

LEGISLATIVE NOTES ON R.S. 46:8B-1 thru 46:8B-30  
(Condominiums)

L. 1969, Chapter 257 - S652

April 2 - Introduced by Farley.

May 12 - Committee substitute passed in Senate.

December 1 - Passed in Assembly.

January 7 - Approved, Chapter 257.

~~- SENATE COMMITTEE SUBSTITUTE ATTACHED~~~~- INTRODUCED BILL ATTACHED -- NOT AMENDED DURING PASSAGE~~

No statement.

*NO HEARINGS OR REPORTS DISCOVERED.*

Periodical notation located:

974.905 New Jersey Realtor  
R286 (May 1969).

FAVOR

Makes amendments to the law which permits condominium ownership of real property which should encourage greater use of this concept by citizens of New Jersey.

We searched the following without success:

V.F.--N.J.--Housing (1969).

For background see:

Rutledge, J.R. Jr.

Conveying the air; the condominium  
in New Jersey. 8 N.J. State Bar Journal  
1201 (Nov. 1964). 1248 (Winter 1965).*LATER DEVELOPMENTS:*

JH/PC

974.90

H842

1975a

*779. Dept. of Community Affairs, Div. of  
State and Regional Planning.  
Mechanisms for Common Ownership  
in Planned Unit Developments, 1975.*

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CHAPTER 257 LAWS OF N. J. 1969  
APPROVED 1-7-70

SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE, No. 652**

**STATE OF NEW JERSEY**

ADOPTED MAY 1, 1969

AN ACT concerning interests in real property and providing for  
the creation and regulation of condominiums.

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

ARTICLE I

INTRODUCTORY PROVISIONS

1 1. Short title. This act shall be known and may be cited as the  
2 "Condominium Act."

1 2. Saving clause. This act shall not be construed to amend or  
2 repeal the act entitled "An act concerning interests in real prop-  
3 erty and providing for the creation and regulation of horizontal  
4 property regimes," approved December 16, 1963 (P. L. 1963, c.  
5 168). Said act shall continue to govern all property constituted  
6 into a horizontal property regime thereunder, provided that upon  
7 waiver of any such regime as provided in said act, the real prop-  
8 erty may be subjected to the provisions of this act as provided  
9 herein.

1 3. Definitions. The following words and phrases as used in this  
2 act shall have the meanings set forth in this section unless the  
3 context clearly indicates otherwise:

4 (a) "Assigns" means any person to whom rights of a unit owner  
5 have been validly transferred by lease, mortgage or otherwise.

6 (b) "Association" means the entity responsible for the admin-  
7 istration of a condominium, which entity may be incorporated or  
8 unincorporated.

9 (c) "By-laws" means the governing regulations adopted under  
10 this act for the administration and management of the property.

11 (d) "Common elements" means:

12 (i) the land described in the master deed;

13 (ii) as to any improvement, the foundations, structural and  
14 bearing parts, supports, main walls, roofs, basements, halls,  
15 corridors, lobbies, stairways, elevators, entrances, exits and

16 other means of access, excluding any specifically reserved or  
17 limited to a particular unit or group of units;

18 (iii) yards, gardens, walkways, parking areas and drive-  
19 ways, excluding any specifically reserved or limited to a par-  
20 ticular unit or group of units;

21 (iv) portions of the land or any improvement or appurte-  
22 nance reserved exclusively for the management, operation or  
23 maintenance of the common elements or of the condominium  
24 property;

25 (v) installations of all central services and utilities;

26 (vi) all apparatus and installations existing or intended for  
27 common use;

28 (vii) all other elements of any improvement necessary or  
29 convenient to the existence, management, operation, mainte-  
30 nance and safety of the condominium property or normally in  
31 common use; and

32 (viii) such other elements and facilities as are designated  
33 in the master deed as common elements.

34 (e) "Common expenses" means expenses for which the unit  
35 owners are proportionately liable, including but not limited to:

36 (i) all expenses of administration, maintenance, repair and  
37 replacement of the common elements;

38 (ii) expenses agreed upon as common by all unit owners;  
39 and

40 (iii) expenses declared common by provisions of this act or  
41 by the master deed or by the by-laws.

42 (f) "Common receipts" means:

43 (i) rent and other charges derived from leasing or licensing  
44 the use of common elements;

45 (ii) funds collected from unit owners as common expenses  
46 or otherwise; and

47 (iii) receipts designated as common by the provisions of  
48 this act or by the master deed or the by-laws.

49 (g) "Common surplus" means the excess of all common receipts  
50 over all common expenses.

51 (h) "Condominium" means the form of ownership of real prop-  
52 erty under a master deed providing for ownership by one or more  
53 owners of units of improvements together with an undivided in-  
54 terest in common elements appurtenant to each such unit.

55 (i) "Condominium property" means the land covered by the  
56 master deed, whether or not contiguous and all improvements  
57 thereon and all easements, rights and appurtenances belonging

58 thereto or intended for the benefit thereof.

59 (j) "Limited common elements" means those common elements  
60 which are for the use of one or more specified units to the exclusion  
61 of other units.

62 (k) "Majority" or "majority of the unit owners" means the  
63 owners of more than 50% of the aggregate in interest of the un-  
64 divided ownership of the common elements as specified in the  
65 master deed. If a different percentage of unit owners is required  
66 to be determined under this act or under the master deed or by-  
67 laws for any purpose, such different percentage of owners shall  
68 mean the owners of an equal percentage of the aggregate in in-  
69 terest of the undivided ownership of the common elements as so  
70 specified.

71 (l) "Master deed" means the master deed recorded under the  
72 terms of section 8 of this act, as such master deed may be amended  
73 or supplemented from time to time.

74 (m) "Person" means an individual, firm, corporation, partner-  
75 ship, association, trust or other legal entity, or any combination  
76 thereof.

77 (n) "Unit" means a part of the condominium property designed  
78 or intended for any type of independent use, having a direct exit  
79 to a public street or way or to a common element or common ele-  
80 ments leading to a public street or way or to an easement or right  
81 of way leading to a public street or way, and includes the propor-  
82 tionate undivided interest in the common elements and in any  
83 limited common elements assigned thereto in the master deed or  
84 any amendment thereof.

85 (o) "Unit deed" means a deed of conveyance of a unit in re-  
86 cordable form.

87 (p) "Unit owner" means the person or persons owning a unit  
88 in fee simple.

1 4. Status of units. Each unit shall constitute a separate parcel  
2 of real property which may be dealt with by the owner thereof in  
3 the same manner as is otherwise permitted by law for any other  
4 parcel of real property.

1 5. Types of ownership. Any unit may be held and owned by one  
2 or more persons in any form of ownership, real estate tenancy or  
3 relationship recognized under the laws of this State.

1 6. Common elements. The proportionate undivided interest in  
2 the common elements assigned to each unit shall be inseparable from  
3 such unit, and any conveyance, lease, devise or other disposition or  
4 mortgage or other encumbrance of any unit shall extend to and

5 include such proportionate undivided interest in the common ele- 22  
 6 ments, whether or not expressly referred to in the instrument effect- 23  
 7 ing the same. The common elements shall remain undivided and 24  
 8 shall not be the object of an action for partition or division. The 25  
 9 right of any unit owner to the use of the common elements shall be 26  
 10 a right in common with all other unit owners (except to the extent 27  
 11 that the master deed provides for limited common elements) to use 28  
 12 such common elements in accordance with the reasonable purposes 29  
 13 for which they are intended without encroaching upon the lawful 30  
 14 rights of the other unit owners. 31

1 7. Invalidity of contrary agreements. Any agreement contrary 32  
 2 to the provisions of this act shall be void. 33

### ARTICLE III 34

#### CREATION OF A CONDOMINIUM 35

1 8. Method of creation. A condominium may be created and estab- 36  
 2 lished by recording in the office of the county recording officer of the 37  
 3 county wherein the land is located a master deed executed and 38  
 4 acknowledged by all owners of such land, setting forth the matters 39  
 5 required by section 9 of this act. This act shall apply solely to real 40  
 6 property or interests therein which have been subjected to the terms 41  
 7 of this act as provided in this section. 42

1 9. Contents of master deed. The master deed shall set forth, or 43  
 2 contain exhibits setting forth the following matters: 1

3 (a) A statement submitting the land described in such master 2  
 4 deed to the provisions of this act. 3

5 (b) A name, including the word "condominium" or followed by 4  
 6 the words "a condominium," by which the property shall there- 5  
 7 after be identified. 6

8 (c) A legal description of the land. 7

9 (d) A survey of the land and plans or other graphic description 8  
 10 of the improvements erected or to be erected thereon in sufficient 9  
 11 detail to show and identify common elements, each unit and their 10  
 12 respective locations and approximate dimensions. Such plans or 11  
 13 other graphic description shall bear a certification by an engineer 12  
 14 or architect authorized to practice his profession in this State 13  
 15 setting forth that such plans constitute a correct representation of 14  
 16 the improvements described. 15

17 (e) An identification of each unit by distinctive letter, name or 16  
 18 number so that each unit may be separately described thereafter 17  
 19 by such identification. 18

20 (f) A description of the common elements and limited common 19  
 21 elements, if any. 20

22 (g) The proportionate undivided interests in the common ele-  
23 ments and limited common elements, if any, appurtenant to each  
24 such unit. Such interests shall in each case be stated as percentages  
25 aggregating 100%.

26 (h) The voting rights of unit owners.

27 (i) By-laws.

28 (j) A method of amending and supplementing the master deed,  
29 which shall require the recording of any such amendment or supple-  
30 ment in the same office as the master deed before it shall become  
31 effective.

32 (k) The name and nature of the association and if such associa-  
33 tion is not incorporated, the name and residence address, within  
34 this state of the person designated as agent to receive service of  
35 process upon such association.

36 (l) The proportions or percentages and manner of sharing com-  
37 mon expenses and owning common surplus.

38 (m) Such other provisions, not inconsistent with this act, as may  
39 be desired, including but not limited to restrictions or limitations  
40 upon the use, occupancy, transfer, leasing or other disposition of  
41 any unit (provided that any such restriction or limitation shall be  
42 otherwise permitted by law) and limitations upon the use of com-  
43 mon elements.

1 10. Unit deeds and other instruments. A deed, mortgage, lease  
2 or other instrument pertaining to a unit shall have the same force  
3 and effect in regard to such unit as would be given to a like instru-  
4 ment pertaining to other real property which has been similarly  
5 made, executed, acknowledged and recorded. A unit deed shall con-  
6 tain the following:

7 (a) The name of the condominium as set forth in the master deed,  
8 the name of the political subdivision and county in which the con-  
9 dominium property is located and a reference to the recording office,  
10 the book and page where the master deed and any amendment  
11 thereto are recorded.

12 (b) The unit designation as set forth in the master deed.

13 (c) A reference to the last prior unit deed conveying such unit, if  
14 previously conveyed.

15 (d) A statement of the proportionate undivided interest in the  
16 common elements appurtenant to such unit as set forth in the  
17 master deed or any amendments thereof.

18 (e) Any other matters, consistent with this act, which the parties  
19 may deem appropriate.

