St. Mary's Law Journal

Volume 11 | Number 4 Article 4

12-1-1980

An Analysis of the Texas Condominium Act: Maintenance and Operation of a Condominium Project.

Faye M. Bracey

COMMENTS

AN ANALYSIS OF THE TEXAS CONDOMINIUM ACT: MAINTENANCE AND OPERATION OF A CONDOMINIUM PROJECT

FAYE MACHEN BRACEY

The developing trend toward condominium ownership in the past decade has necessitated an expansion of real property law to encompass this type of land ownership.[1] A condominium project is a plan whereby a designated number of units or buildings and the land upon which they are situated are collectively offered for sale.[2] Each purchaser obtains fee simple title to his individual unit plus a proportionate interest in the balance of the project known as common elements. These areas generally include hallways, exteriors, and recreational areas and facilities.[3]

Although the concept of condominiums appears to have existed in Europe during the Middle Ages,[4] common law real property doctrines have been found inadequate to deal with the modern concept of condominiums.[5] Without adequate common law background, condominium law in the United States has evolved through statutory enactment.[6] Puerto Rico

---

1. In 1974 Congress authorized a complete study of condominiums and cooperatives to be conducted by the Secretary of Housing and Urban Development (HUD). *See* Housing and Community Development Act of 1974, Pub. L. No. 93-383, § 821, 88 Stat. 740. The full report was completed in 1975 and consists of three volumes. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY I-1, -2 (1975). For a statistical evaluation of the growth of condominiums in the United States from 1970-1975, see *id.* at I-7, -8. For a profile of the development of condominiums across the United States, see *id.* at III-1.

2. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 2(c) (Vernon Supp. 1963-1979).

3. *See id.* §§ 2(l)-(m), 6. Common elements include land on which buildings sit, foundations, bearing walls, columns, roofs, halls, stairways, lobbies, entrances, basements, yard, gardens, swimming pool, and compartments or installation of central services such as power, light, gas, and water. *Id.* §§ 2(i)-(m), 6.

4. *See* Leyser, *The Ownership of Flats - A Comparative Study*, 7 INT'L & COMP. L.Q. 31, 33 (1958).

5. The common law has no method of dealing with the operation of separate, but partially common, ownership of air space. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 227, 239 (1964).

6. Because there was no common law background to rely upon, legislation has been adopted defining the concept and development of condominiums. *See id.* at 227.

became the first United States jurisdiction to adopt legislation authorizing the development of condominium projects.[7] It was not until 1961, however, that the federal government recognized the concept of condominium ownership by enacting the National Housing Act of 1961.[8] The purpose of the Act was to give the Federal Housing Administration (FHA) authority to issue mortgage insurance on condominiums created by state law.[9] The FHA drafted a model condominium statute (FHA Model Act)[10] as a guide for states wishing to establish legislation for condominium developments.[11] The Texas Condominium Act (TCA) was adopted in 1963[12] and patterned after the FHA Model Act.[13] Today all states, the District of Columbia, Puerto Rico, and the Virgin Islands have passed condominium legislation.[14]

---

7. *See, e.g.*, Horizontal Property Act, No. 104, 1958 P.R. LAWS 243 (codified in P.R. LAWS ANN. tit. 31, §§ 1291-1293k (amended Supp. 1978)); Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 587 (1978); Note, *Recent Innovations in State Condominium Legislation*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 994, 994 (1974).

8. Pub. L. No. 87-70, 75 Stat. 149 (current version at 42 U.S.C.A. §§ 5301-5318 (West 1977)).

9. *See, e.g., id.*; Note, *Recent Innovations in State Condominium Legislation*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 994, 994 (1974); Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 523 (1977).

10. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285 (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3 (1979). The Act consists of twenty-eight sections setting out the method for establishing a condominium project as well as providing for a manner of operation. *Id.* §§ 11, 18, 19, *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 29-32 (1979).

11. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285, Commentary (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 25 n.1 (1979). The Act is only a guide to such legislation and should be analyzed in conjunction with existing state law to provide for legally effective legislation achieving the objectives established in the Model Act. *Id.*

12. 1963 Tex. Gen. Laws, ch. 191, § 26, at 512.

13. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 240 (1964).

14. *See, e.g.*, CAL. CIV. CODE ANN. §§ 1350-1370 (Deering 1971 & Supp. 1979); FLA. STAT. ANN. §§ 718.101- .508 (West Supp. 1979); Note, *Recent Innovations in State Condominium Legislation*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 994, 994 (1974). *See generally* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. A-1, at 9-10.1 (1979) (compilation of condominium legislation); U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-1 to -117 (1975) (overview of state acts regarding condominiums).

THE TEXAS CONDOMINIUM ACT

The Texas Condominium Act[15] is the type of condominium statute often referred to as "first-generation" legislation.[16] The TCA defines the type of property that may provide the basis for a condominium project,[17] and states the minimum number of units necessary to constitute a project.[18] The Act describes the property interest held by each unit owner[19] and the boundaries of his unit,[20] while providing for exclusive ownership of individual units with joint interest in the general[21] and limited[22] common elements.[23]

The TCA, like acts of other states, requires a declaration, master lease, or deed[24] be recorded to create a condominium project.[25] This instrument must include a complete legal description of the land, a plat of the units including their square footage and any parking garage, a description of all common areas, and the fractional or percentage interest of the common

---

15. TEX. REV. CIV. STAT. ANN. art. 1301a (Vernon Supp. 1963-1979).

16. This term has been adopted to represent initial enabling legislation for the development of condominium projects. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation,* 78 COLUM. L. REV. 587, 588 (1978). In the article, the author discusses the Model Condominium Code. *See id.* at 589. Statutes enacted after the original enabling legislation, such as the Model Code, have been referred to as "second-generation" statutes since they are more comprehensive. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues,* 13 REAL PROP. PROB. & TR. J. 437, 437 (1978).

17. TEX. REV. CIV. STAT. ANN. art. 1301a, § 2 (Vernon Supp. 1963-1979). Property includes all land, whether in fee simple or leasehold, easements, buildings, and improvements. *Id.* § 2(a).

18. *See id.* § 2(c) (four or more units). Some states do not specify a minimum number of units for the establishment of a project. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-7 (1975).

19. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 6 (Vernon Supp. 1963-1979). A unit owner is the title holder of "an enclosed space consisting of one (1) or more rooms occupying all or part of a floor in a building or one (1) or more floors or stories." *Id.* § 2(e).

20. *See id.* § 9 (boundaries are units' "interior surfaces of the perimeter walls, floors, ceilings and the exterior surfaces of balconies and terraces").

21. General common areas refer to all the elements used by the co-owners and any others specifically designated in the declaration. *See id.* § 2(l)(7).

22. Limited common elements are those elements for the use of only a designated number of unit owners. *See id.* § 2(m).

23. *See id.* § 6. In Ventura v. Hunter Barrett & Co., 552 S.W.2d 918 (Tex. Civ. App.—Corpus Christi 1977, writ dism'd) the court held that "common elements of a condominium are interests in land held by the owners as tenants in common." *Id.* at 921; *see* Hyatt, *Condominium and Home Owner Associations: Formation and Development,* 24 EMORY L.J. 977, 979 (1975).

24. The TCA states in pertinent part: " 'Master Deed' or 'Master Lease' or 'Declaration' means the deed, lease or declaration establishing the property as a condominium regime." TEX. REV. CIV. STAT. ANN. art. 1301a, § 2(g) (Vernon Supp. 1963-1979).

