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CONDOMINIUM HOMEOWNERSHIPIN THE UNITED STATES: A SELECTED ANNOTATED BIBLIOGRAPHY OF LEGAL SOURCES

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CONDOMINIUM HOMEOWNERSHIP IN THE UNITED STATES: A SELECTED ANNOTATED BIBLIOGRAPHY OF LEGAL SOURCES

by
DONNA S. BENNETT

ABSTRACT: Following a brief historical sketch of the condominium concept from its earliest mention in historical documents, this bibliography traces the legal development of condominium homeownership in America to the present day. Although condominium has developed in some countries, such as England, under common law concepts, special statutory provisions have directed this form of ownership in the United States. Covenants, conditions, and restrictions, as well as the condominium association, have developed to collectively finance and manage the common areas and facilities of the condominium regime.

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HISTORICAL BACKGROUND

According to many scholars, the concept of condominium is quite old. Albert Ferrer states that "there is at least one record of the sale of part of a building, in ancient Babylon (modern Iraq), during the First Dynasty, nearly two centuries before the birth of Christ", and that there is evidence of the use of the system among the Greeks, Egyptians, and others.[1] It was during the Middle Ages, when walls were constructed to enclose cities in order to provide security, that building space became even scarcer in many European cities. This lack of space led to individual ownership of parts of a building, sometimes even individual ownership of single rooms, in cities such as Orleans and Paris.[2] J. Leyser states that this "ownership of floors of houses, and even rooms, in the hand of different persons was common in various parts of Europe".[3] The condominium concept of home ownership became especially widespread in the French cities of Nantes, Saint Malo, Caen, Rouen, Rennes, and Grenoble. "In Rennes a catastrophic fire in 1720, which destroyed most of the city, forced inhabitants to build under a new system of wider streets and taller, multi-family buildings. The experiment was so successful that the system was firmly adopted."[4]

Regulation of condominium ownership during these early years was more by usage and tradition than by formal legal rules.[5] The lack of clear rules in many cities regarding the repair and maintenance of common areas, however, led to disputes among owners. Questions such as

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[1] 1 ALBERTO FERRER & KARL STECHER, LAW OF CONDOMINIUM: WITH FORMS, STATUTES, AND REGULATIONS 15 (1967).
[2] Id. at 18.
[3] J. Leyser, *Ownership of Flats – A Comparative Study*, 7 INT"L & COMP. L. Q. 33 (1958).
[4] FERRER, supra, at 18.
[5] Id. at 23.

who was responsible for the repair of the roof or the stairwell or even the building's foundation were often hotly disputed. Frequency of disputes helped to make the condominium concept unpopular in certain areas. This began to change with the first statutory recognition of the condominium concept in the Code Napoleon.[6]

The Code Napoleon of 1804 made provisions in Article 664 for the separate ownership of floors and the regulation of maintenance and repairs of the common parts of the building. HeinOnline provides an English translation (Printed for Charles Hunter, Law Bookseller, 1824) of Article 664.

> **When the different stories of a house belong to different proprietors, if the titles to the property do not regulate the mode of reparations and reconstructions, they must be made in manner following:**
> **The main walls and the roof are at the charge of all the proprietors, each in proportion to the value of the story belonging to him.**
> **The proprietor of each story makes the floor belonging thereto.**
> **The proprietor of the first story erects the staircase which conducts to it; the proprietor of the second story carries the stairs from where the former ends to his apartments; and so of the rest.**

John Henry Wigmore has said of the Code Napoleon, "That code stands out as one of those few books which have influenced the whole world. The Code Napoleon was soon translated into almost every language."[7] French laws, introduced into all those territories annexed by Napoleon, were often retained or incorporated into the local code by the individual countries after Napoleon's defeat. As a result, the condominium concept spread to other European countries and, eventually, to other parts of the world as Europeans immigrated to other continents.

Although the informal ownership of floors or parts of buildings existed in countries such as Austria, Switzerland, and in Germany as early as the twelfth century, especially among the poorer citizens, by 1900 the German Civil code included a provision "expressly forbidding the practice of ownership of a part of a building"[8]. This was a result of much official opposition in Germany to the condominium concept among jurists, the police, and the taxing agencies. Many argued that, "a part of a building could only belong to the owner of the land on which the building rested."[9] Switzerland and Austria soon followed the example of Germany when they adopted restrictive provisions in 1907 and 1912, respectively.[10]

The destruction of housing in Europe during two world wars, however, as well as the high cost of construction, lack of available land in densely populated areas, and the desire for home ownership rather than tenancy, fostered a renewed interest in the concept of condominium in the continental countries. "As the number of condominiums increased and the demand for standard agreements to cover a number of practical problems became stronger, special statutes were adopted."[11] Beginning in the 1920's France, Belgium, Italy, the Netherlands, Germany and others began passing legislation that was designed to clarify the rights and obligations of the owners of flats, especially in regards to their responsibilities toward the common parts of the

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[6] Id. at 24.
[7] 3 JOHN HENRY WIGMORE, A PANORAMA OF THE WORLD'S LEGAL SYSTEMS 1031 (1928).
[8] FERRER, supra, at 20.
[9] Id. at 20.
[10] Id. at 22.
[11] Jan van Weesep, *The Creation of a New Housing Sector: Condominiums in the United States*, 2 HOUSING STUDIES 123 (1987).

building.[12] The commonality of this legislation consisted in "two separate, but closely connected rights. Of these two rights, one was a share in the undivided co-ownership, while the other was a separate right over the flat or other part of the building."[13] Countries have differed in their view of which right is the predominant or principal one and which the accessory. The French have made the ownership of the flat the principal right. "German law has adopted a different attitude: here the share in the co-ownership of the common parts must be regarded as the principal right of the flat owner, and his right of separate ownership of the flat as merely accessory. It is inherent in the legal construction of flat ownership under Continental legislation that the two rights -- the co-ownership share, and the right in the particular flat -- cannot be severed at will."[14]

Further Reading

FERRER AND STECHER, LAW OF CONDOMINIUM: WITH FORMS, STATUTES, AND REGULATIONS (1967).

This two-volume work is a comprehensive and scholarly treatment of the origins and development of the concept of condominium, with a focus on the statutory development of the field within the United States. The authors attempt to interpret the worldwide scope of condominium to the legal profession, and to emphasize that condominium is one of the most effective means of providing mass housing. They provide an extensive chapter on the history of condominium throughout the world, as well as a chapter that provides a comparative analysis of foreign statutes. The work includes a description of the various elements and requirements of the system, such as the legal documents fundamental to the creation of the condominium regime, financing, and the rights and duties of owners. Alberto Ferrer taught at the Inter-American University of Puerto Rico School of Law and was a member of the committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Condominium Act. Karl Stecher was a professor of law at Emory University and the University of Louisville before becoming a trial attorney.

J. Leyser, *Ownership of Flats – A Comparative Study*, 7 INT'L & COMP. L.Q. 31 (1958).

Written in 1958, prior to the development of condominium law in the United States, Leyser focuses on the ownership of flats in Continental legal systems. He provides historical information on the development of the condominium concept in the continental countries and discusses in some depth the more recent legislation of that time. He also points out the lack of uniformity in the legislation of the various countries, even though most Continental countries had passed legislation providing ownership rights in individual flats. Many of the continental countries permit the rights and duties of the flat owners to be regulated by "special agreement" (p. 39). "Generally, the Continental legislators have left the parties full freedom with regard to the way in which they wish to regulate their relationships in connection with the ownership of flats in a building" (p. 40). Leyser discusses the assembly of the co-owners and the various countries' requirements for a quorum for decision-making, ranging from a majority of those present at a meeting in French law, to two thirds of the value of a building in Italian law, with the quorum in subsequent meetings dealing with the same agenda greatly eased. Mr. Leyser ends with a comparative discussion of the common law approach to condominium, especially in England.

Robert G. Natelson, *Comments On the Historiography of Condominium: The Myth of Roman Origin*, 12 OKLA. CITY U.L. REV. 17 (1987).

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[12] LEYSER, supra, at 35.
[13] Id. at 37.
[14] Id. at 39.

The purpose of this article is to disprove the notion that the modern concept of condominium existed in Roman civil law. In the process of doing this, the author provides a sketch of the history of condominium and a thorough discussion of the classical texts upon which this theory of Roman origins has been based.

DEVELOPMENT OF CONDOMINIUM LAW IN THE UNITED STATES

Prior to the passage of enabling legislation for condominiums in this country, many property experts debated the issue of ownership of space below and space above the surface of the land. "Indirect support for the legality of strata ownership of buildings may be derived from mining and aviation law. These areas of the law have had a great influence in dispelling the notion that real property may not be divided horizontally."[15] In 1929, attorney Stuart Ball speculated about the possibility of owning "castles in the air many stories above the streets,"[16] and whether it was possible to own space as opposed to owning land. "From another perspective, evidence of the legislative acceptance of airspace as real property comes from the universal acceptance in the United States of the condominium, with its three-dimensional concept of property."[17]Today's condominium owners are familiar with the concept of owning the airspace within the boundary walls of their unit.

The model for American statutes on condominium law came, not from Europe, but from Puerto Rico. A major housing shortage, along with the high cost of real estate, and a shortage of land in Puerto Rico, led to the approval of the legality of the condominium form of home ownership in 1951. A more detailed version of the act, approved in 1958, was the Horizontal Property Act. This act gave impetus to the condominium movement in America, and became the model for much of the legislation approved in the various states.[18] The Puerto Rico law "is called a Horizontal Property Act because it provides a statutory method of subdividing the space occupied by a building into horizontal strata or layers. Each layer represents a floor in the building that is then subdivided vertically into one or more apartment spaces or units."[19] Each unit is owned individually and has its own deed.

