

1984

A Synopsis of the Symposium

David J. Spencer

Follow this and additional works at: <http://open.mitchellhamline.edu/wmlr>

Recommended Citation

Spencer, David J. (1984) "A Synopsis of the Symposium," *William Mitchell Law Review*: Vol. 10: Iss. 1, Article 3.
Available at: <http://open.mitchellhamline.edu/wmlr/vol10/iss1/3>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in William Mitchell Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

A SYNOPSIS OF THE SYMPOSIUM

DAVID J. SPENCER†

As a vehicle for real estate development and ownership, the condominium has evolved from simple residential projects into more complex forms, including timesharing, mixed use projects, and phased developments. In Minnesota, all of these alternatives are regulated by the Minnesota Uniform Condominium Act (MUCA).

The following Articles and Notes discuss these variations of the traditional condominium and examine the impact of the MUCA on these options. This Symposium significantly contributes to the various issues confronting developers, consumers, and their respective counsel.

Dean Patrick J. Rohan and Associate Dean Daniel A. Furlong of St. John's University School of Law present a guide for attorneys representing purchasers of timeshare interests. The authors examine timeshare concepts and legal principles, tracing the development of timesharing marketing strategies and economic conditions. Rohan and Furlong describe the pertinent statutes and regulatory controls that have emerged in response to the growth of timesharing. The authors also discuss two model acts which have been promulgated to reconcile the problems of timesharing.

Deans Rohan and Furlong offer a comprehensive analysis of timesharing's most pervasive dangers. The authors note that these hazards arise primarily because of the profusion of timeshare schemes available. The authors conclude that, regardless of careful preparation and review of documentation, significant legal and economic risks associated with timeshare ownership are inevitable.

The following Article by Rohan and Furlong examines the development of the no-buy pledge. The pledge is a contract by individual tenants prohibiting them from purchasing units in the proposed condominium prior to an approval from the tenants'

† Member, Minnesota bar. Mr. Spencer received his B.A. degree from Rocky Mountain College in 1965 and his LL.B. degree from Yale University in 1968. He is a member of the American College of Real Estate Lawyers. Mr. Spencer is presently a partner in the firm of Briggs & Morgan.

representatives. The need for the pledge arises where tenants are faced with the prospect of having their apartments converted into condominiums without their assent. The purpose of the pledge is to force the owner of the building to reassess his intent to convert or to garner for the tenants more attractive purchase terms. The pledge achieves this by making conversion a decided economic risk.

Used in combination with statutory protections, no-buy pledges can be an effective weapon for frustrating conversion attempts. For example, state law requires New York City landlords to obtain purchase agreements from fifty-one percent of their tenants in order to convert. Where a tenant association obtains a no-buy pledge signed by more than forty-nine percent of the tenants, the developer is effectively precluded from converting.

The practical significance of the no-buy pledge has lead Deans Rohan and Furlong to review the history of the no-buy pledge and examine the case law resulting from its application. After addressing the relevant legal issues, the authors offer a model no-buy pledge for use by tenants and their counsel.

The next Article is by N. Walter Graff, a local attorney with considerable experience under the MUCA. Graff explores the difficulties facing developers' counsel who must look to the MUCA for guidance in drafting condominium documents. He praises the MUCA's comprehensive framework, but indicates that practitioners have found it inadequate when applied to complex condominium developments.

The author focuses on a number of problems arising from the MUCA including parking space allocation, tenant protections upon conversion, deferral or reduction of developers' assessments during marketing, and technicalities surrounding the required architect certification. Mr. Graff carefully analyzes the MUCA and its anomalies, proposing numerous solutions. Mr. Graff offers his Article to encourage discussion of potential "house-cleaning" legislation for elimination of problems currently existing within the MUCA.

John B. Lundquist, a coauthor of the MUCA, presents a thoughtful Article on mixed use condominiums in Minnesota. Although originally confined to residential or resort use, the condominium has recently been utilized in both commercial and mixed commercial and residential settings. Mixed uses may occur in either a single building or a project containing a number of struc-

tures with a common scheme of development, marketing, and organization.

Mr. Lundquist emphasizes that the success of a mixed use condominium largely depends upon the equitable distribution of expenses, benefits, and responsibilities among competing interests. The author sets forth the characteristics of mixed use condominiums and the goals of the developer in integrating these characteristics with the diverse interests of users. The author offers the developer three alternative structures: a single condominium format sensitive to these diverse characteristics; a two-tiered condominium composed of a master condominium divided into separate areas intended for diverse uses; and a separate but related condominium where each association shares a declaration of easements and covenants, yet remains relatively independent.

Mr. Lundquist discusses two methods of apportioning common expenses: utilizing structural boundaries to create an equitable distribution and adjusting assessments to reflect actual use. The author concludes that the mixed use condominium can be designed to accommodate the diverse interests of unit owners and assure that the burdens of ownership are fairly allocated.

Two Notes follow the Articles discussed above. The first Note addresses the need for comprehensive legislation governing timeshare condominiums in Minnesota. Recognizing the recent emergence of timeshare projects in the state, the author suggests a statutory framework for resolving the many legal uncertainties which accompany timeshare developments. These uncertainties are not adequately addressed by the MUCA, thus suggesting the need for legislation which specifically deals with the unique features of timesharing.

The author explores many problems posed by timeshare developments. The conversion of traditional condominiums into timeshare interests, the difficulty in securing financing for timeshare projects, and the need for precision in assessing timeshare interests for tax purposes all present difficulties which comprehensive legislation can ameliorate. The Minnesota Legislature has not adopted timeshare legislation. The author suggests that the Legislature adopt comprehensive timeshare legislation so that this type of real estate ownership can be properly regulated in Minnesota.

The Symposium concludes with a Note examining equitable allocation of common rights and liabilities among unit owners which

is essential to the successful operation of any condominium project. Under the MUCA, common elements, expenses, and voting rights are allocated on the basis of equality, area, or volume. The choice of bases is an improvement over the single basis available under the first Minnesota condominium law. Nevertheless, the author examines these and other bases and concludes that the MUCA allocation provision should be expanded.

Critical issues of condominium law addressed in this symposium can be analyzed within the framework of the MUCA. For this reason, the full text of the MUCA is reprinted in the Appendix following the Articles and Notes. Its presence is intended to provide easy reference, encouraging careful scrutiny and provoking thoughtful analysis.