L.B. 433: A NEW LEGAL FRAMEWORK FOR NEBRASKA CONDOMINIUMS

INTRODUCTION

In Nebraska, as elsewhere, the condominium housing concept presents some unique legal questions. Condominium ownership is a hybrid of individual and community ownership. Each unit owner has a freehold in his individual unit and an undivided percentage in the community property. See P. Rohan & M. Reskin, Condominium Law & Practice-Forms § 1.01 (1968). Condominium housing is an ancient and worldwide concept. It is commonly attributed to the Roman culture 2000 years ago. Although it is generally thought the term meant joint ownership, it did not include common element joint ownership. See Leyser, Ownership of Flats—A Comparative Study, 7 INT'L & COMP. L.Q. 31, 33 (1958). During the Middle Ages ownership of floors of houses, and even rooms, by different persons was common in various parts of Europe. Recorded history goes back to the twelfth century in some German cities. In the late Middle Ages, co-ownership of floors and buildings occurred in French towns of Grenoble, Rennes and Lyons. Id.

Condominium housing is found throughout the world. The first state statutes were based on European and South American apartments, especially Venezuela and Argentina. This led to condominium development in Puerto Rico, where the first American statute was passed in 1958. 1 P. Rohan & M. Reskin, supra, § 2.03 (1967).

2. See W. Hyatt, Condominium and Homeowner Association Practice: Community Association Law 8-9 (1981). The term condominium refers to a "form of packaging" rather than to a piece of real property. The buyer takes title to a "unit" in a condominium, not to a condominium. This type of ownership is based on shared ownership and shared responsibility. Id. See also P. Kehoe, Cooperatives and Condominiums 5 (1974). The distinction between a condominium and a cooperative form of ownership should be made clear. The cooperator does not have free ownership of land because his unit is owned by the cooperative organization which in turn leases it to him. The cooperative is set up as a non-profit corporation and each cooperator is a shareholder. These shares entitle him to obtain a proprietary lease to a designated apartment in return for a monthly maintenance charge. Id. at 6; Kamer, Conversion of Rental Housing to Unit Ownership—A Noncrisis, 10 REAL EST. L.J. 187 (1982). In a housing cooperative, a corporation will purchase real estate. To finance the acquisition, the corporation places a mortgage on the real estate and sells stock to raise capital to cover the difference between the mortgage and the purchase price. This equity value is reflected in a certain number of stock shares for each unit, and a pro rata share of maintenance charges. A proprietary lease gives a right equivalent to outright ownership, but the tenant must pay rent which includes his share of the expenses (mortgage debt, taxes and operating expenses). If a cooperator were to default on his share, the others would have to assume this expense or risk foreclosure on their property. This risk is not present in the condominium scheme, where each owner is solely responsible for his own mortgage and tax assessment. An advantage of cooperatives, is that because they are much less regulated, costs are less to convert a building to a cooperative. Also since the purchaser is buying stock or personality, the closing costs of a real estate transaction are avoided. Id. at 188-91; Note, Real Property: Cooperative Housing Corporations—A Viable Real Estate Financing Device in Oklahoma, 35 OKLA. L. REV. 167, 178-80 (1982) (discussion of structuring arrangement in order to get tax benefits).
percentage interest in the common elements. This form of ownership offers tax deductions and a chance to build up equity in the property while at the same time offering improved facilities and lower prices.

Even though there are many advantages to the condominium, some common problems and abuses are encountered that are not found in single property ownership. For example, declarants (developers) have at times, misrepresented or omitted pertinent facts in the offer to sell, or they have sold condominiums that have never been completed. The condominium purchaser has often been unprotected because of the complexity of the transaction and the dependent relationship of the purchaser to the seller. Even after the sale, problems may ensue in the transfer of control from the declarant to the association. The association has the obliga-

3. A P. Rohan & M. Reskin, supra note 1, § 23.01 n.3. In this form of ownership, the owner has exclusive ownership in the unit and an undivided percentage interest in the common areas of the development, such as land, basement, halls, roof, and parking lot. This percentage interest can be fixed by value, size, initial sales price, or equality with other owners. See also notes 68-69 and accompanying text infra.

4. Kamer, supra note 2, at 193. The Internal Revenue Code permits the owner-occupier of property a full deduction for all interest and property tax paid on his property without requiring him to offset this deduction by the fair market value of the property. In addition, income gains qualify for the capital gains tax rate. Id. For further tax information, see Comment, Tax Aspects of Choosing Between a Cooperative or Condominium Conversion, 12 Cum. L. Rev. 453 (1982); Bloom, Tax Valuation of Condominiums and Cooperatives: Fiction vs. Realty, 11 Real Est. L.J. 240 (1983). Although tax and financing are important aspects of a condominium, they will not be the thrust of this article.


6. Rohan, Condominium and the Consumer: A Checklist for Counseling the Unit Purchaser, 48 St. John's L. Rev. 1028, 1028-29 (1974). This often is in the form of recreational facilities for residential condominiums. A scarcity of land in urban areas coupled with spiraling buildings costs are cited as factors in the growth of this concept. In addition, the needs and desires of a mobile population have dictated that innovation in housing be considered. For the increased facilities available to commercial unit owners, see note 67 infra.

7. See note 23 infra.

8. Neb. Rev. Stat. § 76-827(9) (Supp. 1983). The “[d]eclarant means any person or group of persons acting in concert who (i) as part of a common promotional plan, offers to dispose of his, her or its interest in a unit not previously disposed of, or (ii) reserves or succeeds to any special declarant right.” Id. The developer of a project is often the declarant.

9. See note 139 and accompanying text infra.

10. See notes 144-54 and accompanying text infra.

11. See notes 296-300 and accompanying text infra.

12. Beaver Lake Ass'n v. Beaver Lake Corp., 200 Neb. 685, 691, 264 N.W.2d 871, 875 (1978). Provisions of bylaws giving a corporate developer authority to appoint a majority of the board of directors of a homeowners' association were not void but became void when the corporate developer applied them in his own interest and against the public interest of the association. Id.
tion in exercising rulemaking and directive powers to reflect the needs and desires of the unit owners. This rulemaking can be overreaching and restrictive in nature. The conversion condominium can raise further problems because of inadequate renovation and displaced tenants. Commercial condominiums are forced to find guidelines from statutes primarily drafted for residential housing. It is not surprising that the problems created by this form of ownership have spawned extensive legislation and litigation.

In May of 1983, the Nebraska legislature enacted its response to these problems in the form of the Nebraska Uniform Condominium Act (hereinafter referred to as the “Nebraska Act” or “Act.” Although this Act is basically the 1980 amended version of the Uniform Condominium Act (hereinafter referred to as the “U.C.A.”),

---

13. The rules and regulations promulgated by the executive board sometimes have been quite restrictive in nature and yet generally have been upheld by the courts. See Note, Condominium Rulemaking—Presumptions, Burdens and Abuses: A Call for Substantive Judicial Review in Florida, 34 UNIV. FLA. L. REV. 219, 220 (1982). See also notes 224-31 and accompanying text infra.

14. See Kamer, supra note 2, at 195-99. Senate advocates of a condominium bill of rights say that tens of thousands of tenants are being displaced by conversions. Most of these tenants are elderly and have moderate incomes. Vacancy rates are low, rents are rising and tenants are more reluctant than ever to move and find new housing. Id. at 197 n.29.

15. Note, supra note 5, at 433. Existing statutes hamper development of commercial and industrial condominiums because they are tailored to the residential context. The article discusses a structuring technique to mitigate those barriers in the present Florida framework, particularly allocations of common elements, alterations of common elements and unit configurations. Id. For further discussion, see notes 167-68 and accompanying text infra.

16. Uniform Condominium Act, L.B. 433, 1983 Neb. Laws — (codified at NEB. REV. STAT. §§ 76-825 to -894 (Supp. 1983); Hearings on L.B. 433 Before the Committee on Banking, Commerce and Insurance, 88th Leg., 1st Sess. 95 (Feb. 15, 1983) [hereinafter cited as Committee Hearings]. Sen. Steve Wiitala introduced L.B. 433 to the Committee, stating that it was a streamlined version of L.B. 666 heard by the Banking and Finance Committee in 1982. At that time, the Committee advanced the measure to the floor but because of the time constraints in a sixty-day session, it was not enacted into law. Id. Testimony was given by Steve Glenn, representing Nebraska State Home Builders’ Association, and Tom Jetton who had lived in a condominium project. Id. at 68-71. In addition, a lobbyist on behalf of the Nebraska Realtors’ Association stated it was in a neutral position concerning the “one hundred and some odd pages of the bill.” Id. at 71.

The bill was presented on the floor on April 11, 1983. Legislative History of L.B. 433, 88th Leg., 1st Sess. 3017-24 (1983) [hereinafter cited as Legislative History]. Sen. Wiitala said he had worked over the interim quite closely with the builders and the real estate interests, and he felt that it represented the interests of the consumer, the developer and the realtor. Id. at 3020. There were 32 ayes, 1 nay, on the motion to advance the bill. Id. at 3024. The effective date is January 1, 1984. NEB. REV. STAT. § 76-825 (Supp. 1983).

the differences are noteworthy. Because of the changes made by the Nebraska Act and a lack of comprehensive caselaw on the subject, this article will compare the Act with key provisions of the U.C.A. and examine its impact on the important issues mentioned above.

BACKGROUND

The original condominium laws, were generally skeletal stat-

As a result of the legislative process in the various states considering the Act and the review of the Act by the Drafting Committee on U.P.C.A. (Uniform Planned Committee Act) a large number of amendments was proposed to the conference. Many were adopted at the 1980 annual meeting. Most of them are intended to resolve insignificant technical questions or clarify ambiguous provisions. Some are more significant and will facilitate the consolidation of the U.P.C.A. and the Condominium Act. Id. Commissioner's Prefatory Note at 126. See generally Geis, Beyond the Condominium: The Uniform Common Interest Ownership Act, 17 REAL PROB. & PRO. & TA. J. 757, 758-59 (1982). The Uniform Common Interest Ownership Act was passed in 1982, consolidating the Model Real Estate Cooperative Act, the U.C.A. and the U.P.C.A.

18. Research of Nebraska case law reveals six cases since 1976 which have involved condominiums. Ross v. Newman, 206 Neb. 43, 43-45, 291 N.W.2d 228, 229 (1980). (A restrictive covenant required approval by all townhome lot owners of alterations. An owner put in a skylight and bevelled window. The lower court told him to remove it. The Nebraska Supreme Court reversed.); First West Side Bank v. Herzog, 204 Neb. 356, 357, 222 N.W.2d 228, 229 (1979) (financing of a condominium project); Waite v. Salestrom, 201 Neb. 224, 228, 226 N.W.2d 908, 911 (1978) (opportunity for expert dealers in real estate to investigate land before option was exercised); Beaver Lake Ass'n v. Beaver Lake Corp., 200 Neb. 685, 672, 264 N.W.2d 871, 875 (1978) (contract between developer and association void when developer applied contract in his own interest and against public interest of association); Hansen v. Circle Lake Dev. Corp., 199 Neb. 678, 681, 260 N.W.2d 609, 611 (1977) (condominium purchase agreement held to be ambiguous); Haller v. State Real Estate Comm'n, 198 Neb. 437, 439, 253 N.W.2d 280, 281 (1977) (saleswoman used promotional practice which represented to lender an amount in excess of sales price for a condominium).

19. This article will not be an in-depth analysis of any one area, but will attempt to present an overview of condominium law as promulgated in the Nebraska Condominium Act of 1983. Timeshare condominiums will not be discussed. See Nebraska Time-Share Act, Neb. Rev. Stat. §§ 76-701 to -741 (Reissue 1981).

20. Before the passage of the Nebraska Act, Nebraska condominium history was much like that in other states. The original statute was passed in 1963 and was amended in 1974. Neb. Rev. Stat. §§ 76-801 to -824 (Supp. 1963), amended by L.B. 730, 1974 Neb. Laws 492-500. These amendments provided expansions which recognized a leasehold interest in land on which the building stands (L.B. 730, 1974 Neb. Laws, Neb. Rev. Stat. § 76-802(6)(A)); injunctive relief against one who violated the bylaws (id. § 76-804(5)); partition of common elements (id. § 76-807); revised provisions relating to insurance (id. §§ 76-820, -820.01); and tort liability (id. § 76-819).