The Horizontal Property Act of Puerto Rico gave impetus to the condominium movement in America. "In 1961, a Puerto Rican delegation of business and professional leaders lobbied the U.S. Congress to enact Section 234 of the National Housing Act to extend the Federal Housing Administration's mortgage benefits to condominiums."[20] Although condominium homeownership was popular in Puerto Rico, additional sources of financing were needed because the banking community did not offer very attractive terms for condominium mortgages. The purchase of a condominium was out of reach for the average person.[21] When the Federal Housing Administration received authorization from Congress to insure mortgages from lenders for condominium dwellings, Puerto Ricans were able to make full use of the condominium concept.[22]

In America, the severe housing shortage and the urban sprawl that occurred following the end of World War II, created "a need for the more efficient use of land through high rise multi-family dwellings located in those areas where facilities for employment, education, recreation, and public services already exist."[23] In addition, there was national interest in providing more

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[15] Note, *Land Without Earth – The Condominium,* 15 U. FLA. L. REV. 207 (1962-1963).
[16] Stuart S. Ball, *Division Into Horizontal Strata of the Landspace Above the Surface*, 39 Yale L. J. 637 (1929-1930).
[17] 2 RICHARD R. POWELL, POWELL ON REAL PROPERTY § 18A.05[6] (2009).
[18] John E. Cribbet, *Condominium—Home Ownership for Megalopolis?* 61 MICH. L. REV. 1213 (1963).
[19] Charles E. Ramsey, *Condominium*, 9 PRAC. LAW. 23 (March 1963).
[20] 1 KAREN CHRISTENSEN and DAVID LEVINSON, ENCYCLOPEDIA OF COMMUNITY: FROM THE VILLAGE TO THE VIRTUAL WORLD 317 (2003).
[21] Curtis J. Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987 (1963).
[22] FERRER, supra, at 56.
[23] William Schwartz, *Condominium: A Hybrid Castle in the Sky,* 44 B.U.L. REV. 138 (1964).

affordable housing for a larger number of people. Americans, in common with most people, preferred to own their own home, rather than rent, and to own a home in an area that might be financially out of their reach if they attempted to purchase a single-family dwelling. "This spurred interest in traditional cooperative housing developments and resulted in the introduction into the United States of a new concept of apartment ownership by individuals."[24]

Scarcity of land within commuting distance of large urban centers, the high cost of real estate, and a growing elderly population further increased the popularity of this type of home ownership. "The desire for the personal comforts of home and its related financial benefits, the prospect of reduced travel time, and the great advantage of being close to cultural and business centers has created a new interest in reducing the burden of inflated land costs through cooperative ownership."[25] William Kerr in 1965 said in a presentation made at an ABA meeting that "It is financially impossible for a man of even moderate means to own a private house near the center of a large city. Condominium should make such ownership possible with the resultant saving in time and money over commuting."[26]

Cooperatives became popular in response to housing shortages, beginning primarily after the First World War. Many of these earlier ventures experienced financial failure during the Great Depression. This type of collectively owned community is most popular in New York, both the city and the state. It is also popular in other cities, such as Chicago, Washington, DC, and the Miami-Fort Lauderdale-West Palm Beach areas, though not to the degree that it is in New York. By 1966, however, condominium growth outpaced the growth of cooperatives everywhere but in New York.

One of the reasons for the growth of the condominium is that most people view it as homeownership. In a cooperative, the individual owns indirectly through ownership in the cooperative stock and a long-term proprietary lease on his apartment. The corporation owns the building and common elements, and the members are stockholders who lease their units from the corporation. In a condominium, the individual owns outright through a fee title to his unit and an undivided interest in the common elements. The condominium owner is an owner of real property, while the cooperative owner is viewed as a stockholder and lessee. For many people, "deeds hold tremendous symbolic value", and this is a major advantage of the condominium over the cooperative.[27]

In a condominium, the unit owner "is not as dependent upon the financial condition of other owners as is the tenant-stockholder in a cooperative"[28]. While foreclosures of individual units may create financial strains on the upkeep of the common elements, the foreclosure experienced by an individual or individuals will not cause the community to fail. "The co-op required homeowners to finance purchases collectively and offered a simple way to exclude undesirable families from the community. The condominium, by contrast, permitted individual financing but offered fewer powers of exclusion."[29] Abraham Kazan, founder of the limited-equity co-op in New York, stated in 1962, "if we encounter a bad egg, we give him back his money and tell him we don't want him here."[30] The individual deeds in a condominium made

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[24] Louis Pohoryles, *The FHA Condominium: A Basic Comparison with the FHA Cooperative,* 31 GEO. WASH. L. REV. 1014 (1962-63).
[25] Id.
[26] William E. Kerr, *Condominium*, 1965 PT.II A.B.A. SEC. REAL PROP. PROB. & TR. L. PROC. 23-24.
[27] MATTHEW GORDON LASNER, NO LAWN TO MOW: CO-OPS, CONDOMINIUMS, AND THE REVOLUTION IN COLLECTIVE HOMEOWNERSHIP IN METROPOLITAN AMERICA, 1881-1973, 479 (2007).
[28] WARREN FREEDMAN and JONATHAN B. ALTER, *The Law of Condominia and Property Owners' Associations*, 23 (1992).
[29] LASNER, supra. at 483.
[30] Id. at 475.

this type of action difficult. "In effect, the condominium transferred certain rights from the collective to the individual; …homeowners greatly preferred the condominium format."[31]

"The condominium concept established the creation of a set of vertical boundaries separated into horizontal apartments, units, floors or stories."[32] The traditional form of homeownership involves a fee simple title to the land upon which the house stands. What does the condominium owner actually own? "Each condominium purchaser acquires a fee simple ownership in the unit, together with an undivided tenancy in common interest with other unit owners in the common areas."[33] The condominium owner, therefore, has exclusive ownership of the interior of his or her apartment or unit, or the apartment space. "The term apartment space means just that. It is the space enclosed or bounded by certain, determined, vertical and horizontal boundaries. These boundaries are the interior surfaces of the perimeter walls, floor, and ceiling of the apartment that the apartment owner owns individually."[34] Ownership also includes a fractional ownership in the common or general facilities, usually referred to as the common elements. The common elements are, basically, all areas of the property outside the individual apartment spaces. Because individual owners share the expenses for these common areas and facilities, such as the maintenance of grounds and buildings, swimming pools, clubhouses, and other amenities, the condominium lifestyle has slowly gained in popularity. In addition, many retirees and second-homeowners wanted the "emotional and physical security of neighbors above and below and the freedom to leave home for months without worry of burglary."[35]

Following the passage of the Puerto Rico Horizontal Property Act in 1958 and the recognition of the condominium form of property ownership in the 1961 National Housing Act, "Arkansas and Hawaii were the first states to take up the Puerto Rican challenge, and Arizona, Kentucky, South Carolina, and Virginia" joined the parade.[36] According to Professor Berger, legislation must do three things. One, it must "provide a procedure for the establishment and dissolution of a condominium."[37] The second requirement is "to accommodate existing legislation dealing with taxation, recording procedures, liens, land-use control, and security regulatory techniques to the special needs of the condominium, and third to anticipate possible judicial antagonism involving such matters as bars on partition and covenants real."[38] He adds, "it seems likely that the FHA Model Statute, with local refinements, will emerge as the prevailing form in this country."[39]

"The concept has electrified the housing profession,"[40] said William Schwartz of Boston University Law School. "At the beginning of 1963, only seven states and the Commonwealth of Puerto Rico had enacted legislation. During the next six months another twenty-four states adopted some form of condominium and legislation is presently pending in ten other states."[41] Indeed, 43 states had passed condominium-enabling statutes by 1965.[42] In 1969, Vermont became the last state to enact a condominium statute.[43]

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[31] Id. at 483.
[32] DAVID A. THOMPSON, 4 THOMPSON ON REAL PROPERTY §36.03 (2nd ed.2004).
[33] GRANT S. NELSON and DALE A. WHITMAN, LAND TRANSACTIONS AND FINANCE, 548. (2004).
[34] Ramsey, Charles E., *Condominium*, 9 PRAC. LAW., 22 (March 1963).
[35] LASNER, supra. at 490.
[36] Cribbet, supra. at 1218.
[37] Berger, supra. at 1003.
[38] Id.
[39] Id. at 1001-1002.
[40] Schwartz, supra. at 138.
[41] W. Robert Fokes, *Legal and Practical Aspects of Condominium*, 19 BUS. LAW. 233 (1963-1964).
[42] Patrick J. Rohan, *Condominium Housing: A Purchaser's Perspective,* 17 STAN. L. REV., 844 (1964-1965).
[43] van Weesep, supra. at 126.

Although in the early 1960's many people did not even know how to pronounce the word "condominium"[44], by 1970, a poll showed that one in four Americans were familiar with the term. By 1972, however, three of every four Americans knew the term.[45] As of 2005, there were 6.6 million condominiums nationwide.[46]

Further Reading

Stuart S. Ball, *Division Into Horizontal Strata of the Landspace Above the Surface*, 39 YALE L.J. 616 (1929-1930).

