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STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

December 9, 1963

SENATE BILL NO. 161

To the Senate:

Pursuant to Article V, Section I, paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 161, with my objections, for reconsideration.

Senate Bill No. 161 would authorize the establishment of "horizontal property regimes" characterized by exclusive individual ownership of each unit of a multi-unit building, together with common ownership in proportionate undivided shares of all other features of the building and the land on which it is located. While not limited to dwelling units, this bill undoubtedly is designed to stimulate the development of moderately priced housing for the benefit of our citizens. Although the novelty of the "condominium" approach to housing in this country necessarily renders its effectiveness a matter for conjecture, it does provide another tool for the implementation of a highly desirable objective. I, therefore, have no fundamental objection to its introduction into law. Nevertheless, the bill as drawn contains certain defects, both substantive and technical, which have led me to conclude that it should not be signed in its present form.

Consistent with its overall treatment of each apartment as a subject of individual ownership, the bill provides that local property taxes shall be assessed against and collected on each individual apartment, "and not on the building or property as a whole." No express reference is made, however, to the assessment of the proportionate undivided interest of each apartment in the land and other commonly held appurtenances of the building, designated elsewhere by the bill as the "common elements." While I am certain that this provision is not intended to place the interest of each apartment in the common elements beyond the reach of the taxing authority, its silence regarding

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 161

- 2 -

assessment of the common elements coupled with its injunction against assessment of "the building or property as a whole" might well inspire litigation which, at the very least, would require the courts to supply the procedure for the assessment of common elements. Since that procedure can be readily specified by the bill itself, I recommend that the bill be amended to clearly express its implicit mandate that the assessment against each apartment shall include the value of the proportionate undivided interest of that apartment in the common elements of the property.

In this connection, the bill presently grants to the owner of each apartment a proportionate share in the common elements equivalent to the percentage representing the value of his apartment "with relation to the value of the whole property." This formula fails to recognize that the "whole property" may include limited common elements which the bill permits to be reserved by agreement for the use of some apartments to the exclusion of others. Since the formula is aimed at establishing the proportionate interest of each apartment in the common elements to be used by all, i. e. the general common elements, the value of the limited common elements would seem to have no proper place in this computation. It would appear that the most accurate measure of the interest of each apartment owner in the general common elements is the percentage of the aggregate value of all the apartments represented by the value of his own apartment. Likewise, the proportionate interest of an owner in the limited common elements can best be established by the percentage representing the value of his apartment with relation to the aggregate value of all apartments entitled to the use of those elements. I propose that the bill be amended accordingly.

In the interests of clarity, and to give meaning to the word "value", the bill should also include a provision that the necessary valuations be made by the owners of the property on the basis of fair market value at the time when

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 161

- 3 -

the "horizontal property regime" is established. These valuations would serve the sole purpose of establishing the proportionate interest of each apartment in the common elements, and need not be expressed in the master deed or elsewhere.

The remainder of the amendments here proposed deal primarily with self-explanatory technical errors and lapses in consistency of expression. They require no particular discussion. As a final word, however, I might add that the phrase "horizontal property regime", as used in the title and throughout the text of the bill in conjunction with a variety of predicates, strikes me as achieving something less than an artistic success. Although I have not insisted upon the substitution of a more meaningful and clearly descriptive designation at this time, the Legislature should consider the adoption of a more suitable term.

For the reasons stated above, I herewith return Senate Bill No. 161 for reconsideration, with the recommendation that the bill be amended as follows:

On page 2, section 1, line 37, delete the word "basic".

On page 2, section 1, lines 37 to 38A, delete the words
", in accordance with the percentages computed in accordance
with the provisions of section 6 of this act".

On page 3, section 6, lines 1 to 15, delete Section 6 in its entirety and insert in lieu thereof:

"6. An apartment owner shall have the exclusive ownership of his apartment and shall have a proportionate undivided interest in the general common elements, equivalent to the percentage of the aggregate value of all the apartments represented by the value of his own apartment. Where limited common elements have been reserved for the use of his apartment, his proportionate undivided interest therein shall be equivalent to the percentage of the aggregate value of all apartments entitled to the use of said limited common elements represented by the value of his own apartment.

"For the sole purpose of establishing said percentages, the value of each apartment and the aggregate value of all the apartments shall be fixed by the owner or co-owners of the property making up the regime, and shall be computed on the basis of the fair market value of said apartments at the time when the regime is established, provided,

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 161

- 4 -

however, that nothing herein contained shall prevent the owner of each apartment from attributing a different circumstantial value to his apartment in all types of acts and contracts. Said percentages once established shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the building."