See Comment, The Nebraska Condominium Property Act, 44 Neb. L. Rev. 658, 679-80 (1965). This contemporaneous critique of the original condominium legislation suggested provisions that should be included either in the condominium declaration (master deed) or by amendment to the statute to insure "greater legal certainty" in some areas. Id. at 679. Some suggested provisions included a more flexible procedure for adjusting proportional valuations of each unit by changing the base that determines the percentage of common elements owned by each own-
utes that did not address such major issues as phased building, consumer protection, eminent domain, or termination. Some states have updated their statutes as condominiums have become more common and as developer abuses have increased. Effective condominium law must recognize the rights and interests of several parties including the developer, primary and secondary lenders, the realtors, and the unit purchasers. The law must also be suited to contexts varying from the commercial to the residential.

Flexible bases should also be used for each owner's liability for common expenses including insurance. See id. at 668. The 1963 statute was ambiguous concerning partial or complete destruction of the project and this commentator suggested placing the cost of partial destruction of the condominium on all unit owners, thus insuring incentive to keep the blanket policy adequate. Id. at 670-72. Three other important provisions suggested that all tort liability arising from common areas be charged as common expense (id. at 671-72); that a provision govern mechanics' and materialmen's liens against common areas (id. at 676-78); and finally that each co-owner be individually taxed for his unit and a pro rata share of the common elements (id. at 678).

This article was foresighted enough to see some of the potential problems that were not provided for by statute until the U.C.A. One such example is the provision for formulas to determine the allocation of common elements, and common expenses which now is found in Neb. Rev. Stat. § 76-844 (Supp. 1983). The 1974 amendments repealed the confusing sections concerning partial or complete destruction of the unit and passed L.B. 730, § 12, 1974 Neb. Laws (codified at Neb. Rev. Stat. § 76-820.01 (Reissue of 1981)). This section stated that in case of destruction, the proceeds of insurance would be used and if deficient the co-owners directly affected by the damage would be liable for any deficiency according to their percentage value. Id. The new statute provides that the cost of repairs in excess of insurance proceeds will be a common expense. Neb. Rev. Stat. § 76-871(h)(iii) (Supp. 1983). The Nebraska Act also has a lengthy section dealing with termination of a project. Id. § 76-855.

21. See U.C.A., Commissioner's Prefatory Note at 125. With the growth of the condominium industry, many of the “first generation” statutes were inadequate and were replaced with more detailed and comprehensive “second generation” statutes. Id. See also Rohan, The ‘Model Condominium Code’—A Blueprint for Modernizing Condominium Legislation, 70 Colum. L. Rev. 587 (1978), reprinted in 1 A. Rohan and M. Reskin, supra note 1, at § 23. In 1978 the “Model Condominium Code” was not available to the public but was being drafted by the Condominium Research Institute with P. Rohan as executive director. The goal of the “Model Code” is to provide a less complex and more flexible alternative to the U.C.A. Id. § 23.02(2).

22. See id. § 23.01 n.8 (list of recent amendments).


24. See, e.g., W. Hyatt, supra note 2, at 67. The author discusses the independence of parties in the operation and administration of a community association and also in the formation, development and sale of units.

25. Goldstein, Lipson, Rohan and Shapiro, Commercial and Industrial Condominiums: An Overall Analysis, 48 St. John's L. Rev. 817, 817 (1974). The commercial or industrial condominium projects include motels, hotels, office buildings, industrial parks, shopping centers, professional offices, and combination buildings
tial and from new construction to conversions as well as resales.\footnote{26} In an attempt to protect these differing rights and interests and to provide uniform answers to increasing problems, the U.C.A. was promulgated.\footnote{28} A few states, including Nebraska, have adopted various versions of the U.C.A.\footnote{29} The basic purpose of the

or mixed-use buildings, featuring offices or retail stores on the lower floors and residential units on upper floors. \textit{Id.} Massachusetts, for example, has repeatedly amended its condominium statute to provide for commercial units. See \textit{Mass. Gen. Laws Ann.} ch. 183A, § 1 Historical Note (West 1977).

\footnote{26} K. Romney, \textit{Condominium Development Guide} § 10,01(2), at S10-5 (Supp. 1981). “[I]nflation is a major cause of condominium conversion viability and popularity. While most of the costs associated with apartment project ownership and operation are increasing with inflation, rental rates have simply not kept pace.” \textit{Id.}

\footnote{Note, Flynn v. City of Cambridge: Guideposts for the Control of Condominium Conversions, 33 \textit{Mercer L. Rev.} 949, 950, 951 (1982). There has been a tremendous increase in the number of rental housing units converted to condominiums, because of the increased demand. This has placed a hardship on the poor who cannot afford to buy their rental housing. \textit{Id.}}

There is very little material available concerning conversions of rental buildings to commercial units. In Salb v. Lemoine Ave. Assoc., 178 N.J. Super. 36, ---, 427 A.2d 1129, 1131 (1981), commercial tenants were not entitled to protection under New Jersey statute dealing with conversions of multiple buildings into cooperatives and condominiums. They were not allowed to purchase their apartments on the relatively attractive terms offered to residential tenants. \textit{Id.}


\footnote{28} \textit{See} note 17 and accompanying text \textit{supra}.

\footnote{29} U.C.A., Commissioners' Prefatory Note at 124-26. The Commissioners in their Prefatory Note stated that a recent count of states adopting the 1977 version of the U.C.A. include Minnesota, Pennsylvania and West Virginia, with Louisiana adopting it with substantial amendments. \textit{Id.} Legislatures of Arizona, Colorado, Connecticut, Idaho, Illinois, Massachusetts, Missouri, Tennessee, Vermont and Wyoming are considering the statute. \textit{Id.} at 126. The 1980 version has been adopted by Maine and Nebraska. \textit{Id.} at 124. See note 16 and accompanying text \textit{supra}. No mention was made that it was being considered by the Nebraska legislature. Therefore some question arises about the accuracy of the Commissioners' count of the states adopting or considering the bill. Further research reveals that New Mexico (N.M. \textit{Stat. Ann.} §§ 47-7A-1 to -7D-20 (Supp. 1983)); Rhode Island (R.I. \textit{Gen. Laws} §§ 34-35.1-1.01 to -1.420 (Supp. 1982)) and Virginia (Va. \textit{Code} §§ 55-79.39 to .103 (Supp. 1983)) have also adopted the 1980 version of the U.C.A.

The Nebraska version of the Uniform Condominium Act was introduced to the Nebraska legislature as the “trust me bill.” \textit{Legislative History, supra} note 16, at 3017-18.

\textbf{SENATOR DeCAMP:} Mr. President and members, this truly is just a bit of a “trust me” bill because it is a hundred and some pages long and it is definitely the longest bill of the session. It is a bill that Senator Wiitala and I have introduced a couple years in a row now, worked in committee closely with the Homebuilders and other groups, realtor [sic], real estate people, different agencies, administering these laws, trying to come up with a really good, workable, efficient condominium law for the State of Nebraska... I suppose if we wanted to spend the next couple weeks explaining all the ramifications, implications and workings of this bill we could easily do it, and that is why I get down to the point, this is truly one of those “trust me”
U.C.A. is to balance the developer's freedom to shape a particular project against the protections sought for consumers.30

Structurally, the U.C.A. and the Nebraska Act are similar. The U.C.A. is divided into five major Articles.31 The Nebraska Act has incorporated the first four Articles but has deleted the term “Article” in this context.32 Part One contains definitions33 and general provisions for areas such as applicability34 and variance.35 Part Two covers the creation,36 alteration37 and termination of condominiums38 and has provisions delineating the contents of the declaration.39 Part Three concerns the administration of the unit owners’ association40 with guidelines for insurance,41 tort and contract liability,42 and liens.43 Part Four basically revolves around the provisions of public offering statements44 and warranties45 which provide protection for the consumer. Article five of the U.C.A. is an optional section pertaining to the administration and registration of condominiums.46 The Nebraska Act does not include this optional section.47 Additionally, the Comments to the U.C.A., while not included in the Nebraska statute, can be helpful type things, trust Senator Wiitala, trust the Homebuilders, trust the real estate department and the people that worked on it. It is a significant bill.

We do hope you will support it.

Id.

30. U.C.A., Commissioners' Prefatory Note at 125. The early statutes were inadequate to deal with the growing condominium industry. States perceived a need for more protection and more flexibility in the creation and use of condominiums.

31. Id. at 124-25.

32. The Nebraska statutes are organized by chapter and article so reference to “article” within the Condominium Act would be confusing.


47. See note 27 supra. In Cohen, supra note 27, at 389, the authors state they believe that most states will favor deleting this section because the cost of funding
in interpreting the various provisions of the Act.  

**PART ONE: GENERAL PROVISIONS**

**Applicability**

Two problems are immediately presented by passage of the Nebraska Act. The first of these is the extent to which there should be different rules for condominiums created before and after the statute becomes effective. The second problem is the determination of which substantive requirements are applicable to condominiums located outside of the state.

The first question, regarding implementation, is complex. Basically, a three step implementation plan will be followed for condominiums created before the effective date of the Nebraska Act. the agency will overtax existing resources and such an agency would duplicate the work of existing governmental units.  

48. The 1980 Comments are found throughout the Uniform Condominium Act.  

49. The Nebraska Act becomes effective January 1, 1984. NEB. REV. STAT. § 76-826 (Supp. 1983). Two policy considerations are present in determining applicability. U.C.A. § 1-202 comment 1, at 127-28. First, present owners have signed contracts and have legitimate expectations which cannot be sacrificed to the desire for uniformity. Id. at 128. The constitutional prohibition of impairment of contracts might come into play. See id. The second policy is to advance the uniformity that the statute seeks to create by having all condominiums housing treated similarly. Id.  

50. U.C.A. § 1-102 comment 10, at 130, states that where sales contracts are executed wholly outside the enacting state and relate to condominiums located outside the state, it is appropriate for courts in the state where the condominium is located to have jurisdiction over the transaction. Id. No reference is made, however, to the situation where only one of these factors is present.

51. NEB. REV. STAT. § 76-826 (Supp. 1983). Act, applicability:

(a) Sections 76-825 to 76-894 apply to all condominiums created within this state after January 1, 1984. Sections 76-827, 76-829 to 76-831, 76-840, 76-841, 76-889, 76-874, 76-876, 76-884, and 76-891 and subdivisions (a) (1) to (a) (5) and (a) (11) to (a) (16) of section 76-860, to the extent necessary in construing any of those sections, apply to all condominiums created in this state before January 1, 1984; but those sections apply only with respect to events and circumstances occurring after January 1, 1984, and do not invalidate existing provisions of the master deed, bylaws, or plans of those condominiums.

(b) The provisions of sections 76-801 to 76-824 do not apply to condominiums created after January 1, 1984, and do not invalidate any amendment to the master deed, bylaws, or plans of any condominium created before January 1, 1984, if the amendment would be permitted by sections 76-825 to 76-894. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by sections 76-801 to 76-824. If the amendment grants to any person any rights, powers, or privileges permitted by sections 76-825 to 76-894, all correlative obligations, liabilities, and restrictions in sections 76-825 to 76-894 also apply to that person.

(c) Sections 76-825 to 76-894 do not apply to condominiums or units located outside this state, but the public offering statement provisions contained in sections 76-879 to 76-888 apply to all contracts for the disposition thereof signed in this state by any party unless exempt under subsection (b) of section 76-878.
First, certain provisions of the Nebraska Act apply prospectively to "old" condominium declarations and bylaws which were valid under the prior law. Second, however, all sections of the prior law not specifically displaced will remain applicable to condominiums created before the effective date of the new law. Therefore, existing master deeds and bylaws will not be invalidated. Third, owners of existing condominiums will be able to amend their condominium documents to take advantage of the new Act's provisions. They must, however, follow the amendment procedure of the prior law and their existing master deed and bylaws, and the substance of the amendment must not violate the new Act. Therefore, Nebraska's new condominium law will include, by reference, portions of prior law as well as the Uniform Condominium Act.

The second question of what substantive requirements are applicable to the sale in Nebraska of condominiums located outside the state is less complex. The state, of course, has authority over projects located within its boundaries, but the applicability of Nebraska law to condominiums located outside of the state is limited to protecting Nebraska citizens from false or misleading information relating to the condominium contracts signed in Nebraska.

---

52. *Id.* § 76-826(a). *See also* U.C.A. § 1-102 comment 3, 4, at 128. Comment 4 uses "a resale" as an example of how this procedure functions under the U.C.A. Since a resale is an event which takes place after the effective date of the new act, this section is applicable to condominiums which were established prior to 1984. If the condominium is sold before the effective date, then the "certificate of resale" is not required, but if sold after, the certificate is required. U.C.A. § 4-109(a). The procedure is similar under the Nebraska Act, however, Nebraska substitutes the word "information" for "certificate." *Neb. Rev. Stat.* § 76-884(a).

