

# WATER LOG

*A Newsletter for the Mississippi-Alabama Sea Grant Consortium*

Volume 4, No.2

Sea Grant Legal Program

Apr-June 1984

## PREFACE

Everyone, at one time or another, has heard in reply to some unbelievable story, "Oh yeah? Well I've got some land in Florida that I will sell you too!" This joke line originated, of course, from the problems created by real estate dealers who were fraudulently selling swamp land in the Southeast as prime resort property to unsuspecting and gullible customers.

Fortunately, laws have been enacted to help protect consumers from falling into such vacation-land traps. These laws will play an even more important role as the coastal population increases. Statistics from the 1980 Census show that Mobile County in Alabama had a larger net migration gain from 1975-1980 than any other county in the state. In addition, Baldwin County placed fifth in net population increase among the state's 67 counties.

Because of similar increased demand for real estate and condominiums in other resort areas on the Gulf Coast, this issue of the *Water Log* focuses on pertinent state and federal laws that currently govern vacation property transactions. It is our intent that by conveying a general overview of the applicable laws, consumers will be more aware of their rights and developers more conscious of their responsibilities when entering into these types of contracts.

## HELP FOR THE CONSUMER IN THE REAL ESTATE MARKETPLACE: THE INTERSTATE LAND SALES FULL DISCLOSURE ACT

The decade of the 1960's witnessed a dramatic increase in the sale of subdivision lots, often sight-unseen, by means of sophisticated high pressure sales techniques through the mails, media advertisements, and personal or telephone solicitation. Interstate land sales was a billion dollar industry. However, a substantial portion of the sales practices were grossly unfair to the consumer, if not actually fraudulent. Purchase agreements often involved a small down payment with long installment periods. These terms seemed generous to the naive purchaser until he realized that his property was either located in a remote area without roads, utilities, public services, or neighbors, or was simply physically unsuitable for residential development. Concerned with these problems,

Congress enacted the Interstate Land Sales Full Disclosure Act of 1968 (ILSFDA) to cope with the burgeoning problem of fraud in the sale of undeveloped and semi-developed land as private homesites. 15 U.S.C.A. §§ 1701 *et seq.* (West 1982 & West Supp. 1983). The Act was designed to set higher standards of conduct for the interstate land sales industry and to ease the consumer's burden of proof in establishing a violation of these standards.

ILSFDA is administered by the Department of Housing and Urban Development (HUD). 47 Fed. Reg. 5886 (1982). Any person or organization which uses the mails or interstate commerce to sell land in subdivisions of 25 or more lots must file a "statement of record" with HUD, listing all pertinent information about the property and about the developer himself. The statement of record, which is to be kept current, must contain information such as the existence of mortgages, liens, or other encumbrances on the property; any unusual difficulties of access; or any noise, safety or health problems affecting the property.

A second major requirement of ILSFDA is that the developer of the subdivision provide each purchaser with a "property report" before the sales contract is signed. This document is supposed to summarize in non-technical terms most of the matter in the statement of record. It must contain all information which would help the potential purchaser make an intelligent, informed decision, such as the nature of the topography of the subdivision, the proximity of nearby municipalities, and the availability of water, electricity, sewage disposal, and other public utilities.

Failure by the developer to provide an accurate, full property report and statement of record can result in administrative penalties from HUD, possible criminal penalties in a court of law, and civil liability in a lawsuit by the purchaser. If either document is not filed or contains anything significantly misleading, HUD has full subpoena power to conduct hearings to investigate any possible wrongdoing. After the hearing, if it appears the developer has violated the Act, HUD may either seek a court order enjoining him from continuing the offensive practice (on pain of contempt of court) or may suspend his statement of record. If the developer continues to sell lots after a suspension order, HUD may seek criminal penalties of up to \$10,000 in fines and/or five years imprisonment.