25. *See, e.g.,* TENN. CODE ANN. § 64-2703 (1976); TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 3, 7 (Vernon Supp 1963-1979); WASH. REV. CODE ANN. § 64.32.020 (1966).

areas assigned to each unit.[26] The TCA provides for the administration of the condominium project[27] according to a set of by-laws,[28] which can be amended by the council of co-owners.[29] The entity designated to have managerial authority has a duty to maintain accurate business records on the operation of the project.[30] An assessment is made to each co-owner on his pro-rata share of the costs of operating the condominium.[31] Any unpaid assessments can be collected out of the proceeds of a subsequent sale of the unit by the owner.[32] Additionally, the TCA gives the administering

---

26. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 3, 7(B) (Vernon Supp. 1963-1979); Hemingway, *Condominium and the Texas Act*, 29 TEX. B.J. 731, 732 (1966).

27. A "condominium project" is defined as "a plan or project whereby four (4) or more apartments, rooms, office spaces, or other units in existing or proposed buildings or structures are offered or proposed to be offered for sale." TEX. REV. CIV. STAT. ANN. art. 1301a, § 2(c) (Vernon Supp. 1963-1979).

28. Unlike the statutes of most states, the TCA does not have any requirements on what provisions these by-laws should include. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979) (stating management of the project is to be by by-laws without any provision on what they should include) *with* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-8, -119 n.(d) (1975) (examples of required provisions include procedures for election of a board of directors, determination of the number of positions on the board and the terms and duties of each position, assessments, establishing voting rights, calling meetings, amending by-laws, and adopting and amending rules and regulations for the project).

29. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979). A "council of co-owners" is the collective body of unit owners in the condominium project. *Id.* §§ 2(h), 2(i). The provision authorizes the council to amend the declaration but fails to specify any procedure. *Compare id.* § 13 ("The by-laws may be amended from time to time by the council.") *with* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-8, -119 n.(d) (1975) (most jurisdictions provide methods for amending declaration).

30. TEX. REV. CIV. STAT. ANN. art 1301a, § 14 (Vernon Supp. 1963-1979). While the TCA is silent as to how to designate a manager, the FHA Model Act suggests that the by-laws provide for the election of a board of directors and whether the board can hire a manager or managing agent. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285, § 19(a) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979). Under the Uniform Condominium Act (UCA) unless the declaration or by-laws provide otherwise, the unit owners are to elect an executive board to act on behalf of the association. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT §§ 3-103(a) to -103(d) (1978). The Act was approved by the National Conference of Commissioners of Uniform State Laws in August 1977 and approved by the American Bar Association in February 1978. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 437 (1978).

31. TEX. REV. CIV. STAT. ANN. art 1301a, § 15 (Vernon Supp. 1963-1979) (placing obligation on each unit owner to assist in financial operation of project).

32. *See id.* § 18 (imposing a lien for unpaid assessments on the proceeds of the sale). Most states authorize a lien upon the unit for these delinquent assessments, effective when recorded by the managing body. *See, e.g.*, CAL. CIV. CODE ANN. § 1356 (Deering 1971); FLA. STAT. ANN. § 718.116(4)(a) (West Supp. 1979); 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW

body standing to sue on behalf of more than one unit owner when the suit involves any portion of the jointly-owned common elements.[33]

Due to the nature of condominium ownership, each unit is a distinct entity that can be conveyed or encumbered separately.[34] A co-owner's percentage interest in the common elements cannot be severed from his ownership in the unit and is automatically conveyed with a sale of an individual unit.[35] The common elements cannot be divided or partitioned.[36] The TCA continues this two-part concept of ownership in its taxing clause by assessing each unit on its percentage interest in the common areas rather than taxing the common element property as a whole.[37]

One criticism of "first-generation" legislation has been that it provides for establishment of the condominium, but fails to deal adequately with the operation and management of an existing condominium project.[38] The TCA authorizes loans on condominiums[39] and recognizes the right of the co-owners to insure the project as a collective body without prejudicing the right of individual unit owners to insure their interests separately.[40] The Act addresses the contingency of disaster in a provision requiring that insurance proceeds be applied to the cost of rebuilding when the damage comprises less than two-thirds of the project.[41] When more than

---

& PRACTICE § 6.04(2)(a) (1979).

33. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 16 (Vernon Supp. 1963-1979). For the types of suits brought by the managing body, see Friendly Village Community Ass'n v. Silva & Hill Constr. Co., 107 Cal. Rptr. 123, 124 (Ct. App. 1973) (suit for damages to property resulting from settling of underlying soil); Hendler v. Rogers House Condominium, Inc., 234 So. 2d 128, 129 (Fla. Dist. Ct. App. 1970) (action to quiet title to swimming pool area); Deal v. 999 Lakeshore Ass'n, 579 P.2d 775, 777 (Nev. 1978) (action for damages for defects in construction).

34. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 4 (Vernon Supp. 1963-1979).

35. *See id.* § 9. An owner of a unit in a condominium project is given title to the individual unit in accordance with the plat of the project and an allocated interest in the common areas, thereby creating a dual-system of ownership. *See id.* § 9; Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 238 (1964); Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 523 (1977).

36. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 8 (Vernon Supp. 1963-1979).

37. *See id.* § 22. The Act expressly makes the laws regarding homestead exemptions from property taxes applicable to condominium units. *Id.* § 17.

38. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 588 (1978); Thomas, *The New Uniform Condominium Act*, 64 A.B.A. J. 1370, 1370-71 (1978).

39. *See* TEX. REV. CIV. STAT. ANN. art 1301a, § 10 (Vernon Supp. 1963-1979).

40. *See id.* § 19. For a discussion of the problems arising from destruction of a condominium and distribution of insurance proceeds, see Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 248-53 (1964). *See generally* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 12.02 (1979).

41. *See* TEX. REV. CIV. STAT. ANN. art 1301a, § 20 (Vernon Supp. 1963-1979).

two-thirds of the project is damaged, however, there is no requirement to rebuild, and the insurance proceeds will be distributed pro-rata among unit owners unless otherwise unanimously agreed.[42] When the building costs exceed the amount of insurance proceeds collected on the damaged property, those co-owners directly affected by the damage shall divide the amount not covered according to their fractional/percentage interest in all the common elements, or as provided in the by-laws.[43] Other provisions in the Act concern statutory authorization for merger of estates[44] and regulations promulgated by planning and zoning commissions.[45]

This comment will examine the operation and management of a condominium under the TCA. By comparing the Act with proposed model acts and statutes of other states, inadequacies in the language of the TCA will be highlighted. The comment will then propose solutions to these inadequacies to facilitate the operation and management of a Texas condominium.

CONSIDERATIONS IN THE OPERATION, MAINTENANCE, AND USE OF A CONDOMINIUM PROJECT

Once a condominium project is established by recordation of the declaration, the operation and maintenance of the project begins. During the initial development of the project, the developer usually retains control.[46] When the units are sold, however, the unit owners take control, thereby requiring some form of management to maintain the project.[47] The TCA recognizes the existence of an administrator or board of administrators, referred to as the council of co-owners[48] and implies management by such a council.[49] Effective co-owner management, however, has been on questionable legal grounds from its inception since there is neither a single

---

42. *See id.* § 20.

43. *See id.* § 21.

44. The project can be terminated by waiver of the regime by the co-owners who then have the county clerk merge the estates with the principal property. *See id.* § 11. The merger, however, does not bar a subsequent development of the land into condominiums. *See id.* § 12.

45. *See id.* § 23 (authorizing adoption of supplemental rules and regulations used by planning and zoning commissions to implement objectives of the Act).

46. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 597 (1978).

47. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY V-23 to -25 (1975).

48. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 2(h), 2(i), 13 (Vernon Supp. 1963-1979) (council consists of all co-owners in project).