In this extensive legal study of the rights of ownership of landspace, the author maintains that the courts will someday be receptive to the stratification of cubic space allowing for division by horizontal planes capable of ownership by different individuals, in other words, the idea of real property without land. The article discusses the separate ownership of rooms and apartments in common law and civil law jurisdictions and provides numerous footnoted references. Mr. Ball has said, "Just as the willingness of the courts to admit that a chamber could be separately conveyed resulted from the accustoming of the judges to the notion by the practical examples surrounding them in the Inns of Court, so will our courts of tomorrow cease to regard as strange the ownership of castles in the air many stories above the streets" (p. 637).

K. E. Barnhill, Jr., Comment, *Creation of Estates in Airspace*, 25 ROCKY MTN. L.R. 354 (1952-1953).

This comment, written in the 1950's, referred to the lack of space and the increased population in Colorado that was spurring the construction of multiple story buildings. The article centers around legislation passed in Colorado that allowed for ownership of spaces above the surface of the ground by individuals or corporations other than the owner of the land. The new statute established the "legality of common law methods of conveying an interest in separate airspace" and "the power to create estates above the surface of the land" (p. 354). The author discusses a number of problems connected with the creation of estates in airspace and provides some possible solutions.

Laird Bell, *Air Rights*, 23 ILL. L.R. 250 (1928-1929).

The key question asked in this article by Laird Bell, a Chicago attorney, is "Can an abstract thing like space be bought and sold as land" (p. 252)? The author reviews selected cases which have attempted to resolve this issue. He indicates that the separate ownership of rooms and stories has been more common in England than in America. Mr. Bell concludes his article by saying, "A conveyance of the air lot with a right to support is obviously better adaptable to the mysteries of the future" (p. 263).

John P. Borgwardt, *The Condominium*, 36. ST. B. CAL. 603 (1961).

Published a few months after the passage of the National Housing Act of 1961 the author asserts prior to the passage of enabling legislation in California, that there is "no basic problem involved in conveying title to a portion of a building, or to a cube of air space enclosed by a building" (p. 604). The developer can avoid problems by drafting the deed to convey air space and retaining the structural portions of the building as common area. He says, "If the unit is air space, destruction of the building will not destroy the subject matter of the fee, and ownership will continue"(p. 604). Mr. Borgwardt provides examples of provisions that are essential to the regulation and development of the condominium. These include: each unit owner paying his

[44] LASNER. supra. at 482.
[45] Id. at 522.
[46] Id. at 529.

proportionate share of common expenses, the ability of the manager to impose a lien on the unit to secure payment of this share; a restriction against any act that will impair the structural integrity of the building; an obligation to maintain insurance; the provision for easements; the specifications of the powers of the manager; and detailed information on how the declaration can be amended.

DAVID CLURMAN, EDNA L. HEBARD, AND F. SCOTT JACKSON, CONDOMINIUMS AND COOPERATIVES, (2nd 1984).

This is a comprehensive survey of condominium and cooperative ownership. Written for the legal practitioner, banker, real estate developer, as well as student, the authors provide an overview of the history and policy of condominiums and cooperatives. They include information on financing, income tax factors, legal structure, and sales of condominiums and cooperatives. The authors provide an excellent chapter on the development and purpose of homeowner associations. The chapter on "Operation and Management of Condominium Regime" provides information on some of the problems associated with condominium living (referred to as the three P's – pets, parking, and people), a section on typical developer mistakes, and essential information on insurance. Appendices include HUD legal policies, model condominium bylaws, and a listing of selected American cases. David Clurman served as an Assistant Attorney General of the State of New York for 23 years. He concluded his term of office in the position of Director of the Bureau of Securities and Public Financing, a position in which he was responsible for directing and implementing cooperative and condominium new construction.

Comment, *Condominium: An Introduction to the Horizontal Property System*. 11 DEPAUL L.R. 319 (1961-1962).

Written at the time when only two states, Arkansas and Hawaii, had enacted condominium legislation, this article stated that "the need for the Condominium is becoming quite evident; it grows out of the pressing necessity to provide adequate housing in large urban areas where the high cost of land, coupled with the construction and financing expenses, practically precludes the erection of single family homes and where rentals on available apartments are prohibitively high for the masses" (p. 321). The article provides an analysis of the Puerto Rico Horizontal Property Act and an overview of the United States 1961 Amendment to the National Housing Act that authorized the insurance of mortgages on condominium units. The article states that the condominium concept of homeownership has been successful in countries throughout the world, and there is no reason why it should not flourish in the United States.

John E. Cribbet, *Condominium – Home Ownership for Megalopolis*, 61 MICH. L.R. 1207 (1963).

Professor Cribbet provides a brief history of condominium, and describes the three basic factors that have led to the development of this form of home ownership in the United States and Puerto Rico. These factors are the lack of good building sites close to urban areas and the resulting housing shortage, the great desire for home ownership, and the fact that this form of home ownership is more affordable for a larger number of people. Professor Cribbet also discusses in depth the advantages of the regulation of condominium by legislation, as opposed to regulation by common law. He provides a draft of a condominium act, with comments upon the provisions within each section. The last portion of the article describes the advantages of the condominium form of home ownership, as well as its disadvantages. John E. Cribbet was Professor of Law at the University of Illinois, Dean of the College of Law, and Former Chancellor, University of Illinois at Urbana-Champaign. He authored *Principles of the Law of Property* and *Cases and Materials on Property*.

Ben H. Crowley, Notes and Comments, *Property: Condominium: What Place – Space?*, 1 TULSA L.J. 73 (1964).

This is an interesting note focusing on the examination and evaluation of the condominium concept of conveying space as real property. "The fee simple possessory right to the condominium unit is to airspace and nothing more" (p. 74). The state statutes also authorize the conveyance of the common elements, which cannot be partitioned or divided from the space estate.

W. Robert Fokes, *Legal and Practical Aspects of Condominium*, 19 BUS. LAW. 233 (1963-1964).

This is an excellent introductory article on condominium development in the United States in which the author describes the "spectacular legislative growth" (p. 233) of the concept of condominium. Mr. Fokes, a Florida attorney, examines the advantages of the condominium form of homeownership, concerns regarding the recording of the legal documents, financing issues, along with frequent references to the law recently adopted in his home state of Florida.

Joseph S. Genshlea and William A. Hirst, Comments, *Home Ownership in Space – Pie in the Sky*, 14 HASTINGS L.J. 263 (1962-63).

The authors discuss the nature of homeownership in a condominium and state that the concept depends on the possibility of owning air space. They cite many references to early English and American cases ruling in some instances in favor of owning air space and in others opposed to the idea. They ask the following: "To what does one have title? How enduring is that property interest? When the building is destroyed, or is no longer habitable, what remains to the homeowner" (p. 264)? The authors refer to the proposed condominium legislation in California and note some of the problems the ownership of space may present.

PATRICK E. KEHOE, COOPERATIVES AND CONDOMINIUMS (1974).

Professor Kehoe, Law Librarian and Professor of Law at American University, provides an explanation of the meaning of condominiums and cooperatives. This work was part of the Legal Almanac series that focuses on explaining the law on a subject in nontechnical language. He provides an excellent comparison of the two types of homeownership and discusses the pros and cons for purchasing one or the other, the tax consequences and insurance needs of each, as well as a chapter on the termination or disruption of a condominium or cooperative. Professor Kehoe also includes a sample declaration, bylaws, and a management agreement.

William K. Kerr, *Condominium*, 1965 PT.II A.B.A. SEC. REAL PROP. PROB. & TR. L. PROC. 19.

In this address to the Regional Meeting of the ABA held in Puerto Rico, the author indicates that his view of condominium as "the ownership of parts of a building" may represent a minority view. He explains that most property experts of the day viewed condominium as the ownership of a unit and the unit as a cube of space above the surface of the land. "…ownership of the cube carries with it the right to occupy the portion of the building which it circumscribes" (p. 19). Mr. Kerr discusses the value of legislation in regulating condominium homeownership, as opposed to this type of ownership under common law. He provides a description of the basic documents of condominium and information on the financing of condominium projects.

Matthew Gordon Lasner, No Lawn to Mow: Co-ops, Condominiums, and the Revolution in Collective Ownership in Metropolitan America, 1881-1973, (March 2007) (unpublished Ph.D. dissertation, Harvard University) (on file with Harvard University Library Archives).

This Ph.D. dissertation is a history of collectively owned multifamily housing in the United States. The author describes the various types of collective homeownership, such as cooperatives, garden apartments, attached houses, own your own apartment, and condominiums. From pages 465 through 535, the author focuses exclusively on condominiums. Mr. Lasner provides a thorough comparison of the cooperative and the condominium, and describes how many Americans in the early 1960's came to feel that the cooperative board's ability to approve or reject sales of apartments was inconvenient and distasteful. "After decades of promoting the co-op as nothing less than absolute and independent homeownership, the real estate industry, virtually overnight, changed course and began describing the condominium as a true system of homeownership and the co-op as something partial and inferior" (p. 480). Many people decided that they preferred to own their unit outright rather than own an interest in a cooperative. In addition, condominium homeowners appreciated the fact that they were able to finance their units individually, whereas the cooperative required the homeowner to finance their purchase collectively. Mr. Lasner describes in some detail one of the earliest and largest of the condominium developments in this country. Aventura was a high-rise condominium development of over 17,000 apartments set on approximately 800 acres in northern Dade County in Florida. The development included a 270 acre golf course. The author provides a sketch of the master plan, an aerial photograph of the development, floor plans of the apartments, and copies of the marketing brochures. The author also provides an extensive bibliography of sources on multifamily housing. This is an excellent study of collective homeownership.

William J. Lippman, *Legal Problems of Condominiums*, 39 APPRAISAL J. 453 (1962).

