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The Nebraska Condominium Property Act

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*Legislation**Comment***THE NEBRASKA CONDOMINIUM
PROPERTY ACT****I. INTRODUCTION**

The rapid growth in urban population has caused a scarcity of land suitable for residential purposes and an increase in the price of available land. As a result, many individuals have been forced to sacrifice the conveniences and financial advantages of home ownership for the more easily obtainable rented apartment. In an attempt to provide for home ownership in areas of limited land resources, a new concept called "condominium" has been introduced into American real property.

The condominium involves the fee simple ownership of an apartment. A multiunit project is subdivided into individually owned units conveyed in fee simple with a proportionate interest in those parts of the project to be commonly used by all unit owners. The legal effect is that each unit owner holds title to a cubical of space enclosed by the walls of his unit, the structure itself being retained as a common element.¹ Thus, even though the structure itself is destroyed, the subject matter of the fee continues to exist.

There are two types of condominium, horizontal and vertical, the former being the most prevalent. The horizontal condominium resembles the ordinary apartment dwelling with each apartment being individually conveyed. The vertical condominium is a tract of land with individual buildings, the space enclosed by each building being conveyed in fee. In both projects, the land and structures are held in common and conveyed in conjunction with the individual unit.

Although some European countries have used condominiums for some time, the concept is a recent innovation in the United States.² Like any new development in the law, the condominium concept involves some uncertain legal consequences. At this writing, no reported court decision has been found involving con-

¹ NEB. REV. STAT. § 76-802(2) (Supp. 1963) defines "apartment" as "an enclosed space consisting of one or more rooms." (Emphasis added.)

² For the history of the condominium concept, see Cribbet, *Condominium—Home Ownership for Megalopolis?*, 61 MICH. L. REV. 1207 (1963).

dominiums, and only tenuous analogies can be drawn from other areas of the law.³ To combat this legal uncertainty and to provide a stable foundation for condominium investment, over thirty states have passed condominium statutes since 1961. In 1963, the Nebraska Legislature followed suit.⁴

The purpose of this article is to analyze the concept of condominium, explain some of the legal problems involved, and determine if the Nebraska statute adequately solves them. Although condominiums could be used for residence, office, industry, business, or any combination thereof, this article will be focused primarily on horizontal residential condominiums, with infrequent references to the other types.

II. THE CONDOMINIUM CONCEPT

A condominium consists of three separate entities: the individual units, the common elements, and the limited common elements. Each individual unit is held in fee simple with all the incidents of ownership, and may be conveyed, encumbered, devised, or given away independently of other units.⁵

In addition to his interest in his individual unit, each co-owner has a proportionate undivided interest in the common elements,⁶ that proportion being determined by the percentage of the value of his unit to the value of the entire project. The percentage is fixed at the inception of the condominium regime and can be altered only by unanimous consent of all co-owners.⁷ This percentage also establishes the proportion of common expenses to be paid by each unit owner⁸ and the weight of the vote of each

³ For a discussion of the common law approach to condominiums, see Comment, 50 CALIF. L. REV. 299 (1962).

⁴ NEB. REV. STAT. §§ 76-801 to -823 (Supp. 1963). The Nebraska act was taken in part from the condominium statutes of Arkansas, Florida, Utah, and Colorado. Interview With Nebraska State Senator Michael P. Russillo, Dec. 15, 1964.

⁵ NEB. REV. STAT. § 76-804 (Supp. 1963).

⁶ NEB. REV. STAT. § 76-802(6) (Supp. 1963). This statute defines "common element" to include the land, structures, other specified areas, and "all other elements of the building rationally of common use or necessary to its existence, upkeep and safety."

⁷ NEB. REV. STAT. § 76-806 (Supp. 1963).

⁸ The act establishes as common expenses: (1) lawful assessments; (2) expenses of administration, maintenance, repair or replacement of common elements; and (3) other expenses agreed upon by the co-owners. NEB. REV. STAT. § 76-802(13) (Supp. 1963).

owner in the administration of the project.⁹ The value thus determined is fixed for these sole purposes, but does not preclude each co-owner from establishing a different value on his unit for purposes of sale, mortgaging, or taxation.¹⁰ The undivided share in the common elements passes as an incident of the unit and cannot be separated therefrom,¹¹ and, although the co-owners hold these elements as tenants in common, partition is expressly forbidden by the act.¹² This is essential in a condominium to insure cooperative use of the property.¹³

A common area which is or may be used exclusively by certain units may be designated by the co-owners as a limited common element.¹⁴ The co-owners of these units would then be solely responsible for its upkeep. Thus, in a multistory apartment condominium, the tenth floor hallway may be reserved for the exclusive use of units on the tenth floor by designating it a limited common element.

⁹ NEB. REV. STAT. § 76-815 (Supp. 1963). Throughout other sections of the act, voting percentage requirements differ according to the subject matter involved. These requirements are set out below in order to clarify later discussion:

(1) A vote of owners representing a majority of the value of the project is required to:

- (a) adopt decisions of the association (§ 76-820);
- (b) provide for blanket insurance protection (§ 76-820); or
- (c) determine provisions for reconstruction in lieu of a provision in the bylaws (§ 76-821).

(2) A vote of owners representing two-thirds of the value of the project is required to modify the system of administration (§ 76-816).

(3) A vote of owners representing three-fourths of the value of the project is required to:

- (a) sell the entire project (§ 76-812);
- (b) waive the condominium regime (§ 76-812); or
- (c) reconstruct after two-thirds of the building has been destroyed (§ 76-821).

(4) A unanimous vote is required to:

- (a) designate limited common elements (§ 76-802(7)); or
- (b) change pro rata valuation of each unit (§ 76-806).

(5) The statute is unclear as to the vote required to designate common expenses under § 76-802(13) (c). This provision would probably be construed to be a decision of the association under § 76-820, and thus require a majority vote.

¹⁰ NEB. REV. STAT. § 76-806 (Supp. 1963).

¹¹ NEB. REV. STAT. § 76-811 (Supp. 1963).

¹² NEB. REV. STAT. § 76-807 (Supp. 1963).

¹³ Note, 31 GEO. WASH. L. REV. 1014, 1030 (1963).

¹⁴ NEB. REV. STAT. § 76-802(7) (Supp. 1963).