49. *See id.* § 13; Hemingway, *Condominium and the Texas Act*, 29 TEX. B.J. 731, 772 (1966) (Act contemplates management by council of co-owners).

owner of the entire project nor any express delegation of authority to any management body by the TCA.[50] Although the TCA recognizes the project is to be governed by a set of by-laws,[51] it fails to clarify co-owner's authority to manage the project through these by-laws; consequently, TCA should be amended to expressly delegate this authority to the co-owners.[52]

The Uniform Condominium Act (UCA) recognizes the impracticality of having all the co-owners manage the project on a day-to-day basis by providing for an executive board, elected by the unit owners,[53] with authority to act on behalf of the unit owners' association, unless otherwise provided in the declaration or the by-laws.[54] Other jurisdictions obtain the same result with a provision delineating the co-owner's authority to manage the project supplemented by condominium by-laws regarding the administration of the association.[55] Suggested by-law provisions include: election of board of directors and officers; designation of terms, duties, meetings; and determination of a quorum, notification, and a method for amending the by-laws.[56] Since the management of a condominium has a tremendous effect on the success or failure of a project and consequently, the value of a unit, professional management should be considered.[57] The FHA Model Act recognizes this alternative and suggests by-laws address whether the

---

50. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 13, 14 (Vernon Supp. 1963-1979); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 246 (1964). The Act does, however, give the managing body authority to bring suit on behalf of two or more unit owners when the common elements are involved. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 16 (Vernon Supp. 1963-1979).

51. *See id.* § 13.

52. *See id.* §§ 13, 14; Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 246 (1964); *cf.* TEX. REV. CIV. STAT. ANN. art. 1301a, § 16 (Vernon Supp. 1963-1979) (authorizing suit by managing body on behalf of co-owners when common elements are involved).

53. The UCA imposes a fiduciary relationship between those officers and members of the board appointed by the declarant and the unit owners, thereby, subjecting declarant-appointed board members to a high standard of duty and liability for their acts or failure to act. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-103(a), Comment 1 (1978).

54. *See id.* § 3-103(a).

55. *See, e.g.*, ARIZ. REV. STAT. ANN. §§ 33-551(5), -561(A) (West 1974); MD. REAL PROP. CODE ANN. § 11-109 (Supp. 1979); OHIO REV. CODE ANN. §§ 5311.01(L), .08(A) (Baldwin Supp. 1978).

56. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-8 (1975); 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 7.03(2) (1979). The UCA requires that the by-laws address the composition of the executive board. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-106 (1978).

57. *See* Hennessey, *Condominium Management*, 48 ST. JOHN'S L. REV. 1064, 1064 (1974); Hyatt, *Condominium and Home Owner Associations: Formation and Development*, 24 EMORY L.J. 977, 978 (1975).

board can employ a manager or managing agent.[58]

Once project management has been clearly delegated, guidance will be needed in performing managerial duties. The sole duty imposed on the managing body under the TCA is to maintain detailed accounting records open to the co-owners for inspection.[59] The Act, however, recognizes other responsibilities exist in the operation of a condominium project by providing that guidelines be set out in the governing instrument, the by-laws.[60] This method of providing for governing the project is advantageous because it allows each project to develop its own method of operation, while authorizing by-laws covering the details of operation.[61]

Many jurisdictions not only require a set of by-laws to govern the project, but also recommend certain topics that should be covered by the by-laws.[62] For example, one topic concerning operation and maintenance of the project[63] includes procedures for budget approval of expenses incurred in the maintenance of the common elements, time and manner of collecting assessments, and authorizing restrictions and regulations governing the project.[64] Since these suggested areas of coverage in the by-

---

58. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 19(a) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979).

59. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 14 (Vernon Supp. 1963-1979). A Florida district court, construing a provision similar to TEX. REV. CIV. STAT. ANN. art. 1301a, § 14 (Vernon Supp. 1963-1979), found the owners had the right to make handwritten notes from the association's accounting records. *See* Winter v. Playa del Sol, Inc., 353 So. 2d 598, 599 (Fla. Dist. Ct. App. 1977). This right was conferred by statute requiring the association to maintain such records open to the unit owners. *Id.* at 599.

60. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979).

61. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 7.03(1) (1979). A general list of duties to be exercised by the council of co-owners might include the following: care and upkeep of common elements; collection of assessments; maintenance of all utility services, machinery, and equipment involved with the common elements such as heating and air conditioning; and acquisition of adequate insurance for the project. Hemingway, *Condominium and the Texas Act*, 29 TEX. B.J. 731, 775 (1966).

62. *See, e.g.*, D.C. CODE ENCYCL. § 5-914 (West Supp. 1978-1979); MD. REAL PROP. CODE ANN. § 11-104 (Supp. 1979); TENN. CODE ANN. § 64-2712 (1976). Even when statutes require certain by-law provisions, the legislation usually includes a catchall clause which allows the drafter to include any other provisions deemed necessary for the operation of a project. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 7.03(3) (1979).

63. *See, e.g.*, ARK. STAT. ANN. §§ 50-1015(c), -1015(d) (1971) (requiring by-laws to provide for care and upkeep of the project and manner of collecting assessments); DEL. CODE ANN. tit. 25, § 2208(7) (1974) (requiring code of regulations provide for maintenance of common elements, manner of collecting assessments, and method of adopting rules concerning use); MD. REAL PROP. CODE ANN. § 11-104(c) (Supp. 1979) (allowing by-laws to contain any provision regarding management and operation including restrictions on use).

64. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 19 (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979); U.S.

laws deal only with general topics, not specific requirements on how to operate the project, the flexibility allowed in drafting by-law provisions for varying projects is maintained.[65] For example, a statutory suggestion that the by-laws include the manner of collecting assessments does not stipulate in what manner assessments should be collected.[66] Section thirteen of the TCA should be amended to provide a checklist of topics to be covered in the by-laws to assist in drafting the governing instrument of the condominium project.[67]

A related area of discussion is the managing body's scope of authority. When the enabling legislation or by-laws delegate authority of managing the project to a designated entity, such as a board of managers, the action of the board, while acting within the scope of its managerial duties, will be validated under the doctrine of respondeat superior and general principles of agency law.[68] One disadvantage of relying upon principles of agency law to define the managing body's authority can be found in long-term management contracts and recreational leases.[69] When the condominium project is in its initial stages of development, the original owner or developer has control over management.[70] As individual units are sold,

---

DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-8, -119 n.(d) (1975).

65. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 7.03(3) (1979); Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 440 (1978).

66. *See, e.g.*, CAL. CIV. CODE ANN. § 1355(e)(1) (Deering Supp. 1979) (by-laws should provide for assessments of authorized expenditures; method of notice and levy); MD. REAL PROP. CODE ANN. § 11-104(4) (Supp. 1979) (by-laws must provide for manner of assessing and collecting each unit owner's share of common expenses); U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 19(g) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979) (by-laws should include manner of collecting assessments).

67. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 440 (1978); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 247 (1964).

68. *See* Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 525 (1977) (making an analogy to the intra vires acts of corporate management being upheld); RESTATEMENT (SECOND) OF AGENCY §§ 8, 27 (1958).

69. A "recreation lease" involves the lease of a recreation facility to the unit owners by the developer who retains title to the facility. Usually these are long-term leases requiring periodic lease payments by the co-owners. Most leases allow foreclosure on individual units in the event of non-payment. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY V-18 (1975). Florida now has a statute prohibiting escalation clauses in such leases to keep the lease payments in line with the cost of living. *See* FLA. STAT. ANN. § 718.302(3) (West Supp. 1979).

70. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY V-22 (1975).

the separate owners begin to take control of the project.[71] Because the original management contracts are made while the developer is in charge of management, he is in a position to abuse his power when entering into long-term management contracts.[72] Even when the contracts substantially remove the association's authority to manage the property, they have remained binding on a subsequent association operated by the co-owners.[73]

Contracts binding subsequent associations have proved undesirable.[74] Statutory provisions permitting termination of original management contracts have been suggested.[75] Even though the TCA gives the managing body the authority to sue on behalf of the co-owners when common elements are affected,[76] it is not certain whether the provision encompasses

---

71. For a complete discussion on the period of transition between the developer and unit owners and the problems involved in such a takeover, see *id.* at V-23, -25.

72. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 597-98 (1978) (examples include long-term management contracts between the developer and his company and leases of the recreation facilities by the developer to the association). *Compare* Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 526 (1977) (suggests guarding against such abuses) *with* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY V-23 (1975) (suggesting problems of abuse through "sweetheart" management contracts is not widespread).

73. *See* Point E. Management Corp. v. Point E. One Condominium Corp., 282 So. 2d 628, 629-30 (Fla. 1973) (long-term management contracts between the developer and his management company for operation of the project with a 99 year lease of the common elements to the co-owners bind a subsequent association comprised of the unit owners), *cert. denied*, 415 U.S. 921 (1974).

74. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 597-98 (1978).

75. *See id.* at 597-98. *Compare* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-105 (1978) (providing for termination of any contract or lease made prior to election of an executive board) *with* FLA. STAT. ANN. § 718.302(1) (West Supp. 1979) (requiring any management contract/agreement entered into before unit owners have control to be fair or subject to cancellation by unit owners) *and* MD. REAL PROP. CODE ANN. § 11-125 (Supp. 1979) (allowing a majority vote of unit owners to cancel any management contract entered into by developer). Recently a Florida court upheld the cancellation of a contract to supply laundry machines, finding the power of termination authorized by a Florida statute was not limited to "sweetheart" management contracts. *See* Wash & Dry, Inc. v. Bay Colony Club Condominium, Inc., 368 So. 2d 50, 51 (Fla. Dist. Ct. App. 1979).

76. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 16 (Vernon Supp. 1963-1979). In other jurisdictions without a statutory provision giving the managing body standing to sue, the courts have taken the view that the associations are without power to sue since they lack a property interest separate from that of individual owners. *See, e.g.*, Friendly Village Community Ass'n v. Silva & Hill Constr. Co., 107 Cal. Rptr. 123, 124, 126 (Ct. App. 1973) (suit by association for damages to property as result of settling of underground soil); Hendler v. Rogers House Condominium, Inc., 234 So. 2d 128, 129-30 (Fla. Dist. Ct. App. 1970) (class action suit by association and co-owners to quiet owners' title to swimming pool area when association has no standing to represent unit owners); Deal v. 999 Lakeshore Ass'n, 579 P.2d 775, 777 (Nev. 1978) (suit for damages against developer for defects in construction and

authority to terminate contracts and leases.[77] While the UCA devotes an entire section to the enumeration of the executive board's powers, it also recognizes that these powers can be set forth in the by-laws.[78] Under the TCA, the by-laws are the governing instrument of the project[79] and, consequently, should define the scope of management's authority.[80] When the powers are not sufficiently defined in the by-laws, the burden of showing the action was within the scope of management's authority will be more difficult.[81] The section of the condominium statute setting forth suggested by-law provisions should, therefore, include a provision for defining the powers of management[82] encompassing the right to terminate management contracts made by the original managing body.[83]

Another related consideration concerns management's authority to impose rules and regulations regarding the problems associated with community living.[84] The uniqueness of condominium living, where a number of persons live in close proximity sharing common elements, has persuaded courts to uphold regulations concerning the use of units and common elements when not arbitrary or capricious.[85] The rights of individual

---

workmanship and for accounting of revenues). *See generally* Annot., 72 A.L.R.3d 314 (1976).

77. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 16 (Vernon Supp. 1963-1979) (giving management body standing to sue when common elements are affected) *with* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-105 (1978) (giving executive board power to terminate developer management contacts).

78. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-102(a)(1) (1978).

79. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979).

80. *See* Note, *Promulgation and Enforcement of House Rules*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 1132, 1133 (1974).

81. *See* Point E. Management Corp. v. Point E. One Condominium Corp., 282 So. 2d 628, 629-30 (Fla. 1973) (authority of association to manage project did not include power to cancel original management contracts even when contracts substantially divested association of authority to manage), *cert. denied*, 415 U.S. 921 (1974).

82. *See, e.g.*, CAL. CIV. CODE ANN. § 1355 (Deering Supp. 1979) (suggesting by-laws set out powers of managing body); MISS. CODE ANN. § 89-9-17(2) (1972) (suggesting powers of management body be provided in declaration of restrictions); OHIO REV. CODE ANN. § 5311.08(B)(1) (Baldwin Supp. 1978) (requiring by-laws to cover power and authority of unit owners' association).

83. *Compare* FLA. STAT. ANN. § 718.302(1) (West Supp. 1979) (requiring any management contract/agreement entered into before unit owners have control to be fair or subject to cancellation by unit owners) *with* MD. REAL PROP. CODE ANN. § 11-125 (Supp. 1979) (allowing majority of unit owners to cancel any management contract entered into by developer).

84. *See* Note, *Promulgation and Enforcement of House Rules*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 1132, 1132-33, 1145 (1974) (where by-laws are unclear on council's powers, unit owners may question council's authority to impose rules and regulations on the use of common elements).

85. *See, e.g.*, Hidden Harbour Estates, Inc. v. Norman, 309 So. 2d 180, 182 (Fla. Dist.

unit owners are balanced with those of the entire project to determine if the regulation is reasonable.[86] Unlike the UCA, there is not express authorization in the TCA to make such rules and regulations.[87] Although the management body might derive the power to enforce such restrictions from its general authority to manage the project,[88] power can also be derived from a by-law provision requiring a method for adopting and amending the rules and regulations.[89] The FHA Model Act recommends any such restrictions on the use of the units or the common elements be included in the by-laws.[90] Since the unit owners are the ones affected by these rules and regulations and their consent is necessary to amend the by-laws,[91] regulations on the use of the premises should be contained in the by-laws, thereby insuring the unit owners' consent and defining the board's authority to enforce such rules.[92] To insure the by-laws address the area of rules and regulations, the TCA should recommend a by-law authorizing the adoption of regulations on the use and maintenance of

---

Ct. App. 1975) (upholding rule forbidding alcoholic beverages in clubhouse adjacent to common areas); Baum v. Ryerson Towers, 287 N.Y.S.2d 791, 794 (Sup. Ct. 1968) (upholding limitation on hours in community party room); 930 Fifth Corp. v. King, 338 N.Y.S.2d 773, 775 (App. Div. 1973) (upholding no-pet rule). *See generally* Hyatt, *Condominium and Home Owner Associations: Formation and Development*, 24 EMORY L.J. 977, 1003-05 (1975); Annot., 72 A.L.R.3d 308 (1976).

86. Seagate Condominium Ass'n v. Duffy, 330 So. 2d 484, 486-87 (Fla. Dist. Ct. App. 1976) (leasing restrictions on condominiums when limited and reasonable are not illegal restraints on alienation); Ryan v. Baptiste, 565 S.W.2d 196, 198 (Mo. Ct. App. 1978) (locks and exterior doors while increasing security did not infringe on use and enjoyment of property). *But see* Davis v. Geyer, 9 So. 2d 727, 729-30 (Fla. 1942) (restriction prohibiting sale without second party's approval illegally restrains alienation of property).

87. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979) (condominium project is to be governed by by-laws) *with* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-102(1) (1978) (unit owners' association has power to adopt rules and regulations). *See also* Le Febvre v. Osterndorf, 275 N.W.2d 154, 158-59 (Wis. Ct. App. 1979) (allowing statutory remedy of injunctive relief to keep developer from leasing unsold units in contravention of restriction against leasing).

88. *See* Note, *Living in a Condiminium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 525 (1977); RESTATEMENT (SECOND) OF AGENCY §§ 8, 27 (1958).

89. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 248 (1964); Note, *Promulgation and Enforcement of House Rules*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 1132, 1135 (1974).

90. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285, §§ 19(i)-19(j) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979).

91. TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979).

92. *See* Note, *Promulgation and Enforcement of House Rules*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 1132, 1134, 1145 (1974) (suggesting by-laws provide for rules and regulations to prevent managing board from adopting rules without unit owners' consent and to put unit owners on notice of board's authority to enforce rules).

the units and common areas.[93]

One rule to be considered in the by-laws is the right of first refusal on sales of units.[94] This rule provides a device for controlling the selection of co-owners of the project by requiring a co-owner who wishes to sell his unit first offer it to the association for purchase at the price being offered by a prospective purchaser.[95] Such a provision, however, may not be valid if found to be an illegal restraint on alienation.[96] In *Chianese v. Culley*[97] a federal district court upheld such a provision finding it similar to an option and not a restraint on alienation since the owner was not *precluded* from selling his unit.[98] When the provision requires the unit be *offered* for sale and does not state a predetermined price, the restraint will be upheld.[99]

The Rule Against Perpetuities[100] could pose a similar problem with the validity of a provision granting a right of first refusal.[101] Since not every future interest is subject to the Rule,[102] judicial interpretation is neces-

---

93. *See, e.g.*, CONN. GEN. STAT. ANN. § 47-80(c)(8) (West 1978); N.Y. REAL PROP. LAW § 339-v-1(h) (McKinney 1968); U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, §§ 19(i) -19(j) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979).

94. *See* Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L. REV. 1810, 1810-11 (1965).

95. *See id.* at 1811. In Coquina Club, Inc. v. Mantz, 342 So. 2d 112 (Fla. Dist. Ct. App. 1977), the court found an applicant must qualify for membership in the association before the unit owner can invoke the provision. *Id.* at 114.

96. *See* Chianese v. Culley, 397 F. Supp. 1344, 1346-47 (S.D. Fla. 1975); Ritchey v. Villa Nueva Condominium Ass'n, 146 Cal. Rptr. 695, 700 (Ct. App. 1978).

97. 397 F. Supp. 1344 (S.D. Fla. 1975) (provision requires owner contracting to sell his unit to give notice to managing body who must either approve sale or furnish another purchaser at same price within sixty days).

98. *See id.* at 1346.

99. *See* Ritchey v. Villa Nueva Condominium Ass'n, 146 Cal. Rptr. 695, 700 (Ct. App. 1978); RESTATEMENT OF PROPERTY §§ 406, 413 (1944).

100. The Rule Against Perpetuities requires a contingent future interest vest not later than twenty-one years after some life in being at the creation of interest, plus a period of gestation. *See, e.g.*, Henderson v. Moore, 144 Tex. 398, 401, 190 S.W.2d 800, 801 (1945); Brooker v. Brooker, 130 Tex. 27, 38-39, 106 S.W.2d 247, 254 (1937); Atkinson v. Kettler, 372 S.W.2d 704, 711 (Tex. Civ. App.—Dallas 1963), *aff'd*, 383 S.W.2d 557 (1964). Of interest is Lucas v. Hamm, 364 P.2d 685, 15 Cal. Rptr. 821 (1961), *cert. denied*, 368 U.S. 987 (1962) in which the court refused to hold an attorney negligent for failure to comply with the Rule in drafting a will, stating that few areas of the law are more confusing. *Id.* at 690, 15 Cal. Rptr. at 826.

101. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 265 (1964) (suggesting local case law may exempt provisions in Texas instruments from Rule); Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L. REV. 1810, 1820 (1965).

102. *See* Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L.

sary to determine if the Rule is applicable.[103] To avoid this uncertainty, the right of first refusal should be granted to a particular party then living, rather than to a management entity designed to exist indefinitely.[104]

When the right of first refusal is used to achieve compatible membership in a community living in close proximity, this right of first refusal has been found reasonable.[105] Statutory language providing for this right, however, might be declared void as sanctioning a discriminatory property device.[106] Once a management body has authority to issue rules and regulations regarding the project, a by-law provision allowing a right of first refusal should be upheld if it provides the property be offered for sale to a designated party in being for the purpose of obtaining compatible membership.[107]

The money required to operate the condominium project's common elements is provided by assessments paid by each co-owner.[108] The TCA imposes a personal obligation that cannot be waived on each co-owner to contribute his share for the operation and maintenance of the common elements.[109] This same allocation of interests controls the owner's voting

---

REV. 1810, 1820 (1965). *Compare* Dozier v. Troy Drive-In-Theatres, 89 So. 2d 537, 543-45 (Ala. 1956) (finding option to repurchase in deed was conditional fee, a vested interest, and therefore, not subject to the Rule) *with* Rocky Mtn. Fuel Co. v. Heflin, 366 P.2d 577, 580 (Colo. 1961) (option to repurchase in grantor, unlimited in time, is a contract right and subject to the Rule).

103. The weight of authority holds options to repurchase reserved in the grantor and unlimited in time, being contract rights, are subject to the Rule Against Perpetuities. *See, e.g.*, Rocky Mtn. Fuel Co. v. Heflin, 366 P.2d 577, 580 (Colo. 1961); Neustadt v. Pearce, 143 A.2d 437, 438 (Conn. 1958); Tucker v. Ratley, 568 S.W.2d 797, 799-800 (Mo. Ct. App. 1978). *But see* Weber v. Texas Co., 83 F.2d 807, 808 (5th Cir.) (right of first refusal in a lease, unlimited in time, does not violate the Rule), *cert. denied*, 299 U.S. 561 (1936).

104. *See* Note, *Condominiums and the Right of First Refusal*, in *Symposium on the Law of Condominiums*, 48 ST. JOHN'S L. REV. 1146, 1148, 1157 (1974); Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L. REV. 1810, 1820 (1965).

105. *See* Chianese v. Culley, 397 F. Supp. 1344, 1346-47 (S.D. Fla. 1975).

106. *See* Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 1018-19 (1963); Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L. REV. 1810, 1812 (1965).

107. *See* Ritchey v. Villa Nueva Condominium Ass'n, 146 Cal. Rptr. 695, 700 (Ct. App. 1978); RESTATEMENT PROPERTY §§ 406, 413 (1944). *See generally* Boyer & Spiegel, *Land Use Control: Pre-emptions, Perpetuities and Similar Restraints*, 20 U. MIAMI L. REV. 148, 182 (1965); Rubens, *Right of First Refusal and Waiver of the Right of Judicial Partition*, 14 HASTINGS L.J. 255, 257-58 (1963); Note, *Right of First Refusal - Homogeniety in the Condominium*, 18 VAND. L. REV. 1810, 1817-23 (1965).

108. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 15 (Vernon Supp. 1963-1979); Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 526 (1977).

109. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 15 (Vernon Supp. 1963-1979) (binding all co-owners to contribute their pro-rata share toward expenses of administering, maintaining, and repairing common areas plus any other expenses lawfully agreed upon by council of

rights in the project.[110] Although the TCA recognizes joint ownership of the common elements,[111] it does not provide a basis for computing these proportionate property interests.[112] The importance of allocating these interests was highlighted by *Daytona Development Corp. v. Bergguist,*[113] in which a Florida court construed a provision analogous to TCA sections six and seven.[114] The appellate court found the developer's failure to assign a percentage interest in the common elements to be a "fatal defect" in the creation of the original unit.[115] Affirming the trial court's decision, the court divided the void unit among the remaining owners as if it were a common element.[116] While Texas is not the only state failing to provide a method for computing each unit's allocation of interest in the common areas,[117] the majority of jurisdictions provide for the interests to be determined on the ratio of the unit's value to the value of the entire project.[118]

---

co-owners). Developers are subject to the same assessments on unsold units as other unit owners. *See* Margate Village Condominium Ass'n v. Wilfred, Inc., 350 So. 2d 16, 17 (Fla. Dist. Ct. App. 1977); Century 21 Commodore Plaza, Inc. v. Commodore Plaza at Century 21 Condominium Ass'n, 340 So. 2d 945, 949-50 (Fla. Dist. Ct. App. 1976).

110. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 2(j) (Vernon Supp. 1963-1979); Walter, *Condominium Government: How Should the Laws Be Changed?*, 4 REAL EST. L.J. 141, 143-46 (1975) (advocating retention of the one man, one vote concept rather than apportioning voting rights on the basis of common element ownership).

111. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 6, 8, 9 (Vernon Supp. 1963-1979); Ventura v. Hunter Barrett & Co., 552 S.W.2d 918, 921 (Tex. Civ. App.—Corpus Christi 1977, writ dism'd) (condominium owners hold common elements, interests in land, as tenants in common).

112. TEX. REV. CIV. STAT. ANN. art. 1301a, § 7(B)(6) (Vernon Supp. 1963-1979) (providing allocation of interest in common elements be affixed, without setting forth any basis for deriving percentages); Hemingway, *Condominium and the Texas Act,* 29 TEX. B.J. 731, 774 n.7 (1966); *cf.* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 6(a) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 27 (1970) (percentage of each owner's interest in common areas computed by taking value of his unit in relation to the value of all property in project).

113. 308 So. 2d 548, 549 (Fla. Dist. Ct. App. 1975).

114. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 6, 7(B)(6) (Vernon Supp. 1963-1979) (providing for joint interest in common elements by co-owners and requiring these proportionate interests be set out in declaration) *with* FLA. STAT. ANN. § 711.08(1)(f) (West 1969) (current version at FLA. STAT. ANN. § 718.104(4)(f) (West Supp. 1979)) (declaration must contain each unit's share of interest in common elements).

115. *See* Daytona Dev. Corp. v. Bergguist, 308 So. 2d 548, 550 (Fla. Dist. Ct. App. 1975).

116. *See id.* at 549-50.

117. *See, e.g.,* FLA. STAT. ANN. § 718.104(f) (West Supp. 1979); GA. CODE ANN. § 85-1615(a) (1978); MD. REAL PROP. CODE ANN. § 11-107(a) (Supp. 1979). *See generally* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.01(3), at 6-5 (1979).

118. *See, e.g.,* ARK. STAT. ANN. § 50-1006 (1971); D.C. CODE ENCYCL. § 5-906(a) (West Supp. 1978-1979); MO. ANN. STAT. § 448.030(3) (Vernon Supp. 1979). *See generally* U.S.

There are numerous methods of computing the allocation of interests in the common elements, such as equality, unit-size, par value, and market value.[119] For legislation to establish one method for computing these interests is to deny the developer the opportunity to affix different methods of computation to the various interests and obligations of the unit owner.[120] The FHA Model Act follows the predominant rule establishing the proportion of the unit's value to the value of the whole project as the method of computing ownership in the common elements[121] and then applies this figure to the unit owner's other interests and obligations.[122] The UCA follows the more flexible approach by requiring the developer stipulate the method used in computing the allocations, without requiring any particular method be used.[123] The TCA should adopt a provision analogous to the UCA to allow flexibility and creativity in the creation of a condominium project while insuring that some method of allocation of these important interests is established.[124]

A common question arising from the obligation to pay maintenance assessments involves the determination of which expenses are considered

---

DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY VI-12 (1975) (unit owner's fractional interest in common elements is ratio between value of his unit to whole project at time declaration is filed). For a list of states using a value basis, see 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.01(3), at 6-4 n.11 (1979).

119. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues,* 13 REAL PROP. PROB. & TR. J. 437, 441 (1978).

120. *See id.* at 442-43. For example, the developer may choose to assign percentage ownership in the common elements for purposes of termination of the project based upon the size of the unit, while using the value basis for determining liability for common expenses. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 7(B)(6) (Vernon Supp. 1963-1979) (requiring the declaration set out percentage interests of ownership in the common elements assigned to each unit) *and id.* § 15 (owner must contribute his pro-rata share to the payment of common expenses) *with* MD. REAL PROP. CODE ANN. § 11-107 (Supp. 1979) (allowing different methods of computation for the varying rights involved).

121. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 6(a) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 27 (1979).

122. *See id.* §§ 10 (common expenses charged to unit owners according to their ownership in common elements), 11(6) (voting based on percentage of undivided interest in common elements).

123. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 2-108(a) (1978).

124. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 7(B)(6) (Vernon Supp. 1963-1979) (requiring percentage interest in common elements be assigned to each unit) *with* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 2-108(a) (1978) (requiring developer to state method used in computing allocations which must be set out in the declaration).

part of the operation and management of the common areas.[125] Should the enabling legislation attempt to define the expenses included,[126] a particularized list could not be comprehensive because expenses will vary with each individual project.[127] These expenses generally include salaries of the maintenance staff, costs of upkeep of the common elements, operation of recreational facilities, and management fees.[128] The TCA recognizes the authority of the co-owners to determine the common expenses for which they are liable,[129] while some states require the by-laws provide for common expenses.[130] One problem with merely allowing the expenses to be provided for in the by-laws is that when the by-laws grant general managerial authority to a board of directors, the board has discretion in determining what expenses are necessary, even though the co-owners are the ones obligated to pay the expenses.[131] Since the TCA creates a per-

125. *See* Trafalgar Towers Ass'n #2 v. Zimet, 314 So. 2d 595, 597 (Fla. Dist. Ct. App. 1975) (condominium association, pursuant to its duty to maintain common elements, has power and authority to buy condominium unit to house resident manager, assessing cost proportionately to all unit owners). *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 15 (Vernon Supp. 1963-1979) (includes expenses of maintenance and operation of common elements and any others lawfully agreed upon) *with* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 2(g) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 26-27 (1979) (all expenses lawfully agreed upon and assessed by the association of owners including expenses incurred in the maintenance, operation, and replacement of common elements and those so designated). *See generally* Annot., 77 A.L.R.3d 1290 (1977).

126. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 2(g) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 26-27 (1979) (all lawfully assessed expenses for operation and maintenance of the common elements, all common expenses, either consented to by co-owners or so designated in the Act, declaration, or by-laws).

127. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.02(1), at 6-12 to -13 (1979).

128. *See* U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY V-20 (1975).

129. *See, e.g.*, ARIZ. REV. STAT. ANN. § 33-561(A) (West 1974); TEX. REV. CIV. STAT. ANN. art 1301a, § 15 (Vernon Supp. 1963-1979) (requiring co-owners to pay for expenses in maintaining and repairing condominium and "any other expenses lawfully agreed upon by the council of co-owners"); U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 2(g) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 26-27 (1979).

130. *See* CAL. CIV. CODE ANN. § 1355(e)(1) (Deering Supp. 1979) (authorizing the by-laws to provide assessments for authorized expenditures of any management body); OHIO REV. CODE ANN. § 5311.08(B)(5) (Baldwin Supp. 1978) (requiring by-laws to cover all common expenses).