1 11. Amendments to master deed. The master deed may be  
 2 amended or supplemented in the manner set forth therein. Unless  
 3 otherwise provided therein, no amendment shall change a unit  
 4 unless the owner of record thereof and the holders of record of any  
 5 liens thereon shall join in the execution of the amendment or execute  
 6 a consent thereto with the formalities of a deed. Notwithstanding  
 7 any other provision of this act or the master deed, the designation  
 8 of the agent for service of process named in the master deed may  
 9 be changed by an instrument executed by the association and  
 10 recorded in the same office as the master deed.

ARTICLE IV  
 ADMINISTRATION

1 12. The association. The association provided for by the master  
 2 deed shall be responsible for the administration and management  
 3 of the condominium and condominium property, including but not  
 4 limited to the conduct of all activities of common interest to the  
 5 unit owners. The association may be any entity recognized by the  
 6 laws of New Jersey, including but not limited to a business corpo-  
 7 ration or a nonprofit corporation.

1 13. By-laws. The administration and management of the condo-  
 2 minium and condominium property and the actions of the associa-  
 3 tion shall be governed by by-laws which shall initially be recorded  
 4 with the master deed and shall provide, in addition to any other  
 5 lawful provisions, for the following:

6 (a) The form of administration, indicating the titles of the  
 7 officers and governing board of the association, if any, and specify-  
 8 ing the powers, duties and manner of selection, removal and com-  
 9 pensation, if any, of officers and board members.

10 (b) The method of calling meetings of unit owners, the per-  
 11 centage of unit owners or voting rights required to make decisions  
 12 and to constitute a quorum, but such by-laws may nevertheless  
 13 provide that unit owners may waive notice of meetings or may act  
 14 by written agreement without meetings.

15 (c) The manner of collecting from unit owners their respective  
 16 shares of common expenses and the method of distribution to the  
 17 unit owners of their respective shares of common surplus or such  
 18 other application of common surplus as may be duly authorized by  
 19 the by-laws.

20 (d) The method by which the by-laws may be amended, provided  
 21 that no amendment shall be effective until recorded in the same  
 22 office as the then existing by-laws. The by-laws may also provide  
 23 a method for the adoption, amendment and enforcement of reason-  
 24 able administrative rules and regulations relating to the operation,

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25 use, maintenance and enjoyment of the units and of the common  
26 elements including limited common elements.

1 14. Duties of the association. The association, acting through  
2 its officers or governing board, shall be responsible for the per-  
3 formance of the following duties, the costs of which shall be common  
4 expenses:

5 (a) The maintenance, repair, replacement, cleaning and sanita-  
6 tion of the common elements.

7 (b) The assessment and collection of funds for common expenses  
8 and the payment thereof.

9 (c) The adoption, distribution, amendment and enforcement of  
10 rules governing the use and operation of the condominium and  
11 the condominium property and the use of the common elements  
12 subject to the right of a majority of unit owners to change any  
13 such rules.

14 (d) The maintenance of insurance against loss by fire or other  
15 casualties normally covered under broad-form fire and extended  
16 coverage insurance policies as written in this State, covering all  
17 common elements and all structural portions of the condominium  
18 property and the application of the proceeds of any such insurance  
19 to restoration of such common elements and structural portions if  
20 such restoration shall otherwise be required under the provisions  
21 of this act or the master deed or by-laws.

22 (e) The maintenance of insurance against liability for personal  
23 injury and death for accidents occurring within the common ele-  
24 ments whether limited or general and the defense of any actions  
25 brought by reason of injury or death to person, or damage to prop-  
26 erty occurring within such common elements and not arising by  
27 reason of any act or negligence of any individual unit owner.

28 (f) The master deed or by-laws may require the association to  
29 protect blanket mortgagees, or unit owners and their mortgagees,  
30 as their respective interests may appear, under the policies of  
31 insurance provided under clauses (d) and (e) of this section, or  
32 against such risks with respect to any or all units, and may permit  
33 the assessment and collection from a unit owner of specific charges  
34 for insurance coverage applicable to his unit.

35 (g) The maintenance of accounting records, in accordance with  
36 generally accepted accounting principles, open to inspection at  
37 reasonable times by unit owners. Such records shall include:

38 (i) A record of all receipts and expenditures.

39 (ii) An account for each unit setting forth any shares of  
40 common expenses or other charges due, the due dates thereof,  
41 the present balance due, and any interest in common surplus.



42 (h) Nothing herein shall preclude any unit owner or other person  
43 having an insurable interest from obtaining insurance at his own  
44 expense and, for his own benefit against any risk whether or not  
45 covered by insurance maintained by the association.

46 (i) Such other duties as may be set forth in the master deed or  
47 by-laws.

1 15. Powers of the association. Subject to the provisions of the  
2 master deed, the by-laws and the provisions of this act, the associa-  
3 tion shall have the following powers:

4 (a) Whether or not incorporated, the association shall be an  
5 entity which shall act through its officers and may enter into con-  
6 tracts, bring suit and be sued. If the association is not incor-  
7 porated, it may be deemed to be an entity existing pursuant to  
8 this act and a majority of the members of the governing board  
9 or of the association, as the case may be, shall constitute a quorum  
10 for the transaction of business. Process may be served upon the  
11 association by serving any officer of the association or by serving  
12 the agent designated for service of process. Service of process  
13 upon the association shall not constitute service of process upon  
14 any individual unit owner.

15 (b) The association shall have access to each unit from time to  
16 time during reasonable hours as may be necessary for the main-  
17 tenance, repair or replacement of any common elements therein  
18 or accessible therefrom or for making emergency repairs necessary  
19 to prevent damage to common elements or to any other unit or units.

20 (c) The association may purchase units in the condominium and  
21 otherwise acquire, hold, lease, mortgage and convey the same. It  
22 may also lease or license the use of common elements in a manner  
23 not inconsistent with the rights of unit owners.

24 (d) The association may acquire or enter into agreements  
25 whereby it acquires leaseholds, memberships or other possessory or  
26 use interests in lands or facilities including, but not limited to  
27 country clubs, golf courses, marinas and other recreational facili-  
28 ties, whether or not contiguous to the condominium property, in-  
29 tended to provide for the enjoyment, recreation or other use or  
30 benefit of the unit owners. If fully described in the master deed or  
31 by-laws, the fees, costs and expenses of acquiring, maintaining,  
32 operating, repairing and replacing any such memberships, interests  
33 and facilities shall be common expenses. If not so described in the  
34 master deed or by-laws as originally recorded, no such membership  
35 interest or facility shall be acquired except pursuant to amendment  
36 of or supplement to the master deed or by-laws duly adopted as  
37 provided therein and in this act. In the absence of such amendment

38 or supplement, if some but not all unit owners desire any such  
39 acquisition and agree to assume among themselves all costs of  
40 acquisition, maintenance, operation, repair and replacement thereof,  
41 the association may acquire or enter into an agreement to acquire  
42 the same as limited common elements appurtenant only to the units  
43 of those unit owners who have agreed to bear the costs and ex-  
44 penses thereof. Such costs and expenses shall be assessed against  
45 and collected from the agreeing unit owners in the proportions  
46 in which they share as among themselves in the common expenses  
47 in the absence of some other unanimous agreement among them-  
48 selves. No other unit owner shall be charged with any such cost or  
49 expense; provided, however, that nothing herein shall preclude the  
50 extension of the interests in such limited common elements to  
51 additional unit owners by subsequent agreement with all those unit  
52 owners then having an interest in such limited common elements.

1 16. Relationship between unit owners and the association (a) No  
2 unit owner, except as an officer of the association, shall have any  
3 authority to act for or bind the association.

4 (b) Failure to comply with the by-laws and the rules and  
5 regulations governing the details of the use and operation of the  
6 condominium, the condominium property and the common elements  
7 in effect from time to time and with the covenants, conditions  
8 and restrictions set forth in the master deed or in deeds of units  
9 shall be grounds for an action for the recovery of damages or  
10 for injunctive relief or both maintainable by the association or  
11 by any other unit owner or by any person who holds a blanket  
12 mortgage or a mortgage lien upon a unit and is aggrieved by any  
13 such noncompliance.

14 (c) A unit owner shall have no personal liability for any  
15 damages caused by the association or in connection with the use of  
16 the common elements. A unit owner shall be liable for injuries or  
17 damages resulting from an accident in his own unit in the same  
18 manner and to the same extent as the owner of any other real estate.

1 17. Common expenses. The common expenses shall be charged  
2 to unit owners according to the percentage of their respective un-  
3 divided interests in the common elements as set forth in the master  
4 deed and amendments thereto, or in such other proportions as may  
5 be provided in the master deed or by-laws. The amount of common  
6 expenses charged to each unit shall be a lien against such unit  
7 subject to the provisions of section 21 of this act. A unit owner  
8 shall, by acceptance of title, be conclusively presumed to have  
9 agreed to pay his proportionate share of common expenses ac-

10 cruising while he is the owner of a unit. However, the liability of  
 11 a unit owner for common expenses shall be limited to amounts  
 12 duly assessed in accordance with this act, the master deed and  
 13 by-laws. No unit owner may exempt himself from liability for his  
 14 share of common expenses by waiver of the enjoyment of the right  
 15 to use any of the common elements or by abandonment of his unit  
 16 or otherwise. The common expenses charged to any unit shall bear  
 17 interest from the due date set by the association at such rate not  
 18 exceeding the legal interest rate as may be established by the  
 19 association or if no rate is so established at the legal rate.

1 18. Prohibited work. There shall be no material alteration of  
 2 or substantial addition to the common elements except as author-  
 3 ized by the master deed. No unit owner shall contract for or per-  
 4 form any maintenance, repair, replacement, removal, alteration or  
 5 modification of the common elements or any additions thereto,  
 6 except through the association and its officers. No unit owner shall  
 7 take or cause to be taken any action within his unit which would  
 8 jeopardize the soundness or safety of any part of the condominium  
 9 property or impair any easement or right appurtenant thereto or  
 10 affect the common elements without the unanimous consent of all  
 11 unit owners who might be affected thereby.

ARTICLE V

ASSESSMENTS, TAXES AND LIENS

1 19. Taxes, assessments and charges; valuation of units; exemp-  
 2 tions or deductions. All property taxes, special assessments and  
 3 other charges imposed by any taxing authority shall be separately  
 4 assessed against and collected on each unit as a single parcel, and  
 5 not on the condominium property as a whole. Such taxes, assess-  
 6 ments and charges shall constitute a lien only upon the unit and  
 7 upon no other portion of the condominium property. All laws  
 8 authorizing exemptions from taxation or deductions from tax bills  
 9 shall be applicable to each individual unit to the same extent they  
 10 are applicable to other separate property. The total of the assess-  
 11 ments for tax purposes against the aggregate of all units consti-  
 12 tuting the condominium property shall not exceed the assessment  
 13 which would otherwise have been made against such condominium  
 14 property as a single parcel had it not been submitted to this act.