56. *Id.*
57. *Id.* See also U.C.A. § 1-102 comment 4, at 128. Suppose an "old" declaration and "old" state law both provide that approval by 100% of the unit owners is required to amend the declaration but the owners wish to amend it to 67%. The amendment would not be valid unless 100% of the unit owners approved it because of the procedural requirement of the declaration and the "old" law. Once approved, however only 67% would be required for subsequent amendments. *Id.* at 129.

59. See note 16 supra.
60. See *Neb. Rev. Stat.* § 76-826(c). *See also* U.C.A. § 1-102 comment 10, at 130. The state can exercise authority if the condominium is sold by contract signed within its boundaries, even though the condominium is located elsewhere.
61. See *Neb. Rev. Stat.* § 76-826(c); U.C.A. § 1-102 comment 10, at 130.
Definitions

The crux of condominium property law is its specific and unique terminology. The condominium contains two basic elements: the unit and the common elements. The unit is a physical portion of the condominium designated for separate ownership or occupancy. The unit owner negotiates a separate loan, and is responsible for the maintenance of his or her individual unit. The unit owner also has an undivided interest in the common elements which are circularly defined as all portions of the condominium that are not a unit. Allocated interests of the owner refers not only to his or her interest in the common elements, but also to a share of the common expenses, and votes in the association. Limited common elements are allocated for the use of one or more,

---

62. See notes 63-90 and accompanying text infra. As new ownership forms evolve, new terms are coined to describe them, as for example, a “time share” is a right to occupy a unit during five or more separated time periods. Neb. Rev. Stat. § 76-1708(13)-(18) (Reissue 1981); U.C.A. § 1-103(24). See also note 19 supra.

63. See note 3 and accompanying text supra.

64. Neb. Rev. Stat. § 76-827(24). The generic term “unit” is appropriate to use for commercial as well as residential condominiums. Legal requirements for the description of a unit are found in Neb. Rev. Stat. § 76-841, and unit boundaries are described in Neb. Rev. Stat. § 76-842(a)(5). Prior Nebraska law used “apartment,” and limited the condominium project regime to a minimum of four units. Neb. Rev. Stat. § 76-802(1).

65. Kamer, supra note 2, at 190.

66. Neb. Rev. Stat. § 76-865(a) (Upkeep of Condominium). The association is responsible for maintenance, repair and replacement of the common elements, and each unit owner is responsible for the maintenance, repair and replacement of his or her unit.

67. Neb. Rev. Stat. § 76-827(2). See 1A P. ROHAN & M. RESKIN, supra note 1, § 23.01 n.3 (examples of common elements). See also Note, supra note 5, at 435. Common elements or areas are not only convenient in a residential format but have many advantages for commercial condominium owners. By spreading the cost of common areas and facilities among a number of owners and combining resources, the condominium offers possibilities that are usually available only to larger enterprises. These resources might consist of facilities such as storage rooms, railroad sidings, refrigeration units, heavy machinery, technical and diagnostic equipment and other forms of support apparatus that small businesses could not attain individually. Common facilities might include reference materials, copy machines, word processors and a receptionist. Id.

68. Neb. Rev. Stat. § 76-827(2). See also W. HYATT, supra note 2, at 20. The individual has an interest in common with all others in the common elements. This assigned percentage of interest can be allocated on a basis of value, square footage, or equality. Id. The value approach states that percentages are equivalent to the percentages representing the value of the individual unit as it relates to the whole property. This creates obvious problems as values change with improvements, inflation and other factors. Id. at 21. The Nebraska Act provides that while formulas are to be determined by the declarant they must be included in the declaration. Neb. Rev. Stat. § 76-844(a).

69. Neb. Rev. Stat. § 76-827(2). The problems with value basis, increase as this percentage is applied to other interests besides common elements. Often interests in voting, common expenses and liabilities are all related back to the value basis
but less than all of the units. Common expenses are expenditures made by or financial liabilities of the association that are allocated to each unit. The association has a lien for any assessment levied against that unit after the assessment becomes due.

Several parties are involved in the condominium. The statute defines a declarant as any person or group of persons, acting concertedly, who as part of a promotional plan offers to dispose of declarant's interest in a unit not previously sold, or reserves or succeeds to any special declarant rights. The declarant generally is the developer of the regime. The declarant might also have special declarant rights which allow the declarant to complete improvements, exercise development rights, maintain sales offices, use easements, and appoint or remove officers in the unit owners' association during the period of declarant control. Other parties involved may be the affiliates of the declarant. Affiliates can include general partners, employers, and persons who have contributed capital to the project. Persons who represent a voting interest in the declarant, by holding proxies, may also be involved. The definition of declarant excludes real estate brokers who do not offer to dispose of their own interest in a unit and unit and can result in inequities. See generally Judy & Wittie, supra note 23, at 437-73 (an extensive treatment of allocation and basis).

and can result in inequities. See generally Judy & Wittie, supra note 23, at 437-73 (an extensive treatment of allocation and basis).

70. NEB. REV. STAT. § 76-827(16). See Hyatt, supra note 2, at 29. Limited common elements may include patios, balconies, parking spaces, storage areas, courtyards, stairways and entryways, attics and basements. Confusion arises because the limited common element appears to be owned by the individual unit owner. A declarant, who is careless in drafting boundaries might include such areas as part of the unit, instead of assigning them as part of the common property for purposes of maintenance and control. Id.

71. NEB. REV. STAT. § 76-827(5)(6).

72. Id. § 76-827(5)(6). Nebraska law requires that the dollar amount of such lien be recorded where mortgages are recorded.

73. Id. § 76-827(5)(6).

74. Id. § 76-827(9). "Dispose" is narrowly defined to mean a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but excluding such transfer of a security interest. Id.

75. Id. § 76-827(23). "Special declarant rights" is a broader term than "development rights." They include a bundle of privileges that facilitate the completion and smooth transition of the condominium. Cf. id. § 76-827(11). See also notes 206-11 and accompanying text infra.

76. Id. § 76-827(1). "Affiliates" are defined by their relationship with the declarant. They are persons either controlled by, or who control, or who are in common control with the declarant. The statute determines the percentages of control necessary to define the various categories. Control is not present, if the powers of the declarant are held solely as security for an obligation. Id.

77. Id. § 76-827(1)(ii).
owners who offer their units for resale.\footnote{78}  

The documents used to create the condominium\footnote{79} are the \textit{declaration},\footnote{80} the \textit{plats and plans} of the project\footnote{81} and the \textit{bylaws}\footnote{82} of the unit owners' association. The Nebraska Act and the U.C.A. require that only the declaration and plats and plans be recorded.\footnote{83} The prior Nebraska law required that condominium bylaws be recorded.\footnote{84}  

The \textit{real estate} means any leasehold or other estate or interest in, over, or under land.\footnote{85} It includes structures, fixtures, improvements and interests which pass with the conveyance.\footnote{86} The condominium maybe held as a fee simple, a leasehold or as another interest in land.\footnote{87} Whatever the interest in land is, it may be subject to \textit{development rights}.\footnote{88} This term reserves to the declarant the right to add real estate, to create units, common elements, or limited common elements, to subdivide or convert units into com-

\footnote{78} U.C.A. § 1-103 comment 7, at 133. According to the Commissioners, the definition is narrowly worded to exclude persons who are not to be charged with the responsibilities imposed on the declarants. \textit{Id.} Caution must be exercised when imposing the U.C.A. comments on the Nebraska Act since they have not been formally adopted by Nebraska. For discussion of the responsibilities imposed on declarants see notes 206-11 and accompanying text \textit{infra}.  

\footnote{79} W. \textsc{Hyatt}, \textit{supra} note 2, at 112-13 outlines six purposes of the development documents. First, they define who owns what. \textit{Id.} at 112. Second, they establish a system of relationships of parties. \textit{Id.} at 112-13. Third, they establish protective standards and restrictions necessary for the project. Fourth, they create an administrative organization to operate the association. Fifth, they provide a financing mechanism for lien rights, budget procedures etc. And sixth, they help transfer control from the developer to the unit owners. \textit{Id.} at 113.  

\footnote{80} \textsc{NEB. REV. STAT.} § 76-842; \textit{cf.} \textsc{id.} § 76-802(9) ("master deed" was the term formerly used).  

\footnote{81} \textit{Id.} § 76-846. Plats and plans are part of the declaration. \textit{Id.}  

\footnote{82} \textit{Id.} § 76-864.  

\footnote{83} \textit{Id.} §§ 76-838(a)-846(f), -864; \textsc{U.C.A.} §§ 2-101, -109, 3-106. \textit{See also} 1A P. \textsc{Rohan} \& M. \textsc{Reskin}, \textit{supra} note 1, § 23.02(2). Rohan suggests that often the unit purchaser must look to the bylaws to determine his rights and obligations and therefore the bylaws and their amendments should be required to be recorded. \textit{Id.}  

\footnote{84} \textsc{NEB. REV. STAT.} § 76-814 (Reissue 1981).  

\footnote{85} \textit{See} \textsc{NEB. REV. STAT.} § 76-827(21) (Supp. 1983). The statute is drawing attention to the three-dimensional concept in the condominium context. If the condominium units are "stacked" as in apartment houses, they are referred to as horizontal condominiums. (Those units that are not horizontal are termed lateral or non-horizontal.) In stacked units, the upper and lower boundaries must be defined since the property does not extend indefinitely upwards or downwards. \textsc{U.C.A.} § 1-103 comment 12, at 134.  

\footnote{86} \textsc{NEB. REV. STAT.} § 76-827(21).  

\footnote{87} \textit{Id.} If the leasehold is used, the condominium may be terminated when the lease expires. \textit{Id.} § 76-827(15). \textit{See also} \textit{id.} § 76-843. This section provides that the lessor must sign the declaration and includes other consumer protection provisions.  

\footnote{88} \textit{Id.} § 76-827(11).
mon elements, or to withdraw real estate from the condominium. Development rights provide the flexibility needed to meet space requirements of prospective purchasers, especially in commercial condominiums.

Other General Provisions

The Nebraska Act provides that each unit and its interest in the common elements is to be taxed separately. One question this raises is who will be responsible for taxes on the common elements in which the declarant has reserved development rights. Arguably, section 76-865 provides the answer. That section provides that the declarant alone will be liable for all expenses in connection with real estate subject to development rights. No unit owner and no other portion of the condominium is to be subject to a claim for those expenses. The Nebraska Act deleted a section of the U.C.A., however, which would have provided an unambiguous answer to this question. That section would have provided: "Any portion of the common elements for which the declarant has reserved any development right must be separately taxed and assessed against the declarant, and the declarant alone is liable for the payment of those taxes." It is not clear how the omission of this specified obligation will affect interpretation of the statute on this question.

89. *Id.*
90. *See Note, supra* note 5, at 437-38. The developer can develop the property in stages and use income generated from sales of substantially completed units to help defray the costs of construction. This enables him to take less risks and use profits and buyer responses from one stage to another. *Id.* at 437. The income earned from the staged construction enables the developer to avoid large initial outlays by acquiring office space in prime locations and utilizing the property in increments, as needed. *Id.* at 437-38. *See notes* 154-55 and accompanying text *infra.*
91. *Neb. Rev. Stat.* § 76-829. Separate taxation was also provided under the earlier law. *Id.* § 76-823.
92. *Id.* § 76-865.
93. *Id.* § 76-865(b).
94. *Id.* The question raised is: Are these taxes part of the "expenses" referred to by this portion? *See notes* 95-97 and accompanying text *infra.*
95. U.C.A. § 1-105(c).
96. *Id.* See also *id.* § 1-105 comments 1-2, at 137-38. Declarant is separately taxed for any common element subject to development rights. Even if that property is part of the condominium and owned in common, it is an asset of the declarant and he is exclusively liable for those taxes. *Id.* The U.C.A. does include such real estate taxes in its definition of "expenses." U.C.A. § 3-107 comment 2, at 187, explains that "expenses" include real estate taxes properly apportionable to that real estate. "As to real estate taxes, see § 1-105(c)." *Id.*
97. This obligation for real estate taxes for sections of the common elements which have not been developed, but for which the developer reserved rights, could add a sizeable amount to the common expenses of the unit owners, if the declarant is not responsible.
The first portion of the Act also addresses the applicability of local conversion ordinances, which has been an important issue.\textsuperscript{98} Because of problems in the landlord-tenant area,\textsuperscript{99} and the increased revenue to be realized in condominium sales versus rental housing,\textsuperscript{100} there has been an accelerated pace of conversions.\textsuperscript{101} In response, some cities have enacted ordinances to preserve rental housing and prevent further conversions.\textsuperscript{102} The Nebraska Act provides that local ordinances, regulations and building codes cannot discriminate against a condominium because of the form of