131. *See* Association of Unit Owners v. Gruenfeld, 560 P.2d 641, 644 (Or. 1976). The

sonal obligation on the co-owner to pay his share of the expenses,[132] with any delinquency payable out of the proceeds of a future sale,[133] the authority of co-owners to determine the extent of their liability should not be left to the by-laws, but should be clarified in the statute to give the majority of the unit owners the right to reject any budget or expense.[134]

The TCA provides for the collection of maintenance assessments from the proceeds of future sales of the unit.[135] In order to protect the interests of the other unit owners by insuring that each owner will contribute his share of operating costs, the sole method of enforcement should not be delayed until a sale of the unit.[136] The majority of jurisdictions impose a forecloseable lien on a unit in the amount of unpaid assessments,[137] with a provision making the liens superior to all others except real estate tax liens and first mortgages.[138] The imposition of a lien for payment of delinquent assessments in Texas, however, may not be valid because of the constitutional protection against forced sale of certain homesteads.[139] Since the unit can be owned in fee simple[140] and the Act authorizes homestead exemptions in taxing each unit,[141] methods other than the lien

---

UCA provides for management by an executive board giving a majority of the unit owners the authority to reject any budget or expense within thirty days after approval by the board. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-103(b) (1978).

132. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 15 (Vernon Supp. 1963-1979).

133. *See id.* § 18.

134. *Compare id.* § 15 (merely imposes duty to pay assessment) *with* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-103(b) (1978) (unit owners may reject any budget or capital expenditure approved by board).

135. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 18 (Vernon Supp. 1963-1979).

136. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 269 (1964).

137. *See, e.g.*, CAL. CIV. CODE ANN. § 1356 (Deering 1971); FLA. STAT. ANN. § 718.116(4)(a) (West Supp. 1979); MD. REAL PROP. CODE ANN. § 11-110(d) (Supp. 1979). *See generally* P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.04(2) (1979); U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, § 23 (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 33 (1979).

138. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.04(2), at 6-26 to -27 (1979); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 269-70 (1964). While also providing a lien for unpaid assessments, the UCA places these liens ahead of first mortgages up to the amount of assessments due six months prior to the action for enforcement. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-115(b) (1978); Thomas, *The New Uniform Condominium Act*, 64 A.B.A. J. 1370, 1372 (1978).

139. *See* TEX. CONST. art XVI, § 50; TEX. REV. CIV. STAT. ANN. art. 3833 (Vernon Supp. 1980); 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 6.04(2), at 6-28 (1979); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 268 (1964).

140. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 2(a), 4, 6 (Vernon Supp. 1963-1979).

141. *See id.* § 17.

technique should be considered in developing an effective method of enforcement.[142] Merely providing for the collection of interest or late charges on unpaid assessments, however, does no more than the TCA provision which furnishes no immediate remedy for collecting the money necessary to operate the project.[143] While a provision allowing forcible entry and detainer for nonpayment of assessments provides one effective remedy,[144] a less drastic and more practical method is to give the managing body authority, upon consent of the co-owners, to discontinue utility services to the defaulting unit a designated number of days after demand for delinquent assessments has been made.[145] This provision should not replace the existing method of collection under the TCA,[146] but should be added to the Act to give the managing body a continuous method for collecting maintenance assessments.[147]

PROPOSAL[148]

While the Texas Legislature should consider both the FHA Model Act and the UCA in adopting amendments to the TCA, it should only use these Acts as guides for drafting new legislation to deal adequately with the management of a condominium in Texas.[149] In a 1975 study of condo-

142. *Compare* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 269 (1964) (suggesting lien technique is most certain method of payment and, therefore, any homestead exemption should be made subordinate to managing body's authority to collect assessments) *with* Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 528 (1977) (stating foreclosure of any such lien is "overkill" as well as being impractical and slow).

143. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a, § 18 (Vernon Supp. 1963-1979) (providing for payment of unpaid assessment from proceeds of a future sale of unit) *with* MD. REAL PROP. CODE ANN. § 11-110(e) (Supp. 1979) (allowing interest or late charges to be added to late payments).

144. ILL. ANN. STAT. ch. 30, § 309.2 (Smith-Hurd Supp.1979) (allowing association an action for forcible entry and detainer for nonpayment of assessments).

145. *See* ALASKA STAT. § 34.07.220 (1975); WASH. REV. CODE. ANN. § 64.32.200 (1966); Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 528 (1977).

146. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 18 (Vernon Supp. 1963-1979).

147. *Compare id.* § 18 (unpaid assessments are payable upon the sale of any unit) *with* ALASKA STAT. § 34.07.220 (1975) (allowing utility service to be cut off ten days after demand for payment) *and* WASH. REV. CODE ANN. § 64.32.200 (1966) (board of managers may discontinue utility service, with consent of owners, ten days after demand for payment).

148. An appendix following the text contains proposed amendments to selected sections of the Texas Condominium Act. Footnotes to the following text containing proposals for amendments to the Act refer to the appendix sections.

149. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING AND URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, Commentary (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 25 n.1 (1979) (only a guide to such legislation which should be analyzed in conjunction with ex-

miniums,[150] one of the major complaints by condominium owners was the complexity of the documents.[151] While the sections of the UCA provide a comprehensive list of issues to be considered in creating a condominium,[152] the Act as a whole is too lengthy for adoption.[153] It would create even more complexity if drafters of condominium documents attempted to address the many provisions of the UCA.[154] The FHA Model Act, the original guide for the TCA,[155] contains several provisions which are helpful in structuring the management of the project.[156]

While TCA implies the condominium project is to be managed by the co-owners,[157] to clarify the authority of the owners to manage the project TCA section thirteen should be rewritten to expressly delegate managerial authority to the co-owners to act in accordance with the by-laws.[158] The procedures for amending the by-laws should be provided with at least a majority vote of the co-owners required for amendment.[159] In order to maintain the flexibility essential to condominium development,[160] while furnishing a checklist of essential issues to be addressed in the by-laws,[161] Texas should adopt a by-law provision analogous to that in the FHA Model Act, suggesting that certain topics be covered in the by-

---

isting state law to provide for legally effective legislation to achieve Act's objectives).

150. U.S. DEP'T OF HOUSING & URBAN DEV., I CONDOMINIUM/COOPERATIVE STUDY (1975).

151. *See id.* at V-17.

152. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 440 (1978).

153. *See* Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 589 (1978).

154. *Compare* TEX. REV. CIV. STAT. ANN. art. 1301a (Vernon Supp. 1963-1979) *with* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT §§ 3-101 to -117 (1978).

155. *See* Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 240 (1964).

156. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM NO. 3285, §§ 7, 19 (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 28, 32 (1979).

157. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 13 (Vernon Supp. 1963-1979); Hemingway, *Condominium and the Texas Act*, 29 TEX. B.J. 731, 772 (1966).

158. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, §§ 13, 14 (Vernon Supp. 1963-1979); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 246 (1964). See Appendix, § 1.

159. *See* CAL. CIV. CODE ANN. § 1355(c) (Deering Supp. 1979) (reasonable amendments consented to by at least a majority of unit owners are binding on all co-owners); DEL. CODE. ANN. tit. 25, § 2207 (1974) (authorizing council to amend by-laws, subject to change by the majority of unit owners). See Appendix, § 1.

160. *See* 1 P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE § 7.03(2) (1979).

161. *See* Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL. PROP. PROB. & TR. J. 437, 440 (1978).

laws.[162] By necessity these provisions will cover only general areas of management.[163]

To provide for the everyday operation of the project, one suggested provision should address the election of a governing board, appropriately titled the council of co-owners (council).[164] The composition of the council, its duties, and authority to delegate responsibility to a manager or managing agency should be addressed.[165] Further administrative considerations include the manner of calling meetings, determination of a quorum, and the procedures for budget approval of expenses incurred in the operation of the project.[166]

To avoid resorting to general principles of agency law when the council is acting on behalf of the co-owners, the by-laws should define the scope of the council's authority.[167] A suggested by-law provision concerning adoption and amendment of rules and regulations governing the project could serve a dual purpose by expressly authorizing the termination of unfair management contracts made by the developer prior to take-over by the co-owners,[168] while sanctioning a remedy for the problems associated with community living.[169] To insure the developer establishes a particular method for computing each owner's allocated interest in the common elements, TCA section 7(B)(6) should be amended to include in the declaration the formula used to determine each unit's proportionate share of the common elements.[170] A provision similar to that found in the UCA would

---

162. *See* U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285, § 19 (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App. B-3, at 32 (1979). See Appendix, § 2.