Although incorporation is possible, many of the recently formed condominiums have been organized as unincorporated associations.¹⁵ Each co-owner is automatically a member of this association, which governs the condominium. In addition to the association of co-owners, many condominiums appoint a board of directors with management experience to operate the project.¹⁶ The Nebraska act requires at least three co-owners to be on the board.¹⁷

III. CONDOMINIUM VS. CONVENTIONAL COOPERATIVE

In the conventional cooperative apartment, a corporation holds title to the land and building while the tenant-owner holds a block of stock in that corporation and a lease to his particular apartment. The rights and obligations of each unit owner are established by lease, charter, and bylaws.¹⁸ A cooperative apartment generally is under a blanket mortgage, with taxes being assessed on a lump sum basis.

The condominium offers several advantages over the conventional cooperative, the most noteworthy of which is the financial independence of the co-owners. In cooperatives with a blanket mortgage and tax assessment, a few financially irresponsible tenants can jeopardize the entire project. If one tenant fails to pay the mortgage assessment, the other owners are faced with the dilemma of either paying the defaulting tenant's share or allowing foreclosure of the entire project. In a condominium, each unit is separately mortgaged and taxed, which eliminates the possibility of a blanket foreclosure. Also, mortgagees are likely to look with favor on this arrangement, since it will allow them to evaluate their risk with a greater degree of predictability and to spread that risk over the separate units.¹⁹ Financial independence also allows

¹⁵ The major advantage of incorporation lies in limiting the personal liability of the unit owners. *But see* note 86 *infra* and accompanying text.

¹⁶ "Many attorneys, lenders, and developers in this field believe that professional management offers the necessary guidance and experience to successfully operate a large condominium." Comment, 37 So. CAL. L. REV. 82, 94 (1964).

¹⁷ NEB. REV. STAT. § 76-802(5) (Supp. 1963).

¹⁸ Although cooperatives can be found with various forms of organization and management, the stock-lease form of ownership seems to be the most prevalent. See Comment, 17 U. MIAMI L. REV. 145 (1962).

¹⁹ Mr. John Binning, a Lincoln attorney representing the Nebraska Mortgage Association before the Committee on Judiciary, testified: "Our

the unit owner a more flexible method of financing, i.e., debt reduction, refinancing, or resale not possible under a blanket mortgage.²⁰ In an area of rising real estate prices, the condominium unit owner will realize a capital gain on resale of his unit, while the cooperative tenant usually is forced to sell his unit back to the corporation at the original purchase price.

Like the conventional cooperative, the condominium provides a lower pro rata share of operating and maintenance expense than the cost of renting comparable housing.²¹ The landlord's profit also is eliminated, and savings through mass purchasing of supplies, utilities, and labor are passed on to each co-owner. High land costs are also spread over many units.

The following have been suggested as disadvantages of the condominium as compared to conventional cooperatives:²² (1) the complexity of the legal device necessary for condominiums;²³ (2) the lack of control over undesirable members arising out of fee simple ownership;²⁴ and (3) the legal problems undeveloped by case law peculiar to any new legal concept.²⁵ These are not, however, inherent in the condominium concept, and could be eliminated, for the most part, by a carefully drawn statute or bylaw.

IV. FHA MORTGAGE INSURANCE²⁶

Investors in condominium projects gained added incentive

members include Insurance, Mortgage, Investment, Title Insurance and Securities Companies, Banks and Trusts, and Savings & Loan Associations. Their interest in this bill is that they would like to have this type of home ownership concept approved in Nebraska. We try to hold our loan money at home." *Hearings Before the Committee on the Judiciary on L.B. 288*, 73d Neb. Leg. Sess. 3 (April 24, 1963). See also Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 998 (1963).

²⁰ *Id.* at 994.

²¹ Ramsey, *Condominium, The New Look in Cooperative Building*, in PROCEEDINGS, ABA SECTION OF REAL PROPERTY, PROBATE & TRUST LAW, PART II 4, 6 (August 6-7, 1962).

²² See Cribbet, *supra* note 2, at 1240.

²³ This should be no more complex under the Nebraska act than it is in a stock-lease cooperative, since the cooperative would be required to comply with incorporation procedures.

²⁴ See text accompanying notes 71-80 *infra*.

²⁵ See conclusion *infra*.

²⁶ Extensive commentary is already available on FHA regulations concerning condominiums and need not be repeated here. For a complete comparison of the FHA condominium to the FHA cooperative, see

with the passage of the National Housing Act of 1961,²⁷ which allowed the Federal Housing Administration to insure mortgages on horizontal residential condominiums.²⁸ Conventional cooperatives had previously been included.²⁹

To obtain FHA insurance on individual unit mortgages under section 234 of the FHA regulations, the entire project must have been originally under an FHA insured project mortgage provided for in other sections of the regulations.³⁰ This project mortgage may then be converted into individual unit mortgages after presentation to the commissioner of an enabling deed and a recorded and binding plan of condominium ownership. This plan must contain items specifically enumerated in the regulations, such as provisions for blanket insurance protection, individual tax assessment, and covenants of co-owners to pay common expenses. Also, at least eighty per cent of the total value of the project must be conveyed to FHA approved unit owners, although no unit owner may own more than four units covered by insured mortgages, one of which must be his own residence. If these requirements are met to the approval of the commissioner, he may voluntarily terminate the project mortgage and convert it into individual unit mortgages.³¹

V. ESTABLISHMENT OF A CONDOMINIUM

The owner or owners of the project declare their intention of establishing a condominium under the Nebraska act by recording a master deed which must contain: (1) a description of the land and building; (2) a general description locating and identifying each apartment; (3) a description of the general and common elements; (4) the value of the property and each apartment's percentage of that value; and (5) all covenants, restrictions, and conditions relating to the regime.³² Attached to the master deed must be a plan certified by an architect or engineer showing

Note, 31 GEO. WASH. L. REV. 1014 (1963). See also Comment, 50 CALIF. L. REV. 299 (1962).

²⁷ 75 Stat. 160 (1961), 12 U.S.C. § 1715(y) (Supp. V, 1963). For regulations see 24 C.F.R. § 234 (1962).

²⁸ 24 C.F.R. § 234.26(a) (1962).

²⁹ 24 C.F.R. § 213 (1962).

³⁰ The project mortgage would probably be insured under 24 C.F.R. § 220 (1962) (urban renewal mortgage insurance), or 24 C.F.R. § 207 (1962) (multifamily housing mortgage insurance). See also MacEllven & Eagen, *Condominium—A Symposium*, 41 TITLE NEWS 28, 40 (1962).