1 20. Liens for labor or materials. (a) Except as otherwise pro-  
 2 vided in section 23, subsequent to recording the master deed as  
 3 provided in this act, and while the property remains subject to  
 4 this act, no lien shall arise or be effective against the condominium  
 5 property as a whole. During such period, liens or encumbrances

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6 shall arise or be created only against each unit (including the un-  
7 divided interest in the common elements appurtenant to such unit)  
8 in the same manner and under the same conditions in every respect  
9 as liens or encumbrances may arise or be created upon or against  
10 any other separate parcel of real property subject to individual  
11 ownership; provided that no labor performed or materials fur-  
12 nished with the consent or at the request of a unit owner or his  
13 agent or his contractor or subcontractor, shall be the basis for the  
14 filing of a lien pursuant to article 10 of chapter 44 of Title 2A of  
15 the New Jersey Statutes against the unit or any other property  
16 of any other unit owner not expressly consenting to or requesting  
17 the same, except that such express consent shall be deemed to be  
18 given by the owner of any unit in the case of emergency repairs  
19 thereto. Labor performed or materials furnished for the common  
20 elements, if duly authorized by the association in accordance with  
21 this act, the master deed or by-laws, shall be deemed to be per-  
22 formed or furnished with the express consent of each unit owner  
23 and shall be the basis for the filing of a lien pursuant to article 10  
24 of chapter 44 of Title 2A of the New Jersey Statutes against each  
25 of the units and shall be subject to the provisions of subparagraph  
26 (b) hereunder.

27 (b) In the event a lien against 2 or more units becomes effective,  
28 the owner of each separate unit may remove his unit (including  
29 the undivided interest in the common elements appurtenant to such  
30 unit) from the lien and obtain a discharge and satisfaction by  
31 payment of the proportion thereof attributable to such unit. The  
32 proportion so attributable to each unit subject to the lien shall be  
33 the proportion in which all units subject to the lien share among  
34 themselves in liability for common expenses. Subsequent to any  
35 such payment, the lien on such unit shall be discharged or other-  
36 wise satisfied of record and the unit (including the undivided in-  
37 terest in the common elements appurtenant thereto) shall there-  
38 after be free and clear of such lien. Such partial payment, discharge  
39 and satisfaction shall not prevent the lienor from proceeding to  
40 enforce his rights against any other unit (including the undivided  
41 interest in the common elements appurtenant thereto) not so paid,  
42 satisfied or discharged.

1 21. Liens in favor of association. The association shall have a lien  
2 on each unit for any unpaid assessment duly made by the associa-  
3 tion for a share of common expenses or otherwise, together with in-  
4 terest thereon and, if authorized by the master deed or by-laws, rea-  
5 sonable attorney's fees. Such lien shall be effective from and after

6 the time of recording in the public records of the county in which the  
7 unit is located of a claim of lien stating the description of the unit,  
8 the name of the record owner, the amount due and the date when  
9 due. Such claim of lien shall include only sums which are due and  
10 payable when the claim of lien is recorded and shall be signed and  
11 verified by an officer or agent of the association. Upon full payment  
12 of all sums secured by the lien, the party making payment shall be  
13 entitled to a recordable satisfaction of lien. All such liens shall be  
14 subordinate to any lien for past due and unpaid taxes, the lien of  
15 any mortgage to which the unit is subject and to any other lien  
16 recorded prior to the time of recording of the claim of lien.

17 Upon any voluntary conveyance of a unit, the grantor and grantee  
18 of such unit shall be jointly and severally liable for all unpaid  
19 assessments pertaining to such unit duly made by the association or  
20 accrued up to the date of such conveyance without prejudice to the  
21 right of the grantee to recover from the grantor any amounts paid  
22 by the grantee, but the grantee shall be exclusively liable for those  
23 accruing while he is the unit owner.

24 Any unit owner or any purchaser of a unit prior to completion  
25 of a voluntary sale may require from the association a certificate  
26 showing the amount of unpaid assessments pertaining to such unit  
27 and the association shall provide such certificate within 10 days  
28 after request therefor. The holder of a mortgage or other lien on  
29 any unit may request a similar certificate with respect to such unit.  
30 Any person other than the unit owner at the time of issuance of any  
31 such certificate who relies upon such certificate shall be entitled to  
32 rely thereon and his liability shall be limited to the amounts set  
33 forth in such certificate.

34 If a mortgagee of a first mortgage of record or other purchaser  
35 of a unit obtains title to such unit as a result of foreclosure of the  
36 first mortgage, such acquirer of title, his successors and assigns  
37 shall not be liable for the share of common expenses or other  
38 assessments by the association pertaining to such unit or charge-  
39 able to the former unit owner which became due prior to acquisition  
40 of title as a result of the foreclosure. Such unpaid share of common  
41 expenses and other assessments shall be deemed to be common ex-  
42 penses collectible from all of the remaining unit owners including  
43 such acquirer, his successors and assigns.

44 Liens for unpaid assessments may be foreclosed by suit brought  
45 in the name of the association in the same manner as a foreclosure  
46 of a mortgage on real property. The association shall have the  
47 power, unless prohibited by the master deed or by-laws to bid in  
48 the unit at foreclosure sale, and to acquire, hold, lease, mortgage

49 and convey the same. Suit to recover a money judgment for unpaid  
50 assessments may be maintained without waiving the lien securing  
51 the same.

1 22. Effect of sheriff's sale. (a) A unit may be sold by the sheriff  
2 on execution, free of any claim, not a lien of record, for common  
3 expenses or other assessments by the association, but any funds  
4 derived from such sale remaining after satisfaction of prior liens  
5 and charges but before distribution to the previous unit owner, shall  
6 be applied to payment of such unpaid common expenses or other  
7 assessments if written notice thereof shall have been given to the  
8 sheriff before distribution. Any such unpaid common expenses  
9 which shall remain uncollectible from the former unit owner for a  
10 period of more than 60 days after such sheriff's sale may be re-  
11 assessed by the association as common expenses to be collected from  
12 all unit owners including the purchaser who acquired title at the  
13 sheriff's sale, his successors and assigns. Unless prohibited by the  
14 master deed or by-laws, the association may bid in and purchase the  
15 unit at a sheriff's sale, and acquire, hold, lease, mortgage and con-  
16 vey the same.

17 (b) Notwithstanding any foreclosure, tax sale, or other forced  
18 sale of a unit, all applicable provisions of the master deed and  
19 by-laws, shall be binding upon any purchaser at such sale to the  
20 same extent as they would bind a voluntary grantee except that such  
21 purchaser shall not be liable for the share of common expenses or  
22 other assessments by the association pertaining to such unit or  
23 chargeable to the former owner which became due prior to such sale  
24 except as otherwise provided in paragraph (a) of this section.

1 23. Blanket mortgage. Notwithstanding any other provision of  
2 this act, if the master deed or by-laws so permit, the entire con-  
3 dominium property, or some or all of the units included therein  
4 (together with the undivided interests in common elements and  
5 limited common elements appurtenant to such units) may be sub-  
6 ject to a single or blanket mortgage constituting a first lien thereon  
7 created by recordable instrument by all of the owners of the prop-  
8 erty or units covered thereby; and any unit included under the lien  
9 of such mortgage may be sold or otherwise conveyed or transferred  
10 subject thereto. The instrument creating any such mortgage shall  
11 provide a method whereby any unit owner may obtain a release of  
12 his unit (together with the undivided interest in common elements  
13 and limited common elements if any, appurtenant thereto) from the  
14 lien of such mortgage and a satisfaction and discharge in recordable  
15 form, upon payment to the holder of the mortgage of a sum equal  
16 to the proportionate share attributable to his unit of the then out-

17 standing balance of unpaid principal and accrued interest and any  
18 other charges then due and unpaid. Such proportionate share at-  
19 tributable to each unit shall be the proportion in which all units  
20 then subject to the lien of the mortgage share among themselves in  
21 liability for common expenses as provided in the master deed or  
22 such other reasonable proportion as shall be specifically provided in  
23 the mortgage instrument.

ARTICLE VI DAMAGE OR DESTRUCTION; CONDEMNATION

1 24. Fire or other casualty. (a) Damage to or destruction of any  
2 improvements on the condominium property or any part thereof  
3 or to a common element or elements or any part thereof covered by  
4 insurance required to be maintained by the association shall be  
5 repaired and restored by the association using the proceeds of any  
6 such insurance. The unit owners directly affected shall be assessed  
7 on an equitable basis for any deficiency and shall share in any  
8 excess.

9 (b) If the proceeds of such insurance shall be inadequate by a  
10 substantial amount to cover the estimated cost of restoration of an  
11 essential improvement or common element or if such damage shall  
12 constitute substantially total destruction of the condominium prop-  
13 erty or of one or more of the buildings comprising the condominium  
14 property or if 75% of the unit owners directly affected by such  
15 damage or destruction voting in accordance with the procedures  
16 established by the by-laws shall determine not to repair or restore,  
17 the association shall proceed to realize upon the salvage value of  
18 that portion of the condominium property so damaged or destroyed  
19 either by sale or such other means as the association may deem  
20 advisable and shall collect the proceeds of any insurance. There-  
21 upon the net proceeds of such sale, together with the net proceeds  
22 of such insurance shall be considered as one fund to be divided  
23 among the unit owners directly affected by such damage or destruc-  
24 tion in proportion to their respective undivided ownership of the  
25 common elements. Any liens or encumbrances on any affected unit  
shall be relegated to the interest in the fund of the unit owners.

26 (c) The master deed or the by-laws may make other and different  
27 provision covering the eventualities set forth in paragraphs  
28 (a) and (b) of this section or covering other results of damage  
29 or destruction to any part or all of the condominium property,  
30 notwithstanding the provisions of paragraphs (a) and (b). If  
31 the master deed or by-laws shall require insurance against fire  
32 and other casualty with respect to individual units, it shall also  
33 provide for the application of the proceeds and the rights and ob-  
ligations of unit owners in case of damage or destruction.

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1 25. Eminent domain. If all or any part of the common ele-  
 2 ments shall be taken, injured or destroyed by eminent domain, each  
 3 unit owner shall be entitled to notice of such taking and to par-  
 4 ticipate through the association in the proceedings incident there-  
 5 to. Any damages shall be for the taking, injury or destruction as  
 6 a whole and shall be collected by the association and distributed  
 7 by it among the unit owners in proportion to each unit owner's un-  
 8 divided interest in such common elements, except to the extent that  
 9 the association deems it necessary or appropriate to apply them to  
 10 the repair or restoration of any such injury or destruction.

#### ARTICLE VII TERMINATION OF A CONDOMINIUM

1 26. Deed of revocation. Any condominium property may be  
 2 removed from the provisions of this act by a deed of revocation  
 3 duly executed by all unit owners or the sole owner of the property  
 4 and the holders of all mortgages or other liens affecting all units  
 5 and recorded in the same office as the master deed.

1 27. Effect of deed of revocation. Upon the recording of such  
 2 deed of revocation, the unit owners as of the date of recording  
 3 of such deed shall become tenants-in-common of the property un-  
 4 less otherwise provided in the master deed or deed of revocation,  
 5 each such unit owner shall thereafter be the owner of an undivided  
 6 interest in the entire property equal to the percentage of his  
 7 undivided interest in the common elements before the recording of  
 8 such deed of revocation, and each lien on an individual unit shall  
 9 become a lien on the individual undivided interest of the unit owner  
 10 in the entire property.