The author, a member of a New York City law firm specializing in real estate issues, focuses on numerous legal problems that he says must be resolved before the condominium form of homeownership can become widespread. Two of the major problems center around the ownership of air space and the rule against perpetuities. He includes a discussion of the condominium documents and the proposed New York state legislation, the Unit Ownership Act.

Raymond T. O'Keefe, *Financial Aspects of Condominiums,* 30 APPRAISAL J. 465(1962).

Mr. O'Keefe, a vice president of the Chase Manhattan Bank, speculates on whether the condominium will be successful in the United States, and if it will be able to compete in the housing market with rental apartments, cooperatives, and single-family dwellings. He indicates that the answer is dependent upon whether the condominium will enable families to obtain housing at a reasonable price. He discusses the FHA regulations and the financing of condominium mortgage loans. Mr. O'Keefe expresses the hope that condominiums will be a tool of urban renewal.

Louis Pohoryles, *The FHA Condominium: A Basic Comparison with the FHA Cooperative*, 31 GEO. WASH. L. REV. 1014(1962-63)**.**

This article, written in the early days of condominium development, is primarily a description of the condominium concept. As the title states, the article compares the condominium style of home ownership with the cooperative. It does this from the point of view of the Federal Housing Administration's regulations. The cooperative differs from the condominium in that the ownership or the title to the whole property remains with the corporation. The member of the corporation is a shareholder or a person who is entitled to occupy a unit for an indefinite period of time a specific apartment. In the condominium, the individual owns the space within that unit and a percentage of the whole.
Mr. Pohoryles emphasizes the need for enabling legislation at the state level if the condominium form of homeownership is to flourish. He also emphasizes the value of public recordation of an enabling deed. Included is a review of the role of the investor or developer, the management of the property, assessment of common expenses, and the financial issues to be considered when

choosing between purchasing a condominium or an interest in a cooperative. He concludes, "the condominium may be here to stay. It has been acclaimed widely as a savior of urban housing." This is an excellent review of the pros and cons of condominium homeownership

Patrick J. Rohan , *Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain,* 65 COLUM. L. REV. 593 (1965).

Professor Rohan addresses the more negative aspects of condominium ownership, such as, partial or total destruction of the building, excessive repair costs, obsolescence, termination of the condominium, and eminent domain. in an effort to encourage those working on enabling legislation to include provisions for these areas. He provides specific drafting recommendations for each area. Although these concerns can be problems for any property owner, in a condominium "their potential disruptive effect threatens not only the interests of the individual unit owner, but extends to the legal framework of the entire project" (p. 594). Decision making in a condominium is complicated by the absence of individual decision-making power. Understanding before purchase the voting requirements stipulated by the condominium instruments is a wise precaution.

Carl Daniel Schlitt, *History of Condominiums,* 30 APPRAISAL J. 453 (1962).

This article discusses the history of condominiums in the United States as of 1962. The author defines condominiums as property in which each person owns an individual portion of the building. Written at the beginning of the creation of statutes governing condominium development, the author describes a specific condominium development that he helped to create in 1947. He worked with a group of GI's who wanted to live in an apartment building in New York City. One of the men bought a building that could be converted into twelve individual apartments, and it was his intention to sell each apartment to one of his friends. Mr. Schlitt and his colleagues decided that under New York state law a person had the right to own air space. They concluded, "it would be perfectly feasible to insure title to an air space inside the building, provided they had some dominion over those physical elements which would permit them to get to and take possession of the air space. So we devised our castles in the air"(p. 454). By the time he wrote this article in the early 196o's, that venture into condominium living had succeeded. The author points out that he has been discussing condominiums as they relate to apartment houses. He says however, "I want you to recognize the fact that the possibilities are unlimited. For instance the condominium form of ownership might be applicable to a two family house…" (p. 457). He even mentions the fact that the condominium concept could apply to industrial and commercial buildings.

TRANSCRIPT OF THE TEXT PREPARED FOR DELIVERY AT THE SYMPOSIUM ON THE PRACTICAL PROBLEMS OF CONDOMINIUM. Home Title Division, Chicago Title Insurance Co., (1964).

As the title indicates, this work contains the text of the talks given by the various panel members at the Association of the Bar of the City of New York's Committee on Real Property Law meeting of May 11, 1964. Professor Curtis J. Berger's talk provides an update on condominium development, a description of the pros and cons of this relatively new form of homeownership in New York, and a review of the key elements in the recently approved New York statute. Mendes Hershman explores various use restrictions and relevant court decisions. Other talks focused on mortgage lending concerns, problems of the title insurer, and issues the attorney must handle in representing the developer of a proposed condominium.

STATUTORY FOUNDATION

The law of condominium developed rapidly in the United States following the passage of two important pieces of legislation. On June 30, 1961, President Kennedy signed the National

Housing Act of 1961.[47] This legislation contained section 234(c) which legally recognized the condominium concept of real property ownership for the first time. (75 Stat. 160, 12 U.S.C. § 1715y Supp. III, 1961) In addition, this act authorized the Federal Housing Administration to insure mortgages from lenders for condominium dwellings,[48] and thereby made obtaining a mortgage for the purchase of a condominium much easier by eliminating the need for a large down payment, which is required to offset uninsured mortgages.[49] This was amended by the Housing Act of 1964 (78 Stat. 769, 780, 12) to include a subsection authorizing "the insurance of a mortgage which would finance the construction or rehabilitation of a condominium, in addition to the sale of the dwelling units"[50]. This legislation allowing "the Federal Housing Administration to insure mortgages on individual units in multi-unit structures, i.e., on condominiums"[51] allowed those who could not afford a single-family dwelling to realize the American dream of home ownership by purchasing a condominium because many condominiums were often less expensive. "Insurance for condominiums, such as is provided through Section 234(c), can be important for low and moderate income renters who wish to avoid being displaced by the conversion of their apartment building into a condominium."[52] Professor Curtis Berger stated that the "condominium's appearance is timely, for it coincides with a growing awareness that for many urban residents home-ownership in its historic guise, the one-family house, is becoming impracticable. Still, the desire for one's own home is likely to persist, so firmly embedded has it become within our culture. Condominium may help to redirect this desire toward the kind of structure that will largely comprise our cities of tomorrow."

It was during the 1960's that states adopted enabling legislation that permitted the creation of condominium. David A. Thomas has said, "Unlike most Anglo-American concepts of property law, condominium ownership is based on statutory authority, not on common law concepts."[53] Professor Curtis Berger stated, "In considering whether condominium is a feasible form of ownership under the common law or whether it requires special statutory provision, as it has in Latin America and Europe, one might note that England and Scotland have assimilated flat-ownership without benefit of statute, and in the United States, there are instances of condominium that predate legislative recognition."[54] One such experiment was described by Carl Daniel Schlitt in his *History of Condominiums.*[55]

Professor Berger, however, concluded that although condominium can exist under common law, he doubted that it could flourish in this country without statutory provision.[56] "What kind of legislation does condominium in its embryonic state require? There is immediate need for an official imprimatur—an enabling statute that blesses the condominium concept and erases any doubts that our legal system can tolerate ownership of estates in airspace lots. This alone should stimulate the interest and elicit the confidence of lenders, consumers, and suppliers. The statute would ensure that unit ownership is recognized as an interest in real property – a status denied by some courts to the stock-lease arrangement for a cooperative—and that unit mortgages, whether insured or conventional, qualify for institutional investment."[57]

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[47] TRANSCRIPT OF THE TEXT PREPARED FOR DELIVERY AT THE SYMPOSIUM ON THE PRACTICAL PROBLEMS OF CONDOMINIUM. Home Title Division, Chicago Title Insurance Co., 2 (1964).
[48] Curtis J. Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 1024 (1963).
[49] GARY A. POLIAKOFF, 1 THE LAW OF CONDOMINIUM OPERATIONS*,* 21 (1998, 2007).
[50] FERRER, supra, at 5-6.
[51] van Weesep, supra. at 122.
[52] U. S. Department of Housing and Urban Development, Homes and Communities, http://www.hud.gov/offices/hsg/sfh/ins/234c--df.cfm
[53] THOMAS, supra. at 237.
[54] Berger, supra. at 1004.
[55] Carl Daniel Schlitt, *History of Condominiums*, 30 APPRAISAL J. 453 (1962).
[56] Berger, supra. at 1001.
[57] Id. at 1003.