On page 4, section 9, line 2, delete the word "real".

On page 4, section 9, line 10, delete the word "building" and insert in lieu thereof "property".

On page 4, section 9, line 14, delete "The percentage appertaining to the co-owners in" and insert in lieu thereof "The respective percentage appertaining to each apartment in".

On page 4, section 9, line 15, after the words "the elements held in common" insert ", both general and limited".

On page 5, section 11, line 7, after the words "Any conveyance of" insert "or other instrument affecting title to".

On page 5, section 12, line 1, delete the words "a building" and insert in lieu thereof "property".

On page 5, section 14, lines 1 and 2, delete the words "The administration of every building constituted into horizontal property" and insert in lieu thereof "The administration of every property constituted into a horizontal property regime".

On page 6, section 15, line 9E, delete the word "basic".

On page 6, section 15, line 16, delete the word "building" and insert in lieu thereof "property".

On page 6, section 15, line 17, delete the word "building" and insert in lieu thereof "property".

On page 7, section 18, line 5, delete the word "building" and insert in lieu thereof "property".

On page 9, section 21, line 3, delete the words "section 17" and insert in lieu thereof "section 18".

On page 9, section 22, line 2, delete the words "section 17" and insert in lieu thereof "section 18".

On page 10, section 26, line 4, after "whole." insert "Such assessments shall include the value of the proportionate undivided interest of each apartment in the general common elements, and in the limited common elements where such interest exists. The proportionate undivided interest of each apartment in said common elements shall be computed in accordance with the procedure established by section 6 of this act."

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Senate Bill No. 161

- 5 -

On page 10, section 26, line 5, after the words "exemptions from taxation" insert "or deductions from tax bills".

Respectfully,

RICHARD J. HUGHES

GOVERNOR

[SEAL]

Attest:

LAWRENCE BILDER

Acting Secretary to the Governor

Conveying the Air The Condominium in New Jersey

PART I

On December 16, 1963 Governor Hughes signed into law L. 1963, c.168 (R.S.46:5A-1 et seq.). The short title of this statute is the "Horizontal Property Act". Its enactment was widely hailed as portending somewhat of a revolution in real estate law.

The Act was the enabling legislation for the implementation of the condominium concept in New Jersey. Similar legislation had already been adopted in some thirty-eight states although only a few of these states can boast of the presence of operating condominium projects.

The basic theory of condominium ownership was not entirely unknown in New Jersey prior to the Horizontal Property Act. L. 1938, c. 370, sec 1 (R.S.46:3-19) provides that:

"Estates, rights and interests in areas above the surface of the ground, whether or not contiguous thereto, may be validly created in persons or corporations other than the owner or owners of the land below such areas, and shall be deemed to be estates, rights and interests in land."

R.S.46:3-20, 21 and 22 provide generally that any interest created in areas above the surface of the ground shall be treated precisely as any other interest in the underlying land. R.S.46:3-19 was, in effect, the predecessor of the Horizontal Property Act.

A CUBICLE OF AIR

To illustrate the condominium effect of the 1938 statute, one should first consider the definition of "condominium". Condominium means ownership of the fee in a cube of air in a building consisting of two or more of such cubes together with the inseparable from the fee ownership of a proportionate undivided interest in the common elements. N.J.S.A.46:5A-2(d) defines the term "common elements". To simplify the statutory definition, one might say that the common elements consist of the portion which the building or buildings are located together with all of its appurtenances, including the buildings.

Note from the above definition, that there is no joint ownership in the cube

of air, defined as "apartment" in the Horizontal Property Act. Sole ownership of this cube rests in the grantee. The proportionate undivided interest as a tenant in common attaches only to the common elements. The method of computing a grantee's proportionate interest in the common elements is specified by Section 6 (N.J.S.A.46:5A-6) of the Act.

To illustrate a condominium in its simplest form consistent with the above definition and the Horizontal Property Act, assume the following facts: A building consisting of two separate apartments is constructed on a parcel of land of any size or shape. One of the apartments is located above the other and is reached by a stairway. There is a detached garage building containing spaces for two vehicles, one space used by each apartment. The owner of the building considers the fair market value of the land and buildings to be \$30,000.00 and desires to submit the property to the horizontal property regime concept rather than to remain as a landlord. The owner believes that each apartment can be sold for \$15,000.00. Assuming that the owner thereafter complies with the provisions of the Horizontal Property Act each apartment can be conveyed in fee simple to individual purchasers. The "apartment" would consist of the cubical of air contained within the four walls, floor and ceiling. The land on which the building is located, and the building