\begin{itemize}
\item \textsuperscript{98} NEB. REV. STAT. § 76-830. See also Kamer, supra note 2, at 197-98.
\item \textsuperscript{99} Kamer, supra note 2, at 191-93. The landlord faces several problems with rental housing. Investment return on rental property has been limited by rent control and new regulations. Id. at 191. Maintenance costs have increased astronomically, to a large measure due to the high cost of energy. Id. at 191-92. Often the rental housing is older and not energy-efficient, tenants are low-income persons who are unable to pay the increased bills. Id. at 193.
\item \textsuperscript{100} Comment, Tenant Protection in Condominium Conversions: The New York Experience, 48 St. John's L. Rev. 978, 982 (1974). To landlords, conversions represent a profitable way to dispose of an unprofitable apartment building. The individually marketed units provide the landlord with a significantly higher rate of return than the sale of the building as a whole. Id.
\item \textsuperscript{101} Berger, The Residential Tenancy Law—Are Landlords Public Utilities?, 60 Neb. L. Rev. 707, 733 (1981). There has been a tremendous growth in conversions from 1975 through 1980, but money shortages and high interest rates slowed the activity in 1981. Id. But see Kamer, supra note 2, at 187. There is no conversion crisis. Legislators have overreacted and enacted restrictive legislative schemes. Id. In June, 1980, a 400 page study was released by U.S. Department of Housing and Urban Development's Office of Policy Development & Research (OPDR). This study concluded units converted between 1970 and 1979 represent 1.31 percent of the country's occupied rental housing. Id. at 202-03.
\item \textsuperscript{102} See Note, supra note 26, at 949. In Flynn v. Cambridge, 418 N.E.2d 335 (1981), Cambridge enacted Ordinance 926, which regulated eviction from and condominium conversion of housing subject to rent control. Id. at 335-36. Property owners brought an action to contest the validity of the ordinance. Id. at 336. The Massachusetts Supreme Judicial Court upheld the ordinance. Id. at 339. The effect of the ordinance was to deny the condominium owner the right to occupy his unit unless a permit was issued. Id. at 337 n.4. The vacancy rate in the total supply of controlled rental housing determined the number of permits to be issued. In this case more than 4% had to be vacant or the ordinance went into effect. Id. But see Zussman v. Rent Control Bd., 326 N.E.2d 876 (Mass. 1975) (held a conversion control ordinance to be contrary to the public policy of encouraging home ownership). See also LINCOLN, NEB., MUNICIPAL ORDINANCES § 21.50.010 (1980). This ordinance requires condominium information to be filed in order for the city of Lincoln, Nebraska, to obtain accurate information regarding the effect of conversions. Id.
\item See Judson, Defining Property Rights: The Constitutionality of Protecting Tenants from Condominium Conversion, 18 HARV. C.R.-C.L. L. Rev. 179, 182 (1983). Unlike questions of state preemption and local power based on state law, federal claims have also been made in this area. Owners have alleged an unconstitutional taking of property without just compensation under the fourteenth rather than the fifth amendment. U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1. Tenants have an occupancy interest which should be protected. See Block v. Hirsh, 256 U.S. 135 (1921). This case limits the owner's right to use the land in order to protect tenants in possession. Block, 256 U.S. at 157-58.
\end{itemize}
its ownership. Apart from this prohibition against discrimination "no provision [of this statute] invalidates or modifies any provision of any zoning . . . or other real estate use law . . . ." Some commentators think that the lack of a definitive preemption statement defeats the uniform treatment of local conversion ordinances.

The Nebraska statute omits the U.C.A.'s "Unconscionable Agreement" provision which would have permitted courts to statutorily avoid an unfair contract or term thereof. That section would have allowed presentation of evidence concerning the commercial setting of the negotiations, the effect and purpose of the contract, the gross disparity between the amount charged and the value of real estate, and whether one party took advantage of the inability of the other party to protect his interests because of physical or mental infirmity, illiteracy or inability to understand the contract.

One author who had advocated the deletion of this section observed that "unconscionability" is not an easily defined term.

---

103. NEB. REV. STAT. § 76-830. In City of Miami Beach v. Arlen King Cole Condominium Ass'n, 302 So.2d 777 (Fla. Dist. Ct. App. 1977), the Florida court found a city ordinance invalid which discriminated against condominiums on the basis of their ownership form; see also Claridge House One, Inc. v. Borough of Verona, 490 F. Supp. 706 (D.N.J. 1980), aff'd, 633 F.2d 209 (3d Cir. 1980) (which provided a one-year moratorium on conversion of rental units. Id. at 708. This ordinance was held invalid as preempted by state law. Id. at 713. A state statute required that regulations must be based on the nature and use of the dwelling and not the fact that the dwelling is used as a condominium. Id. at 712.).

104. NEB. REV. STAT. § 76-830.

105. In Cohen, supra note 27, at 397-98, the authors felt that the lack of a definite preemption statement in the U.C.A. was a weakness and that it should preempt state and local authorities from enacting laws that conflict with the U.C.A. Id. See U.C.A. § 1-106; NEB. REV. STAT. § 76-830; MINN. STAT. ANN. § 515A.1-106(c) (West Supp. 1983). Minnesota's adoption of the U.C.A. significantly waters down preemption and provides that a home rule city, may prohibit or impose reasonable conditions on conversions. Id. The Colorado Bar Association on the other hand suggested a modification to U.C.A. § 1-106 endorsing preemption of laws of a county, municipality or other political subdivision, whether or not vested with home rule powers. The U.C.A. official text with modifications was recommended by the Colorado Bar Association pursuant to action by the Executive Council of its Board of Governors on March 10, 1979. Cohen, supra note 27, at 398.

106. U.C.A. § 1-112 (Unconscionable Agreement or Term of Contract). Nebraska has a similar section in the Nebraska Uniform Commercial Code. NEB. REV. STAT. § 2-302 (Reissue 1980). The U.C.A. comments suggest looking to the rationale and comments provided in the U.C.C. Provision. U.C.A. § 1-112 Commissioners' comment, at 142. The provision also raises a constitutional question concerning whether a state can impair a contract, versus public policy arguments.

107. U.C.A. § 1-112(b)(1).

108. Id. § 1-112(b)(3).

109. Id. § 1-112(b)(4).

110. U.C.A. § 1-112(b)(2).

111. 1A P. ROHAN & M. RESKIN, supra note 1, § 23.02[2].
He equated unconscionability in part with price disparity between actual value and market price.\footnote{112} There was also concern that inclusion of the provision might lessen the certainty of the title transfer.\footnote{113} On the other hand, Nebraska included an unconscionable clause in the Uniform Commercial Code, purportedly to allow a court to pass directly on the unconscionability of contracts.\footnote{114} Without the inclusion of this provision in the UCC, such policing by the courts would have required manipulation of terms or adverse construction of language in order to find it contrary to public policy.\footnote{115} Similarly, the omission of this provision in the Nebraska Act leaves the court without a specific statutory basis to pass directly on the unconscionability of condominium contracts.

Finally, this portion of the Nebraska Act allows variations of specified provisions of the Act by contract.\footnote{116} The Act, however, does not permit the declarant to evade the limitations or prohibitions of the statute by use of the power of attorney or any other similar device.\footnote{117} This limitation has been criticized as the

\footnote{112} Id. But is the disparity between prices the paramount factor to consider when defining unconscionability? A misrepresentation or deliberate contract term which is oppressive to one of the parties, should be governed by some section of law. The rationale behind including it in the Commercial Code and omitting it in relation to Nebraska real estate law is not comprehensible. The concept, whether or not included in the Act is a part of Nebraska common law, but the importance of codifying this protection of the dependent party is to make this protection clear to all involved.

\footnote{113} Id.

\footnote{114} See Neb. Rev. Stat. § 2-302 (Reissue 1980). See Melcher v. Boesch Motor Co., 188 Neb. 522, 526, 198 N.W.2d 57, 61 (1972). The court stated that it was not a jury question because conscionability of the provision became a matter of law to be decided by the court in U.C.C. § 2-302. Id. Accord Abbott v. Abbott, 188 Neb. 61, 66, 195 N.W.2d 204, 208 (1972). If a court as a matter of law finds a contract unconscionable it may refuse to enforce it or it may enforce the remainder of the contract without the clause, or limit its application. Id.

\footnote{115} Neb. Rev. Stat. § 2-302 comments at 52 (Reissue 1980). The principal is one of preventing oppression and unfair surprise and not disturbing the allocations of risks because of superior bargaining power. Id. See New Prague Flouring Mill Co. v. Spears, 194 Iowa 417, 436, 189 N.W. 815, 821 (1922). A clause permitted a seller to cancel, ship or postpone delivery date indefinitely, postponing 30 days at a time, because of the buyer's failure to supply shipping instructions. Court held that the buyer's inaction cannot indefinitely postpone the date of measuring damages, to the seller's advantage. Id.

\footnote{116} Neb. Rev. Stat. § 76-828. Act; variance or evasion prohibited; exception. Except as expressly provided in section 76-825 to 76-894, provisions of sections 76-825 to 76-894 may not be varied by agreement, and rights conferred by sections 76-825 to 76-894 may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of sections 76-825 to 76-894 or the declaration.

The following sections permit variation: §§ 76-826, -827, -831, -839, -842, -844 to -846, -848 to -850, -852 to -855, -857, -860, -861, -864 to -869, -871 to -873, -878, -888, -890.

\footnote{117} Id. § 76-828.
greatest flaw in the U.C.A.\textsuperscript{118} It was suggested that the power of attorney should be allowed, but limited, to prevent the declarant from altering percentage interests already sold, from significantly increasing the annual budget of the condominiums, or subjecting owners to binding contracts.\textsuperscript{119} So limited, it would greatly facilitate transactions with government agencies, lenders, title insurance companies and others.\textsuperscript{120} Evidently, the convenience and flexibility of the power of attorney was not considered by the Commissioners, or the Nebraska drafters, to be worth its inherent danger.

\textbf{PART TWO: CREATION; ALTERATION; AND TERMINATION OF CONDOMINIUMS}

\textit{Creation}

A condominium is created by recording a declaration in the appropriate county land records.\textsuperscript{121} The declaration of a condominium contains those matters which affect the legal structure and title to the condominium.\textsuperscript{122} Nebraska requires the following provisions in the declaration: 1) name of the condominium,\textsuperscript{123} 2) the name of the county in which the condominium is located, 3) a legal description of the subject real estate, 4) a statement of the number of units which will be created,\textsuperscript{124} 5) a description of each unit's boundaries,\textsuperscript{125} 6) a description of the limited common elements.\textsuperscript{126}

\begin{itemize}
\item \textsuperscript{118} IA P. ROHAN & M. RESKIN, supra note 1, § 23.03[3].
\item \textsuperscript{119} Id.
\item \textsuperscript{120} Id.
\item \textsuperscript{121} Neb. Rev. Stat. § 76-838(a). The declaration is recorded in the same manner as a master deed and it must be recorded in every county in which any portion of the condominium is located. Id. The declaration includes any amendments made thereto. Id. § 76-838(b). It is noteworthy that other covenants, conditions or restrictions applicable to the condominium real estate might already have been recorded.
\item \textsuperscript{122} See id.; see also U.C.A. § 2-101 comment 3, at 143. A condominium which has not lawfully been created, but that meets the definition of a condominium is subject to the Act.
\item \textsuperscript{123} Neb. Rev. Stat. § 76-842(a) (1). The name must include the word condominium or be followed by the words, "a condominium," and the name of the association. Id. This allows the declaration to be indexed in the association's name.
\item \textsuperscript{124} Id. § 76-842(a)(2)-(4). The Act requires a statement of the anticipated number of units which the declarant reserves the right to create. Id. § 76-842(a)(4). See notes 140-42 and accompanying text infra (concerning declarant control). In theory, a declarant might overstate the number in order to extend the period of declarant control. By reserving the right to build 100 units, but only planning to build 50, he would not lose control of the association even when all 50 units were sold. Id.
\item \textsuperscript{125} Neb. Rev. Stat. § 76-842(a)(5). This description is expanded in Neb. Rev. Stat. § 76-839. See note 253 infra.
\item \textsuperscript{126} Neb. Rev. Stat. § 76-842(a)(6). This section is cross-referenced to § 76-
7) a description of any development rights,\textsuperscript{127} 8) an allocation of interests,\textsuperscript{128} and 9) any restrictions on use, occupancy and alienation of units.\textsuperscript{129} The provision concerning declarations cross references to other sections of the Act which require the declaration to include: a description of leases;\textsuperscript{130} formulas for allocated interests; prohibition of the partition of the common elements;\textsuperscript{131} reallocation of limited common interests in case of amendment;\textsuperscript{132} requirements of plats and plans;\textsuperscript{133} rights of the declarant pertaining to easements\textsuperscript{134} and to sales;\textsuperscript{135} and last, a provision for the period of declarant control.\textsuperscript{136} As mentioned, the declarant must file the plats and plans of the condominium along with the declaration.\textsuperscript{137} The plat should show the intended location and dimensions of any future improvements to be constructed by the declarant.\textsuperscript{138} Such