John Cribbet, law professor and author of the *Principles of the Law of Property*, provided two major reasons for preferring the regulation of condominium by statute. First, a carefully written statute would clarify many uncertainties that would otherwise have to await answers from the courts, and second, statutes would help to provide uniformity in the creation of projects.[58]

Professor William Schwartz of Boston University wrote that "The statutory foundation would appear desirable, if not strictly necessary, in order to clarify the rights of the parties *inter-se* and with respect to third parties, such as the taxing authorities. Thus, in the absence of a statute, it is doubtful whether a unit owner who repairs the common areas can obtain contribution from his neighbors or that a unit owner can demand that his neighbors make repairs. Likewise, in the absence of a statute, it is doubtful whether a unit would be recognized as a separate entity for tax purposes."[59]

Section 234 of the National Housing Act included a condition requiring "that the concept of condominium homeownership must be established under the laws of the state where the property is located."[60] Charles Ramsey indicated that this is not necessarily a requirement that each state approve enabling legislation, but rather that condominium ownership be permitted in the state.[61] He went further to say, "It would be highly desirable, however, if proper state legislation were enacted to simplify and standardize the method of setting up such titles. They would then be more readily insurable.[62]

By 1969, every state had adopted a condominium statute. These early statutes, often referred to as first generation statutes, continue to "provide the statutory foundation for condominium development in approximately half of the states."[63] These statutes "provide for recognition of divided ownership and the utilization of conveyancing instruments that adequately and clearly demonstrate ownership and its transferability."[64] They also "attempt to regulate procedures, delineate the duties of the individual unit owners, as well as of the condominium association, provide for distribution of responsibilities in the event of damage, destruction or condemnation, and determine the legal rights of condominium unit owners and associations in the event of defaulting individual unit owners."[65] In other words, the first generation of condominium statutes recognized the condominium concept of homeownership, but did not attempt to regulate potential abuses.[66]

In order to address problems not covered by these early statutes, such as abuses in operations and development, and to require disclosure statements concerning all condominium declarations, bylaws and restrictions, many states enacted second generation condominium statutes. The model for many of these second generation statutes was the Uniform Condominium Act (UCA), approved by the National Conference of Commissioners on Uniform State Laws in 1977, and amended in 1980.[67] "A second wave of state condominium legislation – in some states, even a third wave – is providing improved guidelines for developing and governing condominiums, and consumer standards are being set to eliminate sales abuses, leading to greater satisfaction with condominium living."[68]

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[58] Cribbet, supra. at 1218.
[59] Schwartz, supra. at 143.
[60] Ramsey, supra. at 22.
[61] Id.
[62] Id. at 22-23.
[63] WAYNE S. HYATT, CONDOMINIUM AND HOMEOWNER ASSOCIATION PRACTICE: COMMUNITY ASSOCIATION LAW 12 (3rd ed. 2001).
[64] DAVID CLURMAN, F. SCOTT JACKSON & EDNA L. HEBARD, CONDOMINIUMS AND COOPERATIVES 13 (2nd ed. 1984).
[65] THOMAS, supra. at.237-238.
[66] van Weesep, supra. at 127.
[67] HYATT, supra. at 12.
[68] THE OWNER'S AND MANAGER'S GUIDE TO CONDOMINIUM MANAGEMENT, *xiv* (rev. ed. 1984).

Condolawyers.com provides links to state condominium laws.
http://condolawyers.com/nationalaw.htm
Megalaw.com also provides links to state condominium laws web sites, as well as condominium law sites and sites to condominium articles and publications.
http://www.megalaw.com/top/condo.php

Further Reading

Curtis J. Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM L.R. 987 (1963).

Professor Berger says that one of the major goals of condominium is to allow individuals to obtain homeownership within a multifamily project. Even though the desire for homeownership is so firmly ingrained in our culture, many people do not want the upkeep and maintenance that the single-family dwelling requires. The condominium type of homeownership offers major advantages to not only the consumer, but also the space supplier, and the moneylender. The author examines the need for and the specifics of enabling legislation needed by the states. Professor Berger emphasizes that although the condominium can exist under common law it is doubtful whether it would ever flourish without statutory provisions. The author thoroughly describes two important documents that provide information on the nature of the enterprise and its internal organization, i.e., the declaration and the bylaws. Professor Berger provides a very thorough review of the development of the condominium concept that is valuable not only from an historical perspective, but for his insight into the future of condominiums. He points out in 1963 that, "As experience with condominium grows, the legislative process should enter a second phase. On the one hand, weaknesses in the prototypal laws are likely to appear and require remedy. And, on the other, condominiums may prove sufficiently desirable that new legislation will be sought to stimulate still further their establishment" (p. 1024).

Alberto Ferrer, *Some Practical Aspects of Condominium Law*, 1965 PT.II A.B.A. SEC. REAL PROP. PROB. & TR. L. PROC. 27.

At the time of this presentation, Mr. Ferrer was director of the Office of Legislative Services in Puerto Rico. A few years later, he published, with Karl Stecher, the well-know two-volume treatise on *Law of Condominium*. This presentation provides a brief overview of the state of condominium and indicates that as of 1965 sixteen states refer in their statutes not to condominium, but to "horizontal property", five states to "apartment ownership act", nine states to "unit ownership or unit property", and seventeen states use the term "condominium". Mr. Ferrer indicates that only eleven of the states actually define the boundaries of a condominium unit. These states agree "the boundaries of an apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed" (p. 29). He answers the following questions: does the council of co-owners have independent legal status?; is there tort liability of an owner for injuries due to negligence occurring on the common elements?; when is the public deed for new developments filed?; can condominium be used for a development of single family houses?

William K. Kerr, *Condominium: Statutory Implementation*, 38 ST. JOHN'S L. REV. 1 (1963)

The author compares condominium with other forms of property ownership, examines its principal characteristics and a few specific problems that may arise, such as determining the ratio of common interest, inseparability of the common elements from the unit, dealing with recalcitrant owners, and termination of the condominium. Mr. Kerr discusses some solutions to

these issues found in existing legislation. He provides a checklist at the end that specifies the points the ideal statute must include.

Charles E. Ramsey, *Condominium*, 9 PRAC. LAW., March 1963, at 22.

This article was originally delivered as a paper before the Section on Real Property, Probate and Trust Law of the American Bar Association in 1962. Mr. Ramsey uses the Horizontal Property Act of Puerto Rico "as an example of what condominium is and how it works, and to illustrate how some of its basic procedures may, with some modifications, be used in the United States" (p. 23). The author provides an excellent overview of the requirements of condominium.

CHARLES E.RAMSEY, CONDOMINIUM: THE NEW LOOK IN CO-OPS, PRACTICAL AND LEGAL PROBLEMS, (1961).

This excellent work was published shortly after the enactment of Section 234 of the National Housing Act. Mr. Ramsey, Title Officer for the Chicago Title and Trust Company, became an expert in the development of condominium in the United States. He provides background information on the development of condominium in Puerto Rico and the United States, along with a comparison of condominium and cooperative ownership. He includes a description of the FHA's new regulations concerning mortgages insured under Section 234. Mr. Ramsey fully describes the declaration and bylaws and includes a brief discussion on restrictions to be included in the declaration.

William Schwartz, *Condominium: A Hybrid Castle in the Sky*, 44 B.U. L. REV. 137 (1964).

Professor Schwartz discusses the advantages of the condominium concept of homeownership and explores whether the concept can exist in common law. He reviews the Massachusetts statute passed in 1963 that regulates condominium and indicates that although the statute is a thorough treatment of the subject there are major gaps in the legislation. "Problems remain which can only be resolved by statutory amendment or judicial decision" (p. 144). Some of these problem areas are: the un-neighborly neighbor (the author refers to condominium as an experiment in group living), the creation of a lien which has priority over all other liens, the treatment of tort liability in the statute, the lack of eminent domain provisions, and the lack of clarity in the case of a partial dissolution. The author concludes with this prophecy, "Thus , at the risk of being characterized as a false prophet, the author does predict that it will not be too long before "castles" will be built in the skies of Massachusetts" (p. 155).

CREATION OF THE CONDOMINIUM

"A condominium may be a high-rise apartment building, a garden type housing development, an office building, a shopping center of an industrial complex where each apartment, attached or semi-detached unit, office space unit, etc., is individually owned, with joint ownership and control of common areas and facilities. In each of these situations, the unit owner has a fee interest which may be sold, exchanged, mortgaged, and separately assessed for tax purposes." [69]

Developers who wish to create a condominium must declare their intent with the recording of the declaration, sometimes referred to as the master deed, as well as the by-laws and

[69] ERNEST HENRY BREUER, CONDOMINIUM: A SELECTED BIBLIOGRAPHY OF THE HISTORICAL, COMMON LAW, FEDERAL AND STATE LEGISLATION ASPECTS OF UNIT OWNERSHIP, HORIZONTAL PROPERTY AND AIR SPACE OWNERSHIP IN REAL PROPERTY, 101 (1962).

the floor plans. With these documents, "the condominium project has its legal inception."[70] These documents must be filed with the recording officer within the jurisdiction.[71]

The declaration is a constitution setting out the rights and duties of the owners, the original owners, as well as all future owners, and is an important document in modern land development. It must comply with the state condominium law.[72] "The declaration contains fundamental ownership covenants that run with the land so that it binds every person who becomes a property owner in the project. In essence, this document provides for dividing ownership, a veritable declaration of independence for the separate units created by this process as well as affirmation by unit owners of the shared obligation for commonly used areas or common elements."[73]

The declaration includes a legal description of the land and buildings, as well as a description of each unit and of the common areas. According to the Uniform Condominium Act (§2-105), it should include the name of the condominium, the name of every local jurisdiction in which any part of the condominium is located, a description of the boundaries of each unit, and a description of the limited common elements. The declaration includes any applicable restrictions, such as a no rental policy, a statement that the units are for residential purposes only, and a policy that any violation of the declaration or bylaws or any rules that the Board of Administration imposes can be remedied by legal action.

The declaration provides an overview of the administration of the condominium project, information on the alteration of the project, replacement and maintenance funds, insurance, and the procedure regarding unpaid common expenses. "The owners are also granted easements to maintain pipes, wires, conduits and public utility lines, etc., and a right of access to units to make repairs."[74] The declaration usually includes a section on eminent domain and how that could impact the condominium project.

"One of its most important features is the statement in fractions of each owner's common interest, i.e., his share of rights and duties with respect to the common elements. This fraction fixes the unit owner's pro rata burden of the common expenses."[75] The percentage is necessary to calculate each unit owner's liability for the maintenance of the common areas and improvements. It also determines the weight of each unit owner's vote for the purposes of amending the declaration or determining the association's assessments, as well as other voting issues, such as voting for the directors of the association.