itself as well as the detached garage building make up the general common element of the condominium. It is these common elements to which the proportionate undivided interest of each purchaser attaches. Since each grantee will pay one-half of the fair market value of the property, each will also acquire the fee in an undivided one-half interest in these common elements. Therefore, the deeds would recite the conveyance to each purchaser of the fee in a particular apartment together with an undivided 50% interest in the common elements. It is apparent then that ownership of the common elements is in both purchasers as tenants in common. Incidentally, the master deed would undoubtedly limit the use of the stairway to the occupant of the upper apartment and also limit the use of a particular garage space to each apartment. The stairway and the two parking spaces therefore would be "limited common elements" as defined in Section 2(e) of the Act.

"LEISURE VILLAGE"

There is, of course, no limitation upon the number of compartments of air that may be located within any given building nor upon the size of the tract of land upon which the building is located. Neither is there any restriction upon the number of buildings containing compartments of air which may be located on any given tract of land (except as may be governed by local restrictions). For example, the author has prepared and recorded Master Deeds creating and establishing two senior citizens retirement condominiums known as Leisure Village Horizontal Property Regimes I and II in Lakewood, New Jersey. Leisure Village Horizontal Property Regime I consists of thirty-one (31) separate buildings containing a total of 310 separate apartments situate on a tract of land of approximately twenty two and one-half acres. Leisure Village Horizontal Property Regime II has thirty-seven (37) buildings containing 206 apartments on approximately twenty-three acres of land. Additional contiguous condominiums of comparable size are planned by the developer.

(Continued on Page 1222)



...so to define the position of the ... not only vertically, as in the usual subdivision, but also horizontally, ... floors and ceilings, in order that the ... of air might be located, even in the ... of the accompanying structure. The reason for this is simple. In the event of total destruction of the building ... the ownership in the edges of air is unaffected. If the building were reconstructed it would have to conform as nearly as possible to the original location, both vertically and horizontally, in order to avoid encroachment of the common elements into the air cubes and vice versa. If the owner of a condominium unit were to sell his unit, the purchaser is entitled to know exactly where his property is located. Sections 9 and 10 of the Condominium Property Act make reference to the necessity of accurately describing the location of the building and apartments.

As had already been stated, the problem of accurately describing the location of the apartments and common elements is not a particularly difficult one for the surveyor. Should the building contain more than one floor, it is a simple matter to define the location of the upper units by reference to the elevations of the raised floors and ceilings of those units. The "plans" could also be certified to by a licensed surveyor since it is not the province of an engineer or architect to prepare the survey maps required to accurately locate the common elements and the apartments.

Since buildings tend to settle, it may be that in time part of the common elements might encroach upon the air cubes and vice versa. To provide for this contingency, the Master Deed declares that such encroachment, if any, shall be a permissible and valid easement.

Essential in a condominium of the nature of Leisure Village involving so many buildings and apartments, is the developer's intention to actually construct all units prior to the recording of the master deed and before contracts are entered into for the purchase of all units. In fact, therefore, only portions of Leisure Village have been actually constructed, although contracts have been signed for the sale and purchase of units in unconstructed buildings.

Worthy of note is the fact that the title insurance company does not in the title policy make the usual exception subject to such facts as an accident survey may indicate. The title company accepts a certificate from the developer's surveyor that the apartment

is located substantially in accord with the drawing attached to the Master Deed.

Attorneys should realize that in the preparation of any survey maps and in the language of the Master Deed referring to descriptions of the units, they are faced with many fine technical points requiring the utmost care and attention. Reference to the Master Deed of record should be by way of general guidance only. Space limitations do not permit acknowledgment and discussion of the more subtle aspects of creating a condominium.

(First of Two Articles)

BOLD STATEMENT DEPARTMENT

Many executives tell us that cost is the primary factor preventing them from owning more life insurance . . .

—Letter from John Hancock Life Insurance Company

In a scholarly, 43-page legal brief, with many footnotes and citations, the Department of Justice produced what amounted to a peevish joshing of Rep. John H. Kyl, Iowa Republican, whose bill would transfer all but 2.6 sq miles of Washington's 69-sq. mile area to Maryland.

—Newspaper Report

The final give-away of Washington.

The task of poisoning the genes of the unborn has been taken over from syphilis by nuclear pursuits.

Judicially Considered

There is no law which prohibits the amount of time a person may spend on his own ideology.

—A court in Tel Aviv

Bad weather is a valid excuse for being late for work.