1 28. Resubmission. The removal of any property from the pro-  
 2 visions of this act shall not bar the resubmission of the property  
 3 to the provisions of this act in the manner herein provided.

#### ARTICLE VIII MISCELLANEOUS PROVISIONS

1 29. Zoning. All laws, ordinances and regulations concerning  
 2 planning, subdivision or zoning, shall be construed and applied  
 3 with reference to the nature and use of the condominium without  
 4 regard to the form of ownership. No law, ordinance or regulation  
 5 shall establish any requirement concerning the use, location, place-  
 6 ment or construction of buildings or other improvements which  
 7 are, or may thereafter be subjected to this act unless such re-  
 8 quirement shall be equally applicable to all buildings and improve-  
 9 ments which are, or may thereafter be subjected to this act unless  
 10 such requirement shall be equally applicable to all buildings and  
 11 improvements of the same kind not then or thereafter to be sub-  
 12 jected to this act. No subdivision or planning approval shall be re-



13 quired as a condition precedent to the recording of a master deed  
13A or the sale of any unit unless such approval shall also be required  
13B for the use or development of the lands described in the master deed  
14 in the same manner as therein set forth had such lands not been  
15 submitted to this act.

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

1 31. This act shall take effect immediately.

SENATE, No. 652

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STATE OF NEW JERSEY

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INTRODUCED APRIL 2, 1969

By Senator FARLEY

Referred to Committee on Commerce, Industry and Professions

AN ACT to amend and supplement "An act concerning interests in real property and providing for the creation and regulation of horizontal property regimes," approved December 16, 1963 (P. L. 1963, c. 168).

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

1 1. Section 2 of P. L. 1963, chapter 168 (C. 46:8A-2) is amended  
2 to read as follows:

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

5 (a) "Apartment" means an enclosed space consisting of one or  
6 more rooms occupying all or part of a floor or floors in a building of  
7 one or more floors or stories, but not the entire building, and not-  
8 withstanding whether the apartment be designed for residence, for  
9 office, for the operation of any industry or business, or for any other  
10 type of independent use, provided it has a direct exit to a  
11 thoroughfare or to a given common space leading to a throughfare;

12 [(b) "Co-owner" means a person, firm, corporation, partner-  
13 ship, association, trust or other legal entity, or any combination  
14 thereof, who owns an apartment within the building.]

15 (b) "Assessment" means a share of the funds required for the  
16 payment of common expenses which from time to time is assessed  
17 against the unit owner;

18 [(c) "Council of co-owners" means all the co-owners as defined  
19 in subsection (b) of this section; but a majority, as defined in sub-  
20 section (f) of this section, shall, except as otherwise provided in this  
21 act constitute a quorum for the adoption of decisions;]

22 (c) "Association" means the entity responsible for the operu-  
23 tion of a regime, which entity may be incorporated or unincor-  
24 porated;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

25 (d) "Building" means any multiunit building or buildings or  
 26 complex thereof whether in horizontal or vertical arrangement com-  
 27 prising a part of the property and used or intended for use for  
 28 residential, commercial or industrial purposes or for any other  
 29 lawful purpose or for any combination of such uses;

30 (e) "By-laws" mean the by-laws for the government of the  
 31 regime as they exist from time to time;

32 (f) "Common expenses" mean the expenses for which the unit  
 33 owners are liable to the association;

34 (g) "Common surplus" means the excess of all receipts of the  
 35 association, including but not limited to assessments, rents, profits  
 36 and revenues on account of the general common elements, over the  
 37 amount of common expenses;

38 (h) [(d)] "General common elements" means and includes:

39 (1) The land on which the building [is] and improvements  
 40 are located;

41 (2) The foundations, main walls, roofs, halls, lobbies,  
 42 stairways, and entrance and exit or communication ways;

43 (3) The basements, flat roofs, yards, and gardens, except as  
 44 otherwise provided or stipulated;

45 (4) The premises for the lodging of janitors or persons in  
 46 charge of the building, except as otherwise provided or stipu-  
 47 lated;

47A (5) The compartments or installations of central services  
 47B such as power, light, gas, cold and hot water, refrigeration,  
 47C reservoirs, water tanks and pumps, and the like;

48 (6) The elevators, garbage incinerators and, in general, all  
 49 devices or installations existing for common use; and

50 (7) All other elements of the building rationally of common  
 51 use or necessary to its existence, upkeep and safety;

52 (i) [(e)] "Limited common elements" means and includes  
 53 those common elements which are [agreed upon by all the co-owners  
 54 to be reserved for the use of a certain number of apartments to  
 55 the exclusion of the other apartments, such as special corridors,  
 56 stairways and elevators, sanitary services common to the apart-  
 57 ments of a particular floor, and the like:] reserved for the use of  
 58 a certain unit or units to the exclusion of other units;

59 (j) [(f)] "Majority" or "majority of [co-owners] unit owners"  
 60 means [the co-owners with 51% or more of the value of the prop-  
 61 erty as a whole] the unit owners owning over 50% of the undivided  
 62 rights and interests in the general common elements;

63 (k) [(g)] "Master deed" means [the deed establishing the hori-  
 64 zontal property regime.] the instrument or instruments by which a

65 *horizontal property regime is created, and such instrument or in-*  
 66 *struments as they are from time to time amended:*

67 (l) "Operation" or "operation of the regime" means and in-  
 68 cludes the administration and management of the regime property;

69 (m) [(h)] "Person" means an individual, firm, corporation,  
 70 partnership, association, trust or other legal entity, or any combina-  
 71 tion thereof;

72 [(i) "Property" means and includes the land, the building, all  
 73 improvements and structures thereon, and all easements, rights and  
 74 appurtenances belonging thereto.]

75 (n) "Regime" or "horizontal property regime" means that  
 76 form of ownership of regime property under which units of im-  
 77 provements are subject to ownership by one or more owners and  
 78 there is appurtenant to each unit as a part thereof an undivided  
 79 share in the general common elements and in the limited common  
 80 elements;

81 (o) "Regime parcel" means a unit together with the undivided  
 82 share in the general common elements and limited common elements  
 83 which are appurtenant to the unit;

84 (p) "Regime property" means and includes the land in a hori-  
 85 zontal property regime, whether or not contiguous, and all improve-  
 86 ments thereon and all easements and rights appurtenant thereto  
 87 intended for use in connection with the regime;

88 (q) "Unit" means improved space constituting part of the  
 89 regime property and includes an apartment;

90 (r) "Unit deed" means a deed of conveyance of a unit;

91 (s) "Unit owner" or "owner" means the person or persons  
 92 owning a unit in fee simple.

1 2. Section 3 of P. L. 1963, chapter 168 (C. 46:8A-3) is amended  
 2 to read as follows:

3 3. Whenever a [sole owner or the co-owners of a building]  
 4 person or persons having title of record to property expressly de-  
 5 clare, through the recordation of a master deed, which shall set  
 6 forth the particulars enumerated in section 9 (C. 46:8A-9), their  
 7 desire to submit their property to the regime established by this  
 8 act, there shall thereby be established a horizontal property regime.

1 3. Section 4 of P. L. 1963, chapter 168 (C. 46:8A-4) is amended  
 2 to read as follows:

3 4. Once the property is submitted to the horizontal property  
 4 regime, [an apartment in the building] a unit may be individually  
 5 conveyed and encumbered and may be the subject of ownership,  
 6 possession or sale and of all types of juridic acts inter vivos or

7 mortis causa, as if it were sole and entirely independent of the  
8 other **[apartments]** *units* in the building of which it forms a part,  
9 and the corresponding individual titles and interests shall be re-  
10 cordable.

1 4. Section 5 of P. L. 1963, chapter 168 (C. 46:8A-5) is amended  
2 to read as follows:

3 5. Any **[apartment]** *unit* may be held and owned by more than  
4 one person as joint tenants, as tenants in common, as tenants by  
5 the entirety or in any other real estate tenancy relationship recog-  
6 nized under the laws of this State.

1 5. Section 6 of P. L. 1963, chapter 168 (C. 46:8A-6) is amended  
2 to read as follows:

3 6. **[An apartment]** *A unit* owner shall have the exclusive owner-  
4 ship of his **[apartment]** *unit* and shall have **[a proportionate]**  
5 *an undivided* interest in the general common elements**[.]**.  
6 **[equivalent to the percentage of the aggregate value of all the**  
7 **apartments represented by the value of his owner apartment].**  
8 Where limited common elements have been reserved for the use  
9 of his **[apartment]** *unit*, **[his proportionate]** *the unit owner shall*  
10 *have an undivided interest therein [shall be equivalent to the per-*  
11 *centage of the aggregate value of all apartments entitled to the*  
12 *use of said limited common elements represented by the value of*  
13 *his own apartment].*

14 **[For the sole purpose of establishing said percentages, the value**  
15 **of each apartment and the aggregate value of all the apartments**  
16 **shall be fixed by the owner or co-owners of the property making up**  
17 **the regime, and shall be computed on the basis of the fair market**  
18 **value of said apartments at the time when the regime is estab-**  
19 **lished, provided, however, that nothing herein contained shall pre-**  
20 **vent the owner of each apartment from attributing a different**  
21 **circumstantial value to his apartment in all types of acts and con-**  
22 **tracts. Said percentages once established shall have a permanent**  
23 **character, and shall not be altered without the acquiescence of the**  
24 **co-owners representing all the apartments of the building.]**

25 *The respective percentages of such undivided interests appur-*  
26 *tenant to each unit shall be fixed by the person or persons creating*  
27 *the regime and shall be set forth in the master deed. Such per-*  
28 *centages once established shall have a permanent character and*  
29 *shall not be altered without the acquiescence of the unit owner*  
30 *representing all the units affected thereby.*

1 6. Section 7 of P. L. 1963, chapter 168 (C. 46:8A-7) is amended  
2 to read as follows:

3 7. The common elements, both general and limited, *which are*  
 4 *appurtenant to a unit, shall remain undivided, and shall not be*  
 5 *separated therefrom, shall pass with the title to the unit, whether*  
 6 *or not separately described, and shall not be the object of an action*  
 7 *for partition or division [of the co-ownership]. Any covenant to*  
 8 *the contrary shall be void.*

1 7. Section 8 of P. L. 1963, chapter 168 (C. 46:8A-8) is amended  
 2 to read as follows:

3 8. Each [co-owner] *unit owner* may use the elements held in  
 4 common in accordance with the purpose for which they are in-  
 5 tended, without hindering or encroaching upon the lawful rights  
 6 of the other [co-owners] *unit owners*.