³¹ The entire conversion procedure is set out in 24 C.F.R. § 234.26 (1962).

³² NEB. REV. STAT. § 76-809 (Supp. 1963).

graphically all particulars of the building, and this graphic illustration is conclusively presumed to illustrate the actual boundaries of each apartment.³³ Since a unit actually consists of enclosed space,³⁴ the normal settling of the building would cause defects in titles, resulting in either trespasses or the necessity for a series of mutual easements. A graphic floor plan of each owner's apartment is not subject to such difficulty.³⁵ Each apartment shown on the plan must be either numbered or lettered, and any instrument affecting title to a unit bearing the appropriate number or letter with the words "in Condominium Property Regime" is deemed to be a sufficient description of that unit for all purposes.³⁶

A condominium regime is governed by bylaws which may be adopted by co-owners representing two-thirds of the total value of the building. These bylaws are not effective until recorded,³⁷ but once recorded run with the land and "bind all coowners, tenants of such owners, employees and any other persons who use the property, including the persons who acquire the interest of any coowner through foreclosure, enforcement of any lien or otherwise."³⁸ The Nebraska act enumerates five specific items which must be provided for in the bylaws.³⁹

VI. COMMON ELEMENTS AND EXPENSES

Each co-owner must pay his pro rata share of all common expenses.⁴⁰ No co-owner can refuse to pay these expenses by waiving the use or enjoyment of the common elements or by abandoning his apartment.⁴¹ These expenses are enforced by a

³³ NEB. REV. STAT. § 76-810 (Supp. 1963).

³⁴ NEB. REV. STAT. § 76-802(2) (Supp. 1963).

³⁵ "Perhaps the best approach to this problem is that taken by Nebraska whose act provides that a copy of the floor plans be filed and that there is a conclusive presumption that the actual boundaries of the apartment are the legal boundaries." Legislation Note, 13 DE PAUL L. REV. 111, 113 (1964).

³⁶ NEB. REV. STAT. § 76-811 (Supp. 1963).

³⁷ NEB. REV. STAT. § 76-814 (Supp. 1963).

³⁸ NEB. REV. STAT. § 76-809(5) (Supp. 1963).

³⁹ NEB. REV. STAT. § 76-815 (Supp. 1963) requires: (1) form of administration; (2) regulations for meetings of co-owners; (3) care, upkeep, and surveillance of the building; (4) manner of collecting common expenses; and (5) designation and dismissal of personnel.

⁴⁰ See text accompanying notes 6-13 *supra*.

⁴¹ NEB. REV. STAT. § 76-817 (Supp. 1963).

lien in favor of the association on the individual apartment, with preference over all other liens and encumbrances except tax liens, tax assessments, and duly recorded mortgage or lien instruments.⁴² If the apartment is sold with common expenses outstanding, such expenses are first paid out of the sales price or by the vendee in preference over all encumbrances except tax liens, tax assessments, and duly recorded mortgage or lien instruments.⁴³

A vendee is jointly and severally liable with the vendor for unpaid common expenses which accrued before the conveyance, but retains the right of reimbursement from the vendor.⁴⁴ Although the Nebraska act requires a lien for unpaid common expenses to be recorded, a vendee is jointly and severally liable on all outstanding amounts, whether a lien is recorded or not.⁴⁵ Yet no provision is made for a potential vendee to examine the records of the management for any outstanding assessments. Evidently, he is at the mercy of the board of directors in this respect. Under this arrangement, abstract companies, title examiners, and attorneys must either insist that these records be made available or obtain an estoppel certificate from the management.⁴⁶ To facilitate transferability of the unit apartments, provisions should be made either in the bylaws or by statute requiring the board to make the record of assessments available to potential purchasers.⁴⁷ Most condominium statutes have such a provision.⁴⁸

The proportionate value of a unit to the total value of the project, which is established at the inception of the condominium, can only be altered by unanimous consent of the co-owners.⁴⁹

⁴² *Ibid.*

⁴³ NEB. REV. STAT. § 76-818 (Supp. 1963).

⁴⁴ NEB. REV. STAT. § 76-819 (Supp. 1963).

⁴⁵ *Ibid.* The statute refers only to "amounts owing" rather than to recorded liens.

⁴⁶ See Comment, 17 U. MIAMI L. REV. 145 (1962).

⁴⁷ Minnesota added to a statute making a vendee jointly and severally liable the following provision: "However, any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for any unpaid assessments against the grantor in excess of the amount therein set forth." MINN. STAT. ANN. § 515.24 (Supp. 1964). *Accord*, MICH. STAT. ANN. § 26.50(21) (Supp. 1963).

⁴⁸ Kerr, *Condominium—Statutory Implementation*, 38 ST. JOHN'S L. REV. 1, 13 (1963).

⁴⁹ NEB. REV. STAT. § 76-806 (Supp. 1963).

This proportionate valuation is universally used in determining the percentage of common expenses to be paid by each unit owner, his percentage of ownership in the common elements, and the weight of his vote in the management of the project. As a practical matter, this percentage will never be changed. Any unit owner who is in any way burdened by a change in the percentage of his unit has the power to veto the alteration under a unanimous consent requirement. If a change in this percentage is deemed necessary for the sound operation of condominiums, a more liberal procedure must be adopted.

Whether value is the proper basis at all, however, depends upon the purpose for which that basis is used. It can best be justified in determining the weight of the vote of each unit owner, for the owner with the most invested has the most to lose by mismanagement of the project. Since actual value does not remain constant and the weight of the vote should be proportioned to such value, a flexible method of changing the percentage originally established should be incorporated into the statute.⁵⁰

Proportionate value is less justified as a basis for determining a unit owner's share of common expenses and common elements. An increase in the value of one apartment would not increase the expense of maintaining common elements such as hallways and staircases. The maintenance costs of such areas for the most part will not vary, so each unit owner's assessment for such maintenance should be determined on a nonvariable basis. Also, since a co-owner should ideally bear the cost of maintaining his percentage share of common elements, the same basis should be used to determine both. The percentage of cubic feet owned by one owner in relation to the number of cubic feet in the entire project would be particularly applicable to this situation, since such a percentage would not change.

Proportionate value likewise has little relation to the amount of utilities consumed and other like expenses. Although many utilities may be metered directly to individual apartments, the co-owners may install central services to lower costs. A central heating unit rather than individual furnaces would be a common example. To determine such expenses, extent of use would be the most appropriate basis, provided adequate measuring devices were available.