163. *See* D.C. CODE ENCYCL. § 5-914 (West Supp. 1978-1979); TENN. CODE ANN. § 64-2712 (1976). See Appendix, § 2.

164. *See* CAL. CIV. CODE ANN. § 1355(a) (Deering Supp. 1979); 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-106(2) (1978). See Appendix, § 2(a).

165. *See* N.Y. REAL PROP. LAW § 339-v-1(a) (McKinney Supp. 1979-1980); 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-106 (1978). See Appendix, § 2(a).

166. *See* MD. REAL PROP. CODE ANN. § 11-104 (Supp. 1979); U.S. FEDERAL HOUSING ADMIN., DEP'T OF HOUSING & URBAN DEV., MODEL STATUTE FOR THE CREATION OF APARTMENT OWNERSHIP, FORM No. 3285, §§ 19(b)-19(f) (1962), *reprinted in* 1A P. ROHAN & M. RESKIN, CONDOMINIUM LAW & PRACTICE, App B-3, at 32 (1979). See Appendix, §§ 2(b), 2(f).

167. *See, e.g.*, CAL. CIV. CODE ANN. § 1355(b)(1) (Deering Supp. 1979); MISS. CODE ANN. § 89-9-17(2)(i) (1972); OHIO REV. CODE ANN. § 5311.08(B)(1) (Baldwin Supp. 1978).

168. *See* FLA. STAT. ANN. § 718.302(1) (West Supp. 1979); 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM LAWS, § 3-105 (1978). See Appendix, § 2(d).

169. *See* CONN. GEN. STAT. ANN. § 47-80(c)(8) (West 1978); N.Y. REAL PROP. LAW § 339-v-1(h) (McKinney 1968). See Appendix, § 2(e).

170. *See, e.g.*, MD. REAL PROP. CODE ANN. § 11-107 (Supp. 1979); TEX. REV. CIV. STAT. ANN. art. 1301a, § 7(B)(6) (Vernon Supp. 1963-1979); Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 444-45 (1978).

allow the developer flexibility and creativity in establishing varying methods of computation for the determination of a unit owner's ownership in the common elements, liability for common expenses, voting rights, and rights upon termination of the project.[171]

Presently under the TCA the co-owners are personally obligated to pay their proportionate share of all expenses incurred in maintaining the common elements and any others lawfully agreed upon; however, the Act does not provide how such expenses are to be authorized.[172] To insure co-owners are allowed to determine the extent of their liability, TCA section fifteen should be amended to give the majority of unit owners the right to reject any budget or expense.[173] In addition, a by-law provision concerning a method for adopting a budget would enable the co-owners to authorize expenditures on a periodic rather than a continuous basis.[174] Since the operation of the condominium project depends on the collection of assessments from each unit owner, TCA section eighteen should be revised to allow a more expedient method of collection than from the proceeds of reselling the unit.[175] A provision allowing the council to have utility service discontinued in a unit when there has been a failure to pay assessments after a demand would protect the interests of the other unit owners by insuring an effective and expedient method for collecting delinquent assessments.[176]

With the incorporation of these suggested revisions to the TCA, the operation and maintenance of a Texas condominium will be more sharply defined, without impairing the flexibility in creating individualized condominium projects. In the interim, practitioners involved in the development of condominiums should draft by-laws adequately covering the issues raised by the proposed legislation.

---

171. *See* 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 2-108 (1978); Judy & Wittie, *Uniform Condominium Act: Selected Key Issues*, 13 REAL PROP. PROB. & TR. J. 437, 441-42 (1978) (various methods for computing interests reviewed). See Appendix, § 3.

172. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 15 (Vernon Supp. 1963-1979).

173. *See id.* § 15 (imposing personal obligation on unit owner for payment of expenses for operating project and any other expenses "lawfully agreed upon" by co-owners); 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-103(b) (1978) (giving majority of co-owners authority to reject any budget or expense within thirty days after it has been approved by executive board). See Appendix, § 4.

174. *See* TENN. CODE ANN. § 64-2712 (1976); 7 U.L.A. BUSINESS AND FINANCE LAWS, UNIFORM CONDOMINIUM ACT § 3-103(b) (1978). See Appendix, § 2(f).

175. *See* TEX. REV. CIV. STAT. ANN. art. 1301a, § 18 (Vernon Supp. 1963-1979); Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUS. L. REV. 226, 269 (1964).

176. *See* ALASKA STAT. § 34.07.220 (1975); WASH. REV. CODE ANN. § 64.32.200 (1966). *See generally* Note, *Living in a Condominium: Individual Needs Versus Community Interests*, 46 U. CINN. L. REV. 523, 528-29 (1977). See Appendix, § 5(a).

APPENDIX

PROPOSED AMENDMENTS TO SELECTED SECTIONS OF THE TEXAS CONDOMINIUM ACT

§1. Section thirteen of the Texas Condominium Act should be amended to read as follows:

MANAGEMENT

The management of every building or buildings constituting a condominium project shall be governed by the by-laws. By-laws shall be adopted and may be amended upon vote or consent of not less than a majority of the owners in the project. The co-owners shall comprise the homeowners association and shall have authority to manage the condominium project.

§2. A new section should be added to the Texas Condominium Act to read as follows:

BY-LAWS

The by-laws may provide for, but are not limited to, the following:

(a) The election from among the unit owners of a council of co-owners, the number of persons constituting same, its officers, and members' terms; the powers and duties of the council; the compensation, if any, of the members; the method of removal from office; and whether the council may engage the services of a manager or managing agency; and

(b) The method of calling meetings of the unit owners and the percentage of unit owners constituting a quorum; and

(c) The maintenance and repair of the common areas and replacement of facilities and payments therefor, including the method for approving these payments; and

(d) The cancellation, by a majority of unit owners other than the developer, of unfair and unreasonable contracts for maintenance, management, and operation of the condominium project entered into by the developer while in control of the unit owners' association; and

(e) The method of adopting and amending rules and regulations governing the details of the operation and use of the common areas and facilities; and

(f) The method of adopting a budget for the operation of the association and the manner of collecting from units owners their share of the common expenses.

§3. Section 7(B)(6) of the Texas Condominium Act should be amended

to read as follows:

The fractional or percentage interest in the common elements and expenses of the association, and a portion of the votes in the association allocated to each unit, stating the formulas used to establish those allocations, and any others.

§4. Section fifteen of the Texas Condominium Act should be amended to read as follows:

OWNER CONTRIBUTIONS TOWARD EXPENSES

All co-owners are bound to contribute pro-rata for the expenses of administering, maintaining, and repairing the general common elements, and, in the proper case, the limited common elements of the building, and for any other expenses lawfully agreed upon by the council of co-owners. No owner shall be exempt from contributing for such expenses by waiver of the use or enjoyment of the common elements, either general or limited, or by abandonment of the unit belonging to him. A majority of unit owners may reject any budget or capital expenditure approved by the council of co-owners, within 30 days after council approval.

§5. Section eighteen of the Texas Condominium Act should be amended to read as follows:

COLLECTION OF ASSESSMENTS

(a) The council of co-owners has authority, upon ten days notice to the unit owner delinquent in payment of assessments, to sever any and all utility services until such assessments are paid.

(b) Upon the sale or conveyance of a unit, all unpaid assessments against a co-owner for his pro-rata share in the expenses to which section fifteen refers shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature except the following:

(1) Assessments, liens, and charges in favor of the state and any political subdivision thereof for taxes past due and unpaid on the unit; and

(2) Amounts due under mortgage instruments duly recorded.