"It has been held that the condominium declaration is more than a mere contract delineating the mutual rights and obligations of the parties. It also assumes some of the attributes of a covenant running with the land, circumscribing the extent and limits of the use and enjoyment of real property."[76]

The declaration is an important legal document, and it is usually difficult to amend.[77] The Uniform Condominium Act (§2-117) recommends that residential condominiums require at least 67 percent of the votes in the association for amendment, but indicates that the declaration can require a larger majority.

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[70] TRANSCRIPT OF THE TEXT PREPARED FOR DELIVERY AT THE SYMPOSIUM ON THE PRACTICAL PROBLEMS OF CONDOMINIUM. Home Title Division, Chicago Title Insurance Co., 6 (1964).
[71] GARY A. POLIAKOFF, 1 THE LAW OF CONDOMINIUM OPERATIONS, §4.22, 1988.
[72] Wayne S. Hyatt, *Community Associations: How to Draft Documents That Work*, 7 REAL EST. L.J. 30 (1978).
[73] CLURMAN, supra. at 12.
[74] BREUER, supra. at 100.
[75] TRANSCRIPT OF THE TEXT PREPARED FOR DELIVERY AT THE SYMPOSIUM ON THE PRACTICAL PROBLEMS OF CONDOMINIUM, supra. at 6.
[76] THOMAS, supra. at 240.
[77] NELSON and WHITMAN, supra. at 549.

The bylaws "are the rule book by which the association, and particularly the officers and directors function."[78] The bylaws "spell out the policies and procedures that will be employed in the everyday governance and administration of the complex."[79] The bylaws describe members of the association, the types of meetings these members are required to have and their frequency, as well as what constitutes a quorum for these meetings. The bylaws delineate the obligations of the members, including what they are required to maintain and repair, and what happens if a member does not pay his assessment fees. They describe the make-up and responsibilities of the board of administration, the terms of office, the frequency of board meetings, the timing of the notice regarding meetings, including the annual meeting, the election process, and the board's powers and duties. The bylaws usually include provisions for the removal of board members, the keeping of minutes, and the content and notice of the annual budget. In most communities, amending the bylaws is easier than amending the declaration.[80]

The rules are the regulations of the condominium project and the operational rules of behavior. They are binding on each owner.[81] The rules may include provisions for pets, parking, trash, noise, fencing, decks, patios, landscaping, exterior decorating and lighting, windows, doors, and skylights. The rules regulate the use of the common elements, the limited common elements, and the individual units. "By and large, condominium documents do not subject the rule-making authority of the board to unit owner agreement or vote. Most often, however, the board is required to distribute to each unit owner a copy of any rules that it has adopted."[82]

These documents, the declaration, bylaws, and rules provide the structure of the legal entity called the association and are referred to as covenants, conditions, and restrictions or the CC&R's.[83]

Further Reading

Robert Kratovil, *The Declaration of Restrictions, Easements, Liens, and Covenants: An Overview of an Important Document*, 22 J. MARSHALL L. REV. *69* (1988-1989).

Professor Kratovil provides a general introduction to the declaration of restrictions and illustrates how modern property law evolves. The declaration is "the operative document creating a condominium that subdivides the declarant's interest in the land horizontally and vertically. To establish a condominium, the developer must declare his intention to do so by recording a declaration containing the information required by statute. In some states the declaration is referred to as a Master Deed" (p 75). He calls the declaration "a creation of this century's lawyers' ingenuity" (p. 69). Professor Kratovil describes the early development of the homeowners association, the Uniform Condominium Act, and the Uniform Common Interest Ownership Act.

WILLIAM JAY LIPPMAN, CONDOMINIUM AND CO-OP CLOSINGS: A PRACTICAL GUIDE TO RESIDENTIAL AND COMMERCIAL PROPERTIES, (4th ed., 2008)

This excellent handbook provides extensive information for the attorney representing the purchaser and the attorney representing the seller of a condominium or co-op dwelling, as well as those purchasing a commercial condominium. The author, counsel to the law firm of Thacher

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[78] Wayne S. Hyatt, *Community Associations: How to Draft Documents That Work*, 7 REAL ESTATE LAW JOURNAL 32 (1978).
[79] PATRICK E. KEHOE, COOPERATIVES AND CONDOMINIUMS 19 (1974).
[80] NELSON and WHITMAN, supra. at 549.
[81] C. JAMES DOWDEN, CREATING A COMMUNITY ASSOCIATION: THE DEVELOPER'S ROLE IN CONDOMINIUM AND HOMEOWNER ASSOCIATIONS 36 (2ND rev. ed. 1986).
[82] GARY A. POLIAKOFF, 1 THE LAW OF CONDOMINIUM OPERATIONS, Thomson/West, §4.28 (1988).
[83] WORKING WITH YOUR HOMEOWNERS ASSOCIAITION: A GUIDE TO EFFECTIVE COMMUNITY LIVING, 59 (2003).

Proffitt & Wood, located in New York City, and an adjunct associate professor at the New York University Real Estate Institute, provides a detailed section on preparing the contract of sale. He provides an extensive systematic checklist for the closing procedure, along with a detailed explanation of each step. "The closing represents a complex coordination of a number of steps that must come to a conclusion simultaneously"(p. 4-1). The final section, a Note on Legal Sources, provides a listing of all the statutes on condominium for the fifty states. This title is available to subscribers of WESTLAW.

CARL NORCROSS, TOWNHOUSES & CONDOMINIUMS: RESIDENTS' LIKES AND DISLIKES (1973).

This is an interesting report of a survey conducted by Mr. Norcross of residents in forty-nine projects in California and the Washington, D.C. area. The emphasis in this work is on the people already living in a townhouse or condominium, not on those individuals who are considering buying. The survey attempts to determine what 1,800 individuals and families in forty-nine projects like and dislike about their townhouse or condominium. Mr. Norcross provides data on owner satisfaction, irritations with condominium living, parking problems, importance of recreational facilities, a profile of buyers, as well as the density and the people factor. The top three complaints in this survey dealt with crowding or living too close together, noisy neighbors, and barking dogs. The author includes numerous black and white photographs of the various communities, as well as sketches of land plans, including building locations, street and parking layout, and the space around them. Mr. Norcross includes a copy of the letter and the Opinion Poll that he sent to the various residents. An appendix includes the names, descriptions, price ranges, and the name of the developer of the various communities that were included in the survey.

OWNER'S AND MANAGER'S GUIDE TO CONDOMINIUM MANAGEMENT, (rev. ed. 1984).

This textbook is a reference for all persons involved with condominiums, from the developer, unit owner, property manager, and board member. It provides detailed information on the governing documents, the transfer of control from the developer to the homeowners, the board of directors, how to conduct effective membership and board meetings, the committee structure, property management and managers, maintenance and security, insurance, and the budgetary process. It also includes an extremely helpful checklist of sample forms, such as the grievance or complaint form, a sample proxy, notice of annual membership meeting, and a budget worksheet. This is an excellent resource.

POLIAKOFF, GARY A., LAW OF CONDOMINIUM OPERATIONS, (1988 & Supp. 2009-2010).

This excellent source, updated annually, provides an overview of the condominium concept, as well as an extensive section of forms. The role of the association is discussed in depth, including its structure, its role in rules enforcement, its financial obligation to the common expenses, and its insurance requirements. A chapter on the rights and liabilities of directors provides information on the responsibilities of the directors in areas of maintenance and repair of association property, fiscal planning, and enforcing covenants and restrictions. There are chapters on conducting association meetings, the covenants and restrictions of the condominium, assessment of homeowners for association expenses, as well as handling non-payment of assessments, and foreclosure. The chapter on protecting the association from risks includes information on the association's responsibility to protect the condominium from criminal activity, to protect the association property, and to protect the residents of the condominium. An interesting chapter on warranties covers the specialized field of construction defect litigation. There are chapters on amending the condominium documents, association attorneys, and the

rights and responsibilities of unit owners. Also included is a chapter on specialty condominiums, such as land condominiums, non-residential, continued care, hotel, and resort or time-share condominiums. A comprehensive index and table of cases is also included.

Charles E. Ramsey, *Condominium*, *23* MORTGAGE BANKER, December 1962, at 22.

This is an excellent introductory article regarding condominium, which provides extensive information regarding the content and requirements of the declaration. Mr. Ramsey, Title Officer of the Chicago Title and Trust Company, stressed how important it was for the declaration to mandate "that no co-owner may convey or mortgage his apartment without including also his corresponding undivided interest in the common elements, and vice versa. It is most important to the continued existence and success of the cooperative venture that this combined unit ownership not be separated" (p. 25).

Patrick J. Rohan, *Condominium Housing: A Purchaser's Perspective*, 17 STAN. L. REV. 842 (1964-1965).

The author indicates that at the time the article was written in 1964 that there were few sources of information available to provide either the purchaser or counsel for the purchaser with guidelines on factors to be considered and problems to be anticipated when purchasing a condominium unit. The author recommends a close scrutiny of both the assessment and voting rights policy in the declaration and rules, as well as the provisions for amending the condominium instruments. He also stresses the importance of the documents requiring professional management of the property. "Shortsighted economies and outright mismanagement may produce a decline in essential services, amenities, and eventually property values" (p. 856).

PATRICK J. ROHAN AND MELVIN A. RESKIN, CONDOMINIUM LAW AND PRACTICE: FORMS, (1965-2009).

This excellent multi-volume set is updated quarterly. The authors provide extensive information on the creation of condominiums, including examples of actual condominium documents and litigation documents. They include information on the condominium's use of air space, and current condominium developments, including antidiscrimination laws, construction defects, time-sharing, obsolescence, and retirement communities. They also provide citations to current condominium legislation and regulations. This title is a required resource for the professional working with condominiums.