⁵⁰ To provide for the alteration of this percentage, a statute could allow for periodic appraisal. The statute should also determine the binding effect of such an appraisal and provide for arbitration if the appraisers do not agree.

It would seem that, in determining which basis is the most reasonable for assessing common expenses, the nature of the expense should be the controlling factor. It would be cumbersome, if not impossible, for a statute to provide the basis for each of the innumerable types of expenses which might develop. For this reason, the determination should be left with the co-owners.⁵¹

There may be common profits as well as common expenses. Such profits could arise by leasing apartments owned by the association or by making assessments which are greater than common expenses. The Nebraska act does not refer to these profits, so a provision for disposition of such funds should be included in the bylaws.⁵²

Although a lien in favor of the association may be enforced against an individual unit if a co-owner does not contribute toward common expenses,⁵³ the Nebraska act is silent as to a mechanic's or materialman's lien on common elements. If a blanket lien is allowed, all unit titles are affected. Thus, even if one unit owner paid his share, the lien would not be removed until all unit owners had contributed or until the association had satisfied the debt. This is contrary to the policy of financial independence which the condominium concept was designed to effectuate. Many states have attempted to solve this problem in their condominium acts. The most common provision prohibits liens against the common elements, but allows materialmen and laborers to file individual liens against each unit for each co-owner's share.⁵⁴ Thus, a co-owner can remove the lien against his unit without being dependent on other co-owners. In New York, the mechanic or materialman is entirely deprived of his lien, but acquires a beneficial interest in a trust consisting of common charges received and to be received by the association managers. No money may be expended for any other purpose by

⁵¹ A statute requiring a footage basis for the percentage of ownership of common elements and the share in common expenses related to such common elements would be necessary. All other expenses should be paid on a basis determined by a majority of the co-owners.

⁵² New York defines common profits as the excess of all receipts of the rents, profits, and revenues from the common elements remaining after the deduction of the common expenses. N.Y. REAL PROP. LAW § 339-e (6). These common profits are then distributed to the co-owners pursuant to their percentage of the common elements. N.Y. REAL PROP. LAW § 339-m. See also MINN. STAT. ANN. § 515.10 (Supp. 1964).

⁵³ NEB. REV. STAT. § 76-817 (Supp. 1963).

⁵⁴ IOWA CODE ANN. § 499B.12 (Supp. 1964); MINN. STAT. ANN. § 515.09 (Supp. 1964).

the managers until the mechanic or materialman is fully paid.⁵⁵ Either solution adequately solves the problem, but the New York method seems more equitable. Instead of placing the burden and expense of filing individual liens on the mechanic or materialman, the expense is shifted to the association, which must then file its own liens on each unit.

VII. INSURANCE

Careful planning is necessary to develop an adequate program of casualty insurance for condominiums. The Nebraska act allows the purchase of a blanket insurance policy if required in the master deed or bylaws, or with the approval of co-owners owning a majority of the value of the project. The act also allows each unit owner to purchase an individual insurance policy covering his own unit.⁵⁶

Premiums for the blanket policy are included in common expenses. As already indicated, common expenses are assessed in the percentage established at the inception of the project, and a later change in this percentage under the present act is unlikely.⁵⁷ If one unit owner greatly increases the value of his unit, the premium on the blanket policy will rise without a corresponding rise in the assessment of that unit owner. This results in some unit owners paying for another's insurance coverage. New York has adopted the following provision with respect to insurance premiums:

[P]remiums for such insurance on the building shall be deemed common expenses, provided, however, that in charging the same to the unit owners consideration may be given to the higher premium rates on some units than on others.⁵⁸

The Nebraska act should be amended accordingly.⁵⁹

⁵⁵ N.Y. REAL PROP. LAW § 339-l(2).

⁵⁶ NEB. REV. STAT. § 76-820 (Supp. 1963).

⁵⁷ See text accompanying note 49 *supra*.

⁵⁸ N.Y. REAL PROP. LAW § 339-bb.

⁵⁹ Adoption of the New York provision would also require amendment of § 76-821 of the Nebraska act, which now provides that, if the building is destroyed and not reconstructed, the insurance indemnity is divided among the co-owners "in accordance with their interests as determined in the master deed." In other words, the proceeds would be distributed in the percentage of the value of the unit to the value of the entire project as originally established. Thus, the result would be an equitable assessment of the insurance costs with an inequitable disbursement of the insurance proceeds. The proceeds should be divided in accordance with the percentage of the premium paid.

Coordination of insurance coverage is essential in a condominium situation where there may be both blanket and individual coverage. The difficulty has best been phrased by Professor Rohan in his article on condominium insurance:

A key feature of the condominium insurance format—the separate mortgaging of individual units—raises the distinct possibility of overlapping policies, as unit owners, their mortgagees, and the association of unit owners all seek protection. Resolution of the exact role of each with respect to the purchase of insurance and the disposition of proceeds is essential to avoid duplication of premiums, gaps in coverage, and needless discouragement of institutional mortgagee participation in the condominium field.⁶⁰

This is not to say, however, that dual coverage is inadvisable. Good arguments have been made for both blanket and individual coverage, which leads to the conclusion that an integrated system including both would give the best results. It has been suggested in support of blanket coverage that the association is the only entity having the capacity and authority to restore all damaged areas and to secure payment for the contractors engaged.⁶¹ Blanket coverage also would guarantee the continuity of the project at the lowest per unit cost. On the other hand, if the roof and the top three stories of a ten story condominium are destroyed by fire and the blanket insurance policy is not sufficient to insure the entire loss, the association of co-owners will undoubtedly vote to apply the insurance proceeds to reconstruction of the roof and other common elements before reconstructing the individual unit. This makes a strong case for supplemental individual insurance.⁶² It is true that, if the blanket policy is sufficient, this problem does not arise, and there is no reason why such a policy could not be maintained. However, many individual unit owners may be reluctant to entrust the responsibility of keeping adequate insurance protection to the association, for to do so would involve financial dependence on other unit owners. If this is the case, the unit owners who do purchase individual insurance policies will then be reluctant to pay for total blanket protection. This dilemma can possibly be solved by placing the burden of uninsured losses on all unit owners.⁶³

⁶⁰ Rohan, *Disruption of the Condominium Venture: The Problems of Casualty Loss and Insurance*, 64 COLUM. L. REV. 1045, 1046 (1964).