\begin{footnotesize}
\begin{enumerate}
\item[846(b)(8)] which includes porches, balconies and patios, other than parking spaces and other limited common elements. See also id. § 76-839.
\item[127] Id. § 76-842(a)(7). The U.C.A. requires that the declaration contain a time limit within which the development rights must be exercised. U.C.A. § 2-105(8). The Nebraska statute requires only a general description of any development rights and other special declarant rights, without imposing a time limit. See Neb. Rev. Stat. § 76-842(a)(7).
\item[128] Neb. Rev. Stat. § 76-842(a)(8). For further explanation, see id. § 76-844, which authorizes the declaration to state formulas used to allocate interests. The allocations cannot discriminate in favor of units owned by the declarant. Id. See also notes 69-68 and accompanying text supra; Cohen, supra note 27, at 409-10. The U.C.A. permits different bases than using the value approach to allocated interests. Id. The declaration must state which formula is being applied and permits flexibility by allowing different bases. See Neb. Rev. Stat. § 76-844.
\item[129] Id. § 76-842(a)(9); W. HYATT, supra note 2, at 253 states that perhaps the most emotional issue facing an association is the subject of restrictions upon sale, lease and occupancy of units. When these restrictions are imposed, the developer is making a decision as to how the project should develop. It is more likely to be enforceable if it is contained in the declaration instead of being enacted through regulation. Id. However, amendments to the declaration by an association have also been upheld. Id. at 257. In Seagate Condominium Ass'n v. Duffy, 330 So. 2d 484 (Fla. Dist. Ct. App. 1976), the association had amended the declaration and had added a restriction on the leasing of units. Id. at 484-5. It was held that this restriction was not an unreasonable restraint on alienation because of its possible termination at any time by amendment. Id. at 486.
\item[131] Id. § 76-844.
\item[132] Id. § 76-845.
\item[133] Id. § 76-846.
\item[134] Id. § 76-851, -853.
\item[135] Id. § 76-852.
\item[136] Id. § 76-861. In conjunction with this list which requires the declaration to contain particular matters, draftsmen should carefully consider modifying provisions where variation is permitted. See note 116 and accompanying text supra.
\item[137] Neb. Rev. Stat. § 76-846. See U.C.A. § 2-109 comment 1, at 155-57. Under the Act, the plat when first filed is not necessarily a survey of the entire project, but through amendments as development proceeds, may eventually become so. The plan essentially constitutes a boundary survey of each unit, but these boundaries need not be physically measured.
\item[138] U.C.A. § 2-109 comment 2, at 157. The declarant may not create any im-
\end{enumerate}
\end{footnotesize}
contemplated improvements must be labeled either "Must Be Built" or "Need Not Be Built."\textsuperscript{139}

The Nebraska Act does not require substantial completion of all buildings containing or comprising any units before recording the declaration of a condominium.\textsuperscript{140} The only limitation imposed by this section requires that any unit added by amendment to the declaration which would increase the declarant's voting rights must have a completed foundation.\textsuperscript{141} This prevents the declarant from having personal control of the association by adding phantom units.\textsuperscript{142} The Nebraska Act does require that there be substantial completion of a unit before an interest in that unit is conveyed.\textsuperscript{143} This does not, however, address the expectations of consumers faced with an incomplete building and an insolvent developer. Furthermore, if the insolvent declarant failed to pay the common expense assessments against the unbuilt units, the only lien the association would have would be against cubicles of airspace.\textsuperscript{144}

The U.C.A. on the other hand requires the substantial completion of the structural components and mechanical systems\textsuperscript{145} of all buildings containing or comprising any units before a condominium is created or a unit is conveyed.\textsuperscript{146} The purpose of imposing this requirement is to insure that a purchaser acquires title to a
unit which may be used for its intended purpose.\textsuperscript{147} Significant construction must have taken place before units can be assigned an interest in the common elements, a vote in the association or a share of the common expenses.\textsuperscript{148}

The U.C.A. includes several protective devices in this area to prevent misrepresentations and damages to the consumer-purchaser. None of these protections is included in the Nebraska Act. The U.C.A. provides for either substantial completion of the buildings to be built in the construction phase,\textsuperscript{149} or in the alternative, for performance bonding.\textsuperscript{150} In addition, an escrow account is required for the protection of the purchaser's deposit money until closing.\textsuperscript{151} The consumer has legitimate expectations when purchasing a unit concerning common elements and the size of the project.\textsuperscript{152} Common expenses and voting rights will be contingent on the number of units completed. This change in project size and expected common facilities could be especially devastating to the commercial buyer who is planning a business around shared facilities.\textsuperscript{153} The U.C.A.'s requirement of substantial completion will result in more condominiums being constructed in phases with the initial phase being determined by the financial situation of the declarant's subsequent phases will be initiated by the declarant's

\textsuperscript{147} Id., § 2-101 comment 5, at 144.
\textsuperscript{148} Id.
\textsuperscript{149} U.C.A. § 2-101(b).
\textsuperscript{150} Id. § 5-103(b)(5). See 1A P. ROHAN & M. RESKIN, supra note 1, § 23.04[2][b]. The posting of a performance bond protects purchasers against the developer's failure to complete construction, often of large scale amenities. In many jurisdictions, a bond is very expensive and in some it is not available. Id.
\textsuperscript{151} U.C.A. § 4-110. The provision was deleted in the Nebraska Act.
\textsuperscript{152} See Committee Hearings, supra note 16, at 69-70. Tom Jetton testified about living in a condominium for four years. Portions of his testimony in favor of the bill include:

"[T]hey're requiring the declarant developer to show what land is in the association at the time of purchase and what land is reserved for future development and what amenities will be, are or will be required, provided excuse me [sic]. In our condominium case . . . it was implied that nearly a forty-acre tract was scheduled for construction of condominiums . . . In reality only a small parcel was dedicated for condominium use and only a few were actually built . . . [I]t was implied a pool and tennis courts would be constructed soon . . . by implication a clubhouse was also to be included . . . Tennis courts were never built . . . I would prefer to see stronger language requiring reserve accounts established for the construction of any amenities.

Id.
\textsuperscript{153} See Note, supra note 5, at 435; note 67 supra.
\textsuperscript{154} U.C.A. § 2-101 comment 16, at 145 (substantial completion encourages phased condominiums). See also Cohen, supra note 27, at 405. The developer without a deep pocket will probably not be able to record a declaration before construction reaches a certain point because the construction lender controls the process. Id. Often these U.C.A. requirements coincide with pre-sale requirements imposed
amendment which will allocate common interests accordingly.\textsuperscript{155} This phasing still provides needed flexibility to the declarant-builder without sacrificing consumer security.

\textit{Amendments and Alterations}

This portion of the Nebraska Act allows the declarant to exercise development rights by unilaterally amending the declaration.\textsuperscript{156} Unit owners may amend the declaration in most circumstances by a vote of sixty-seven per cent.\textsuperscript{157} These amendments must be recorded with the other documents.\textsuperscript{158} The U.C.A. would prohibit any amendment which would create or increase special declarant rights, increase the number of units, change the boundaries of any unit or allocated interests of a unit, or the uses to which it is restricted, unless unanimous consent was obtained from the unit owners.\textsuperscript{159} The Nebraska Act does not require such unanimity and requires only the normal sixty-seven per cent vote.\textsuperscript{160} Although this change gives the developer more freedom, it also reduces individual protection.

The declaration can also require that a certain percentage of secured lenders approve specified actions of unit owners.\textsuperscript{161} This ratification is permitted because acts such as termination, sale or encumbrance of the common elements drastically affect the mortgage holder.\textsuperscript{162} Lenders are not given rights in the areas of administrative affairs, litigation or dispensation of insurance proceeds.\textsuperscript{163}

Amendments to the declaration are not generally necessary for alterations by a unit owner.\textsuperscript{164} Alterations are permissible by the owner if they do not impair the structural integrity of the con-

---

\textsuperscript{155} U.C.A. § 2-110. Neb. Rev. Stat. § 76-847 permits a unilateral amendment without association approval if the declarant has reserved declaration rights, pursuant to § 76-854 and complied with § 76-846.

\textsuperscript{156} Neb. Rev. Stat. § 76-847. The first step in exercising these rights is to prepare, execute and record an amendment to the declaration. \textit{Id.} § 76-847(a).

\textsuperscript{157} \textit{Id.} § 76-854(a). Unit owners may amend the declaration in most instances except for amendments that can be made by the declarant (\textit{id.} §§ 76-846(f), 76-847); the association (\textit{id.} §§ 76-831, 76-850, 76-843(d), 76-845(c), 76-849(a)); or certain unit owners (\textit{id.} §§ 76-850(b), 76-849(a), 76-850(b), 76-855(b)) or limits imposed by (d) of this section (\textit{id.} § 76-854(d)). Smaller percentages are allowed only if all the units are nonresidential. \textit{Id.} § 76-854(a).

\textsuperscript{158} \textit{Id.} § 76-854(c).

\textsuperscript{159} U.C.A. § 2-117(d).

\textsuperscript{160} Neb. Rev. Stat. § 76-854(d).

\textsuperscript{161} \textit{Id.} § 76-856.

\textsuperscript{162} \textit{See} U.C.A. § 2-119 comment 1, at 174.

\textsuperscript{163} \textit{See id.} comment 2, at 174.

\textsuperscript{164} \textit{See} Neb. Rev. Stat. § 76-848.
The appearance of the common elements or exterior of a unit cannot be changed without association approval. Provisions for relocation of boundaries and easement rights are vital to the commercial condominium owner. Unstable market conditions and fluctuations in demand require a more innovative approach which will allow commercial condominium buyers the same degree of flexibility in operation and expense allocation that they would find in a leasehold arrangement.

Another major area of concern to the condominium buyer is the allocation of common and limited common interests. The Nebraska Act permits the declarant to allocate and provide formulas in the declaration for the fraction or percentage of undivided interests in the common elements, in the common expenses, and in the portion of votes in the association. Possible bases to be

---

165. Id. § 76-848(1).
166. Id. § 76-848(2). Some inroads on this requirement were made in Nebraska. See Ross v. Newman, 206 Neb. 43, 43-45, 291 N.W.2d 228, 229 (1980). Owner put in a skylight and bevelled window which the lower court told him to remove, and the supreme court reversed. But see Sterling Village Condominium, Inc. v. Breitenbach, 251 So. 2d 685, (Fla. 1971). Owners removed the screens from their porches and replaced them with glass jalousies. Id. at 687. Court held this to be a material alteration. Id. at 688.
167. See Note, supra note 5, at 450 n.120. In the commercial context, owners have a fear of being locked into a defined space, because space needs will vary with success in the marketplace. Id. This Note substantially expands a three-dimensional descriptive plan developed by David Sherman to structurally enable commercial condominiums to expand and contract space with ease. Id. at 454 n.144. See Kenin, Condominium: A Survey of Legal Problems and Proposed Legislation, 17 MIAMI L. REV. 145, 161 (1962). Cubing is used because the grid system envisions the creation of three-dimensional cubes bounded by two or more imaginary planes. Note, supra note 5, at 454. "Cubing" is a construction scheme which may eliminate many expansion and contraction problems. Basically it involves establishing condominium units according to a grid system attached to each floor of the building. Each grid line would delineate unit boundaries and unit size would depend on a buyer's need for space. The grids form a cube of air space which constitute one unit. Id. at 454-56. As purchasers buy the units, office partitions are moved to another grid line and new units are combined with previously owned units to expand office space. Id. at 456. Unit boundaries are set at the time of recording and because only the physical embodiment of those boundaries is being altered, the declaration does not have to be amended. Common interests are allocated in percentages based on square footage of floor space. Id. at 457.
168. See Note, supra note 5, at 441. Commercial tenants need not expend a large initial sum to acquire space, and can deduct rental payments as operating costs. Id. at 438. When more or less space is needed, they are not locked into an ownership arrangement.
170. Id. § 76-845.
171. Id. § 76-844. Allocation of voting rights can be allocated differently on particular matters, for instance cumulative voting is permitted only for electing members of the executive board, while class voting will be allowed on specified matters. Id. Votes may be allocated in proportion to common expenses for a capital expenditure but on an equal basis on other issues.
used to allocate these interests are a par value, size of the unit by area or volume, market value, equality, or relation back to the basis of another right. The prior Nebraska statute relates all interests back to the value of the individual apartment with relation to the value of the whole property. When development rights are exercised and units are added or withdrawn, common interests must be reallocated. The above allocations will impact upon the unit owner throughout the life of the condominium.

