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FOREWORD

LEGISLATIVE HISTORY OF THE MINNESOTA UNIFORM CONDOMINIUM ACT

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Since the concept of condominium ownership has proven to be a useful and flexible means of community property ownership, every state has adopted laws governing its creation and management. The recent evolution of condominium law is an outstanding example of statutory law formulated to meet the needs of modern day society. The first condominium statute in the United States was adopted by Puerto Rico in 1958. Three years later, the Federal Housing Administration (FHA) developed the FHA Apartment Ownership Act.¹ Minnesota's first condominium law, the Apartment Ownership Act, was enacted in 1963.²

Condominium laws have facilitated the creation of a three dimensional form of real estate ownership. As a result, ownership of a cube of air as well as an undivided interest in the common portions of the condominium property became possible in a number of states. While the condominium concept could have provided that title to the common portions be vested in the association of owners, the pattern was to vest an undivided interest of the common portions of the condominium in the unit owners.

After Minnesota's adoption of the Apartment Ownership Act, minor technical amendments were made from year to year. The most important philosophical change occurred in 1976 when developers were required to make certain disclosures to purchasers of condominium units.

As condominiums increased in popularity Minnesota's Apart-

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1. FHA APARTMENT OWNERSHIP ACT §§ 1-29 (1962), *reprinted in* P. ROHAN & M. RESKIN, 1A CONDOMINIUM LAW & PRACTICE App. B-3 (1982).

2. Apartment Ownership Act, 1963 Minn. Laws 616 (current version at MINN. STAT. §§ 515.01-.29 (1982)).

ment Ownership Act proved inadequate. The Act failed to adequately define the basis for allocating a unit owner's interest in the common areas, voting rights, and expenses. While the Act stated that the owner's interest was based on "value;" the term "value" was undefined. The Act lacked a provision for eminent domain. It also prohibited the subdivision of apartments, and did not provide for a flexible condominium. Under the Act, local municipalities controlled condominium development, resulting in some attempts to prevent condominium conversion.

Development of the Uniform Condominium Act (UCA)³ coincided with the problems arising out of the provisions of the Apartment Ownership Act. State Senator Jack Davies, a commissioner to the National Conference on Uniform State Laws, introduced the UCA to the 1976 Minnesota State Legislature. The Real Estate Section of the Minnesota State Bar Association objected to the UCA, principally because Article 5 of the UCA required a review of each proposed condominium by the state's Commissioner of Commerce. Developers opposed the bill for the same reason. Since the UCA did not give mortgagees adequate protection, mortgagees and mortgage bankers also opposed the long and unwieldy bill.

Opposition to the bill continued in each session of the legislature until 1979. At that time, a group of developers and financial institutions engaged the services of John B. Lundquist and the author of this Article to draft a bill that would properly provide for development of the condominium concept in Minnesota.

After its preparation, the Real Estate Section of the Minnesota State Bar Association appointed an ad hoc committee to review a draft of the bill. With the endorsement of the Minnesota State Bar Association, the bill was introduced by Senator Davies in the 1980 session of the legislature. With the exception of a portion relating to conversion condominiums, the bill was well received by the legislature. The bill included the UCA proposal that municipal ordinances or regulations could not prohibit the condominium form of ownership or impose any requirements on a condominium that were not imposed upon physically identical developments under a different form of ownership. The goal was to promote

3. UNIF. CONDOMINIUM ACT §§ 1-101 to 5-110, 7 U.L.A. 103-231 (1977). The original UCA was developed by the National Conference of Commissioners on Uniform State Laws in 1977. An amended version was adopted in 1980.

uniformity; uniformity could only be achieved if the state legislature controlled the laws governing condominium conversion.

Tenant groups protested the bill, claiming that the conversion of existing rental units to condominiums would diminish the supply of rental housing. These groups maintained that even the conversion of a luxury apartment would affect low rent housing under the "trickle down theory." Under this theory, persons living in luxury apartments who do not elect to purchase converted units will move into less luxurious housing, thereby setting off a chain reaction eventually resulting in the displacement of low income tenants. As a result, the bill was amended enabling a statutory or home rule charter city, pursuant to an ordinance or charter provision, to impose reasonable conditions upon the conversion of buildings to condominiums, only if the city experiences a significant shortage of suitable rental dwellings available to low and moderate income persons. In 1980, the legislature adopted the bill as amended.

The Minnesota Uniform Condominium Act (MUCA)⁴ is a modified version of the 1977 UCA. The MUCA authors did not retain the concepts of withdrawable and convertible land. They believed the concepts merely added pages to the UCA, created problems, and accomplished very little. Article 5 of the UCA, which subjected condominiums to state regulations similar to the securities laws, was also eliminated. The timesharing concept, at one time included in the UCA, was also eliminated with the thought that separate timeshare legislation was more appropriate. While a condominium that was part fee title and part leasehold was contemplated by the UCA, the authors of the MUCA found this type of ownership unnecessarily complex. The MUCA, however, includes a provision that considers a residential unit, garage, and its allocable interest in the common elements a homestead.

In place of limitations on the developer contained in Article 5 of the UCA, the MUCA contains restrictions on the allocation of common rights and liabilities. The developer must allocate voting, common elements, and expenses on the basis of equality, area, or volume. The MUCA also protects the interests of existing unit owners in a flexible condominium by requiring the developer to give notice to the association and to unit owners of his intention to add land to the condominium. In contrast, the UCA set no limits on the manner in which a developer could determine owners' in-

4. MINN. STAT. §§ 515A.1-101-.4-118 (1982).

terests in the common area facilities. The UCA also failed to require that the association governing the condominium be incorporated. As a result, the Commissioners complicated their proposal by attempting to clothe the unincorporated association with corporate powers. This unnecessary fiction was eliminated from the MUCA.

The lack of amendments to the MUCA indicates that it contains the basic structure needed for condominium development in Minnesota. After three years of practice under the MUCA, the time is ripe for refining and clarifying certain provisions.