulate activities beyond its boundaries may frustrate its efforts to insure protection for its own residents. A developer selling units located in a poorly regulated or unregulated state may be able to damage purchasers in a well-regulated state. In order to halt such an out-of-state developer's activities, the regulating state would have to bring the developer into its courts; but injunctive remedies are not usually enforced in other states. In addition to this, if violation of a state's condominium laws are only misdemeanors, enforcement and extradition may sometimes be neglected. In light of these problems, federal regulation of this area is warranted.

[183] H.R. 15071, 93d Cong., 2d Sess. § 6 (1974):

(a) The Secretary shall take all possible steps to encourage and assist State and local governments and agencies to establish procedures, standards, and requirements * * * similar to and no less stringent than [those] provided by this Act * * *.

(b) The Secretary is authorized to make such grants to the State and local governments and agencies * * * to help them establish special offices to administer and enforce the procedures, standards, and requirements * * * and in general to oversee the development and construction of condominiums * * *.

[184] By way of example, the Coastal Zone Management Act, 16 U.S.C. §§ 1451–14 (Supp. II, 1972), has created and operates under a very similar system. Congress here has recognized that "[t]he key to effective protection * * * is to encourage the states to exercise their full authority" to regulate land use. *Id.* § 1451(h). In order to accomplish this goal, annual grants have been made available to provide up to ⅔ of the funding for local administration, *id.* § 1454, pursuant to federal minimum standards, *id.* § 1455(c). *See* Land Use Planning Act of 1973, H.R. 10294, 93d Cong., 1st Sess.; *cf.* [Current] BNA HOUS. & DEV. REP. No. 4, at A–22 (Oct. 31, 1973).

[185] In the words of one commentator, "the proper control of marginal and fraudulent operators is as great an asset to the legitimate developer as it is to the uninformed purchaser." Note, *supra* note 93, at 727.

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