

# THE BEATT

Business, Education and The Trades

PRACTICAL IDEAS AND GUIDELINES FOR CONDOMINIUM ASSOCIATIONS

## History of Condominiums

Welcome to the first of the new the BEATT newsletters in 1996.

We're going to start with basics and work up to projects. Keep each copy of the BEATT for future reference and new Board Members.

Published by:  
Condominium  
Business  
Network,  
Ltd.

c  
o  
n  
d  
o  
m  
i  
n  
i  
u  
m

The following excerpt from the history of condominiums was written in 1990 as part of a commentary on the Illinois Condominium Property Act. The commentary was prepared by Donnie Rudd and Caryn Gardner, both condominium attorneys. Mr. Rudd's firm had (at the time) written approximately 60% of the Illinois Condominium Property Act. Mr. Rudd currently is retired from law. Ms. Gardner, who had specialized in condominium law in the Chicago area is currently practicing law in Florida..

### SECTION 1 History

The term "condominium" identifies a form of ownership of real property. Property becomes a condominium simply by recording a Declaration which submits the real property to the Condominium Property Act.

Submission of real property to the Condominium Property Act of the State in which it is located is the only way to create a condominium. Neither the type of building nor its structure or use has any bearing on whether it is a condominium. It is simply that the Declaration subjects the property to the Condominium Property Act. In most states, the statute is not

referred to as the Condominium Property Act. It is referred to as the Horizontal Property Act.

Condominiums are not a new concept. The form of ownership which is utilized for condominiums was used by the Romans as early as the 6th century B.C. In Europe, the concept has been available for many centuries. The concept has existed in South American countries for at least two centuries.

Among the industrialized countries, the United States was the last to embrace the condominium concept. The first attempt in the United States or its territories to develop condominiums was the Horizontal Property Act of Puerto Rico, passed in 1948, utilizing a model statute developed by the Federal Housing Authority.

After World War II, essentially the only type of commonly owned housing that was available to the general population was the cooperative. However, the cooperative had several major drawbacks, chief among them being the fact that the ownership in the cooperative entity could not generally be mortgaged, thereby precluding most of the available purchasers from purchasing shares in the cooper-

ative. The form of ownership known as the condominium solved most of the major problems associated with the cooperative.

One by one the various States adopted various condominium statutes, each based on the Federal Housing Authority model. Unfortunately, this approach created many serious problems. It was merely a quick attempt to provide a condominium concept in order to make purchase of condominiums available, and little thought was given to the legal structuring of condominiums.

Defined in its simplest terms, a condominium contemplates that the unit owner will own air space within his unit and the real estate will be owned by all of the owners as tenants in common according to a percentage of ownership set forth in the Declaration. Tenancy in common as a form of ownership has long existed in common law but little regard was given to its implications when adopting the condominium laws. Thus, many problems have occurred in condominium associations which could have been avoided by referring to the fundamentals of real estate law when drafting the original Act.

The Illinois Condominium Property Act was adopted by the legislature on June 20, 1963, and became effective July 1, 1963. Thus, Illinois is a late comer in the condominium business,

although it is currently one of the half-dozen leading states in the number of condominiums and development of condominium law.

By the mid-1970's, associations began to complain that too many problems existed in the operation of the associations, which were not addressed by the Illinois Condominium Property Act. The

Legislative Study Commission published a study in March 1975, and reported to the House of Representatives and General Assembly of the State of Illinois, making recommendations for changes in the Illinois Condominium Property Act. In 1977, Public Acts 80-1102 through 80-1120 were passed

and became effective on January 1, 1978. This was the first major rewrite of the Illinois Condominium Property Act. These acts addressed the major problems occurring in associations, primarily developer related, and sought to prevent abuses that created other problems for associations.

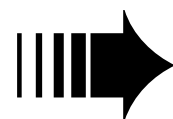
Between the 1978 rewrite and the 1983 rewrite, some fifteen (15) bills were passed to amend the Illinois Condominium Property Act. These legislative acts addressed particular problems and needs of the industry, and in particular dealt with the problems created by the large number of condominium conversions created during the economic climate at that time.