—Minnesota Labor Board

A firm is not at all inclined to prove the age of its mother when he applies for a marriage license.

—The Attorney General of Oklahoma

Applicants for admission to the local high school may say to be addition with rice instead of corn.

—School authorities in Hamamaki, Japan

A swimmer has no other sign to the use of public waters as my boat.

—A magistrate in Brucebridge, Ont.

A soldier may take the arm of his wife in public if she is wearing pajamas.

—French army ruling

A man who lost his taste for whiskey after being hit on the head with a pick-axe is entitled to \$1,500 damages.

—A Court in Edinburgh

A non-migratory duck is one that cannot be proved to have been born outside the state.

—North Dakota Wildlife Commission.

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The Condominium Concept

(Ed. Note: The author, an attorney in Lakewood, represented the owner of the establishment of the exclusive condominiums known as "Leans Village" in that town. A condominium is a "horizontal property regime" of strata of air, each one of which is owned by separate deed of the occupant, rather than by shares of stock as in a cooperative.)

(CONCLUDED)

FINANCING

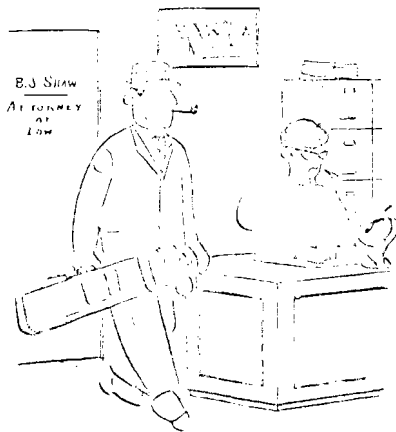
Financing of the project, both construction and permanent, may or may not pose a problem to the developer depending upon the course of conservation of the financing institution. The conservative or conservative leader might be troubled by some problems peculiar to financing the construction of a condominium. The reluctance of a construction lender to lend money for a condominium varies directly with the number of units planned. On the other hand, there is really no perceptible difference in financing the purchase, as opposed to the construction, of an individual unit in a condominium than in financing the purchase of a single family detached home in the conventional fashion.

The construction mortgage, having been recorded as a lien upon the entire condominium prior to the closing of title to the first individual unit, must be released as to that unit and its appurtenant share in the common elements at or before closing in order for the seller to make good title. The construction mortgage will, of course, contain a provision requiring the mortgagee to execute such a release upon payment of an agreed sum. Consider the position, however, of the construction mortgagee immediately following the release of the first unit. Assume at that time that the mortgagor should default requiring foreclosure of the mortgage. The purchaser at the foreclosure sale would receive a sheriff's deed conveying the entire condominium to him with the exception of the cube of air and the percentage of the common elements previously released. Unless the owner of the single unit consented to sell his property to the purchaser at the foreclosure sale, the entire condominium would have to remain forever in that form. Section 12 of the Horizontal Property Act requires the consent of all of the co-owners of the property before the Horizontal Property Regime may be waived. Likewise, the purchaser at the foreclosure sale is prohibited from par-

tioning or dividing the co-ownership by Section 7 of the Act.

Quite naturally, therefore, since the mortgagee did not become the owner of property which could only thereafter be disposed of in condominium form, construction financing for condominiums may not be found as readily as for other conventional developments. The reluctance of the lender to finance construction however will diminish as the number of units being constructed is reduced. The reason for this is that the mortgagee is risking less of its funds on the smaller project and also because the chances of default are reduced.

If any restrictions are placed by the developer on resale of the units, thereby narrowing the market available to a foreclosure purchaser, these restrictions may very well also effect the availability of construction money. The developer therefore would be well advised to first obtain a construction loan commitment before proceeding with any further plans to build a condominium. Such a commitment would, in many cases, command premium rates.



"I'm sorry, sir, Mr. Shaw's hours on Wednesday are strictly from two to four in the afternoon."

The form of construction mortgage used at Lakeview Village is identical with the conventional type, the parcel release provision stipulating that an individual unit together with its appurtenant share in the common elements shall be released from the lien of the mortgage at closing upon the payment to the construction mortgagee of an agreed upon amount.

There should be no reason why the buyer of an individual unit should have any unusual difficulty in obtaining a purchase money loan to be secured by a mortgage on the property unless there are some restrictions limiting the market for resale of the mortgages. In event of default, objects to being a tenant in common with the other co-owners in the ownership of the common elements. Section 4 of the Horizontal Property Act permits the individual apartment to be encumbered and the mortgage to be recorded. In the event of default on the mortgage, the interest of the other co-owners are not affected by the foreclosure and sale. The form of the mortgage is likewise identical to the conventional mortgage. The mortgage description of the premises would be adequate if in the following language:

"All that certain unit of real property situate, lying, etc. . . . known as apartment No. — in — Horizontal Property Regime more fully described in the Master Deed dated — and recorded in the Clerk's office of — County in deed book —, Page —."