Allocation of expenses in a commercial condominium has recently been an area of concern. The most common method of allocating expenses in the past has been according to the proportional or fractional share of the unit owner's common element interest. Frequently the commercial condominium consists of several distinct businesses with specific needs. Unlike the presumed proportionate interest in residential units, some owners may use a disproportionate share of common expenses in the commercial development. Therefore, a commercial condominium needs an expense allocation system based on an expense origination formula to achieve equitable results. The Nebraska Act permits the formula to be varied according to need and requires it

172. See Judy & Wittie, supra note 23, at 441. This article presents a detailed study of the various allocation issues and considerations that developers and their counsel should take into account in making these decisions.


174. Id. §§ 76-847(c)(1) (Supp. 1983).

175. Judy & Wittie, supra note 23, at 440.

176. See Note, supra note 5, at 442-44. Author is concerned that the Florida Act does little to resolve the problems facing the commercial condominium owner.

177. See note 68 and accompanying text supra.

178. See Note, supra note 5, at 444.

179. Id.

180. Id. To resolve the common expense apportionment problem, the association could levy assessments for excess expenses against the particular units generating them. The Note takes an analogous arrangement in which a residential condominium's declaration was amended to change each unit owner's share of the common expenses and applies this to the commercial setting. In Thiess v. Island House Ass'n, 311 So. 2d 142 (Fla. Dist. Ct. App. 1975) (per curiam) the court of appeals held that an owner's unit including common expenses cannot be altered without his consent. Apparently, the Thiess court would have upheld the assessment scheme based on expenses if such a use-percentage scheme was included in the declaration originally. However, under the Court's interpretation, each assessment would constitute an alteration in the proportionate share of common expenses, requiring an amendment. Note, supra note 5, at 445. This would be especially cumbersome in a commercial setting. See also Special Subcommittee of the Committee on Condominiums, Cooperatives and Homeowner Associations, Codifying the Law of Homeowner Associations: The Uniform Planned Community Act, 15 REAL PROP., PROB. & TR.J. 854, 872 (1980). The amendments to the 1977 U.C.A. and the Nebraska Act provide that the formulas for reallocation of units that may be added or withdrawn will be stated in the declaration. One effect is that the consumer may be less
to be included in the declaration. 181

Termination

Finally, this portion of the Act addresses termination of a condominium. Generally, no unit owner or other person can bring a partition action against the common elements of the condominium so long as the regime is continued. 182 However, if a termination is to be effected, eighty per cent of the unit owners must consent and a termination statement must be recorded. 183 This ability of the majority to force the sale of the minority’s property is one disadvantage of communal ownership. 184

The Act distinguishes between horizontal property which contains units that are “stacked” upon one another with common elements interstratified and nonhorizontal property. 185 A termination statement of a horizontal condominium provides that common elements and units be sold and the minimum terms of the sale must be set forth. 186 In the case of units not having horizontal boundaries, a termination statement may provide for sale of the common elements but may not require that units be sold unless all unit owners consent to the sale. 187 The lateral development without horizontal boundaries, including non-contiguous parcels of real estate, can function independently so the rationale requiring a complete sale is absent.

The Act provides that termination proceeds be distributed by the association to the unit owners and lienholders “as their interests may appear.” 188 Values of the unit and common elements are to be determined by an independent appraiser. 189

---

182. 1 P. Rohan & M. Reskins, supra note 1, § 8.01 (for list of statutes see id. § 8.01 n.1). Neb. Rev. Stat. §§ 76-807, -844(e) provides that the common elements will remain undivided and not be subject to an action for the division of co-ownership. The rule against perpetuities and the rule restricting unreasonable restraints on alienation cannot defeat this section. Id.
184. 1 P. Rohan & M. Reskin, supra note 1, § 8.02[2]. If condominium legislation can restrict the right to partition, it can also determine when partition can be made. These provisions can be construed as a voluntary vesting of power of sale in the majority members. Id. Cf. Neb. Rev. Stat. §§ 76-807, -844(e) (Nebraska provisions concerning partition).
187. Id.
188. Id. § 76-855(e). The respective interests of unit owners is the fair market value immediately before termination. Id. § 76-855(b).
189. Id.
of any unit owner's interest to that of all unit owners is determined by dividing the individual fair market value by the total fair market value of all units and elements.\textsuperscript{190}

If a unit is acquired by eminent domain, the award must compensate the unit owner for her unit and its interest in the common elements, whether or not any common elements are acquired.\textsuperscript{191} That unit's allocated interests must then be reallocated to the remaining units.\textsuperscript{192} If a part of the common elements is acquired, then a representative portion of the award is paid to the association.\textsuperscript{193} If limited common elements are taken, then the award is equally divided among the affected owners.\textsuperscript{194}

\textbf{PART THREE: MANAGEMENT OF THE CONDOMINIUM}

Although the Declaration will give a condominium technical legal existence, a well organized unit owners' association is indispensible to the success of a condominium.\textsuperscript{195} Taking title to a unit subjects a unit owner to the rights and obligations of membership in the association.\textsuperscript{196} This organization manages the common elements, assesses and collects expenses, adopts and amends budgets and promulgates the rules that govern the condominium.\textsuperscript{197} In addition to the unit owners' association, the Nebraska Act provides for either a master association or a merger of condominium associations in conjunction with a condominium merger.\textsuperscript{198} A master association may provide management services or decision-making for a series of smaller condominiums.\textsuperscript{199} A merged association for

\begin{enumerate}
\item \textsuperscript{190} Id.
\item \textsuperscript{191} Id., \textsuperscript{19}§ 76-831(a).
\item \textsuperscript{192} Id.
\item \textsuperscript{193} Id., \textsuperscript{19}§ 76-831(c).
\item \textsuperscript{194} Id.
\item \textsuperscript{195} See Breetz, Dealing with The Condo Concept, An Outline: Uniform Condominium Act, Uniform Law Commissioners, (pamphlet on file at Creighton L. Rev.). Management presents many serious problems. Initially it is closely related to the development process and developers insist on controlling the condominium to insure success. Later however, the need for sound management continues and often increases after a developer is no longer around. Id., at 6.
\item \textsuperscript{196} See Neb. Rev. Stat. \textsuperscript{19}§ 76-859 (membership shall consist exclusively of all unit owners); id., \textsuperscript{19}§ 76-860 (lists powers of unit owners' association). W. Hyatt, \textit{supra} note 2, at 6. A community association, refers to an organization in any form of real estate development with a mandatory membership association to which individual purchasers automatically become members subject to its powers and procedures. Id.
\item \textsuperscript{197} Neb. Rev. Stat. \textsuperscript{19}§ 76-860. \textit{See also} W. Hyatt, \textit{supra} note 2, at 31 (citing Urban Land Institute, Community Association Institute, Managing A Successful Community Association 3 (1976)). The association is "a privately owned and operated vehicle of service to a specific community." Id.
\item \textsuperscript{198} See Neb. Rev. Stat. §§ 76-857, -858.
\item \textsuperscript{199} See id., \textsuperscript{19}§ 76-857; U.C.A. \textsuperscript{19}§ 3-120 comment 1, at 175.
\end{enumerate}
consolidated condominiums is a legal successor to all pre-existing condominiums.\textsuperscript{200}

\textit{Transition Period}

The statutes provide for a gradual transfer of control from the declarant to the unit owners and their association as early as is practicable.\textsuperscript{201} This early transition provides for continuing effective management by giving the unit owners the experience necessary to run the project.\textsuperscript{202} The statute sets out guidelines for electing a governing board of the association, and requires that a majority be selected from among unit owners other than the declarant.\textsuperscript{203} The Nebraska statute gives the declarant an advantage not found in the U.C.A.\textsuperscript{204} The period of declarant control terminates no later than sixty days after: (1) ninety percent (seventy-five percent in U.C.A.) of the units have been conveyed to unit owners other than the declarant; or (2) two years after all declarants have ceased to offer units for sale. The Nebraska Act omits the third limitation contained in the U.C.A. which terminates declarant control two years after the last development right was exercised.\textsuperscript{205}

The declarant instead of maintaining control for the allotted time, may transfer his obligations and liabilities to a successor.\textsuperscript{206} In the event that the declarant does transfer such interests, then if so requested and recorded his "special declarant rights" may also be transferred to the successor.\textsuperscript{207} If the successor is an affiliate, he incurs liability for prior actions of the declarant as well as the responsibility for completing improvements that were labeled "Must

\begin{itemize}
\item \textsuperscript{200} \textit{NEB. REV. STAT.} § 76-858. This organization will hold all powers, rights, and obligations, of the former associations.
\item \textsuperscript{201} \textit{NEB. REV. STAT.} § 76-861. \textit{Compare} U.C.A. § 3-101 (1977) \textit{with} U.C.A. § 3-101 (1980). The 1977 U.C.A. organized the association when the condominium was created. It is now mandatory that the association be organized no later than the date when the first unit is conveyed. The original approach hoped to insure that there would be adequate record keeping and all contracts would be in the association's name. \textit{Id.} It may have been thought burdensome in large tiered projects to organize an association before conveyance.
\item \textsuperscript{202} \textit{See} \textit{NEB. REV. STAT.} § 76-861(e). Sixty days after conveyance of twenty-five per cent of the units which may be created to unit owners other than a declarant, at least one member of the executive board has to be elected by the unit owners. Specific percentages are outlined in this section for the transition of control of the association. \textit{Id.}
\item \textsuperscript{203} \textit{Id.} § 76-861(f). The election shall take place not later than the termination of any period of declarant control. The executive board elects the officers.
\item \textsuperscript{204} \textit{Compare} \textit{NEB. REV. STAT.} § 76-861(d) \textit{with} U.C.A. § 3-103(d). \textit{See} text at note \textsuperscript{205} infra.
\item \textsuperscript{205} \textit{Compare} \textit{NEB. REV. STAT.} § 76-861(d) \textit{with} U.C.A. § 3-103(d).
\item \textsuperscript{206} \textit{Id.} § 76-862.
\item \textsuperscript{207} \textit{Id.}
\end{itemize}
Be Built" on original plans. The non-affiliate is not responsible for prior actions of the declarant, but under most circumstances must complete improvements. The statute also provides to certain successors freedom from the declarant's liability as an incentive to the financial community to bid in for purposes of subsequent resale. A non-affiliate successor may assure control of the executive board of the association without incurring other liabilities and obligations, in order to insure a smooth transition.

In the past, a widespread abuse of declarant power has occurred with the use of the long-term or recreational lease. Some developers have provided themselves a "continuing annuity" by an insider arrangement in which they lease a facility to the condominium regime at a high rate for a long period. The U.C.A. provides for the possible termination of these "sweetheart" leases and contracts made before the association was in existence. The Nebraska Act provides that the contract may be terminated without penalty upon not less than 180 days notice to the other party (in U.C.A., 90 days notice); therefore, this opportunity to cancel allows the new association to decide whether or not they favor the

---

208. See id. § 76-862(e); U.C.A. § 3-104 comment 5, at 184. The purpose of this provision is to preclude declarants from transferring their obligations to affiliates. This section insures that they are held jointly and severally liable with the successor for all obligations imposed on the declarants by the declaration or the Act. Neb. Rev. Stat. § 76-862(b)(2).

209. Id. § 76-862(e)(2); U.C.A. § 3-104 comment 5, at 184. Although the statute does not mention completing improvements, per se, it does discuss liability for all obligations.

210. See Neb. Rev. Stat. § 76-862(c); U.C.A. § 3-104 comment 7, at 184-85. Those who acquire real estate being foreclosed or sold are protected. In case of a foreclosure of mortgage, a sale by a trustee under a trust deed, or a sale by a trustee in bankruptcy, any person acquiring title may request, but need not take, the special declarant rights. If not requested, they cease to exist and any period of declarant control ends. The successor can hold the right for another person or reserve the right to maintain sales offices and models without incurring the former declarant's liability. Id.

211. Id. § 76-862(e)(4); U.C.A. § 3-104 comment 7, at 184-85.

212. See 1A P. Rohan & M. Reskin, supra note 1, § 23.04[4]. Both the Model Act and the U.C.A. protect purchasers from the unscrupulous developer who arranges management contracts or leases for unreasonable compensation. Id.