1 8. Section 9 of P. L. 1963, chapter 168 (C. 46:8A-9) is amended  
 2 to read as follows:

3 9. The master deed creating and establishing the horizontal  
 4 property regime shall be executed by the [owner or owners of]  
 5 *person or persons having title of record to the property making up*  
 6 *the regime and shall be recorded in the office of the county record-*  
 7 *ing officer of the county where such property is located. The master*  
 8 *deed shall express the following particulars:*

9 (a) *The submission of the property to the horizontal property*  
 10 *act;*

11 (b) [(a)] The description of the land and the building, express-  
 12 ing their respective areas;

13 (c) [(b)] The general description and number of each [apart-  
 14 ment] *unit*, expressing its area, location and any other data neces-  
 15 sary for its identification;

16 (d) [(e)] The description of the general common elements of  
 17 the property, and, in proper cases, of the limited common elements  
 18 restricted to a given number of [apartments] *units*, expressing  
 19 which are those [apartments] *units*;

20 [(d)] The respective percentage appertaining to each apartment  
 21 in the expenses of, and rights in, the elements held in common,  
 22 both general and limited; and]

23 (e) *The proportionate undivided rights and interests in the*  
 24 *common elements, both general and limited, stated in percentages,*  
 25 *which are appurtenant to each unit, which percentages shall ag-*  
 26 *gregate 100%;*

27 (f) *The proportions or percentages and manner of sharing com-*  
 28 *mon expenses and owning common surplus;*

29 (g) [(e)] The name by which the horizontal property regime  
 30 is to be known followed by the words "horizontal property re-  
 31 gime";

32 (h) *The name of the association and whether or not it is incor-*  
 33 *porated. If the association is not incorporated, the name and*  
 34 *residence address of the person designated as agent to receive*  
 35 *service of process upon the association. Such agent must be a*  
 36 *resident of the State;*

37 (i) *Voting rights of unit owners;*

38 (j) *Method of amendment of master deed;*

39 (k) *Such other provisions not inconsistent with this law as may*  
 40 *be desired, including but not limited to those relating to the amend-*  
 41 *ment of the master deed, value of the regime property and of each*  
 42 *unit or regime parcel, statement of purpose for which regime*  
 43 *property and units are intended, designation of limited common*  
 44 *elements, responsibility for maintenance and repair of units, in-*  
 45 *sureing of the regime property against loss and the owners and*  
 46 *association against liability, reconstruction or repair after casualty*  
 47 *and votes required in connection therewith, use restrictions, limi-*  
 48 *tation upon conveyance, sale, leasing, purchase, ownership and oc-*  
 49 *cupancy of units, termination of the regime;*

50 (l) *The master deed may include such covenants and restrictions*  
 51 *concerning the use, occupancy and transfer of the units as are per-*  
 52 *mitted by law with reference to real property;*

53 (m) *All valid provisions of the master deed shall run with the*  
 54 *land and shall be effective until the master deed is revoked.*

1 9. Section 10 of P. L. 1963, chapter 168 (C. 46:8A-10) is amended  
 2 to read as follows:

3 10. There shall be attached to the master deed, at the time it is  
 4 filed for record, a full and exact copy of the plans of the building,  
 5 which copy of plans shall be entered of record along with the  
 6 master deed. Said plans shall show graphically all particulars of  
 7 the building including, but not limited to, the dimensions, area and  
 8 location of each [apartment] unit therein and the dimensions, area  
 9 and location of common elements affording access to each [apart-  
 10 ment] unit. Other common elements, both limited and general,  
 11 shall be shown graphically insofar as possible and shall be de-  
 12 scribed in detail in words and figures. Said plans shall [be cer-  
 13 tified to] bear a certification by an engineer or architect authorized  
 14 and licensed to practice his profession in this State, to the effect  
 15 that the foregoing requirements are fully and accurately set forth.

1 10. Section 11 of P. L. 1963, chapter 168 (C. 46:8A-11) is  
 2 amended to read as follows:

3 11. Each [apartment] unit in a building shall be designated, on  
 4 the plans referred to in section 10 of this act, (C. 46:8A-10) by

5 letter or number or other appropriate designation and any con-  
 6 veyance, or other instrument affecting title to said [apartment]  
 7 unit, which described the [apartment] unit by using said letter or  
 8 number followed by the words "in . . . horizontal property regime"  
 9 shall be deemed to contain a good and sufficient description for all  
 10 purposes. Any conveyance of or other instrument affecting title  
 11 to an individual [apartment] unit shall be deemed to also convey  
 12 the undivided interest of the owner in the common elements, both  
 13 general and limited, appertaining to said [apartment] unit without  
 14 specifically or particularly referring to same.

1 11. (a) An amendment of a master deed shall become effective  
 2 when recorded according to law.

3 (b) The amendment shall be evidenced by an instrument executed  
 4 with the formalities of a deed and shall include the recording data  
 5 identifying the original master deed.

6 (c) Unless otherwise provided in the master deed as originally  
 7 recorded, no amendment shall change any regime parcel unless the  
 8 recorded owner thereof and all recorded owners of liens thereon  
 9 shall join in the execution of the amendment or consent thereto,  
 10 which consent shall be executed with the formalities of a deed.

11 (d) Notwithstanding any other provision of this act or the  
 12 master deed, the designation of the agent for the service of process  
 13 named in the master deed may be changed from time to time by an  
 14 instrument executed by the association with the formalities required  
 15 for the execution of a deed and recorded in the office of the clerk of  
 16 the county wherein the master deed was recorded.

1 12. Section 12 of P. L. 1963, chapter 168 (C. 46:8A-12) is  
 2 amended to read as follows:

3 12. [All the co-owners or the sole owner of the property consti-  
 4 tuted into a horizontal property regime may waive this regime and  
 5 regroup or merge the records of the individual apartments with the  
 6 principal property, provided, that the individual apartments  
 7 are unencumbered, or if encumbered, that the creditors in whose  
 8 behalf the encumbrances are recorded agree to accept as security  
 9 the undivided portions of the property owned by the debtors.]

10 (a) *All of the unit owners or sole owner of the property may*  
 11 *remove the property from the provisions of this act or may merge*  
 12 *the records of the individual units with the principal property by an*  
 13 *instrument to that effect, duly executed by all such persons and duly*  
 14 *recorded, provided that the holders of all liens affecting any unit*  
 15 *consent thereto or agree, in either case by instrument duly executed*  
 16 *and recorded, that their liens be transferred to the individual share*  
 17 *of the unit owner in the property as hereinafter provided.*



18 (b) Upon removal of the property from the provisions of this  
 19 act, the property shall be deemed to be owned in common by the  
 20 unit owners. Unless otherwise specifically provided in an instrument  
 21 duly recorded, the undivided share in the property owned in common  
 22 by each unit owner shall be the undivided share previously owned  
 23 by such owner in the general common elements and the limited  
 24 common elements.

25 (c) After termination of the horizontal property regime in any  
 26 manner, the liens upon the units of unit owners under the regime  
 27 shall be upon the respective undivided shares of the owners as  
 28 tenants in common.

1 13. Section 13 of P. L. 1963, chapter 168 (C. 46:8A-13) is  
 2 amended to read as follows:

3 13. The termination or merger provided for in section 12  
 4 (C. 46:8A-12) shall in no way bar the subsequent constitution of  
 5 the property into another horizontal property regime whenever so  
 6 desired and upon observance of the provisions of this act.

1 14. Section 15 of P. L. 1963, chapter 168 (C. 46:8A-15) is  
 2 amended to read as follows:

3 15. (1) The by-laws must necessarily provide for at least the  
 4 following:

5 (a) Form of administration, indicating [whether this shall be  
 6 in charge of an administrator or of a board of administration, or  
 7 otherwise, and specifying the powers, manner of removal, and,  
 8 where proper, the compensation thereof] the title of the officers and  
 9 board of administration, if any, and specifying the powers, duties,  
 10 manner of selection and removal, and compensation, if any, of  
 11 officers and boards.

12 (b) [Provisions for notices of meetings of co-owners containing  
 13 a statement of the purpose of the meeting; method of notifying and  
 14 calling or summoning the co-owners to assembly; that decisions  
 15 involving capital expenditures shall require the affirmative vote of  
 16 the co-owners representing at least 60% of the value of the property  
 17 as a whole and that other decisions shall require the affirmative  
 18 vote of at least a majority; who is to preside over the meeting and  
 19 who will keep the minute book wherein the resolution shall be re-  
 20 corded.] Method of calling or summoning unit owners to assemble  
 21 at meetings; the percentage of unit owners or voting rights required  
 22 to make decisions, and to constitute a quorum. The foregoing re-  
 23 quirements as to meetings are not to be construed, however, to  
 24 prevent unit owners from waiving notice of meetings or from acting  
 25 by written agreement without meetings, if so provided in the by-  
 26 laws, the master deed or this act.

27 **[(e) Care, upkeep and surveillance of the building and its gen-**  
 28 **eral or limited common elements and services]**

29 (c) **[(d)]** Manner of collecting from the **[co-owners for the pay-**  
 30 **ment]** *unit owners their shares* of the common expenses.

31 **[(e) Designation and dismissal of the personnel necessary for the**  
 32 **works and the general or limited common services of the building**

33 The sole owner of the property, or, if there be more than one, the  
 34 co-owners representing  $\frac{2}{3}$  of the total value of the property, may  
 35 at any time modify the system of administration, but each one of the  
 36 particulars set forth in this section shall always be embodied in the  
 37 by-laws. No such modification may be operative until it is embodied  
 38 in a recorded instrument which shall be recorded in the same office  
 39 and in the same manner as was the master deed and original by-  
 40 laws of the horizontal property regime involved]

40A (d) *The method by which the by-laws may be amended con-*  
 40B *sistent with the provisions of this act, provided, however, no amend-*  
 40C *ment or modification may be operative until it is embodied in a re-*  
 40D *corded instrument.*

41 (2) *The by-laws may provide for the following:*

42 (a) *Method of adopting and of amending administrative rules*  
 43 *and regulations governing the details of the operation and use of*  
 44 *the general and limited common elements.*

45 (b) *Such restrictions on and requirements respecting the use and*  
 46 *maintenance of the units and the use of the general and limited*  
 47 *common elements, not set forth in the master deed, as are designed*  
 48 *to prevent unreasonable interference with the use of the units and*  
 49 *general and limited common elements.*

50 (c) *Such other provisions not inconsistent with this act or with*  
 51 *the master deed as may be desired.*

1 15. Sections 16 (C. 46:8A-16) and 17 (C. 46:8A-17) are repealed.

1 16. (a) The operation of the regime shall be by the association,  
 2 the name of which shall be stated in the master deed.

3 (b) The association, whether or not incorporated, shall be an  
 4 entity which shall act through its officers and shall have the  
 5 capability of contracting, bringing suit and being sued. If not  
 6 incorporated, the association shall be deemed to be an entity  
 7 existing pursuant to this action and a majority of such association  
 8 shall constitute a quorum for the transaction of business. The  
 9 association in behalf of the regime and unit owners shall have  
 10 power to execute contracts, deeds, mortgages, leases and other  
 11 instruments by its officers. Service of process upon the association  
 12 if not incorporated may be had by serving any officer of the associa-  
 13 tion or by serving the agent designated for service of process.

14 Service of process upon the association shall not constitute service  
15 of process upon any unit owner.

16 (c) No unit owner, except as an officer of the association, shall  
17 have any authority to act for the association.

18 (d) Unless limited by the master deed, the powers and duties of  
19 the association shall include those set forth in this act. The powers  
20 and duties of the association shall include also those set forth in  
21 the declaration, master deed and by-laws.

22 (e) The duties of the association shall include the following:

23 (1) The maintenance, repair and replacement of the common  
24 elements.

25 (2) The assessment and collection of funds from unit owners  
26 for common expenses and the payment of such common expenses.