⁶¹ *Id.* at 1050.

⁶² Mixon, *Apartment Ownership in Texas: Cooperative and Condominium*, 1 HOUSTON L. REV. 226, 250 (1964).

⁶³ See text accompanying notes 68-70 *infra*.

VIII. DESTRUCTION OF THE PREMISES

Space is neither created nor destroyed. Coupled with the condominium concept, this principle results in various legal complications when the building enclosing an individual's space is destroyed either in part or in its entirety. The Nebraska statute is susceptible of several reasonable interpretations with regard to this problem, which leaves many attendant uncertainties. The two pertinent sections are set out below with introductory numbers added to facilitate reference in the subsequent discussion.

(1) 76-821. In case of fire or any other disaster the insurance indemnity shall, except as provided in the next succeeding paragraph of this section, be applied to reconstruct the building.

(2) Reconstruction shall not be compulsory where it comprises the whole or more than two-thirds of the building. In such case, and unless otherwise agreed upon by three-fourths of the co-owners, within one hundred twenty days after such damage or destruction, the regime is waived, and the property shall be subject to a partition action and may be sold, and the proceeds, along with the insurance indemnity, if any, shall be delivered to the coowners in accordance with their interests as determined in the master deed.

(3) Should it be proper to proceed with the reconstruction, the provisions for such eventuality made in the by-laws shall be observed, or in lieu thereof, the decision of the association of co-owners shall prevail.⁶⁴

(4) 76-822. Where the building is not insured or where the insurance idemnity is insufficient to cover the cost of reconstruction, the new building costs shall be paid by all the coowners directly affected by the damage, in proportion to the value of their respective apartments, or as may be provided by said by-laws; and if any one or more of those composing the minority shall refuse to make such payment, the majority may proceed with the reconstruction at the expense of all the coowners benefited thereby upon proper resolution setting forth the circumstances of the case and the costs of the works, with the intervention of the association of coowners.

(5) The provisions of this section may be changed by unanimous resolution of the association of coowners, adopted subsequent to the date on which the fire or other disaster occurred.⁶⁵

A possible interpretation of these provisions is that section 76-821 in its entirety applies when the insurance indemnity is inadequate. The division into separate sections seems to lead to this conclusion. Also, (3) provides that reconstruction will proceed according to provisions in the bylaws, but (4) sets up a

⁶⁴ NEB. REV. STAT. § 76-821 (Supp. 1963).

⁶⁵ NEB. REV. STAT. § 76-822 (Supp. 1963).

specific statutory plan to follow. To give meaning to both sections, (3) must apply when the insurance is adequate and (4) must apply when the insurance is inadequate. This interpretation, however, would require mandatory reconstruction in the second instance.

The statutes also may be applied concurrently to both situations. This would mean that, regardless of the sufficiency of insurance indemnity, reconstruction must be approved under (2) and, if thus approved, would proceed under the provisions of (4). The insertion of the words "if any" in (2), referring to insurance proceeds, supports this interpretation. Under such an interpretation, if more than two-thirds of the building is destroyed and the insurance indemnity is inadequate, it will require a three-fourths vote under (2) to reconstruct, a two-thirds vote under (3) to determine the provisions for reconstruction with a bylaw, a majority vote under (3) to determine provisions for reconstruction in lieu of a bylaw,⁶⁶ and a majority vote under (4) to proceed with reconstruction.

Condominium investors and owners cannot afford the uncertainty created by two reasonable interpretations of a statute designed to regulate the disbursement of large amounts of money or property. One of the greatest disadvantages of the condominium is its lack of legal certainty. Sections 76-821 and 76-822 fall far short of providing that certainty. They also leave several details to implication. The allowance of a partition action in the event of waiver of the regime *implies* that the co-owners are tenants in common. It also *implies* that liens against unit apartments are transferred to the co-owners' undivided interest in the entire property. These matters should be expressly included in the statute.⁶⁷

Where there is inadequate or no insurance available and the premises are destroyed, the costs of reconstruction are to be borne by those co-owners "directly affected by the damage." In reality, damage to any part of the structure affects the aesthetic composition and thus the value of the entire project. Such an interpretation of the term "directly affected" would then spread the loss to all co-owners in the project. One writer has suggested that this term will be interpreted to mean those co-owners who suffer some

⁶⁶ NEB. REV. STAT. § 76-815(2) (Supp. 1963) requires a majority of co-owners to adopt decisions. "Majority of coowners" is defined in NEB. REV. STAT. § 76-802(8) (Supp. 1963) as "more than fifty per cent of the basic value of the property as a whole"

⁶⁷ See, e.g., R.I. GEN. LAWS ANN. § 34-36-31 (Supp. 1964).

loss of use because of the damage.⁶⁸ The same author, however, suggests that unavoidable loss could just as easily become the burden of the entire group, thereby adding incentive to keep the blanket insurance adequate. If the burden is individual, each co-owner will overinsure his own apartment at the expense of the blanket policy.⁶⁹ This reasoning seems persuasive. Unless most of the common elements are designated as limited common elements, all co-owners will be affected by being required to pay their proportionate share of repairs to common elements destroyed. Thus, ground level owners will be forced to pay part of the expense of repairing a destroyed hallway on the third floor. On the other hand, the extended use of limited common elements also causes difficulties. An area designated as such is reserved for the exclusive use of a certain number of apartments.⁷⁰ Thus, in a three story apartment condominium without elevator service, the top floor hallway could be made a limited common element as to owners on the third floor, but part of the second floor hallway would be necessary for both second and third floor owners, and part of the ground level hallway would be used by all owners. The result would be the allocation of an inequitable proportion of the common expenses to third floor owners.

The Nebraska act allows section 76-822 to be changed by unanimous resolution of the co-owners. To protect the integrity of the regime and to give an added incentive for the maintenance of blanket insurance coverage, the co-owners should place the burden of partial destruction, in the absence of sufficient insurance, on all co-owners.

IX. THE UNDESIRABLE OWNER

The combination of cooperative living with a fee simple form of ownership creates delicate legal problems in maintaining harmony among co-owners and thus in the project itself. Once an individual buys into the project, little control can be exercised over him by the association. However, the Nebraska act establishes certain rules supplementing those embodied in the master deed or bylaws which must be followed by each co-owner:

[T]he use and enjoyment of each apartment shall be subject to the following rules:

(1) Each apartment shall be devoted solely to the use assigned to it in the deed to which section 76-803 refers;

⁶⁸ *Mixon*, *supra* note 62, at 249.