A developer who misleads his customers or otherwise violates the Act has more to fear than possible governmental action, however. ILSFDA

specifically provides that a purchaser may file a civil suit against the seller/developer to compel him to live up to his bargain, rescind (nullify) the contract, pay money damages, or provide such relief as the court deems just and appropriate. Money damages could include not only out of pocket expenses, but also interest, attorney's fees, court costs, and other losses incurred in the transaction. If a buyer is able to establish actual fraud on the part of the seller (as opposed to mere failure to live up to the terms of the contract), then he may recover damages substantially above his expenses. Fraud is defined to include failure to disclose information which the seller is legally required to impart to the buyer.

Under certain circumstances, it has been held that ILSFDA applies to condominiums (at least when they are sold before completion) and perhaps even to time-share apartments. It has also been held that when several buyers' rights have been violated under ILSFDA by a single seller, they may join together in a single class action lawsuit against him. See Malloy, *The Interstate Land Sales Full Disclosure Act*, 24 B. C. L. Rev. 1187, 1193, 1205.

It should be noted that the statute of limitations for most cases arising under ILSFDA is not long, running ordinarily only three years from the original transaction. However, a purchaser on whom the ILSFDA statute of limitations has already run may have alternative state law remedies under such traditional actions as breach of contract or fraud. ILSFDA is in addition to such remedies and does not displace them.

In summary, federal law now provides a purchaser considerable protection against unscrupulous developers. Anyone contemplating the purchase of property in a subdivision should ensure that he receives a property report from the seller and studies it carefully. For further protection, buyers should always make an on-site inspection of the property itself prior to deciding whether to purchase it.

Holt Montgomery

## \*SPECIAL THANKS\*

The editors wish to thank Professor Guthrie T. Abbott of the University of Mississippi Law School for sharing his expertise in the preparation of these articles.

## MISSISSIPPI CONDOMINIUM LAW

### Introduction

Condominiums have existed as a form of ownership of real property since ancient times, but the concept was not introduced to the United States until a form of condominium legislation was enacted in Puerto Rico in the 1950's. Ten years later Congress recognized the potential benefits of condominium ownership by amending the National Housing Act to permit the Federal Housing Administration (FHA) "to insure mortgages on individually owned units in multi-unit structures where such form of ownership has been established by the laws of the state in which the property is located." Housing Act of 1961, Pub. L. No. 87-70, 75 Stat. 149 (1961).

Since that time, all fifty states and the District of Columbia have enacted condominium legislation patterned after the FHA Model Act, a model statute for the creation of apartment ownership. Mississippi enacted the "Mississippi Condominium Act" in 1964 to give statutory recognition to condominium ownership. The following is an overview of Mississippi's condominium law. Miss. Code Ann. §§ 89-9-1 *et seq.* (1972).

### Condominium Ownership

Condominiums are unique forms of real estate that consist of condominium "units" that can be owned by the individual just as other forms of property, and "common areas" which are owned in common and shared with the other unit owners. The unit itself, which is considered to be the condominium, consists of the space beginning at the interior surfaces of the walls, floors, and ceilings. Owners have the right to decorate and refinish the inner parts of the unit as they please. Each owner also has a nonexclusive easement for ingress and egress through the common areas appurtenant to the unit. All the units together with the common areas are known as the condominium "project." Condominiums may be used for residential or commercial purposes and can be declared homestead property.

Whereas condominiums and rental properties such as apartment buildings have many similar characteristics, the concept of unit ownership is the distinguishing feature that sets the condominium apart from other multi-unit structures. Developers should be aware, however, that condominiums and other apartment-type buildings are usually treated the same under most municipal and county zoning ordinances; both must meet the same standards. If the condominium must satisfy any special zoning requirements as compared to apartment structures, Mississippi law dictates that the ordinance must clearly draw a distinction between the two types of housing.

Property that is divided or is to be divided into condominiums must have a condominium plan recorded by the record holder of the property in the chancery clerk's office where it lies in order for the Condominium Act to apply. The recorded plan must consist of a description or survey map of the land, a diagrammatic floor plan that identifies each individual unit, and a certificate that shows

the consent of the record holder(s) to the recordation of the plan with all necessary signatures and acknowledgements. The plan can be amended or revoked with subsequent recordation of similar documents.