27 (3) The maintenance of accounting records according to good  
28 accounting practices which shall be open to inspection by unit  
29 owners at reasonable times. Such records shall include:

30 (A) A record of all receipts and expenditures.

31 (B) An account for each unit which shall designate the  
32 name and address of the unit owner, the amount of each  
33 assessment, the dates and amounts in which the assessment  
34 came due, the amounts paid upon the account and the bal-  
35 ance due.

36 (f) Subject to the limitations and restrictions contained in this  
37 act, the association shall, on behalf of the unit owners:

38 (1) Have the right to have access to each unit from time to time  
39 during reasonable hours as may be necessary for the maintenance,  
40 repair or replacement of any of the common elements therein or  
41 accessible therefrom, or for making emergency repairs therein  
42 necessary to prevent damage to the common elements or to another  
42A unit or units.

43 (2) Have the power unless prohibited by the master deed of  
44 the regime, articles of incorporation or by-laws of the association,  
45 to purchase units in the regime and to acquire and hold, lease,  
46 mortgage and convey the same.

1 17. In addition to any other provisions of this chapter, an as-  
2 sociation may acquire and enter into agreements whereby it ac-  
3 quires leaseholds, memberships and other possessory or use  
4 interests in lands or facilities including but not limited to country  
5 clubs, golf courses, marinas and other recreational facilities,  
6 whether or not contiguous to the lands of the regime, intended to  
7 provide for the employment, recreation or other use or benefit of  
8 the unit owners. All of such leaseholds, memberships and other  
9 possessory or use interests existing or brought into existence at

10 the time of recording the master deed shall be set forth and fully  
11 described therein. Subsequent to the recording of the master  
12 deed, the association may not acquire or enter into agreements  
13 acquiring such leaseholds, memberships or other possessory or  
14 use interests except as authorized by the master deed and by-laws.  
15 The master deed and by-laws may declare the expenses of rental,  
16 membership fees, operations, replacements and other undertakings  
17 in connection therewith to be common expenses and may include  
18 covenants and restrictions concerning the use of the same by the  
19 unit owners and such other provisions not inconsistent with this  
20 law as may be desired.

1 18. (a) The maintenance of the common elements shall be the  
2 responsibility of the association.

3 (b) There shall be no material alteration or substantial additions  
4 to the common elements except in a manner provided in the master  
5 deed.

6 (c) No unit owner shall make any alterations in the portions of  
7 the improvements of a regime which are to be maintained by the  
8 association or remove any portion thereof, or make any additions  
9 thereto, or do any work which would jeopardize the safety or  
10 soundness of the building containing his unit or impair any ease-  
11 ment.

1 19. Section 18 of P. L. 1963, chapter 168 (C. 46:8A-18) is  
2 amended to read as follows:

3 18. [The co-owners of the apartments are bound to contribute  
4 pro rata, in the percentages computed according to section 6 of  
5 this act, toward the expenses of administration and of maintenance  
6 and repair of the general common elements, and, in the proper  
7 case, of the limited common elements, of the property, and toward  
8 any other expense lawfully agreed upon.

9 No co-owner may exempt himself from contributing toward such  
10 expenses by waiver of the use or enjoyment of the common elements  
11 or by abandonment of the apartment belonging to him.]

12 (a) *Common expenses shall include the expenses of the operation,*  
13 *maintenance, repair, or replacement of the common elements, costs*  
14 *of carrying out the powers and duties of the association and any*  
15 *other expense designated as common expense by this act, the master*  
16 *deed or the by-laws.*

17 (b) *Funds for the payment of common expenses shall be assessed*  
18 *against unit owners in the proportions or percentages of sharing*  
19 *common expenses provided in the master deed.*

20 (c) *The common surplus shall be owned by unit owners in the*  
21 *percentage of shares provided in the master deed.*

1 20. Section 19 of P. L. 1963, chapter 168 (C. 46:8A-19) is  
2 amended to read as follows:

3 19. Each **[co-owner]** *unit owner* shall comply strictly with the  
4 by-laws and with the administrative rules and regulations adopted  
5 pursuant thereto, as either of the same may be lawfully amended  
6 from time to time, and with the covenants, conditions and restric-  
7 tions set forth in the master deed or in the deed to his **[apartment]**  
8 *unit*. Failure to comply with any of the same shall be ground for  
9 a civil action to recover sums due, for damages or injunctive relief,  
10 or both, maintainable by the **[administrator, or the board of ad-**  
11 **ministration or other form of administration specified in the by-**  
12 **laws on behalf of the council of co-owners]** *association* or, in a  
13 proper case, by an aggrieved **[co-owner]** *unit owner*.

1 21. Section 20 of P. L. 1963, chapter 168 (C. 46:8A-20)  
2 is amended to read as follows:

3 20. (a) Subsequent to recording the master deed as provided in  
4 this act, and while the property remains subject to this act, no  
5 lien shall arise or be effective against the property. During such  
6 period liens or encumbrances shall arise or be created only against  
7 each **[apartment]** *unit* and the percentage of undivided interest  
8 in the common elements appurtenant to such **[apartment]** *unit* in  
9 the same manner and under the same conditions in every respect  
10 as liens or encumbrances may arise or be created upon or against  
11 any other separate parcel of real property subject to individual  
12 ownership; provided that no labor performed or materials fur-  
13 nished with the consent or at the request of a **[co-owner]** *unit*  
14 *owner* or his agent or his contractor or subcontractor, shall be the  
15 basis for the filing of a lien pursuant to article 10 of chapter 44 of  
16 Title 2A of the New Jersey Statutes against the **[apartment]** *unit*  
17 or any other property of any other **[co-owner]** *unit owner* not ex-  
18 pressly consenting to or requesting the same, except that such  
19 express consent shall be deemed to be given by the owner of any  
20 **[apartment]** *unit* in the case of emergency repairs thereto. Labor  
21 performed or materials furnished for the common elements, if  
22 duly authorized by the **[council of co-owners, the administrator or**  
23 **board of administration or other administration specified by the**  
24 **by-laws]** *association* in accordance with this act, the master deed  
25 or by-laws, shall be deemed to be performed or furnished with the  
26 express consent of each **[co-owner]** *unit owner* and shall be the  
27 basis for the filing of a lien pursuant to article 10 of chapter 44 of  
28 Title 2A of the New Jersey Statutes against each of the **[apart-**  
29 **ments]** *units* and shall be subject to the provisions of subparagraph  
30 (b) hereunder.

31 (b) In the event a lien against 2 or more **[apartments]** units  
 32 becomes effective, the owners of the separate **[apartments]** units  
 33 may remove their **[apartment]** unit and the percentage of un-  
 34 divided interest in the common areas and facilities appurtenant  
 35 to such **[apartment]** unit from the lien by payment of the fractional  
 36 or proportional amounts attributable to each of the **[apartments]**  
 37 ~~units affected. Such individual payment shall be computed by~~  
 38 ~~reference to the percentages appearing in the master deed. Sub-~~  
 39 sequent to any such payment, discharge or other satisfaction the  
 40 **[apartment]** unit and the percentage of undivided interest in the  
 41 common elements appurtenant thereto shall thereafter be free and  
 42 clear of the lien so paid, satisfied or discharged. Such partial  
 43 payment, satisfaction or discharge shall not prevent the lienor  
 44 from proceeding to enforce his rights against any **[apartment]**  
 45 unit and the percentage of undivided interest in the common ele-  
 46 ments appurtenant thereto not so paid, satisfied or discharged.

1 22. Section 21 of P. L. 1963, chapter 168 (C. 46:8A-21) is  
 2 amended to read as follows:

3 21. **[Upon the sale or conveyance of an apartment, all unpaid**  
 4 **assessments against a co-owner for his prorata share in the ex-**  
 5 **penses to which section 18 refers]**

6 (a) *A unit owner, regardless of how title is acquired, including*  
 7 *without limitation a purchaser at a judicial sale, shall be liable for*  
 8 *assessments coming due while he is the owner of a unit. In a volun-*  
 9 *tary conveyance the grantee shall be jointly and severally liable*  
 10 *with the grantor for all unpaid assessments against the latter for*  
 11 *his share of the common expenses up to the time of such voluntary*  
 12 *conveyance, without prejudice to the rights of the grantee to recover*  
 13 *from the grantor the amounts paid by the grantee therefor. Such*  
 14 *unpaid assessments against the unit owner for his share of the*  
 15 *common expenses shall first be paid out of the sales price or by the*  
 16 **[acquirer]** *grantee in preference over any other assessments or*  
 17 *charges of whatever nature except the following:*

18 **[(a)]** (1) Assessments, liens, and charges for taxes past  
 19 due and unpaid on the **[apartment]** unit; and

20 **[(b)]** (2) Payments due under mortgage instruments of  
 21 encumbrance duly recorded.

22 (b) *The liability for assessments may not be avoided by waiver*  
 23 *of the use or enjoyment of any common elements or by abandonment*  
 24 *of the unit for which the assessments are made.*

25 (c) *Assessments and installments thereon not paid when due*  
 26 *shall bear interest from the date when due until paid at the rate*

27 *provided in the master deed, not to exceed the rate allowed by law,*  
28 *and if no rate is provided then at the legal rate.*

29 *(d) The association shall have a lien on each regime parcel for*  
30 *any unpaid assessments, and interest thereof, against the unit*  
31 *owner of such regime parcel. If authorized by the master deed said*  
32 *lien shall also secure reasonable attorney's fees incurred by the*  
33 *association incident to the collection of such assessment or enforce-*  
34 *ment of such lien. Said lien shall be effective from and after the*  
35 *time of recording in the public records in the county in which the*  
36 *regime parcel is located of a claim of lien stating the description of*  
37 *the regime parcel, the name of the record owner, the amount due*  
38 *and the date when due, and the lien shall continue in effect until all*  
39 *sums secured by the lien shall have been fully paid. Such claims of*  
40 *liens shall include only assessments which are due and payable when*  
41 *the claim of lien is recorded. Such claims of liens shall be signed*  
42 *and verified by an officer or agent of the association and shall then*  
43 *be entitled to be recorded. Upon full payment the party making*  
44 *payment shall be entitled to a recordable satisfaction of the lien. All*  
45 *such liens shall be subordinate to the lien of a mortgage or other*  
46 *lien recorded prior to the time of recording the claim of lien.*

47 *(e) Liens for assessments may be foreclosed by suit brought in*  
48 *the name of the association in like manner as a foreclosure of a*  
49 *mortgage on real property. In any such foreclosure the unit owner*  
50 *shall be required to pay a reasonable rental for the regime parcel,*  
51 *if so provided in the master deed or by-laws, and the plaintiff in*  
52 *such foreclosure shall be entitled to the appointment of a receiver*  
53 *to collect the same. The association shall have the power, unless*  
54 *prohibited by the master deed or by-laws, to bid in the regime par-*  
55 *cel at foreclosure sale, and to acquire and hold, lease, mortgage and*  
56 *convey the same. Suit to recover a money judgment for unpaid*  
57 *assessments may be maintained without waiving the lien securing*  
58 *the same.*

59 *(f) Where the mortgagee of a first mortgage of record or other*  
60 *purchaser of a regime unit obtains title to the regime parcel as a*  
61 *result of foreclosure of the first mortgage, such acquirer of title,*  
62 *his successors and assigns, shall not be liable for the share of com-*  
63 *mon expenses or assessments by the association pertaining to such*  
64 *regime parcel or chargeable to the former unit owner of such parcel*  
65 *which became due prior to acquisition of title as a result of the fore-*  
66 *closure. Such unpaid share of common expenses or assessments*  
67 *shall be deemed to be common expenses collectible from all of the*  
68 *unit owners including such acquirer, his successors and assigns.*

69 *(g) Any grantee on a voluntary sale of a unit shall have the right*

70 to require from the association a certificate showing the amount of  
 71 unpaid assessments against the grantor with respect to his regime  
 72 parcel. The holder of a mortgage or other lien shall have the same  
 73 right as to any regime parcel upon which he has a lien. Any person  
 74 other than the owner or grantor who relies upon such certificate  
 75 shall be protected thereby and his liability shall be limited to the  
 76 amounts as set forth in such certificate.