⁶⁹ *Id.* at 252.

⁷⁰ NEB. REV. STAT. § 76-802(7) (Supp. 1963).

(2) No tenant of an apartment may make any noise or cause any annoyance or do any act that may disturb the peace of the other coowners or tenants;

(3) The apartments shall not be used for purposes contrary to law, morals or normal behavior;

(4) Each coowner shall carry out at his sole expense any works of modification, repair, cleaning, safety, and improvement of his apartment, without disturbing the legal use and enjoyment of the rights of the other coowners, or changing the exterior form of the facades, or painting the exterior walls, doors or windows in colors or hues different from those of the whole, and without jeopardizing the soundness or safety of the property, reduce its value or impair any easement or access to or use of common elements; and

(5) Every coowner or tenant shall strictly comply with the administration provisions set forth in the deed or in the by-laws referred to in section 76-815. Violations of these rules shall be grounds for an action for damages by the coowner or tenant aggrieved.⁷¹

Arguably, this section could be interpreted as providing an action for damages only for violation of the "administration provisions" referred to in subparagraph (5). However, the use of the term "rules," both in subparagraph (5) and in the introductory sentence of the section, implies that a violation of any of the subparagraphs, as well as provisions of the bylaws and master deed, will give rise to an action for damages. The Nebraska court may view such an action as an exclusive remedy⁷² or as an attempt to insure a legal remedy in addition to injunctive relief.⁷³

⁷¹ NEB. REV. STAT. § 76-804 (Supp. 1963).

⁷² "It is a general principle of interpretation that the mention of one thing implies the exclusion of another [T]he enumeration of certain powers implies the exclusion of all others not fairly incident to those enumerated" *Heuffle v. Eustis Cemetery Ass'n*, 171 Neb. 293, 296, 106 N.W.2d 400, 403 (1960). In *New York Cent. R.R. v. City of Bucyrus*, 126 Ohio St. 558, 186 N.E. 450 (1933), it was held that where parties to a covenant stipulate a definite remedy for breach of a covenant in a deed, they are ordinarily relegated to the relief thus stipulated. Arguably, the Nebraska act would be incorporated by reference into every condominium deed.

⁷³ The argument that the provision allowing an action for damages was included merely to insure a legal remedy in addition to injunctive relief would have to be based on the premise that an action for damages would not be allowed under common law or that, at least, the validity of such an action would be questionable. In *Schworer v. Boylston Mkt. Ass'n*, 99 Mass. 285 (1868), it was held that agreements and stipulations may be enforced at law in an action for damages between the original parties only. See also 2 *AMERICAN LAW OF PROPERTY* § 9.11 (Casner ed. 1952). However, in *Flynn v. New York, W. & B. Ry.*, 218 N.Y. 140, 112 N.E. 913 (1916), the New York court

A co-owner may prefer to pay damages rather than abide by a covenant.⁷⁴ It may, therefore, be necessary for the protection of the other co-owners to afford immediate injunctive relief rather than to force them to suffer the effects of a violation until a judgment for damages can be rendered. Of course, even a judgment for damages may not stop continuous violations of the rules, if the damages awarded are minimal. Making injunctive relief expressly available in such a situation seems imperative, and it is suggested that the act be amended accordingly. Nebraska should also consider enacting an amendment similar to the New York provision requiring flagrant violators to provide a surety.⁷⁵ This would give additional incentive for compliance with the bylaws and also give the association or aggrieved co-owners more protection.

Although control of present co-owners is limited, most writers on condominium suggest that a right of first refusal be incorporated into the bylaws of every project. If a co-owner receives a firm offer to purchase, he must afford the association the opportunity to purchase his apartment on the same terms within a

held that restrictive covenants are enforceable in law and equity, and binding upon every subsequent purchaser having notice of the plan. See also *Welitoff v. Kohl*, 105 N.J. Eq. 181, 147 Atl. 390 (Ct. Err. & App. 1929); CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 155 n.27 (1929). The only Nebraska case in point held that where an owner of a tract of land adopts a general scheme of restrictions which is imposed on all lots conveyed, and it is shown that the restrictions are for the benefit of each owner, any lot owner may enforce such restrictions against other owners purchasing with notice, actual or constructive. This case involved an equity action for injunctive relief and the court granted the injunction, because the *remedy at law was inadequate*. *Dundee Realty Co. v. Nichols*, 113 Neb. 389, 203 N.W. 558 (1925). This indicates that the Nebraska Supreme Court has recognized the existence of an action at law for breach of a covenant running with the land and would reject the argument that such an action would not lie.

⁷⁴ The authority concerning the measure of damages for breach of a restrictive covenant is divided into at least two different rules. The first measure recognized is the difference between the value of the benefited property as protected by the restriction and its value as not so protected. *Welitoff v. Kohl*, 105 N.J. Eq. 181, 147 Atl. 390 (Ct. Err. & App. 1929). The second is the difference between the respective values of the benefited property with and without the structure which violates the covenant. *Amerman v. Deane*, 132 N.Y. 355, 30 N.E. 741 (1892).

⁷⁵ "In any case of flagrant or repeated violation by a unit owner, he may be required by the board of managers to give sufficient surety or sureties for his future compliance with the by-laws, rules, regulations, resolutions and decisions." N.Y. REAL PROP. LAW § 339-j.

reasonable time. If the association fails to exercise its option within the prescribed time, the owner may sell to the offeror. The right of first refusal should be reinforced by a right of redemption, which would allow the association to repurchase a unit if a seller violates the first refusal covenant. These two covenants would allow a reasonable screening of prospective purchasers, but would not allow discrimination as to race or religion.⁷⁶

Three common law doctrines stand in the way of incorporating the right of first refusal into a condominium project: the doctrine of unreasonable restraint on alienation; the rule against perpetuities; and the requirement that covenants must run with the land to be binding on subsequent purchasers. The Nebraska act may allow the designation of the right of first refusal as a covenant running with the land.⁷⁷ Another section provides: "The rules of property against perpetuities and restricting unreasonable restraints on alienation shall not be applied to defeat any of the provisions of . . . [this act]."⁷⁸ This may apply to a right of first refusal, since arguably it could be a "restriction" within section 76-809 (5).⁷⁹ Nevertheless, the validity of a right of

⁷⁶ *Shelley v. Kraemer*, 334 U.S. 1 (1948).