### Condominium Transfers

The project owner, before conveying a condominium, must record a declaration of restrictions that includes, but is not limited to, restrictions on the future sale or lease of the unit. All restrictions are binding on a condominium owner as long as they are reasonable. The declaration also typically creates a managing body of the project and provides for the payment of expenses incidental to maintenance and management.

The project management as provided for in the declaration often has an interest in retaining some degree of selectivity over the composition of the ownership in the project. This is accomplished by placing a "right of first refusal" or "pre-emptive option" in the condominium restrictions. This right or option usually gives the management the first chance to purchase the property if and when the unit owner decides to dispose of his condominium. This right is valid as long as it clears two legal hurdles. First of all, the restriction must be reasonable, because the common law generally favors the free transfer of real estate. Second, the restriction cannot be unlimited in time as another common law doctrine discourages the creation of interests in property that may vest sometime in the distant future.

Under the Mississippi Condominium Act, a statutory right of first refusal was created to acknowledge the management's interest in the ownership composition of the condominium. The Act was amended in 1971 to make this right discretionary, as opposed to mandatory. Because of the legislature's failure to expressly state that the common law doctrines mentioned above do not apply to the discretionary right of first refusal, some commentators have questioned whether this has opened the door to potential problems. 43 Miss. L.J. 261 (1973). The Act has never been challenged before the Mississippi Supreme Court, so it is uncertain how the right of first refusal provisions would be interpreted.

Finally, whether the conveyance of the condominium is a subsequent transfer subject to restrictions or part of the original project division, the deed to the condominium conveys the entire unit as well as the grantor's undivided interest in the common areas shared with the other unit owners. Condominiums are transferred through deeds, just as other real estate is.

### Condominium Management

As stated earlier, the recorded declaration provides the structure for the governing body that administers the condominium project. The condominium management can consist of the unit owners themselves, a board of governors elected by the owners, a management agent elected by the owners or the board, or a combination of the above. The management is charged with the duty of maintaining the condominium project, providing insurance protection for the unit owners, and paying the

taxes and special assessments due on the project. The power to enforce the declared restrictions and to sell the entire project for the benefit of all the owners also is vested in the condominium project management.

### Responsibilities of Ownership

Condominium owners are responsible for assessments (e.g. share of project expenses) that are made from time to time according to the declaration of restrictions. If the owner fails to pay his portion of the assessment, the debt becomes a lien against his unit and is recorded in a special Condominium Lien Book in the chancery clerk's office in the county where the property lies. Condominium liens, which can be enforced with foreclosure and sale, have priority over any other liens subsequently filed against the unit.

Not every financial benefit to the unit owner can be assessed to him. For example, labor, services, or materials provided to a condominium owner cannot be a basis for a lien unless the owner consents to the work. However, consent is deemed to be present for the purpose of emergency repairs and for work authorized by the management to be performed on common areas. If a lien is assessed against more than one condominium (e.g. for work done in common areas) the condominium owner can have the lien removed from his unit by paying his fractional share of it.

Property taxes and special assessments levied by city, county, state and other government bodies are assessed against each unit separately and not against the project as a whole. All taxes constitute a lien on that unit only and failure to pay taxes due can result in a tax sale of the property. Declared restrictions are applicable to purchasers of condominium units in tax sales. Therefore, owners of condominiums who obtain title through tax deeds must meet the same obligations as the previous owners.

Finally, condominium owners are responsible for any injuries that occur within their own condominium according to other principles of law. They are generally not individually liable, however, for damages caused by the management or injuries that happen in the common areas.