### TEST YOUR STRENGTH



*as a Board Member. Get the other Board Members to work together as a team... Make informed business decisions... Your unit Owners are waiting!*

**3-Hole Punch, Bind, Keep, and REFER to  
Your Newsletters and Resource Directory.**



By 1982, it became apparent that rather than merely addressing developer created problems in associations, a close look should be taken at the internal operation of associations, the administration of the board of managers, unit owner protection, and statutory solution of problems in order to avoid inundating the Courts with condominium litigation. Thus, the 1983 Amendments to the Condominium Property Act contained a substantial rewrite of the Act for the first time to addressing the internal operations of associations.

The 1983 amendments came after a painstaking two years analysis of the Condominium Property Act and every lawsuit involving condominiums. The analysis and recommendations were provided by attorney Donnie Rudd, and his close work with Representative Ellis Levin of the General Assembly provided the exact language which ultimately became the major revisions to the Illinois Condominium Property Act, adopted in 1983, and generally referred to as the 1984 amendments to the Illinois Condominium Property Act, since they were not effective until 1984.

Since 1984, numerous amendments have been made to the Illinois Condominium Property Act in order to provide solutions to problems brought to the attention of the legislature by condominium associations and unit owners as well as their representative attorneys. The State's leading condominium experts have drafted legislative language used by the State Representatives who have been responsible for almost all condominium legislation in the state since 1982.

The Illinois Condominium Property Act will continue to change. The legislature will amend the Act as necessary to meet the needs of associations.

A number of states have now adopted the

Uniform Condominium Act as proposed by the Uniform Commissioners of State Laws. Illinois has not adopted the Uniform Condominium Act, and it appears that Illinois is unlikely to do so since it would require relinquishment of many of the important gains made by associations in the legislature during the last decade. Many states have rejected the Uniform Act, including California, Florida, and Hawaii, all leading condominium states. While states not having much condominium development seem to be able to adopt the Uniform Condominium Act without many problems, those states having large numbers of condominiums have gone their separate ways and addressed their own specific needs with specialized legislation. Both systems work well.

Although the Condominium Property Act in Illinois is now (thirty-three) years old, it is relatively new compared to condominium legislation in other countries. Its newness means that many provisions of the Act will be reviewed and changed from time to time, in order to meet changing conditions in the development, marketing, and operation of associations.



*There is just one more Section of this particular Excerpt. Section 2 deals with some important Definitions in the ICPA that you should understand.*

**Section 2** of the Condominium Property Act provides definitions to be used throughout the Act. Most of the definitions are self-explanatory. Therefore, only a few subsections will be reviewed here, these being the most commonly misunderstood sections.

Paragraph (d) provides that a **"Unit"** means a part of the property designed and intended for any type of independent use.

Paragraph (e) defines **"Common Elements"** as all portions of the property except the units. Therefore, the sum total of real estate in a condominium association is the combination of the units and common elements.

It is important to note that the common elements of the association includes all of the real estate, the units being essentially air space, and the real estate is owned by all of the unit owners as tenants in common. Thus, the condominium association itself does not have title to real property unless it owns a unit or property otherwise deeded to it.

Paragraph (s) defines **"Limited Common Elements"** as a portion of the common elements designated in the declaration as being reserved for the use of a certain unit or units to the exclusion of other units. A common mistake made in interpreting condominium documents is to treat limited common elements as something separate from units or common elements. Limited common elements are still common elements. They are merely restricted in use.

However, they fall within the definition of common elements for the purposes of control, insurance, and regulation.

Paragraph (w) defines a **"Meeting of the Board of Managers"** as a gathering of a quorum of the members of the Board of Managers for the purpose of conducting Board Business. This is a commonly misinterpreted section of the Act. For instance, a nine member Board has a quorum of five. A seven member Board has a quorum of four. A five member Board has a quorum of three. Many associations attempt to have committee meetings of the Board to avoid the open meetings provisions even though this paragraph (w) provides a definition which, when combined with Section (8) clearly prevents this type of activity.

A major change in the Illinois Condominium Property Act came about in 1995. As of this year, per Section 2.1, the Illinois Condominium Property Act applies to all condominium associations in the state of Illinois no matter in what year the association was formed. This is a major comprehensive consideration. ■

## ILLINOIS CONDOMINIUM PROPERTY ACT

### Section 2.1 Applicability.

Unless otherwise expressly provided in another Section, the provisions of this Act are applicable to all condominiums in this state. Any provisions of a condominium instrument that contains provisions inconsistent with the provisions of this Act are void as against public policy and ineffective.

Published by:  
Condominium  
Business  
Network,  
Ltd.

c o n  
d o m  
i n i  
u m