⁷⁷ NEB. REV. STAT. § 76-809 (Supp. 1963) provides in part: "The master deed shall express the following particulars: . . . (5) The covenants, conditions and restrictions relating to the regime, which shall run with the land and bind all coowners, tenants of such owners, employees and any other persons who use the property, including the persons who acquire the interest of any coowner through foreclosure, enforcement of any lien or otherwise." This provision is susceptible of two interpretations. First, it may mean that the master deed must express all of the covenants, conditions, and restrictions relating to the regime and that all such covenants, etc., are covenants running with the land. On the other hand, the provision could be interpreted to mean that only those covenants, etc., which are expressly designated by the co-owners as covenants running with the land must be expressed in the master deed. Under the first interpretation, the right of first refusal must be included in the master deed and when so included automatically runs with the land. Under the second interpretation, the co-owners would have to expressly stipulate that the right of first refusal runs with the land, but this would only be evidence of an intention to make the covenant run, and the covenant would still have to touch and concern the land. CLARK, REAL COVENANTS AND OTHER INTERESTS WHICH "RUN WITH LAND" 75 (1929).

⁷⁸ NEB. REV. STAT. § 76-807 (Supp. 1963).

⁷⁹ Even without statutory sanction, a right of first refusal has been upheld as a reasonable restraint in a cooperative apartment situation. *Gale v. York Center Community Co-op., Inc.*, 21 Ill. 2d 86, 171 N.E.2d 30 (1960). However, in *Andrews v. Hall*, 156 Neb. 817, 821, 58 N.W.2d 201, 203 (1953), the Nebraska court stated: "The validity or extent

first refusal is far from certain, and the Nebraska act should be amended to expressly allow such a restriction.⁸⁰

X. TORT AND CONTRACT LIABILITY

The Nebraska act is silent on the question of whether individual co-owners are jointly and severally liable for: (1) torts arising out of accidents on the common elements; and (2) contracts entered into by the board of directors or the association at large. All unit owners are tenants in common with respect to the common elements. Therefore, liability arising out of a negligently maintained hallway, for example, might be placed on any of the co-owners under a joint enterprise or common purpose theory.⁸¹

The contractual liability of the co-owners for contracts formulated by either the board of directors or the association is governed by the law of agency and particularly the law of voluntary unincorporated associations. In *First Nat'l Bank v. Rector*,⁸² the Nebraska court, in exempting religious societies from the general rule, stated the rule to be that "all the officers or members who joined in making or authorizing the contract are represented by the joint name, and they are liable upon it, on the ground of principal and agent and not of partnership." Although the question of when any given co-owner authorized a contract is

of one's title to real estate ought not to rest upon considerations of reasonableness in the imposing of restrictions. Such a relaxation by judicial interpretation can only bring confusion where certainty ought to exist."

⁸⁰ See, e.g., R.I. GEN. LAWS ANN. § 34-36-28 (Supp. 1963).

⁸¹ The doctrine of joint enterprise, with few exceptions, has been used solely in automobile law by imputing the negligence of a driver to a passenger. PROSSER, TORTS § 65 (2d ed. 1955). In *Doleman v. Burandt*, 160 Neb. 745, 753, 71 N.W.2d 521, 525 (1955), the Nebraska Supreme Court, in imputing the contributory negligence of one co-owner of an automobile to the other co-owner, and thereby barring recovery in the latter's suit against a third person for injury to the automobile, stated: "We adopt this rule only in the above situation It would not necessarily apply in all cases, especially where the co-owners are parties defendant and one owner [is] operating the car. In such a case the question of imputable negligence would still require proof of the relationship of principal and agent, joint enterprise or some community of interest." With respect to the common elements, unit owners in a condominium would have the community of interest and possibly the joint enterprise requirements referred to in the above quotation.

⁸² 59 Neb. 77, 79-80, 80 N.W. 269, 270 (1899).

one of fact and intention, for the purposes of this article it is enough that in certain situations unit owners may be bound individually upon the association's contracts.⁸³

Each unit owner should pay his just share of any liability thus imposed, either in contract or tort. Although contribution between joint debtors is recognized in Nebraska,⁸⁴ the ability of a joint tortfeasor to maintain such an action is unsettled.⁸⁵ If it were not allowed, the burden which might fall on an individual co-owner could be intolerable.⁸⁶ Some states have attempted to solve the problem by statute.⁸⁷ The easiest solution would be to include a provision in the bylaws designating as common expense

⁸³ Little uniformity can be found in cases involving contractual liability of members of voluntary unincorporated associations. In *Hornberger v. Orchard*, 39 Neb. 639, 58 N.W. 425 (1894), the Nebraska court held that, in the absence of an express contract, members of such associations were not liable for debts incurred before membership was obtained. This would not apply to the purchaser of a condominium apartment, since the statute imposes such liability. NEB. REV. STAT. § 76-819 (Supp. 1963). For an extensive survey of the contractual liability of members of unincorporated associations, see 42 DICK. L. REV. 154 (1937). See also NEB. REV. STAT. § 25-316 (1956), which allows any judgment creditor of an association to have an award of execution against "all such persons, or any of them as may appear to have been members of such . . . association" if the property of the association is insufficient to cover the debt. An "association" within the meaning of this statute is defined as "any company or association of persons formed for the purpose of . . . holding any species of property . . ." NEB. REV. STAT. § 25-313 (Reissue 1964). The condominium is well within the definition.

⁸⁴ *Exchange Elevator Co. v. Marshall*, 147 Neb. 48, 22 N.W.2d 403 (1946).

⁸⁵ Contribution was allowed between joint tortfeasors acting in good faith in *First Nat'l Bank v. Avery Planter Co.*, 69 Neb. 329, 95 N.W. 622 (1903), but the authenticity of that decision was questioned by Judge Delehant in *Andromidas v. Theisen Bros.*, 94 F. Supp. 150 (D. Neb. 1950). See also Comment, 37 NEB. L. REV. 820 (1958).

⁸⁶ Personal liability may be limited by incorporation of the association, but it is uncertain whether this would be a complete answer. Professor Berger, in his article on condominiums, suggests incorporation as a possible solution, but notes that even with a corporate management the corporation may be treated as an agent for the unit owners, who would then become liable to the creditors as principals. Berger, *Condominium: Shelter on a Statutory Foundation*, 62 COLUM. L. REV. 987, 1007-08 (1963).