213. Id. For example if the developer builds a swimming pool for $100,000, and rents it for $25,000 annually, the pool will be paid for in four years. Thereafter the developer earns total profit, while the unit owners pay all the expenses connected with the pool. Id. 1 P. Rohan & M. Reskin, supra note 1, at 13.04[4] discusses the monthly rental of a recreational area. If the purchaser capitalized the rental charge of $70 per month, he would have to keep $18,800 invested at 5% to make enough income to pay the rental charge. This hidden cost would drop if the lease were fairly short or if the developer paid some of the operating costs. Id.

lease. The Nebraska Act adds a vague statement which provides that "[t]his section shall not apply to any lease of a roadway or amenity for the mutual benefit of any phase of the condominium regime." This statement could be construed as removing the opportunity to cancel if the amenity is for mutual benefit.

**Rulemaking Process**

After the declarant transfers control to the association, the association in turn delegates broad power to the executive board to govern the condominium. The statute does not allow the board to amend the declaration, to terminate the condominium, or to elect or determine qualifications of the members of the executive board; but, in most other instances they may act on behalf of the association. The standard of care for all board members under the Nebraska Act is "ordinary and reasonable" care. The U.C.A., however, requires two levels of care; "ordinary and reasonable care" for those elected by unit owners, and "the level of care required of fiduciaries," for those board members appointed by the declarant. The rationale for imposing a higher standard for declarant-appointed members was based on the broad powers of the board and the potential conflict of interest between the declarant, expressed through his members on the board, and the unit owners. The Nebraska Act evidently ignores this problem, although the duty owed by a fiduciary as defined in case law may already address this issue.

When a board or controlling party acts in bad faith, or beyond

---

216. *Id.*
217. An amenity can be either tangible or intangible. For instance, circumstances such as situation, view, location, or access to a water course contribute to the benefit of occupants. Tangible items in a condominium including swimming pools, landscaping and tennis courts are also amenities. *BLACK'S LAW DICTIONARY* 74 (5th ed. 1979). The drafters of the Nebraska law by adding the final provision appear to have negated the rest of the section. "Mutual" benefit can be broadly defined. See *Cole v. Angora Enter.*, 403 So. 2d 1010 (Fla. Dist. Ct. App. 1981), the court held that a condominium association and its unit owners may state a cause of action for breach of fiduciary duty and self-dealing when a recreation lease is executed by the developer. *Id.* at 1013.
218. See *NEB. REV. STAT.* § 76-861.
219. *Id.* § 76-861(b).
220. *Id.* § 76-861(a).
222. *Id.* § 3-103 comment 1, at 181.
223. See *Cole v. Angora Enter.*, 403 So. 2d 1010 (Fla. Dist. Ct. App. 1981). A fiduciary obligation is usually in reference to a corporation's controlling shareholders. These shareholders are under a fiduciary duty not to exercise influence to oppress or to effect a fraud on a minority. It is necessary to assess the fairness of the transaction and the controlling person's influence on the outcome. If it was for per-
the scope of their authority when making rules, they may substantially interfere with the unit owners’ use of their property. Neither the Nebraska Act nor the U.C.A. sets the standard for determining the validity of such rules. However, one jurisdiction has struggled with the presumption of the validity of the condominium rules. In *White Egret Condominium, Inc. v. Franklin*, the Florida Supreme Court invalidated an age restriction contained in the declaration. The court in this case applied an equal protection analysis and found an uneven enforcement of the restriction. However, unless the challenge implicates a constitutional due process or equal protection right, the Florida courts have maintained that full disclosure is adequate protection from unreasonable rulemaking. A subsequent Florida case changed this deferential stance and shifted the initial burden of persuasion to the rulemaker, requiring that the board demonstrate a reasonable relationship between its denial of a unit owner’s request and the stated purpose of the rule. This new substantive review by the court protects unit owners from arbitrary or capricious rules.

**Assessment Powers**

The association, in addition to its rulemaking function, has the obligation and responsibility to assess and collect common expenses against unit owners. Unexpected and undisclosed assessments can pose a potential problem for the unwary unit owner. A common abuse by developers has been to underestimate or pay all common expenses in the early stages of the project, in order to improve sales. This classic case of the inadequate personal benefit or interest it will most often be a breach of fiduciary duty. See *Henn, Handbook of the Law of Corporations* § 238 (1970).

224. *See Note, supra* note 13, at 220 (draws parallels between condominium associations and administrative agencies and the presumed validity of their actions).

225. *Id.* at 224-25. Courts have shown great deference to regulations promulgated by the declarant’s rules and have generally applied only procedural analysis.

226. 358 So. 2d 1084, 1088 (Fla. Dist. Ct. App. 1978), aff’d on other grounds, 379 So. 2d 346, 352 (Fla. 1979).

227. *Id.*

228. *See id.* at 352. Although the age restriction prohibited unit occupancy by children under twelve years, many unit owners had young children. When a unit owner transferred his unit to his brother, the condominium association attempted to invalidate the transfer because the children were too young.


230. *Id.* at 640-41.

231. *Id.* at 640. The court did not order Basso to comply with the Board’s decision.


233. *See U.C.A.* § 4-103 comment 4, at 203. “Low balling” is a deceptive sales...
budget is misleading to the purchaser, who later finds that with increased assessments, he can no longer afford to live in the condominium.\footnote{234}

The assessments must be made at least annually on a budget also adopted annually.\footnote{235} Once the association makes an assessment, all units must thereafter be assessed according to the allocation formulas in the declaration.\footnote{236} Drafters of condominium documents should note the importance of providing in the declaration that limited common expenses be assessed against the individual unit to which they are assigned.\footnote{237} In addition, costs of insurance and utilities (especially in the commercial context) may be assessed according to risk or use only to the extent allowed by the declaration.\footnote{238} Another part of the statute also provides that judgments against the association must be paid only by units which were in the condominium at the time the judgment was entered.\footnote{239}

Past due assessments become a lien against the recalcitrant owner's unit.\footnote{240} This lien has priority over all other liens except for those recorded before the declaration, a first mortgage or trust deed recorded before assessment became delinquent, or liens for real estate taxes and governmental assessments or charges.\footnote{241}

The U.C.A. permits an accumulation of assessments for a six-month period, which even has priority over first mortgages.\footnote{242} The Nebraska Act requires that a notice containing the dollar amount of the lien be recorded in the office where mortgages are recorded,\footnote{243} and deletes the section allowing priority to the accumulation of six months of association assessments.

A money judgment against the association is not a lien on the common elements but is a lien on the units.\footnote{244} If a lien other than a mortgage or trust deed, including a judgment lien or mechanic's

\footnote{234. See id.}
\footnote{235. Neb. Rev. Stat. § 76-873(a).}
\footnote{236. Id. § 76-873(b).}
\footnote{237. Id. § 76-873(c)(1). See U.C.A. § 3-115(c)(1) (1977). The Nebraska Act is a change from the 1977 U.C.A., which assessed limited common elements against units benefited. Now, this happens only to the extent required by the declaration.}
\footnote{238. Neb. Rev. Stat. § 76-873(c)(2). See note 180 and accompanying text supra.}
\footnote{239. Neb. Rev. Stat. § 76-873(d).}
\footnote{240. Id. § 76-874(a). See note 72 and accompanying text supra.}
\footnote{241. Neb. Rev. Stat. § 76-874(b).}
\footnote{242. U.C.A. § 3-116(b).}
\footnote{243. Neb. Rev. Stat. § 76-874(a). This requirement is not found in the U.C.A.}
\footnote{244. Id. § 76-875(a).}
lien, becomes effective against two or more units, the unit owner can pay his proportionate share and get a release from the lienholder.\textsuperscript{245}

The association or any unit owner has a right of action against the declarant for losses suffered based on a tort or breach of contract during any period of declarant control.\textsuperscript{246} Because the association is an entity which can sue or be sued,\textsuperscript{247} actions in tort or contract may be brought against the association.\textsuperscript{248} Causes of action may not be brought against individual unit owners except when the claim is against the controlling declarant.\textsuperscript{249} The declarant is liable for all losses not covered by insurance.\textsuperscript{250} The Nebraska Act adds a provision which states that the declarant will not be liable for any action, loss or cost if at the time the loss occurred, the required insurance had been obtained.\textsuperscript{251}

Insurance is mandated by the statute from the time of the first conveyance to the extent reasonably available.\textsuperscript{252} The Nebraska Act states that a residential association must provide insurance for "property including the common elements" against all risk of direct physical loss.\textsuperscript{253} A later provision states that in a building containing units having horizontal boundaries, the insurance shall

\textsuperscript{245} Id. § 76-875(c).
\textsuperscript{246} See id. § 76-869(a).
\textsuperscript{248} Id. § 76-869(a).
\textsuperscript{249} See id. § 76-869(a).
\textsuperscript{251} Wittington Condominium Apartments, Inc. v. Braemar Corp., 313 So. 2d 463, 467-68 (Fla. Dist. Ct. App. 1975) (held that action for damages for improper construction can be maintained by the association, by a unit owner, or by unit owner as a representative of a class of owners).
\textsuperscript{252} NEB. REV. STAT. § 76-869.
\textsuperscript{253} Id. § 76-869(a).
\textsuperscript{254} Id. § 76-869(b).
include the units, but need not include improvements installed by the unit owners. More limited coverage is permissible for conversion buildings. A waiver of insurance is permissible if the building is commercial in nature, but not for the residential condominium. Liability insurance, including medical payments insurance shall cover all losses arising from use, ownership or maintenance of the common elements, which result in death, bodily injury and/or property damage.

PART FOUR: PROTECTION OF CONDOMINIUM PURCHASERS

Disclosure Required

The main thrust of this section is to provide protection to condominium purchasers in the form of disclosure. The principal difficulty in this area is how to require meaningful disclosure of information to the condominium purchaser. First and foremost,
disclosure is required from the declarant in the form of a public offering statement. He or she can transfer the responsibility for preparing a public offering statement to a successor declarant or dealer, provided she furnishes adequate information for the statement to be issued. The Nebraska Act makes the preparer liable for her own intentional misrepresentations and material omissions. If the declarant does not prepare any part of the public offering statement, he or she will not be liable.

The Nebraska Act substantially reduces the requirement of the U.C.A. offering statement. A public offering statement is required only if a condominium: is larger than twenty-five units; is subject to development rights; or potentially may become part of a larger condominium or group of condominiums. A public offering statement is not required if the disposition of a unit is gratuitous, testamentary, pursuant to court order, by foreclosure, or made by the government. If a public offering statement is required it must include: the name of the declarant; description and amenities of the condominium with planned schedules of com-

the purchaser cancels, it can either be by hand-delivery or mail. There is no mention of refunds, and proof of actual damages might be difficult. Neb. Rev. Stat. § 76-883. The ten percent penalty to declarants by the U.C.A. is incentive to make sure the public offering statement is provided in a timely fashion. U.C.A. § 4-108(c) comment 6, at 209.

261. Id. § 76-879(b)(c). Nebraska requires intent to mislead, while U.C.A. requires proof that the disclosure is false or misleading. See U.C.A. § 4-102(c).
263. Id.
264. Compare Neb. Rev. Stat. § 76-880 with U.C.A. § 4-103. Nebraska has cut the disclosure requirements from nineteen to nine items. Omitted from Nebraska’s statement are: description of liens and encumbrances on title; description of financing offered or arranged by declarant; terms and significant limits of warranty; 15-day cancellation period; recovery of 10% of sales price if declarant fails to deliver public offering statement; statement of unsatisfied judgment or pending suits; statement concerning deposits placed in escrow account; any restraints on alienation of any portion of the condominium; financial provisions for improvements and description of zoning or land use requirements; and all usual and material circumstances, features and characteristics of the condominium and the units. Id.