It is not necessary to specifically include the percentage of ownership in the common elements since Section 11 of the Horizontal Property Act provides in that:

"Any conveyance of or other instrument affecting title to an individual apartment shall be deemed to also convey the undivided interest of the owner in the common elements, both general and limited appurtenant."
(Continued on Page 1247)

The Condominium Concept

(Continued from Page 1253)

ing to sell apart but without specifically or particularly referring to same."

THE NOVEL MASTER DEED

The final step in creating a condominium is the preparing and recording of the master deed. According to Section 2 of the Act, the horizontal property regime is established de jure upon the recording of this deed. However, to create a de facto condominium, it is essential that there be at least two co-owners of the common elements. This would require that at least one unit be sold by the developer. At that point the developer and the purchaser would be all of the co-owners and the condominium exists as previously defined.

Needless to say, the drafting of the master deed requires the most meticulous attention of the developer's attorney. The master deed in order to properly establish the condominium, must go far beyond the minimum provisions of the Horizontal Property Act. The Act is useful only as a guide in the preparation of the master deed. The attorney should make an exhaustive study of the nature of a condominium to fully appreciate the detail which must be expressed in the master deed and which is not defined in the Act. Unfortunately, it is not practicable to reprint the master deed as an exhibit to this article. For those attorneys who wish to study this document, the deed for Leisure Village Horizontal Property Regime I is recorded in the Ocean County Clerk's office in *Case Book 2368*, page 128 and the deed for Regime II is recorded in book 2360, page 295.

The term "master deed" is a misnomer. The recorded instrument is not a deed at all since it conveys no interest and would be more accurately defined as "enabling declarations" since its purpose is to create the establishment of a horizontal property regime on the premises described.

The master deed must contain the particulars set forth in Section 9 of the Act, apartment plans and surveyor's maps (Section 10), definition of each individual apartment (Section 11) and the By-laws or the form of administration used to govern the horizontal property regime (Section 14). Section 15 sets forth the minimum provisions of the By-laws.

As can be seen, the master deed will be a rather bulky document. In the case

of Leisure Village Horizontal Property Regime I, the master deed required forty one typed pages, on legal size and seventy of exhibits (plans, deed and surveyor's drawings as set by law).

The master deed must state the respective percentage of ownership of each apartment in the common elements. It follows therefore that this percentage must be determined for all units in the condominium prior to the recording of the master deed and the vesting of title to the first unit. Since this percentage is based upon the full market value or sales price of the unit, the sales price of all units must also first be determined before the master deed is recorded. The developer therefore should most certainly have sufficient experience in the building field in order to appreciate what sales prices will be attractive to the market. Once the first title to an individual unit is closed, the developer is for all practical purposes committed to selling the remainder of the project in condominium form and for the prices which were used in computing the percentage of ownership in the common elements. Section 6 of the Horizontal Property Act declares these percentages, when once established, to have a permanent character and not subject to alteration without the acquiescence of all of the co-owners in the condominium. This may be a very influential factor in making the initial determination of whether or not to use the condominium form.

In addition to containing the information required by Sections 9, 10 and 11 of the Act, the master deeds for Leisure Village Horizontal Property Regimes contain easements and restrictive and protective covenants running with the land, some of which merely paraphrase other provisions of the Horizontal Property Act but many of which are outside the language of the Act and are necessary to give operative effect to the condominium.

ADMINISTERING THE HORIZONTAL PROPERTY REGIME

The act further directs that every horizontal property regime shall be administered in a form left to the discretion of the owner or co-owners. Section 14 of the Act requires that the By-laws of this form of administration be inserted in or appended to and recorded with the master deed and Section 15 outlines the minimum contents of these by-laws.

In Leisure Village, the form of administration of the various horizontal prop-

erty regimes in a single development, one joint and several deed, one deed for each unit, has been entered into. This is a departure from Section 21 of the Act which provides for the joint and several deed, one deed for each unit. However, in the case of Leisure Village, the pooling of interests in the condominium is what renders the deed joint and several and incorporates the provisions of Section 21 and the provisions of Section 11.

All condominiums in Leisure Village are governed by the *By-laws of The Association of Leisure Village Association* and all units are governed by the conditions of incorporation of the Association or, generally as provided by the Act on behalf of co-owners, and, as finally, as provided in the by-laws of the Association.