⁸⁷ "The owner of a unit shall have no personal liability for any damages caused by the association on or in connection with the use of the common elements. A unit owner shall be liable for injuries or damages occurring in his own unit . . ." FLA. STAT. ANN. § 711.18(2) (Supp. 1964).

all tort liability arising out of common areas.⁸⁸

XI. TAXATION⁸⁹

The Nebraska act requires that all state taxes, assessments, and other charges be assessed against each individual apartment, and that tax liens must be levied individually.⁹⁰ However, the statute does not deal with property taxes or other assessments made against the common elements. It would be within the discretion of the tax commissioner to decide whether these taxes were also to be individually assessed on each unit owner's share of the common areas. If a blanket assessment were levied and not paid, a lien upon the common elements would be illusory, since they could not be sold separately from the individual apartments.⁹¹ Also, if the lien were levied, it would cloud all unit titles and thus destroy the advantage of financial independence. This problem could be solved in the same manner as that involving mechanic's liens against common areas.⁹² Some statutes force separate taxation on the entire holding of the unit owner, including common elements.⁹³ The Nebraska act should be amended to contain such a provision.

XII. WAIVER OF THE REGIME

A change in the surrounding neighborhood or an inability to sell individual units may make retention of a condominium arrangement unsound. Thus, the Nebraska act provides that three-fourths of the co-owners may vote at any time to sell the entire property or waive the condominium regime and revert to a tenancy in common. On such a vote, all co-owners are bound to execute and deliver the necessary instruments in order to obtain that result. Before such a waiver is valid, creditors holding

⁸⁸ NEB. REV. STAT. § 76-802(13)(c) (Supp. 1963) defines common expense as "expenses agreed upon as common expenses by the association of coowners."

⁸⁹ The area of federal income taxation of condominiums has been extensively explored and will not be discussed in this article. See Berger, *supra* note 86; Comment, 50 CALIF. L. REV. 299 (1962); Comment, 14 HASTINGS L.J. 270 (1963); Comment, 17 U. MIAMI L. REV. 145 (1962); Note, 31 GEO. WASH. L. REV. 1014 (1963).

⁹⁰ "The Tax Commissioner of Nebraska says it would present no problem to tax these individually." *Hearings Before the Committee on the Judiciary on LB 288*, 73d Neb. Leg. Sess. 5 (April 24, 1963).

⁹¹ NEB. REV. STAT. § 76-807 (Supp. 1963).

⁹² See text accompanying notes 53-55 *supra*.

⁹³ See, e.g., ARIZ. REV. STAT. ANN. § 33-558 (Supp. 1964).

recorded encumbrances must agree to accept as security the undivided portions of the property owned by the debtor.⁹⁴ However, any such waiver does not bar the subsequent return to a condominium regime.⁹⁵ This would seem to provide a cumbersome but possible solution to the undesired owner problem. If a three-fourths majority of the co-owners wished to remove from the project one or more of the minority, the regime could be waived and the entire project sold to a straw man, who in turn would reinstate the condominium regime and reconvey the premises to the majority. In effect, the rest of the co-owners could buy out a recalcitrant member.

XIII. CONCLUSION

Nebraska, like many states, has taken a step forward in the passage of the Condominium Property Act. It has, for the most part, taken adequate steps in providing a sound legal foundation for condominium development. Although this article primarily has attempted to raise problems pertaining to the statute, the Nebraska act has solved many of the legal difficulties which the common law could not solve. It has eliminated common law rules, applicable to conventional real property ownership, which are contrary to the nature of the condominium concept. However, condominium projects involve the investment of large sums of money, and legal certainty is a prerequisite for such investment. To attain this legal certainty, the following provisions, previously suggested in this article, should be included, where possible, in the internal organization of the project through declarations and bylaws, or in the alternative by statutory amendment:

1. A provision by statute or bylaw allowing potential purchasers to examine the records of the association for assessments against individual units.⁹⁶
2. A statutory provision allowing a flexible procedure for adjusting the respective proportional valuations of individual units.⁹⁷
3. A statutory provision changing the basis for determining the percentage of common elements owned by each co-owner and liability of each co-owner for common expenses.⁹⁸

⁹⁴ NEB. REV. STAT. § 76-812 (Supp. 1963).

⁹⁵ NEB. REV. STAT. § 76-813 (Supp. 1963).

⁹⁶ See text accompanying notes 45-48 *supra*.

⁹⁷ See text accompanying notes 49-50 *supra*.

⁹⁸ See text accompanying note 51 *supra*.

4. A provision by statute or bylaw dealing with the distribution of common profits.⁹⁹

5. A statutory provision governing mechanic's and materialman's liens against common areas.¹⁰⁰

6. A statutory provision allowing the actual value of each unit to be taken into consideration in assessing that unit's share of premiums for blanket insurance.¹⁰¹

7. A complete change and clarification of sections 76-821 and 76-822, dealing with the partial or complete destruction of the project.¹⁰²

8. A provision by statute or bylaw placing the cost of partial destruction of the condominium on all unit owners, thus insuring incentive to keep the blanket insurance policy adequate.¹⁰³

9. A statutory provision expressly allowing injunctive relief as well as an action for damages against unit owners who violate covenants and bylaws.¹⁰⁴

10. The inclusion in the bylaws of covenants of right of first refusal and right of redemption.¹⁰⁵

11. A statutory provision expressly exempting the right of first refusal from operation of the rule against unreasonable restraints on alienation and the rule against perpetuities.¹⁰⁶

12. A provision by statute or bylaw that all tort liability arising from common areas be charged as common expense.¹⁰⁷

13. A statutory provision requiring individual taxation of each co-owner's entire estate, including his pro rata share of common elements.¹⁰⁸

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⁹⁹ See text accompanying note 52 *supra*.

¹⁰⁰ See text accompanying notes 53-55 *supra*.

¹⁰¹ See text accompanying notes 58-59 *supra*.

¹⁰² See text accompanying notes 64-67 *supra*.

¹⁰³ See text accompanying notes 68-70 *supra*.

¹⁰⁴ See text accompanying notes 71-75 *supra*.

¹⁰⁵ See text accompanying note 76 *supra*.

¹⁰⁶ See text accompanying notes 77-80 *supra*.

¹⁰⁷ See text accompanying notes 81-88 *supra*.

¹⁰⁸ See text accompanying notes 90-93 *supra*.