265. Neb. Rev. Stat. § 76-878(b)(7)(8). Nebraska does not require a public offering statement if the condominium is composed of 25 or less units, or if the units are not intended for residential use. Id. The U.C.A. has no similar provisions, however, they reduce some of the requirements if 12 or less are offered, because of the cost of preparing a public offering statement. U.C.A. § 4-103(b) comment 12, at 204. See also Neb. Rev. Stat. § 76-880(c) (This provision is ambiguous concerning “residential” units. Do residential condominiums with fewer than 25 units have to provide public offering statements? According to § 76-878(b)(7) and (8), the answer is no); Omaha World Herald, Sept. 18, 1983, § F, at 1, col. 6 (James Sherrel’s statement that the public offering statement is required only on condominium developments of 25 units or more).

mencement and completion dates; anticipated number of units; statement of recorded covenants, conditions, restrictions and reservations.267 The statement must include the bylaws, rules and regulations of the association, and disclose availability of copies of contracts and leases which can be cancelled by the association.268 The current operating budget and amount of monthly assessments must also be disclosed along with a statement indicating whether the declarant is paying expenses that may later be assessed to the unit owner.269

The Nebraska Act deletes the U.C.A. disclosure requirements concerning exercise of development rights reserved by the declarant.270 The requirements of disclosure by a real estate broker upon resale of a unit in Nebraska includes only a few essential items and no disclosure is required when a unit owner sells to a purchaser.271 The seller also must provide releases of all liens affecting that unit and its common elements interest which the purchaser does not expressly agree to take subject to or assume.272 This is also true, to a limited extent, for the declarant's conveyance of his units to the association.273

Conversion Disclosure

Disclosure statements must also be given to those who are purchasing a unit in a conversion building.274 The public offering statement of a residential conversion must include a statement by an independent registered architect or engineer, describing the apparent condition of structural components and mechanical and

267. Id. § 76-880.
268. Id.
269. Id.
270. U.C.A. § 4-104. Basically this disclosure statement is to inform purchasers how the exercise of development rights will affect the condominium. Further development may alter views and boundaries, and change both legal and physical aspects of the project. Id. § 4-104 comment, at 206.
271. Neb. Rev. Stat. § 76-884. Besides providing a copy of the declaration (other than plats and plans), the bylaws and rules and regulations, the realtor (Nebraska law) must also provide a statement of monthly common expenses, other fees, current budget, availability of insurance policy, and statement of remaining term of leasehold estate. Id. See U.C.A. § 4-109. The U.C.A. imposes these requirements on the unit owner and it more stringently requires realtors to comply with the general public offering statement. Id. The Nebraska Act makes it substantially easier for realtors to comply with the statutory disclosure requirements.
273. Id. § 76-885(b). The declarant shall have real estate released from liens that would deprive unit owners of any right of access to or easement of support of their units, and all other liens on that real estate unless the public offering statement describes it as conveyed subject to liens in specified amounts. Id.
274. Id. § 76-881.
electrical systems. The public offering statement must include information from the declarant regarding the age of each item or a statement that no representations are being made. In addition, he must include a list of any outstanding notices of uncured building code violations.\textsuperscript{275}

Generally, the U.C.A. would require the declarant to give each residential tenant notice of the conversion and to provide him with a public offering statement within 120 days before vacancy is required.\textsuperscript{276} Additionally, the declarant must offer to convey the unit to the occupying tenant.\textsuperscript{277} This offer must be kept open for sixty days.\textsuperscript{278} If the tenant rejects this offer, the offeror may not dispose of the unit for less money for a period of 180 days.\textsuperscript{279} These provisions apply only to residential units and the purpose is to discourage unreasonable offers.\textsuperscript{280} The Nebraska statute is more permissive and only requires the declarant to provide notice to a tenant sixty days before he is required to vacate.\textsuperscript{281} For sixty days after this notice the declarant may, but is not required to offer to convey the unit to the tenant.\textsuperscript{282} If such offer is made, and the tenant rejects the offer, the offeror may not offer the unit to anyone else on more favorable terms for thirty days.\textsuperscript{283} The absence of a mandatory right of first refusal provides tenants with little protection.

\textbf{Warranties}

In addition to disclosure, statutory express and implied warranties offer some protection to consumers.\textsuperscript{284} The declarant may

\textsuperscript{275} Id. The U.C.A. requires the projected costs to remedy the building code violations be disclosed to the purchaser. U.C.A. § 4-106(a)(3). Nebraska does not require this. The deletion could cause a substantial difference between expected and actual monthly assessments.

\textsuperscript{276} U.C.A. § 4-112(a).

\textsuperscript{277} Id. § 4-112(b).

\textsuperscript{278} Id.

\textsuperscript{279} Id.

\textsuperscript{280} Id. § 4-112 comment 2, at 213-14.

\textsuperscript{281} Neb. Rev. Stat. § 76-888(a).

\textsuperscript{282} Id. § 76-886(b).

\textsuperscript{283} Id. The rationale given in the U.C.A. for the special protections given to renters is based on the phenomenon of conversions of rental apartment. U.C.A. § 4-112 comment 1, at 213. \textit{See also} 68 Pa. Cons. Stat. Ann. § 3410 (Supp. 1982). Pennsylvania goes a step further and gives one year's notice in addition to attaching a public offering statement to the notice. If the tenant fails to purchase the unit during a six-month option period, the declarant cannot offer more favorable terms to someone else for six months. \textit{Id.}

\textsuperscript{284} Neb. Rev. Stat. §§ 76-887, -888. \textit{Committee Hearings, supra} note 16, at 69. Consumer Tom Jetton testified:

I believe L.B. 433, especially the sections dealing with the rights and obligations of homeowners and the declarant will go a long way toward alleviat-
be liable for a breach of express warranty if the consumer relies on written promises relating to improvements, use or benefit of certain facilities not found in the condominium, or other promises relating to their units.285

The application of implied warranties of quality to condominiums is not absolutely clear. The Nebraska legislature deleted the U.C.A. provisions which would have provided:

A declarant and any person in the business of selling real estate for his own account impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by him, or made by any person before the creation of the condominium, will be:

(1) free from defective materials; and
(2) constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.286

Further, under the U.C.A., the declarant is also required to warrant to a residential purchaser that an existing use, continuation of which is contemplated by the parties, does not violate applicable law.287 This makes the declarant liable if such use violates the housing codes.288 Nebraska does not include this provision.

The ramifications of the deletion of the implied warranty are not clear. An analogous situation was presented in Connecticut in *Greentree Condominium Association v. R.S.P. Corp.*289 There the issue was whether an implied warranty of fitness and merchantability with respect to condominium units attached to sales made before 1977 when the statutory warranty became effective.290 The Connecticut court found that the statutory claim was not exclusive and that plaintiffs could sue for breach of an implied warranty if the consumer relies on written promises relating to improvements, use or benefit of certain facilities not found in the condominium, or other promises relating to their units.285

Id. 285. NEB. REV. STAT. § 76-887. The Nebraska Act requires that the express warranty be written. Therefore, any written description of the physical characteristics of the condominium or plats and plans creates an express warranty. Id.

286. U.C.A. § 4-114(b).
287. Id. § 4-114(c).
288. See id. § 4-114 comment 6, at 216.
290. Id. at —, 415 A.2d at 250-51.
warranty under common law principles.291

The Nebraska Supreme Court in 1974, held that, as a general rule, a contractor constructing a building impliedly warrants that the building will be erected in a workmanlike manner and in accordance with accepted practices in the community where the work is done.292 The court looked to Minnesota and Iowa case law and held that, in the absence of an express agreement to the contrary, it is implied that the building will be erected in a reasonable, workmanlike manner.293

The implied warranty has not been limited only to contractor-builders. In an interesting series of cases the Illinois Supreme Court explored this issue.294 In 1979, the Illinois Supreme Court held that in the sale of a new home by a builder-vendor there is an implied warranty of habitability covering latent defects.295 In 1980, in Tassan v. United Development Co.,296 the court expanded the application of implied warranty and held that a developer-seller of a condominium could be deemed to have made such a warranty.297 They based this conclusion on the unusual dependency of the vendee upon the vendor.298 Building on the above precedent, the court in Herlihy v. Dunbar Builders Corp.,299 reasoned that purchasers are not knowledgeable in construction practices and must rely on the developer-vendor.300 The court found an implied warranty of habitability covering latent defects in the common elements.301 In another warranty case, Governors Grove Condominium Association v. Hill Development Corp.,302 the Connecticut court held that although the plaintiffs failed to state a claim in express or implied warranty, the fact that the developer had power to control the association board of directors imposed on the developer a fiduciary duty to disclose roof defects to the

291. Id. at —, 415 A.2d at 251.
293. Id. at 319, 214 N.W.2d 926, citing Robertson Lumber Co. v. Stephen Farmers Coop. Elevator Co., 274 Minn. 17, 143 N.W.2d 622 (1966); Markman v. Hoefer, 252 Iowa 118, 106 N.W.2d 59 (1960) (both cases upholding the implied warranty in building and construction contracts).
294. See notes 295-304 and accompanying text infra.
297. Id. at —, 410 N.E.2d at 908.
298. Id.
300. Id. at —, 415 N.E.2d 1227-28.
301. Id. at —, 415 N.E.2d at 1228.
In the U.C.A., disclaimers of implied warranties can only be used if a contract term similar to "as is" is employed which calls the buyer's attention to the exclusion. No general disclaimer can be used for implied warranties regarding a residential purchaser, but specific liability can be disclaimed and can be made a part of the bargain. The Nebraska Act defines this area with less specificity and deletes distinctions between residential and commercial purchasers. It provides warranty exclusion by agreement of the parties if "as is" calls the buyer's attention to the exclusion of warranties.

CONCLUSION

Nebraska's new condominium law deviates from the U.C.A. in several important respects. Many of the consumer protections the U.C.A. provides have been modified or omitted from the Nebraska Act. One of the intentions of the U.C.A. is to provide greater flexibility to builders. It is important that the declarant have enough latitude that he can afford to create a profitable regime. In fact, the U.C.A. has been criticized as leaning too far in that direction. Nebraska's Act favors the declarant to an even greater extent.

The Nebraska Act deleted the provision that provided for avoidance of an unconscionable contract. Instead of the declarant's appointees being held to the higher standard of care required of fiduciaries, the standard of care imposed is ordinary and reasonable. The drafters of the Act determined that the condominium phase does not have to be substantially finished before the condominium regime is created, and no time limits are prescribed for the exercise of the development rights. The consumer is not provided with the protection of mandatory escrow accounts or performance bonding. In addition, the declarant has control of the

303. Id. at —, 414 A.2d at 1183-84. The claim for implied warranty was not upheld because recovery was limited to actions by the original purchaser from the builder-vendor. The court held that because of the declarant's power over the common property, he had a fiduciary obligation to the association. Id. at —, 414 A.2d 1181-84.
304. U.C.A. § 4-115(a)(2).
305. Id. § 4-115(b).
306. NEB. REV. STAT. § 76-889.
307. See note 30 and accompanying text supra.
308. See IA P. ROHAN & M. RESNICK, supra note 1, at §§ 23.03[1], 23.04.
309. See notes 106-15 and accompanying text supra.
310. See notes 218-23 and accompanying text supra.
311. See notes 140-48 and accompanying text supra.
312. See note 127 supra.
313. See notes 149-51 and accompanying text supra.
condominium until ninety per cent of the units are sold. The U.C.A. provision was omitted which specifically makes the declarant liable for real estate taxes on common elements for which development rights have been reserved. The U.C.A. provision which supposedly ended long-term recreational leases is open-ended in Nebraska. A public offering statement is not necessary unless the condominium has at least twenty-five units. Furthermore, the information required in a public offering statement under the Nebraska Act is less comprehensive than required by the U.C.A. The realtor's obligation is minimal in terms of providing information to the buyer, and the purchaser in a private sale has no disclosure protection. The buyer's remedy for the declarant's refusal to provide a public offering statement is limited to actual damages and the Nebraska Act does not include guarantees about refunds.

The consumer-owner who spoke at the Committee Hearings mentioned two concerns: the completion of the condominium and the inclusion of implied warranties. Although both of these concerns were addressed in the U.C.A. by specific provisions, neither of these provisions were retained in the Nebraska Act. The deletion of these provisions creates a question mark in an intensively litigated area. Although implied warranties of fitness and workmanlike construction have been upheld in Nebraska case law, the Nebraska legislature apparently declined the opportunity to codify this position.

Although the tenant is afforded greater protection by the Nebraska Act than previously enjoyed, the tenant still has no mandatory right of first refusal if his apartment is converted to a condominium. Additionally, the period of time the tenant has to vacate upon conversion is substantially less than allowed in the U.C.A.

There may be good reasons for some of the changes made. According to one of the senators who introduced the bill, some of the U.C.A. provisions were out of harmony with Nebraska business

314. See notes 204-05 and accompanying text supra.
315. See notes 91-97 and accompanying text supra.
316. See notes 212-17 and accompanying text supra.
317. See notes 294-65 and accompanying text supra.
318. See notes 286-71 and accompanying text supra.
319. See note 271 and accompanying text supra.
320. See note 259 supra.
321. Id.
322. See notes 152, 284 and accompanying text supra.
323. See notes 292-93 and accompanying text supra.
324. See notes 274-63 and accompanying text supra.
325. See note 281 and accompanying text supra.
practice because Nebraska is not faced with some of consumer problems addressed in the U.C.A.\textsuperscript{326} Regardless, the purpose of the statute is to make sure we do not permit practices that will be unfair to either party, and in this situation it is especially important to be aware of potential consumer problems.

\textit{Marjean M. Gillaspie—'84}

\textsuperscript{326} Committee Hearings, \textit{supra} note 16, at 64-65 (statement made by Sen. Wiitala).