### Partitions

The Condominium Act provides that a condominium project can be partitioned (severed among the various condominium owners) according to their undivided interests in the common areas. The partition action is initiated when one or more of the owners file a petition to the chancery court in the county where the property lies. The partition only can take place, however, if it is shown that one of the following conditions exist:

- (1) the project has not been substantially repaired within 3 years from the occurrence of damage and destruction that left a material part of the project unfit to use;
- (2) at least ¾ of the project has been destroyed or substantially damaged and owners holding more than 50% of the interest in the common areas are opposed to a restoration;

- (3) the project has existed for 50 years, is now obsolete and uneconomical, and owners holding more than 50% of the interest in the common areas are opposed to a restoration; or
- (4) the conditions for a partition set forth in the declarations of restrictions have been met.

Upon a showing of one of the above, the court can partition the project by selling the property and dividing the proceeds among the owners according to their shared interest in the common areas. It should be noted that the common areas alone are not subject to a partition action. Only the entire project or single condominium units can be judicially severed.

### Conclusions

As can be seen from the above discussion, condominiums are unique forms of real estate because they combine the characteristics of individual ownership of real estate with the mutual responsibilities found in rental property. Mississippi's Condominium Act has not been amended since 1971. It is time for the legislature to take another look at the statute and make revisions which would reflect growing consumer concerns over condominium ownership and to resolve the questions raised by the discretionary right of first refusal provision.

Tim Weeks

## ALABAMA CONDOMINIUM LAW

### Condominium Ownership and Establishment

In 1964, Alabama enacted the "Condominium Ownership Act," patterned after the FHA Model Act. Ala. Code Ann. §§ 35-8-1 *et seq.* (1975). It provides that a condominium is the ownership of property under a declaration providing for ownership of units of the property by one or more owners. The condominium contains common elements (areas where all the owners have an undivided interest), limited common elements (areas where only some owners have an interest), and units (the private elements which are subject to exclusive ownership by the individual). Therefore, it is the entire "project" of units (not the unit itself) that is considered to be the condominium. Each unit that is conveyed includes easements for necessary services such as wiring and plumbing, ingress and egress and a right of access to all public roads.

Condominium property is established by recording a declaration in the county where the property is located. The declaration is executed with all the formalities of a deed by all the record holders of title to the property. The declaration is to contain all the elements necessary to describe and identify the property, the units, and the common and limited common elements. It is also to name the organization of the association, the administrative body of the condominium, and to assign the voting rights, undivided interests, and proportion of expenses and surplus among the unit owners.

Furthermore, the declaration should include all covenants and restrictions concerning the use, occupancy, and transfer of the units, such as the right of first refusal. Alabama has a

statutory pre-emptive option that is not a discretionary right, as it is in Mississippi. (See discussion on Mississippi Condominium Law in this issue.) Recognizing that the association has an interest in retaining reasonable control over the transfer of the units, the statute expressly prescribes that the common law restriction rules are not to be applied to condominium rights of first refusal.

Prior to the conveyance of a unit, plans or other "graphic descriptions" of the unit, certified by a licensed or registered engineer or architect, must be recorded as part of the declaration or as an amendment to it. The plans must be in sufficient detail to identify the private, common, and limited common elements that comprise the unit. The deed to the condominium should also name the condominium property, the county where it is located, the specific identification as called for in the plan, and the proportion of the undivided interests assigned to the unit. Reference to the declaration and where it is recorded should also be part of the deed.

After a condominium has been transferred, it may be used for residential, commercial, industrial or professional purposes. Conveyance of a condominium carries all the rights and responsibilities of ownership as any other transfer of real estate. Regardless of the form of ownership, zoning laws and regulations are to apply uniformly to all types of multi-unit dwelling projects.

### Condominium Administration

The bylaws of the association, which are recorded in the same place as the declaration, govern the administration and management of the condominium property. The form of the administration, powers and duties of the officers, rules of unit owner meetings, and methods of expense accounting are all to be determined in the association by laws.

The association itself, whether incorporated or unincorporated, has the unit owners as members or stock holders. The officers or governing board are charged with the responsibility of managing the property. It is their duty to maintain the premises, collect the necessary expenses from the unit owners, provide insurance coverage, improve the facilities, and enforce all necessary covenants and restrictions.