One of the primary duties of the administrative body is to collect from the co-owners their monthly share of the costs of maintaining the common elements and such other utilities and services as may be necessary, unless upon. The Act makes contributions towards these expenses mandatory upon the co-owners to the extent of their percentage of ownership in the common elements. Section 18, in order to maintain the cooperative nature of condominium living, no owner may exempt himself from contribution towards these common expenses for to permit otherwise would require the neighbors of the defaulting co-owner to assume his share.

SOME SEARCH PROBLEMS

While the act does not specifically create a lien in favor of the administering body against the co-owners' interest, it does permit suit for failure of the co-owners to comply with the by-laws and with the rules and regulations adopted by the governing association and also with the provisions of the master deed. Section 21 of the Act's elevates unpaid assessments against the co-owner for his share in the common expenses above all other possible liens against the co-owners' interest with the exceptions of unpaid taxes and mortgages of record. Section 22 of the Act makes a subsequent purchaser of an apartment jointly and severally liable with the seller for unpaid maintenance charges and assessments and, thereby, creates a so called "hidden lien". In examining the title to a condominium unit the purchaser's attorney would have to obtain a statement from the administering body of any unpaid assessments or maintenance charges attributable to the particular unit. Failure to do so

SENATE, No. 161

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 4, 1963

198
X P-6648
(2)

By Senators STOUT, BOWKLEY, FOX and HAINES

Referred to Committee on Institutions, Public Health and Welfare

AN ACT concerning and providing for the creation of horizontal property regimes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. This act shall be known and may be cited as the "Horizontal Property
2 Act."

1 2. Unless it is plainly evident from the context that a different meaning
2 is intended, as used herein:

3 (a) "Apartment" means an enclosed space consisting of one or more
4 rooms occupying all or part of a floor in a building of one or more floors or
5 stories regardless of whether it be designed for residence, for office, for the
6 operation of any industry or business, or for any other type of independent
7 use, provided it has a direct exit to a thoroughfare or to a given common
8 space leading to a thoroughfare;

9 (b) "Co-owner" means a person, firm, corporation, partnership, associa-
10 tion, trust or other legal entity, or any combination thereof, who owns an
11 apartment within the building;

12 (c) "Council of co-owners" means all the co-owners as defined in sub-
13 section (b) of this section; but a majority, as defined in subsection (f) of this
14 section, shall, except as otherwise provided in this act constitute a quorum for
15 the adoption of decisions;

16 (d) "General common elements" means and includes:

17 (1) The land on which the building stands;

4 the regime established by this act, there shall thereby be established a
5 horizontal property regime.

1 4. Once the property is submitted to the horizontal property regime, an
2 apartment in the building may be individually conveyed and encumbered and
3 may be the subject of ownership, possession or sale and of all types of juridic
4 acts inter vivos or mortis causa, as if it were sole and entirely independent
5 of the other apartments in the building of which it forms a part, and the
6 corresponding individual titles and interests shall be recordable.

1 5. Any apartment may be held and owned by more than one person as
2 joint tenants, as tenants in common, as tenants by the entirety or in any other
3 real estate tenancy relationship recognized under the laws of this State.

1 6. An apartment owner shall have the exclusive ownership of his apart-
2 ment and shall have a common right to a share, with the other co-owners,
3 in the common elements of the property, equivalent to the percentage rep-
4 resenting the value of the individual apartment, with relation to the value
5 of the whole property. This percentage shall be computed by taking as a
6 basis the value of the individual apartment in relation to the value of the
7 property as a whole.

8 Said percentage shall be expressed at the time the horizontal property
9 regime is constituted, shall have a permanent character, and shall not be
10 altered without the acquiescence of the co-owners representing all the apart-
11 ments of the building.

12 The said basic value, which shall be fixed for the sole purpose of this
13 chapter and irrespectively of the actual value, shall not prevent each co-
14 owner from fixing a different circumstantial value to his apartment in all
15 types of acts and contracts.

1 7. The common elements, both general and limited, shall remain undi-
2 vided and shall not be the object of an action for partition or division of
3 the co-ownership. Any covenant to the contrary shall be void.

1 8. Each co-owner may use the elements held in common in accordance
2 with the purpose for which they are intended, without hindering or en-
3 croaching upon the lawful rights of the other co-owners.

