

Appendix F. Condominium Act Summary

The current law pertaining to condominiums remains inchoate and incomplete in most jurisdictions.⁷⁵ Even those jurisdictions which have pioneered condominium legislation have not developed fully comprehensive acts. It is the purpose of the Uniform Condominium Act (UCA) (1980) to provide the needed comprehensive body of law.

The character of ownership in condominiums is multiple. There is the individual unit owned by the individual buyer, and there is the common area owned jointly by all. If that seems already complex, there are also the interests of the promoter, who first establishes condominiums as the form of ownership for the project, and of subsequent unit buyers and additions to the ownership group. If a building is converted from other uses, there are the interests of tenants before conversion. Some units may be rented by individual unit owners, creating absolutely new landlord and tenant relationships. In addition, the lenders who financed the total development will have secured interests in the real estate. Each unit owner will generally have a creditor with an interest. Overlaying all of this is the owner's association with governing powers over a development during its life as a condominium. The owners' association also has the power to create liens upon individual units. It is to organize and sort out these interests that the UCA has been developed.

A condominium has four critical phases: creation, financing, management, and termination. A comprehensive act deals with each phase and with the problems of consumer protection and regulation.

A condominium is created by recording a "declaration" in the appropriate land records. The declaration serves as notice of the creation. It describes the property in specific terms, and states a formula for allocation of individual interests in the common property of the condominium.

Of primary importance to financing condominiums is clarification of priorities between creditors. The UCA does not upset ordinary priorities based on recordation and/or the time a lien is created, except in one instance. A limited priority, even over recorded first mortgages, exists for the statutory lien of the owners' association for unpaid assessments. It is prior for the six month period immediately preceding an action to enforce the lien, only.

This limited first priority, in reality, is designed for protection of all creditors. Interruption of the owners' association cash flow jeopardizes maintenance of the development. That affects the value of other units and the condominium development as a whole. Other creditors, particularly those with secured interests, are thereby threatened. This limited priority to the owners' association helps prevent such loss of value.

⁷⁵ This information in this section came directly from the Uniform Law Commission website: <http://www.uniformlawcommission.com/ActSummary.aspx?title=Condominium Act>

Management of a condominium development under the UCA descends from the developer to the owners' association. To assure that the developer cannot unduly control the owners' association, control must be transferred no later than the time 75 percent of the units are sold, or two years after essential declarant interests terminate, whichever comes sooner. The UCA provides broad management powers to the association, which is governed by an elected executive board. It is responsible for upkeep for the budget, and for setting and collecting assessments. The UCA provides the basis for all procedures necessary to govern a development. Included among these provisions are those for limitation of liability and insurance. The bylaws, adopted by the association, permit further refinement of the governing process.

Nobody buys a condominium unit expecting termination of the project, but it must be considered as a possibility. The UCA provides for termination only by agreement of at least 80 percent of the unit owners. The termination provisions then provide for any sale of real estate, protection of creditors, distribution of proceeds, and division of interests among the owners. Their interests are to be valued, basically, at the fair market value for their shares.

The UCA utilizes two basic concepts for consumer protection, although many of the provisions on management and relinquishment of developer control are really buyer protections, too. But basic to consumer protections are disclosure and warranties.

Disclosure of the terms of sale and of the condition of the property is accomplished through the public offering statement. It is a detailed prospectus concerning the condominium development and the specific unit sold. The information given mainly concerns the financial condition of the owners' association and any restrictions or problems which might affect the development of any units. If a declarant reserves development rights, these must be disclosed in detail. If the building is a conversion, substantial information on the condition of the building should be included.

Warranties include both express warranties, based on asserted facts or promises of the seller, and implied warranties of fitness. Implied warranties may be disclaimed in writing, but no general disclaimer is effective for residential units. Defects must be specifically disclaimed for the residential units.

There are also protections for tenants in residential units of buildings which are to be converted to condominiums. Tenants must be given notice at least 120 days before they must vacate the property. They also have a right to purchase for 60 days after notice is tendered.

The UCA devotes a final article to regulation of condominiums. It is an optional article because the ULC is well aware that new agencies, or even new responsibilities for old ones, are not fiscally possible or desirable in many jurisdictions. For those jurisdictions which desire greater regulation, the UCA provides one which registers all condominium developments. It has the power to hear consumer complaints, to investigate for alleged abuses, to issue cease and desist orders, and to go to court. The agency has limited rule-making powers.

No summary can contain the entire range of provisions for an act as comprehensive as the UCA. Only the general character can be outlined. There are many unique features of the UCA which have not been discussed. The UCA answers many questions which have plagued condominium law, and it solves many problems—sometimes in surprising ways. It should have a profound effect as it is considered in all the legislatures.

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