### Condominium Obligations and Liabilities

Each unit owner is responsible for his pro rata share of expenses according to his share in the common elements and limited common elements. However, only alteration and additions contained in the declaration and authorized by the association can be made upon the common and limited common elements. In addition, a unit owner cannot take any action within his own unit that would jeopardize the safety of any part of the property, impair any easement or right of any owner, or affect the common areas without first obtaining the consent of all unit owners that may be affected by such action.

Unit owners are legally responsible for their actions which cause injury or damage to others. Neither the association or any unit owner can be held liable for the individual acts of another unit owner. However, the association is obligated to defend all appropriate unit owners in any

action brought that arises for reasons other than a unit owner's individual actions. Unit owners can be held liable only for their pro rata share of any judgement or settlement against the association.

The association has the power to bring legal action against a unit owner for non-compliance with the covenants and restrictions. Conversely, any unit owner has the privilege of suing the association or any other unit owner at his own expense. It is interesting to note that if he does initiate legal action, he is at the same time responsible for his shared expenses of the defense or judgement against the property.

All property taxes are to be assessed to the unit as a separate parcel and not to the condominium property as a whole. Unpaid taxes constitute a lien on the individual taxpayer's unit. Likewise all other liens that may arise are enforceable against the unit and not the entire condominium property. In the event a lien becomes effective against more than one unit, the unit owner can remove the lien as it applies to his separate unit by paying his proportional share of the debt.

The association can file a lien against a unit for any unpaid assessments. Liens filed of record by the association are subordinate to any tax liens, condominium mortgages, or other liens filed before the association lien. Liens for unpaid assessments can be foreclosed upon the unit by the association.

If a unit owner sells his condominium, he and the buyer are jointly responsible for any assessments that are not satisfied. The buyer, however, has the right to recover any payments from the seller. The purchaser or the unit owner may require a certificate from the association showing the amount of unpaid assessments. The association is obligated by law to issue the certificate within 10 days after the request is made. Any person other than the unit owner who relies on such a certificate is responsible only for the amount set forth in the certificate.

If the unit is foreclosed upon for a lien other than an association lien, the one who acquires title to the property is not fully liable for any assessments that were left unpaid by the former owner prior to the foreclosure. Instead, the unpaid expenses are collected from the remaining unit owners and the new owner of title to the unit as a common expense. In other words, everyone "chips in" a proportional share to cover the delinquent assessment payments.

Whereas, each unit may be secured by an individual mortgage, Alabama law also permits the entire condominium property to be subject to a blanket mortgage, if it is permitted by the declaration or bylaws. Such mortgages provide a method for each unit owner to pay his proportional share of the mortgage and to be released of record when the mortgage is satisfied.

### Condominium Termination

Provided that all the unit owners and all holders of record of liens agree, the condominium may be terminated and removed from the provisions of the Alabama Condominium Act. If all the parties do not agree to a termination, one unit owner can still petition the circuit court to terminate and partition the

property. The petition will be granted under the following conditions:

- (1) the condominium property is totally destroyed and no agreement has been made to rebuild it within a reasonable time; or
- (2) the property is substantially destroyed or deteriorated and after a reasonable time no agreement has been reached to repair the property and a majority of the unit owners' votes are cast in favor of termination.

After the termination of the property, the property is owned in common by the unit owners. The property is then divided according to the proportional interests in the common elements. Any lien on a unit becomes a lien against the respective undivided interest of the unit owner in the partitioned property.

#### Conclusion

Alabama's first-generation act describes in detail the rights and liabilities of the unit owners and association, but it fails to address any of the current concerns of disclosure to consumers and developer rights. With the increasing development of the state's Gulf coast, the Alabama legislature should consider revising the law, taking into account the new guidelines created by the Uniform Condominium Act.