1 9. The master deed creating and establishing the horizontal property
2 regime shall be executed by the owner or owners of the real property mak-
3 ing up the regime and shall be recorded in the office of the county recording
4 officer of the county where such property is located. The master deed shall
5 express the following particulars:

6 (a) The description of the land and the building, expressing their
7 respective areas;

8 (b) The general description and number of each apartment, expressing
9 its area, location and any other data necessary for its identification;

10 (c) The description of the general common elements of the building, and,
11 in proper cases, of the limited common elements restricted to a given num-
12 ber of apartments, expressing which are those apartments;

13 (d) Value of the property and of each apartment, and, according to
14 these basic values, the percentage appertaining to the co-owners in the ex-
15 penses of, and rights in, the elements held in common; and

16 (e) The name by which the horizontal property regime is to be known
17 followed by the words "Horizontal Property Regime."

1 10. There shall be attached to the master deed, at the time it is filed for
2 record, a full and exact copy of the plans of the building, which copy of plans
3 shall be entered of record along with the master deed. Said plans shall show
4 graphically all particulars of the building including, but not limited to, the
5 dimensions, area and location of each apartment therein and the dimensions,
6 area and location of common elements affording access to each apartment.
7 Other common elements, both limited and general, shall be shown graphically
8 insofar as possible and shall be described in detail in words and figures.
9 Said plans shall be certified to by an engineer or architect authorized and
10 licensed to practice his profession in this State.

1 11. Each apartment in a building shall be designated, on the plans re-
2 ferred to in section 10 of this act, by letter or number or other appropriate
3 designation and any conveyance, or other instrument affecting title to said
4 apartment, which describes the apartment by using said letter or number

8 setting forth the circumstances of the case and the cost of the works, with
9 the intervention of the council of co-owners.

10 The provisions of this section may be changed by unanimous resolution
11 of the parties concerned, adopted subsequent to the date on which the fire
12 or other disaster occurred.

1 23. All property taxes, assessments and other charges of any taxing
2 district shall be assessed against and collected on each individual apartment,
3 each of which shall be carried on the tax books as a separate and distinct
4 entity for that purpose, and not on the building or property as a whole. All
5 laws authorizing exemptions from taxation shall be applicable to each indi-
6 vidual apartment to the same extent they are applicable to other separate
7 property.

1 24. If any provision of this act is held invalid such invalidity shall not
2 affect other provisions hereof, and to this end the provisions of this act are
3 declared to be severable.

1 25. This act shall take effect immediately.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 161

STATE OF NEW JERSEY

ADOPTED MARCH 25, 1963

Amend page 1, Title, line 1, after "concerning" insert "interests in real property", after "creation" insert "and regulation".

Amend page 1, section 2, line 4, after "floor" insert "or floors".

Amend page 1, section 2, line 5, after "stories" omit "regardless of whether it", insert ", but not the entire building, and notwithstanding whether the apartment".

Amend page 1, section 2, line 17, delete "stands", insert "is located".

Amend page 2, section 2, line 36, after "(f)" insert "'Majority' or" and after "means" insert "the co-owners with".

Amend page 4, section 9, line 13, delete the entire line.

Amend page 4, section 9, line 14, delete "these basic values, the", insert "(d) The".

Amend page 5, section 12, line 2, delete "an", insert "a".

Amend page 5, section 15, lines 6-9, delete lines 6 through 9 in their entirety and insert:

"(b) Provisions for notices of meetings of co-owners containing a statement of the purpose of the meeting; method of notifying and calling or summoning the co-owners to assemble; that decisions involving capital expenditures shall require the affirmative vote of the co-owners representing at least 60% of the basic value of the property as a whole and that other decisions shall require

or his contractor or subcontractor, shall be the basis for the filing of a lien pursuant to article 10 of chapter 44 of Title 2A of the New Jersey Statutes against the apartment or any other property of any other co-owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by the owner of any apartment in the case of emergency repairs thereto. Labor performed or materials furnished for the common elements, if duly authorized by the council of co-owners, the administrator or board of administration or other administration specified by the by-laws, in accordance with this act, the master deed or by-laws, shall be deemed to be performed or furnished with the express consent of each co-owner and shall be the basis for the filing of a lien pursuant to article 10 of chapter 44 of Title 2A of the New Jersey Statutes against each of the apartments and shall be subject to the provisions of subparagraph (b) hereunder.

(b) In the event a lien against 2 or more apartments becomes effective, the owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payment shall be computed by reference to the percentages appearing in the master deed. Subsequent to any such payment, discharge or other satisfaction the apartment and the percentage of undivided interest in the common elements appurtenant thereto shall thereafter be free and clear of the lien so paid, satisfied or discharged. Such partial payment, satisfaction or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common elements appurtenant thereto not so paid, satisfied or discharged.”.