1 23. Section 22 of P. L. 1963, chapter 168 (C. 46:8A-22) is  
 2 repealed.

1 24. In the event of substantial damage to or destruction of all  
 2 or a substantial part of the regime property, and in the event the  
 3 property is not repaired, reconstructed, or rebuilt within a reason-  
 4 able period of time, any unit owner shall have the right to petition  
 5 a court having jurisdiction in and for the county where the regime  
 6 property is located for equitable relief, which may, but need not  
 7 necessarily, include a termination of the regime and a partition.

1 25. (a) The liability of the owner of a unit for common expenses  
 2 shall be limited to the amounts for which he is assessed from time  
 3 to time in accordance with this law, the master deed and by-laws.

4 (b) The owner of a unit shall have no personal liability for any  
 5 damages caused by the association on or in connection with the use  
 6 of the common elements. A unit owner shall be liable for injuries  
 7 or damages resulting from an accident in his own unit to the same  
 8 extent and degree that the owner of a house would be liable for an  
 9 accident occurring within his home.

1 26. Section 23 of P. L. 1963, chapter 168 (C. 46:8A-23) is  
 2 amended to read as follows:

3 23. **【**The co-owners shall insure the building against risk, with-  
 4 out prejudice to the right of each co-owner to insure his apartment  
 5 on his own account and for his own benefit.**】** *The association shall*  
 6 *insure the building against loss or damage by fire and such other*  
 7 *hazards when required by the vote of a majority of unit owners.*  
 8 *Any risks insured against by the association shall be without prej-*  
 9 *udice to the right of each owner to insure his unit on his own act*  
 10 *and for his own benefit.*

1 27. Section 24 of P. L. 1963, chapter 168 (C. 46:8A-24) is  
 2 amended to read as follows:

3 24. In case of fire or any other disaster the insurance indemnity  
 4 shall, except as provided in the next succeeding paragraph of this  
 5 section, be applied to reconstruct the building.

6 Reconstruction shall not be compulsory where it comprises the  
 7 whole or more than  $\frac{2}{3}$  of the building. In such case, and unless  
 8 other unanimously agreed upon by the **【**co-owners**】** unit owners,



9 the idemnity shall be delivered pro rata to the [co-owners] unit  
 10 owners entitled to it in accordance with provision made in the by-  
 11 laws or in accordance with a decision of  $\frac{3}{4}$  of the [co-owners] unit  
 12 owners if there is no by-law provision.

13 Should it be proper to proceed with the reconstruction, the  
 14 provisions for such eventuality made in the by-laws shall be ob-  
 15 served, or in lieu thereof, the decision of the [council of co-owners]  
 16 association shall prevail.

1 28. Section 25 of P. L. 1963, chapter 168 (C. 46:8A-25) is  
 2 amended to read as follows:

3 25. Where the building is not insured or where the insurance  
 4 indemnity is insufficient to cover the cost of reconstruction, the new  
 5 building costs shall be paid by all the [co-owners] unit owners  
 6 directly affected by the damage, in proportion to the value of their  
 7 respective [apartments] units or as may be provided by said by-  
 8 laws; and if any one or more of those composing the minority shall  
 9 refuse to make such payment, the majority may proceed with the  
 10 reconstruction at the expense of all the [co-owners] unit owners  
 11 benefited thereby, upon proper resolution setting forth the circum-  
 12 stances of the case and the cost of the [works, with the intervention  
 13 of the council of co-owners] reconstruction.

14 The provisions of this section may be changed by unanimous  
 15 resolution of the [parties] unit owners concerned, adopted subse-  
 16 quent to the date on which the fire or other disaster occurred.

1 29. Section 26 of P. L. 1963, chapter 168 (C. 46:8A-26) is  
 2 amended to read as follows:

3 26. [All property taxes, assessments and other charges of any  
 4 taxing district shall be assessed against and collected on each indi-  
 5 vidual apartment, each of which shall be carried on the tax  
 6 books as a separate and distinct entity for that purpose, and  
 7 not on the building or property as a whole. Such assessments shall  
 8 include the value of the proportionate undivided interest of each  
 9 apartment in the general common elements, and in the limited com-  
 10 mon elements where such interest exists. The proportionate un-  
 11 divided interest of each apartment in said common elements shall  
 12 be computed in accordance with the procedure established by section  
 13 6 of this act.]

14 (a) *Property taxes and special assessments assessed by municipi-*  
 15 *palities, counties and other taxing authorities shall be assessed*  
 16 *against and collected on the regime parcels and not upon the regime*  
 17 *property as a whole. Each regime parcel shall be separately assess-*  
 18 *ed for taxes and special assessments as a single parcel. The taxes*  
 19 *and special assesments levied against each regime parcel shall con-*

20 *stitute a lien only upon such regime parcel so assessed and upon no*  
21 *other portion of the regime property.*

22 *(b) All provisions of a master deed relating to a regime par-*  
23 *cel which has been sold for taxes or special assessments shall sur-*  
24 *vive and be enforceable after the issuance of a tax deed or master's*  
25 *deed upon foreclosure of an assessment, certificate or lien, a tax*  
26 *deed, tax certificate, or tax lien, to the same extent that they would*  
27 *be enforceable against a voluntary grantee, immediate, mediate,*  
28 *or remote, of the owner of the title immediately prior to the delivery*  
29 *of the tax deed or master's deed.*

30 *(c) All laws authorizing exemptions from taxation or deductions*  
31 *from tax bills shall be applicable to each individual [apartment]*  
32 *unit to the same extent they are applicable to other separate prop-*  
33 *erty.*

1 30. A unit may be sold by the sheriff on execution, free of any  
2 unpaid assessments from common expenses, but any funds derived  
3 from such sale which shall remain after the satisfaction of prior  
4-5 charges but before distribution to the previous owner shall be  
6 charged with any unpaid assessments against the unit provided  
7 that written notice thereof shall have been given to the sheriff  
8 before distribution. Any such unpaid assessments which cannot  
9 be promptly collected from the former unit owner may be re-  
10 assessed by the association as a common expense to be collected  
11 from all of the unit owners including the owner who acquired title  
12 by virtue of the sheriff's sale. To protect this right to collect unpaid  
13 assessments, which are a charge against a unit, the association may,  
14 on behalf of the unit owners, purchase the unit at the sheriff's  
15 sale provided such action is authorized by the association.

1 31. Section 27 of P. L. 1963, chapter 168 (C. 46:8A-27) is re-  
2 pealed.

1 32. This act shall take effect immediately, but shall remain in-  
2 operative for 90 days thereafter.

# New Jersey State Bar Journal

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## Attend the Midyear Meeting In Atlantic City

NOVEMBER 19-21, 1964

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# 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.46:8A-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.46:8A-2(d) defines the term "general common elements". To simplify the statutory definition, one might say that the common elements consist of the land on 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.46:8A-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 purchases. 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 elements 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 200 apartments on approximately twenty-three acres of land. Additional contiguous condominiums of comparable size are planned by the developer.

(Continued on Page 1232)



# Conveying the Air

(Continued from Page 1201)

At this point, it is interesting to note how condominiums could have been created in New Jersey prior to the enactment of the Horizontal Property Act, by reason of the provisions of R.S.46:3-19 et seq. Assume that before construction of our hypothetical two apartment building, the owner retained a surveyor to survey and locate two separate cubes in the air above the surface of the land. Incidentally, this is not a particularly complicated task for a surveyor. Pursuant to R.S.46:3-19, the owner could convey the fee in both cubes of air to two different grantees. Assume that around these cubes of air the owner constructed a building, the walls, floors and ceilings being contiguous to the surfaces of the cubes of air. By a simple conventional conveyance of the land and buildings to the owners of the cubes of air, as tenants in common, the owner has in effect created a condominium. Each of our two grantees would own the fee in his individual cube of air and also an undivided one-half interest in the land and building. To insure the continuance of a true condominium in this hypothetical, there would have to be a covenant against partitioning the jointly held property and a restriction against conveying the fee in the cube of air without also conveying the undivided interest in the common elements. If this were done, ownership to the property would be held in true condominium form.

One of the features of the Horizontal Property Act is the mandatory separate assessment and taxation of each individual apartment including its undivided interest in the common elements. R.S. 46:8A-26. But one might find the same mandate to the local assessors in the language of R.S.46:3-21 which provides that:

"All of the rights, privileges, incidents, powers, remedies, burdens, duties, liabilities and restrictions pertaining to the estates, rights and interests in land shall appertain and be applicable to such estates, rights and interests in areas above the surface of the ground."

R.S.46:3-20 permits alienation of title to the cube of air by descent and distribution in exactly the same manner as any other realty might be alienated or charged. R.S.46:3-22 would certainly be authority for the county clerk to accept

for recording the deed conveying the fee in a cube of air.

While the above comparison of the Horizontal Property Act with R.S.46:3-19 et seq may be purely academic following the passage of the former, it is made to point out the fact that the condominium concept in New Jersey is not as revolutionary as has been acclaimed. The Act does however remove any doubt as to the recordability of deeds conveying cubes of air, separate assessment and taxation of individual apartments, etc. It also served to publicize condominiums in their accepted form and provide instructions for implementing the concept. While we in New Jersey might have been able to develop a condominium in the absence of the Horizontal Property Act, the passage of the Act removes some problems, the solution of which could have called for judicial decision. The Act, however, is by no means a panacea for many of the problems encountered in developing an operating condominium. The areas in which the Act is deficient will be pointed out later.

## CREATING THE CONDOMINIUM

With a basic understanding of the nature of the animal, we can take the initial steps necessary to the creation of a condominium in New Jersey. There are primarily four areas requiring the attention of the developer, his attorney, engineer, surveyor, architect and financing source, preliminary to any actual sales of condominium units being made:

- (1) Subdivision, zoning and building regulations
- (2) Surveys and plans of the building or buildings and of the several cubes of air
- (3) Financing, both construction and permanent, and
- (4) The master deed and supporting documents.

### I

Certainly, local zoning and building regulations would be applicable to any building or buildings to be constructed as a condominium. Since it is entirely possible to have a combination residence and business condominium, a variance to deviate from the strict terms of a zoning ordinance would undoubtedly be required were it contemplated to erect such a combination building in, for example, an area zoned for residential purposes only. Density restrictions would also be a factor to be considered in the initial planning of the number of units involved. These considerations, however, are not unique to condominiums.