4 DAVID A. THOMAS, THOMPSON ON REAL PROPERTY, (2nd 2004)

Chapter 36 discusses the residential property rights of owners of condominiums and cooperatives. The condominium concept provides for separate ownership of individual units in multi-unit projects, and a shared ownership as tenant in common of the common areas and facilities of a project. The chapter reviews the property rights of occupants of separate units in multi-unit buildings and the benefits of individual ownership together with shared responsibilities. This chapter also provides a brief history of condominiums, a description of the legal structure of the concept of condominiums, a description of condominium documents, liability of the Association, termination, disclosures required before sale, as well as the establishment of the mechanism for care and upkeep of common areas and facilities,
The chapter concludes with a bibliography complete with a listing of ALR annotations. This work is updated annually.

Stephen L. Williams, GREAT CONDOMINIUM RIPOFF, (1974).

The author, a research and marketing analyst within the condominium field, highlights many of the problems of condominiums during their first decade of development in this country.

Mr. Williams focus is on abusive and deceptive developers and the questionable practices of some lending institutions.

GOVERNANCE AND THE CONDOMINIUM ASSOCIATION

"The Condominium is in reality an experiment in group living. It brings together a group of individuals with diverse personalities and attitudes and imposes upon them the task of living harmoniously in close proximity one to another. In addition, these individuals also assume the responsibility of collectively managing the common areas and facilities."[84] In other words, these individuals make up the community association, sometimes referred to as the council of homeowners or the condominium association. The association is an automatic and mandatory membership organization.[85] "The association is created at the time the declaration is recorded."[86] At the time of purchase, the title owner automatically becomes a member of the association. "They must remain citizens of that association subject to its governing and taxing powers so long as they remain owners."[87]

The association has the power to govern the community and to provide for the care, upkeep, and physical maintenance of the common elements.[88] It must enforce the provisions of the founding documents, and establish, publicize, and enforce rules and penalties approved by the members. It is responsible for procuring adequate insurance coverage as required by the legal documents. It must establish sound fiscal policy, keep proper records, establish budgets and assessment rates, and support the business needs of the community. One of the ways in which it fulfills its responsibilities is to elect a board of directors from among the unit owners.

"The initial board is formed at the creation of the condominium and is appointed by the developer."[89] The administration of the condominium project rests with the developer until such time the legal documents stipulate that the owners will take control of the association. This timeframe can vary, but it often occurs at the time a certain percentage of the units have sold, for example, 80 per cent. Some states have taken the lead and have established the timeframe for the transfer of control from developer to unit owner. "This was done in response to developer abuses such as indefinitely retaining control over a certain percentage of units, selling units to developer-controlled parties, packing the board of directors with developer-controlled parties or unilaterally reserving the right to amend either the declaration or the bylaws."[90]

The start-up board appointed by the developer represents the developer, rather than the homeowners. "The developer initially controls the association both to protect the firm's financial interests and to effectively promote the sale of the condominiums in this project."[91]As additional units are sold, the board will be composed of developer-appointed individuals, as well as one or more owners who will represent the unit owners. Eventually the unit owners will begin to outnumber the developer representatives. "The role of the developer in turning over the project to new unit owners has been likened to that of a businessperson turning over an established business to new people with no business experience. The transition process is one of the most problematic areas affecting developer/unit owner relationships."[92] Wayne Hyatt states, "The emphasis is upon creating an atmosphere for the community and upon educating the members as to the general operations of the board and of the association. At its best, turnover,

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[84] Schwartz, supra, at 144.
[85] HYATT, supra, at 6.
[86] WAYNE S. HYATT, CONDOMINIUMS AND HOMEOWNER ASSOCIATIONS: A GUIDE TO THE DEVELOPMENT PROCESS 7 (1985).
[87] Id. at 6.
[88] Id. at 1.
[89] THOMAS, supra, at 263.
[90] Id. at 264.
[91] THE OWNER'S AND MANAGER'S GUIDE TO CONDOMINIUM MANAGEMENT, 49 (Rev. Ed. 1984).
[92] THOMAS, supra, at 262.

that is, transfer of control of the association, is the culmination of a gradual process of training, involvement, and mutual trust that equals transition."[93] After the transition has been completed the board moves from appointed members to elected members.

The condominium documents describe the election process for the board of directors, and they specify the board's role and responsibility within the association. The board of directors is the most visible group in the community. These individuals are homeowners who choose to be involved in the decision-making process. The board "is responsible for making all the business decisions that affect the association. It has fiduciary responsibility, legal oversight, and overall management responsibility for all of the association's business."[94] The board is also responsible for protecting, maintaining and enhancing the value of the property.

Most condominium documents include a provision allowing the board to hire a property manager to handle the day-to-day administration of the community. It is the board, however, who has the ultimate responsibility for monitoring and overseeing the management company.

"In a move that confirmed the importance of the condominium to the American housing market, the Urban Land Institute helped establish an independent organization to serve as the voice for homebuilders and homeowners called the Community Associations Institute in 1973."[95] From its development, CAI was designed to represent five groups: developers, property managers, homeowner association directors, public officials, and professionals who deal in homeowner associations, such as lawyers, landscapers, etc.[96] CAI is an educational organization, which also lobbies state legislatures on behalf of homeowner associations. Homeowner associations can govern communities of detached houses, as well as semidetached, row housing, and condominiums. In these communities, the members of the association own in common the recreational centers and the green areas. As of December, 2008, CAI had 28,929 members. CAI reports that in 2008 there were 300,800 association-governed communities with 24.1 million housing units and 59.5 million residents. This compares with 10,000 communities in 1970 with 701,000 housing units and 2.1 million residents. (http://www.caionline.org/info/research/Pages/default.aspx)

From its beginnings, CAI has focused on communication and education through the publication of newsletters and research reports. Their publishing division, Community Associations Press, publishes numerous resources for community association volunteers and professionals. Their bimonthly newsletter is *Community Manager* and their magazine is *Common Ground*. They offer a number of subscription based e-newsletters. CAI serves as a clearinghouse for information important to community associations.

"Living in a condominium, unlike living in a single-family home, eliminates individual responsibility for yard work and repairs because the homeowners association assumes those duties."[97] Prospective buyers of any condominium should read the declaration prior to purchasing a unit, and they should have a clear understanding of the rules of the community. A pet-owner must be aware prior to purchase if they are considering a community where pets are restricted. Rules may restrict the number of vehicles allowed per unit, the type of flowers allowed in certain areas in front of the unit, the color of window blinds, and the type of decorative items used, to name just a few. To avoid problems, the buyer should be aware of the community rules before purchasing the unit.

The condominium association is designed to be a democratically functioning group of informed homeowners who collectively participate in governing their community. While each member of the association owns their own unit, all members collectively own the commonly

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[93] HYATT, supra, at 318.
[94] WORKING WITH YOUR HOMEOWNERS ASSOCIATION, supra, at 23.
[95] LASNER, supra. at 522.
[96] EVAN MCKENZIE, PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT 111 (1994).
[97] CHRISTENSEN, supra, at 317.

held areas of the community and are required to finance, repair, and maintain those areas. When homeowners are interested in the operations of their community and participate in the process, they will find that their community exhibits participatory democracy at its best. If the organization is plagued with apathetic homeowners or dictatorial and untrained board members, the community experience will be less than satisfying. Surveys done by Zogby International in 2007, however, indicate that 72% of people living in a community association rate their experience as positive, with only 9% rating it as negative. Of these, 74% said that the rules of their community protect and enhance their property values.[98]

Further Reading

MARLENE M. COLEMAN AND JUDGE WILLIAM HUSS, WORKING WITH YOUR HOME OWNERS ASSOCIATION: A GUIDE TO EFFECTIVE COMMUNITY LIVING, (2003).

This book focuses on building community within your homeowners association, managing the legal issues that arise in this type of community, and managing the day-to-day operations of the community. It has specific pointers for board members, property managers, and homeowners. The section on managing legal issues provides an overview of the legal issues an association may face from time to time. The third part discusses the role that you as a resident, committee member, or board member, discusses the role you may take as you work to improve the operations of your homeowners association. This guide offers very descriptive information of the responsibility of the board of directors and the types of committees that may exist within the association, and information about property managers and various management companies. It provides descriptions of the primary documents, such as the declaration, cc&r's, bylaws, and the articles of incorporation, and the house rules. It also discusses in some depth the types of communications that should occur within a community, such as the board meetings, meetings of committees, the annual homeowner association meetings, the newsletter, suggestion process to give homeowners input, and there is a general focus on how individuals can become a part of this larger community and the role they may play. It is an excellent handbook for the new board member, a person interested in learning about what is involved in condominium and homeowner association living. This book is useful for any type of community association living, whether the community is condominium, cooperative, community apartment project, or a planned development community.

C. JAMES DOWDEN, CREATING A COMMUNITY ASSOCIATION: THE DEVELOPER'S ROLE IN CONDOMINIUM AND HOMEOWNER ASSOCIATIONS, *(*2nd rev. ed. 1986).

This is an excellent and relevant handbook on the creation and operation of community associations. The author provides recommendations on how to successfully transfer the control of the association to the unit owners, along with a very useful chart and description of the transition phase from developer control to unit owner control. Although written primarily for the developer and builder, it provides practical information to any person considering buying a home in a community association and to the person interested in serving on the board of directors. Mr. Dowden served as the executive vice-president of Community Associations Institute from 1974-1990.