Amend page 6, section 18, line 1, delete “18.”, insert “21.”.

Amend page 7, section 19, line 1, delete “19.”, insert “22.”.

Amend page 7, section 19, line 5, after “.” add “The council of co-owners shall provide for the issuance and issue to any purchaser, upon his request, a statement of such amounts due by the seller and the purchaser’s liability under

this section shall be limited to the amount as set forth in said statement.”.

Amend page 7, section 20, line 1, delete “20.”, insert “23.”.

Amend page 7, section 20, line 1, delete “may, upon resolution of a majority,”, insert “shall”.

Amend page 7, section 21, line 1, delete “21.”, insert “24.”.

Amend page 7, section 22, line 1, delete “22.”, insert “25.”.

Amend page 8, section 23, line 1, delete “23.”, insert “26.”.

Amend page 8, after section 23, insert new section 27 to read as follows:

“27. Nothing herein contained shall prohibit any council of co-owners from incorporating pursuant to the provisions of Title 14 of the Revised Statutes for the purpose of the administration of the building constituted into a horizontal property regime. In the event of any such incorporation, the percentage of stock interest of each co-owner in the corporation shall be equal to the percentage of his right to share in the common elements as computed in accordance with the provisions of section 6 of this act.

Amend page 8, section 24, line 1, delete “24.”, insert “28.”.

Amend page 8, section 25, line 1, delete “25.”, insert “29.”.

SENATE AMENDMENTS TO

SENATE, No. 161

STATE OF NEW JERSEY

ADOPTED DECEMBER 9, 1968

Amend page 2, section 1, line 37, delete the word "basic".

Amend page 2, section 1, lines 37 to 38A, delete the words ", in accordance with the percentages computed in accordance with the provisions of section 6 of this act".

Amend page 3, section 6, lines 1 to 15, delete section 6 in its entirety and insert in lieu thereof:

"6. An apartment owner shall have the exclusive ownership of his apartment and shall have a proportionate undivided interest in the general common elements, equivalent to the percentage of the aggregate value of all the apartments represented by the value of his own apartment. Where limited common elements have been reserved for the use of his apartment, his proportionate undivided interest therein shall be equivalent to the percentage of the aggregate value of all apartments entitled to the use of said limited common elements represented by the value of his own apartment.

"For the sole purpose of establishing said percentages, the value of each apartment and the aggregate value of all the apartments shall be fixed by the owner or co-owners of the property making up the regime, and shall be computed on the basis of the fair market value of said apartments at the time when the regime is established, provided, however, that nothing herein contained shall prevent the owner of each apartment from attributing a different circumstantial value to his apartment in all types of acts and contracts. Said percentages once

established shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the building.”.

Amend page 4, section 9, line 2, delete the word “real”.

Amend page 4, section 9, line 10, delete the word “building” and insert in lieu thereof “property”.

Amend page 4, section 9, line 14, delete “The percentage appertaining to the co-owners in” and insert in lieu thereof “The respective percentage appertaining to each apartment in”.

Amend page 4, section 9, line 15, after the words “the elements held in common” insert “, both general and limited”.

Amend page 5, section 11, line 7, after the words “Any conveyance of” insert “or other instrument affecting title to”.

Amend page 5, section 12, line 1, delete the words “a building” and insert in lieu thereof “property”.

Amend page 5, section 14, lines 1 and 2, delete the words “The administration of every building constituted into horizontal property” and insert in lieu thereof “The administration of every property constituted into a horizontal property regime”.

Amend page 6, section 15, line 9E, delete the word “basic”.

Amend page 6, section 15, line 16, delete the word “building” and insert in lieu thereof “property”.

Amend page 6, section 15, line 17, delete the word “building” and insert in lieu thereof “property”.

Amend page 7, section 18, line 5, delete the word “building” and insert in lieu thereof “property”.

Amend page 9, section 21, line 3, delete the words “section 17” and insert in lieu thereof “section 18”.

Amend page 9, section 22, line 2, delete the words “section 17” and insert in lieu thereof “section 18”.

Amend page 10, section 26, line 4, after “whole.” insert “Such assessments shall include the value of the proportionate undivided interest of each apartment

in the general common elements, and in the limited common elements where such interest exists. The proportionate undivided interest of each apartment in said common elements shall be computed in accordance with the procedure established by section 6 of this act.”.

Amend page 10, section 26, line 5, after the words “exemptions from taxation” insert “or deductions from tax bills”.