One area that may indeed be troublesome is the question of whether or not local subdivision ordinances are applicable to the subdivision of air. In this respect, condominiums are entirely unique. The conventional subdivision ordinance, designed by its very language and enabling legislation (Municipal Planning Act) to apply to subdivisions of land only, expresses minimum standards for roads, curbs, sidewalks, setbacks, drainage and the like. Query: How does one apply these standards to cubes of air hanging in space? Granted that although some requirements of subdivision ordinances such as minimum "lot" size might be said to be equally applicable to subdivisions of air, most of the provisions of these ordinances can not be effectively or intelligently applied to the condominium concept. This is one question which the Horizontal Property Act does not answer. If the subdivision of air is to be subject to the jurisdiction of local planning authorities, a recital in the Horizontal Property Act to that effect should be made or the Municipal Planning Act (1953), L.1953, c.433 should be amended to include within the definition of "Subdivision" the words "or air" after the words "parcel of land". R.S.40:55-1.2. The present language of the planning act clearly applies only to subdivisions of land. Even if the Planning Act were extended to permit control of air subdivision, new ordinances designed specifically for that purpose, would have to be adopted. The subdivision problem encountered in the development of Leisure Village is now awaiting resolution in the Superior Court. In the meantime, a non-prejudicial working agreement has been reached with the local planning authorities to permit the project to proceed pending judicial determination of whether or not the local subdivision regulations are applicable.

The determination of the Court will be a landmark in the condominium field. It was perhaps inevitable that our Courts would be called upon to assist in the birth and development of condominiums although the necessity of this assistance would have been obviated in many cases if, in drafting the Act, our legislators were equipped with a keener understanding of the many ramifications and fine points entailed in the condominium concept.

### II

Of fundamental importance in developing a condominium is the accurate description and location of the building or buildings and the cubes of air. The task to be performed by the surveyor requires

him so to define the position of the building not only vertically, as in the usual subdivision, but also horizontally, i.e. floors and ceilings, in order that the cube of air might be located even in the absence of the encompassing structure. The reason for this is simple. In the event of total destruction of the building the fee ownership in the cube 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 Horizontal 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 finished 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.

Inherent in a condominium of the nature of Leisure Village involving so many buildings and apartments, is the developer's reluctance to actually construct all units prior to the recording of the master deed and before contracts have been signed for the purchase of all units. Initially, 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 state of facts as an accurate survey may indicate". The title company accepts a certificate from the developer's surveyor that the apartment

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

Attorneys should realize that in the preparation of the 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 pedantic 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.

### Judgment Rendered

There is no lawful limit to the amount of noise a person may make on his own balcony.

—A court in Tel Aviv

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

—Minnesota Labor Board

A fishing license is sufficient to prove the age of its holder when he applies for a marriage license.

—The Attorney General of Oklahoma

Agriculture students at the local high school may pay their tuition with rice instead of cash.

—School authorities in Hanamaki, Japan

A swimmer has as much right to the use of public waters as any boat.

—A magistrate in Bracebridge, Ont.

A soldier may take the arm of his wife in public if she is visibly pregnant.

—French army ruling

A man who lost his taste for whisky after being hit on the head with a pickaxe is entitled to \$1,400 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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A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these things he may venture to call himself an architect.—*Sir Walter Scott.*

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Winter 1965

# The Condominium Concept

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

(CONCLUDED)

## FINANCING

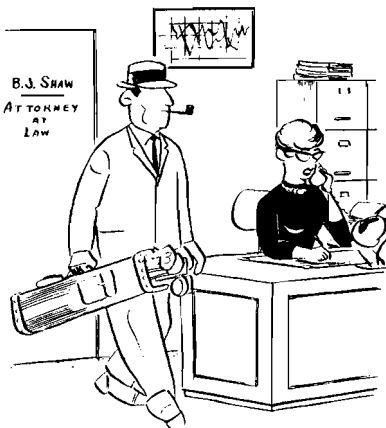
Financing of the project, both construction and permanent, may or may not pose a problem to the developer depending upon the degree of conservatism of the financing institution. The conscience of a conservative leader might be troubled by some problems peculiar to financing the construction of a condominium. The reluctance of a construction financier to lend money on 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 might 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 might 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 fore in the afternoon."

The form of construction mortgage used at Leisure Village the large condominium in Lakewood, 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 mortgage 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 or the mortgagee, 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 part 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, appertain- (Continued on Page 1264)"

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# The Condominium Concept

(Continued from Page 1248)

ing to said apartment 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 3 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 deed book 2368, page 138 and the deed for Regime II is recorded in book 2386, 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 declare 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, architect's plans and surveyor's maps (Section 10), designation of each individual apartment (Section 11) and the By-laws of 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 II, the master deed required forty-one type written pages on legal cap and seventy of exhibits (architect's and surveyor's drawings and by-laws).

The master deed must recite 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 closing of title to the first unit. Since this percentage is based upon the fair 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 minimal contents of these by-laws.

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

erty regimes is a single non-profit corporation known as Leisure Village Association which was incorporated as a Title 15 corporation. Note that Section 27 of the Act suggests incorporation of this form of administration pursuant to Title 14 of the Revised Statutes. However, in the case of Leisure Village, and probably in most other condominiums, it was considered to be more desirable to incorporate the form of administration under Title 15 rather than under Title 14.

All condominiums in Leisure Village are governed by the Board of Trustees of Leisure Village Association and this Board is empowered by the certificate of incorporation of the Association to act generally as provided by the Act on behalf of co-owners and specifically, 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 facilities and services as may be mutually agreed upon. The Act makes contribution 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 also 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 therefore 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

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would be tantamount to overlooking a municipal tax or upper court search.

The by-laws and master deed for the Leisure Village Horizontal Property Regimes specifically subject each unit to a lien in favor of Leisure Village Association for all unpaid maintenance charges and assessments and provide that this lien shall be subject to foreclosure in the same manner as real estate foreclosure actions.

Section 23 of the Act directs the co-owners to insure the building against risk. There is no question but that the co-owners have an insurable interest but it would be extremely impracticable, at least in the case of Leisure Village, to list all of the co-owners on the policy as the named insureds. If this were to be done, an endorsement to the policy would be required whenever a sale or a transfer of title to any unit was made and also with the addition of each mortgagee. To overcome this practical difficulty, the co-owners in the Leisure Village condominiums, by reason of a covenant in the master deed, have transferred their insurable interests to the administering body, Leisure Village Association. The Association as named insured is trustee for the owners and co-owners of the horizontal property regime. It is incumbent upon the Association in the event of loss or damage to the common elements, to apply the insurance proceeds as directed by Sections 24 and 25 of the Act. The premiums on these policies are paid out of the maintenance charges received each month from the owners.

#### INSURANCE PROBLEMS

Section 24 of the Act raises perhaps the most troublesome problem in the development of a condominium. This Section directs the application of the insurance indemnity to the costs of reconstructing the building following any loss unless the loss is of more than two-thirds of the building. In the latter case, and unless otherwise unanimously agreed by the co-owners, the indemnity is to be delivered pro rata to the co-owners entitled to it. No difficulty is encountered where the decision, following any loss, is to reconstruct the building. In that case, if the insurance indemnity is insufficient to cover the cost of reconstruction the difference is assessable against the co-owners affected by the damage as provided in Section 25 of the Act.

The Act, however, does not contemplate the situation which arises where the loss to the building is more than two-thirds and the decision is made not to reconstruct. In such a case, what disposition is to be made of the individual

cubes of air no longer enclosed by a building and the co-ownership of the land on which the building once was located?

As the language of the Act now provides, the horizontal property regime cannot be terminated except with the concurrence of all of the co-owners and, as we have seen, Section 7 of the Act prohibits an action for partition or division of the co-ownership and further prohibits any covenant to the contrary. If only one co-owner refused to join in the waiver of the horizontal property regime the others would forever be frustrated from jointly conveying the remaining interests to a subsequent purchaser. Obviously title to the entire property would be unmarketable were there an outstanding undivided interest in the property and the fee in a cube of air above the property were not to be included in the conveyance.

#### A SUGGESTED CHANGE IN OUR STATUTE

Condominium legislation in some other states, in contemplation of the possible destruction of the building coupled with an election not to rebuild, declares that the fee originally conveyed to the co-owners shall determine upon the happening of such contingency. In some states not having such provisions in the statute, the fee is made determinable by covenant in the master deed. It is submitted that Section 7 of the New Jersey Act should be qualified to permit an action for partition or division of the co-ownership when, and only when, the buildings are destroyed to more than two-thirds and at the same time the co-owners elect not to reconstruct.

In the absence of a provision in the statute, it became necessary to provide in the master deeds for Leisure Village for an orderly disposition of the entire property, including the cubes of air, following an election not to reconstruct. This provision, which is a covenant running with the land and binding upon all co-owners, permits the entire condominium to be sold upon the affirmative vote of 75% or more of the co-owners with the consent of all of the mortgagees holding first mortgages on the individual units. This covenant in the master deed is in apparent conflict with Section 12 of the Act which requires the consent of all of the co-owners to a waiver of the regime but it was not considered possible to otherwise resolve the problem created by election not to reconstruct following destruction of the building by more than two-thirds.

The recording of the master deed permits the developer to begin conveying individual units. Exhibit 7 is the form of the individual deed used in the Leisure Village Horizontal Property Regimes.

The title insurance policy written here insures the fee in the individual apartment and its undivided interest in the general and limited common elements of the Regime. The only unusual exception found in the title policy provides that the policy does not insure against loss or damage by reason of:

"Covenants, restrictions, reservations, limitations, conditions, uses agreements, easements, options and other provisions, including but not limited to provisions for the payment of money and for lien in the event of default, all as contained in that certain deed identified in Schedule A hereof and in that certain Master Deed and exhibits attached thereto executed by Leisure Village, Inc. dated January 29, 1964 and recorded in Deed Book 2368 page 138. No liability is assumed for any failure hereafter to comply with or abide by said covenants, restrictions, limitations, conditions, uses, agreements, options and other provisions, including provisions for payment of money and penalties for delinquency."

#### CONDOMINIUMS DISTINGUISHED FROM COOPERATIVES

After the constitution of the property into a condominium the co-owner of any unit may treat his interest therein just as he would or could any other interest in real property. Section 4 of the Act declares each apartment to be sole and independent of all other apartments and subject to all of the usual incidents of fee ownership. This is one of the major advantages of condominium ownership over a cooperative. There is apparently a desirable psychological effect created by delivery of a warranty deed establishing true ownership as opposed to purchasing a share in a corporation and obtaining a proprietary lease for a particular apartment as is the case in a cooperative dwelling. There are other substantial distinctions between condominiums and cooperatives but it is not the purpose of this article to explore them. Time alone will determine whether condominiums will ultimately replace cooperatives.

The author acknowledges the kind help and cooperation of Mr. Boyce C. Outen, general counsel of Lawyers Title Insurance Corporation of Richmond, Virginia in many matters preliminary to the establishment of the Leisure Village Horizontal Property Regimes, particularly in the drafting of the master deed.