WARREN FREEDMAN AND JONATHAN B. ALTER, LAW OF CONDOMINIA AND PROPERTY OWNERS' ASSOCIATIONS, (1992).

This resource provides a working knowledge of the important principles of condominium law, a detailed description of the documents of the condominium association, information

[98] WHAT AMERICANS SAY ABOUT THEIR COMMUNITY ASSOCIATIONS, NATIONAL RESEARCH BY ZOGBY INTERNATIONAL 1 (2007).

regarding its operation, creation of rules and regulations, as well as a model declaration and bylaws. Also included are sample rules and regulations, a sample management agreement, and procedures for the collection of assessments. Also included are notes and details of important cases that have established precedents in this field. Warren Freedman was formerly Liability Counsel and Assistant Secretary for Bristol-Myers Squibb Company. Jonathan B. Alter is an Associate with the law firm of Schatz, Schatz, Ribicoff and Kotkin in Stamford, CT.

WAYNE S. HYATT, CONDOMINIUM AND HOMEOWNER ASSOCIATION PRACTICE: COMMUNITY ASSOCIATION LAW, (3rd ed. 2000, 2001).

This work is primarily for the practicing attorney, but provides information of value to anyone interested in buying a home in a community association. The author discusses the creation of a common interest community, defines the community association, discusses the association powers and its functions, how design standards and control are developed, and enforcement within the community of these standards, as well as the liability of association, their board and the association members. He also covers the development, the building, and selling what is going to be built as a common interest community. Included are very practical guides to drafting the creation documents, he includes drafting checklists, and points out that the failure to develop what is considered a good legal document can be a major developer mistake. Particularly valuable is an appendix that provides a document-drafting checklist, a table of contents for the declaration of the condominium, a table of contents for the bylaws for the, and a table of contents of CC&R's for a homeowners association, as well a community association bylaws table of contents. These can be particularly valuable to the attorney writing documents for a new community.

WAYNE S. HYATT, CONDOMINIUMS AND HOME OWNER ASSOCIATIONS: A GUIDE TO THE DEVELOPMENT PROCESS, (1985).

This work is an introduction to community associations and an explanation of their creation. "The author's intention is to create a user's manual which unfolds as would the job itself if the reader were sitting down to do the work necessary to create the community association"(p. 2). Mr. Hyatt focuses on community association law, rather than real estate issues. He provides an excellent chapter on the transition process from developer to homeowner control. Mr. Hyatt emphasizes that the transition should be a process. To indicate that the transition is a time of turning over control shows a lack of understanding regarding this process that can be harmful to its ultimate success. Mr. Hyatt is a member of Hyatt & Stubblefield, an Atlanta-based law firm, and has been an adjunct professor of law at Emory University School of Law and Vanderbilt University School of Law. He specializes in representing master-planned communities and their developers. He is also the author of twelve books on legal issues relating to planned communities, condominium association law and community associations.

EVAN MCKENZIE, PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT, (1994).

This is a comprehensive study of the political and social issues posed by the rise of common interest housing developments (CIDs) governed by homeowner associations (HOAs). The author refers to homeowner associations as privatized, quasi- autonomous governments. He traces the history of CID housing from the nineteenth century to the present, and focuses on how the rise of such governing organizations is reshaping our neighborhoods. He provides an excellent chapter on the history of the Community Associations Institute. Mr. McKenzie is an attorney who spent six years representing homeowner associations in California. He has been an associate professor of political science at the University of Illinois at Chicago.

Note, *Judicial Review of Condominium Rulemaking*, 94 HARV. L. REV. 647(1981.

This note examines the problems and abuses of unrestrained condominium government, and the appropriate role of the judiciary in curtailing the condominium association's rulemaking power. The author emphasizes that enforcing condominium restrictions is desirable. The condominium enabling statutes provide for enforcement of restrictions and this in turn preserves the stability of the condominium environment. "Enforcement thus fosters condominium development by attracting buyers seeking a stable, planned environment" (p. 653). The creation and enforcement of arbitrary, capricious, and sometimes totalitarian rules must be controlled through judicial review.

RICHARD R. POWELL, POWELL ON REAL PROPERTY. (1949-2009).

Chapter 54A of this updated multi-volume set is titled "The Operation of Common Interest Communities: Condominiums, Cooperatives, Homeowner Association Developments and Time-Shares". The author provides a legal definition and overview of the key terms used in this area of law, explanations of the primary documents, explanations of issues in the day-to-day operations of the community, and an examination of the challenges confronting common-interest communities. He includes information regarding the transition from developer control, budgeting for common expenses, rules regarding pets, noise, motor vehicles, tenants, architectural controls, and association insurance.

Uriel Reichman, *Residential Private Governments: An Introductory Survey*, 43 U. CHI. L. REV. 253 (1975-76).

The author provides an analysis of the growth of the residential private government phenomenon, the term used by many in the 1960s and 1970s to describe condominium and homeowner associations, and concludes by proposing "a policy rationale for preferring a private, rather than a public, law construct for resolving disputes between the residential private government and individual homeowners" (p. 254). Professor Reichman explores the advantages of living in a residential private government community and the price of those advantages, primarily the erosion of what the author sees as the basic concepts of personal liberty in terms of property rights. Restrictions on paint color, window coverings, the ability to make certain home improvements, such as constructing a fence, and even pet ownership has the potential to be limited or forbidden by the residential private government.

RESTATEMENT (THIRD) OF PROP.: SERVITUDES (2000).

ALI added Chapter 6 to the restatements in 2000 to cover the rapidly growing body of community association law. The focus of this chapter is on residential and not commercial common interest communities. "Three strands of law come together in the law governing residential common-interest communities: the law of servitudes; the law governing the forms of ownership used in the community; and the law governing the vehicle used in the community for management of commonly held property or provision of services"(p. 69). This chapter covers the powers of common-interest communities, the duties and liabilities of the association and the board of directors, the governance of the community, and the relationship between the developer and the common-interest community. References to statutes and digests of all relevant cases are included.

Patrick J.Rohan, *Preparing Community Associations for the Twenty-First Century: Anticipating the Legal Problems and Possible Solutions*, 73 ST. JOHN'S L. REV. 3 (1999).

Professor Rohan, author of numerous articles and treatises on real property, condominiums, and community associations says that this is the age of community association living. Fewer people now rent or own one-family homes. Potential homeowners prefer to buy in developments that provide significant recreational amenities. This means that they are willing to accept responsibility for the commonly held areas of the community and the covenants and

restrictions that run with the land. Professor Rohan suggests that judges should update their view of covenants and restrictions and discontinue viewing them unfavorably as attempts to interfere with the right of every individual to enjoy his or her property. The author says, "they should be looked upon favorably (if not benignly) in the abstract, and enforced whenever reasonably possible." Additionally, "in short, the time has come to bring the law of covenants abreast of the beneficial function these devices actually serve and their all-but-universal presence in modern housing arrangements" (Page 14). Professor Rohan also provides information regarding strengthening insurance laws for community associations.

DONALD R. STABILE, COMMUNITY ASSOCIATIONS: THE EMERGENCE AND ACCEPTANCE OF A QUIET INNOCATION IN HOUSING, (2000).

Mr. Stabile explores the roots of the modern community association from feudal times to its development in present day America. He describes the various forms of community associations and the development and growth of the Community Associations Institute. The author describes the book as an intellectual and a social history of community associations. He provides extensive information on the development of CAI and an excellent selective bibliography of community associations. Mr. Stabile holds The G. Thomas and Martha Myers Yeager Endowed Chair in the Liberal Arts at St. Mary's College of Maryland where he is also chair of the Economics Department.

Understanding Condominium Association Powers: To Govern Well, the Condominium Association Must Be Endowed With the Proper Powers, 19 PRAC. REAL EST. LAW. July 2003 at 47.

To work well, the association must be a smoothly functioning private government. It must have the power to make decisions, enact and enforce rules, conduct association affairs, and the power to authorize the expenditure of common funds. This article focuses primarily on the association's responsibility for managing the common elements.

DAVID B.WOLFE, CONDOMINIUM AND HOMEOWNER ASSOCIATIONS THAT WORK, (1978).

Mr. Wolfe focuses on two areas in this volume. First, he describes the process of designing a community association through the founding legal documents. Next, he discusses the process of operating the association. He emphasizes the close relationship of these two elements and points out the harm that can occur when the founding documents are written in isolation and the day-to-day needs of the association are not considered. "Legal design is successful only when it anticipates the needs, dilemmas, and operation of the living community which will follow; and in turn, the community association's governance system depends largely, for its success, on the legal structure on which it hangs" (p. vii). This is an excellent and informative resource.

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ERNEST HENRY BREUER, CONDOMINIUM: A SELECTED BIBLIOGRAPHY OF THE HISTORICAL, COMMON LAW, FEDERAL AND STATE LEGISLATION ASPECTS OF UNIT OWNERSHIP, HORIZONTAL PROPERTY AND AIR SPACE OWNERSHIP IN REAL PROPERTY, (1962).

An excellent annotated bibliography prepared in 1962 by the librarian of the New York State Library. Mr. Breuer provides a brief overview of the development of condominium in this country and information on FHA mortgage insurance. He states his purpose for compiling the bibliography as "to list all the references to condominium which I have been able to find since I first saw this term mentioned" (p. 102) in 1961.

COUNCIL OF PLANNING LIBRARIANS, BIBLIOGRAPHY OF CONDOMINIUM LITERATURE, (1974).

A very useful bibliography of books and articles published primarily during the first decade of condominium homeownership in the United States. Many of the listed articles review state condominium legislation published during this time. There are also citations to journals from other countries.