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## REFLECTIONS ON THE MINNESOTA UNIFORM CONDOMINIUM ACT

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Fine tuning any piece of legislation as complex as the Minnesota Uniform Condominium Act (MUCA) is traditionally a long-range process. Recent trends in Minnesota real estate development, however, have accelerated this process. Increased use of the condominium format for industrial, office, retail, and residential complexes has revealed numerous deficiencies in the MUCA, prompting several proposed modifications. The following pages provide a thumbnail sketch of present discussions within the Minnesota legal community. Prior to examining these proposals, brief mention of the status of the Uniform Condominium Act (UCA) is appropriate.

There are currently no active proposals to further “gild the lily” under consideration by the authors of the UCA. A draft, presently being circulated, however, attempts to consolidate condominium law with the Uniform Cooperative Act and the Uniform Planned Community Act. The consolidation is entitled the Uniform Common Interest Ownership Act (UCIOA). According to former reporter Stephen Jahnakin of the National Conference of Commissioners on Uniform State Laws (NCCUSL), the UCIOA attempts to achieve two objectives. The first is to merge statutory law affecting cooperatives and condominiums with laws affecting other forms of planned unit development. The second is to facilitate adoption of the UCIOA by UCA states without major statutory surgery.

Adoption of the UCIOA in Minnesota is doubtful. Although the MUCA clearly defines the state’s condominium law, statutory law addressing cooperatives is not consolidated in a similar act. While enactment of the UCIOA would not alter present condominium law, it would clarify state cooperative law. Nevertheless,

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discussions attended by this writer fail to indicate a broad base of support for consolidation of cooperative laws which would justify adoption of the UCIOA.

In recent years, the Real Property Section of the Minnesota State Bar Association has maintained a special legislation subcommittee which solicits proposed MUCA modifications from members of the practicing bar. Unfortunately, except for isolated discussions addressing timesharing problems and reforms, materials submitted to the subcommittee have been meager. The absence of a significant formal response is due largely to the down cycle in residential condominium development resulting from high unemployment and interest rates. Nevertheless, several problem areas have surfaced through informal discussion.

One particularly salient problem concerns the seven-year time limitation on the reservation to expand the condominium by adding additional real estate.<sup>1</sup> A potential problem could arise under the following scenario: A municipal authority empowered to issue Industrial Development Revenue Bonds is charged with the planning and creation of an industrial park. During planning it becomes evident that improvements, including loading docks, parking facilities, railroad sidings, power facilities, and waste disposal facilities, could be most readily built, operated, and maintained as common elements. The seven-year limitations period is insufficient for such developments. Rather, development of this industrial park probably would require an expandable approach to the condominium structure, permitting completion after the seven-year limitation period.

Indeed, the seven-year limitation serves little purpose, indicating the need for a statutory exception. The goal of adding users to these common elements can be achieved by other approaches, including leasing, reservation of cross-easements upon the common elements, and creation of operating and maintenance agreements. These approaches could be designed to allow the growing number of participants, in a series of separate industrial condominiums built over a lengthy period of time, to participate fully in the operation, use, and maintenance of the common elements.

Another issue currently under discussion concerns the allocation of common expense liabilities for commercial office condominiums in a manner inconsistent with the present requirements. Under

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1. See MINN. STAT. § 515A.2-106 (1982).

the MUCA,<sup>2</sup> expenses are allocated either equally between units or in proportion to the unit's area or volume. Not all circumstances, however, economically justify allocation of expenses on these bases. Rather, common expense costs often should be apportioned on the basis of percentage use. Where use is disproportionate, inequities currently are remedied by specialized agreements and maintenance arrangements.

Laws requiring substantial completion of the "building" prior to recordation of the declaration have further complicated present condominium law. Under the MUCA, substantial completion must occur prior to recording the declaration whenever a "building" is involved.<sup>3</sup> In other words, "as built" plans are required. This requirement is problematic where numerous lenders are involved in the total financing of the "building." In order to specifically define the lenders' property rights upon foreclosure, mortgage liens must be perfected prior to the commencement of construction. The need for perfection places urgent pressures upon the developer, lenders, recording officers, and title insurers to file the declaration and other documents prior to construction.

Although the protection afforded by the "as built" requirement is justified in residential construction, logic militates against similar treatment for nonresidential projects. Consumer protection policies implicit in the MUCA clearly attempt to safeguard the residential condominium purchaser. These protections, however, can still be guaranteed by the enactment of a statutory exception for nonresidential projects, thus avoiding "Rube Goldberg" devices currently utilized.

Debate also continues over the use of timeshare condominiums in Minnesota. Documented abuses have prompted critics to suggest statutory abolition of timesharing in Minnesota. Foremost of these critics is former State Senator Jack Davies, longtime commissioner of the NCCUSL and chief sponsor of Minnesota Chapter 515A. Others, including Minneapolis attorney Fred Rosenblatt, strongly favor the use of timesharing.

Finally, problems arise when preexisting low interest mortgages are preserved during the conversion of a nonresidential condominium. The MUCA provides that a purchaser may agree to continue the existing mortgage where a title insurance policy insuring

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2. *See id.* § 515A.2-108.

3. *See id.* §§ 515A.2-101, .2-110, .4-115.

against loss or damage is issued to the purchaser.<sup>4</sup> The UCA, however, provides that other forms of insurance, including surety bonds and other collateral substitutes, may be used.<sup>5</sup> Since some type of security is needed to protect the title insurer, the MUCA should be broadened to permit the developer and the purchaser to obtain any form of insurance. This approach is especially attractive for commercial and industrial conversions in which the developer and purchaser have equal bargaining power.

The above comments are a brief attempt to inform the reader of problems and solutions currently under discussion within Minnesota's legal community. Although the MUCA has proven invaluable, further modifications are necessary. It is hoped that this Article will encourage further discussion leading to constructive amendments to Chapter 515A.

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4. *Id.* § 515A.4-109.

5. UNIF. CONDOMINIUM ACT § 4-109, 7 U.L.A. 206 (1977).