

Appendix G. Uniform Planned Community Act Summary

Although American property law allows an infinite variety of ownership and financing arrangements for real property, little variety appeared in residential real property development until the decade of the 1970s.⁷⁶ Sales were characterized by transfers of fee simple ownership. The other alternative was renting.

In the 1970s, the term "condominium" changed all of that. It introduced the American public to a kind of multiple ownership that has become as familiar as the simpler, traditional forms of real estate development. The condominium movement created other opportunities. New ideas, such as real estate time-sharing, followed, but old ideas which had never fully caught on have, also, been dusted off. There is growing interest in real estate cooperatives, for example.

One form to be dusted off for the future is the multi-unit residential "planned community." This common law form couples private ownership of individual units with ownership of the "common elements" or the property used in common by all residents, in the owners' association. The community is held together with a set of covenants, conditions, and restrictions which accompany each sale of a unit and which "run with the land." These are the glue which holds the community together.

This is in contrast to condominiums which vest ownership in individual units in each owner, coupled with tenancies-in-common in the common elements, which are then governed by the owners' association. Ownership is the common glue in a condominium development.

Although condominiums and planned communities are based on differing arrangements of ownership, they function on the practical level pretty much identically. They have the same critical phases—creation, financing, management, and termination. Both depend upon an owners' association for governance. Usually, the owners are assessed regularly for the maintenance of the development. Similar amenities can be, and are, offered to buyers to make life in these developments attractive. Conversely, most of the potential problems are identical, including inordinate developer control, difficulties with management, and long-term maintenance.

Once the NCCUSL addressed condominiums in the Uniform Condominium Act (UCA), it had to consider planned communities. It has now promulgated the Uniform Planned Community Act (UPCA).

UCA served as the direct model for UPCA. Creation of a planned community occurs when a declaration is recorded in the same manner as a deed. This is exactly the way a condominium development is begun under UCA. The declaration contains the location of the planned community, the name of the planned community, a description of the real estate, and a

⁷⁶ This information came directly from the Uniform Law Commission website:
[http://www.uniformlawcommission.com/ActSummary.aspx?title=Planned Community Act](http://www.uniformlawcommission.com/ActSummary.aspx?title=Planned%20Community%20Act)

description of relevant development rights. The declaration is the fundamental instrument in both UPCA and UCA.

For lenders, the basic concern in both Acts is priority between all lenders and those with other liens against the property. The basic principle is simple, that is, reliance upon the existing priorities except where necessary for the operation of the Act. As in the Uniform Condominium Act, UPCA gives a very limited first priority for the owners' association's lien for assessments due. This priority, which exists for only six months of past due assessments, is meant to protect the solvency of the owners' association. Its solvency is essential to the security for all other mortgages and liens on units in the development. This priority, therefore, protects lenders' interests in the whole development.

Power over a planned community transfers from the developer to an owners' association in UPCA exactly as it does under UCA. All power transfers by a set time, when 75% of the units have been sold or two years after essential developer interests end. Management vests in the owners' association. It has broad powers to operate the development. Both Acts handle liability and insurance in a similar fashion.

Termination provisions are, also, nearly identical. Termination cannot occur without the concurrence of at least 80% of the owners. There are similar provisions in each Act for carrying out the termination, including sale of property, taking care of creditors, and distributing proceeds to owners. Again, the parallels between the Acts are very close.

Consumer protection in UPCA follows the basic pattern of UCA. There are two basic concepts—disclosures and warranties. Disclosure is accomplished through the public offering statement, a detailed listing of facts and figures pertinent to purchasing a unit. Special disclosure provisions apply to buildings converted from other uses. Warranties in UPCA include both express and implied warranties of sale. Any affirmation of fact or a promise made by the seller to the buyer is the basis of express warranties. Implied warranties of fitness will apply, without overt affirmation by the seller. Implied warranties may be disclaimed, however, if done clearly for specific defects. The UCA does not vary these provisions in any significant way from UPCA.

Both UCA and UPCA, also, have optional articles which establish an administrative agency for condominiums and planned communities. All projects are registered with the agency. It can investigate complaints, issue cease and desist orders, and sue for violations of the Act. This article is optional, because it is recognized that new administrative agencies or new duties given to old administrative agencies may not be fiscally feasible in many jurisdictions. The Act provides for individual enforcement through the courts so that the need for an agency is minimized.

The differences between UPCA and UCA are rooted in the basic distinction between a planned community annealed by conditions, covenants, and restrictions, and a condominium development bound together by tenancies-in-common. Because a planned community may

have limited common elements, physically and fiscally, an exception is created for planned communities with fewer than twelve units, or for which the liability for common expenses is less than \$100 per year per unit. These kinds of planned communities are not subject to the Act except for the provisions on separate titles and taxation, applicability of building codes, and eminent domain. A de minimus planned community is no more than a group of individual units with a minor commitment to some common property or use. For such a planned community, the total application of this Act is over-kill.

Condominiums, in contrast, vest ownership rights in all common elements. This kind of joint ownership makes a de minimus condominium not feasible. A planned community is easily tailored to a de minimus regime.

Of course, common elements cannot be dealt with identically under these two forms of ownership, either. Since common elements are owned by the association in a planned community, the declaration and public offering statement must reflect this. Also, in a planned community, owners must have a statutory easement to protect their individual interests in the common elements.

Under UPCA, as opposed to UCA, real estate may be added without describing its location in the original declaration. An addition may not exceed 10% of the total designated development area, and the declarant cannot increase the number of units established in the original declaration. In effect, it allows added real estate to the common elements. In a condominium development, adding real estate requires adjustment for each unit owner's share. In a planned community, since the owners' association owns the common elements" no such adjustment is necessary, and adding small amounts of real estate to the common elements is feasible.

The UPCA and UCA parallels and identical organization are very much intended. The law should favor no particular development scheme over another. Each scheme should stand on the merits of its own advantages versus its own disadvantages. The way UPCA and UCA are structured guarantees this neutrality in the law. It puts the emphasis upon real advantages when a developer contemplates a project and sales to consumers.