Tim Weeks

## TIME-SHARE CONDOMINIUMS

Next to owning a home, one of the greatest American dreams is to purchase a vacation "get away" at a favorite resort area, perfect for creating a family tradition of summer fun and memories. However many buyers are not able or willing to buy a vacation home which must sit idle, yet be maintained and protected, for long periods of time. Time-sharing attempts to reconcile these conflicting desires for an increasing number of families by providing them with the privileges of property ownership, but not burdening them with many of the responsibilities associated with it.

Under time-sharing, ownership of property, usually in the form of a condominium unit, is divided so that a number of owners have exclusive use and occupation of the property for a fixed, but limited, time period. This type of property ownership brings with it many tax breaks. In addition, time-share purchases carry a lower price tag than when a family buys an entire condominium or vacation home. Upkeep, maintenance and security are controlled and supervised by the management entity, so potential buyers envision a relatively care-free, guaranteed use and enjoyment of a vacation home in their chosen resort area.

However, time-share type ownership is fraught with uncertainties. Due to the newness of the concept, few states have begun to grasp the extent of the potential problems. For example, what if one owner fails to adequately clean the unit before he vacates the premises, permanently damages the furniture, equipment, or structure, or leaves a dangerous condition which harms a visitor, owner or the property two or three months later? How can the owners determine the cause and effect of the injury or the joint or individual liability of the different owners? What if one

owner purchases more than a block at a time? Does he have more voting power in the association? If one owner doesn't pay taxes or files for bankruptcy, can his creditors sell his interest to pay his debts? Would such a sale affect the other owners? Do all the owners have to be notified of such sales?

Present laws on time-sharing vary from state to state and are confusing rather than enlightening, with only four states actually attempting to legislate time-shares: Colorado, New Hampshire, Utah, and Florida. Concern over this situation prompted the development of the Uniform Real Estate Time Share Act (URETSA) by the National Conference of Commissioners on Uniform State Laws. URETSA is designed to affect all time-share interests, including purchases of property and the various forms of recurring rental agreements. The subject matter is complex, and the Act requires intense study to be fully understood. See, Note, *Uniform Real Estate Time Share Act*, 14 *Real Property, Probate and Trust Journal* 683 (1979).

It has been argued that insurance by the managing entity may solve some of the problems with liability, but the legal problems with foreclosures, judicial sales, and forced partitions are so complex with multiple owners of one unit, that most states have not even begun to draft legislation to resolve the complications.

The courts are also finding it difficult to deal with conflicts that arise under time-share agreements. In trying to establish rules consistent with traditional property laws, yet settle individual disputes fairly, confusion seems to be the most common result. For example, what law applies - property ownership or some version of landlord-tenant laws? Can one owner buy or sell freely as with a traditional home, make alterations in the property, or redecorate at will? Do the usual property rights come with a time-share purchase or are they limited by restrictive agreements that require the approval of all the co-owners? Do the various owners have any control as to whom an individual owner can sell? Should they have such control? Which principles can be adapted from established property law and which ones cannot be applied in a setting where owners must share, use, and to some degree, agree upon decisions relating to a common piece of property? See, Note, *"Time-share Condominiums: Property's Fourth Dimension"*, 32 *Maine Law Review* 181, 181-236 (1980).

The Mississippi Real Estate Commission, the state entity responsible for overseeing the real estate industry in Mississippi, established new time-share guidelines in July. Mississippi Real Estate Commission, "Rules Regarding Time-Sharing" (1984). These guidelines define a time-sharing plan as any arrangement whereby a purchaser receives a right to use accommodations for a specific period of time. The crux of the time-share regulations is the requirement that the seller disclose a certain amount of information about the project to the buyer in the purchase contract. This includes the description of the nature and duration of the time-share period, as well as the estimated date of availability of accommodations which have not been completed. The purchaser must also be made aware of his total financial obligation,

including the initial purchase price and any other additional charges. The contract must inform the buyer that he has five working days from signing of the document and from receipt of the public offering statement to cancel the agreement. If the contract is cancelled, the purchaser must notify the seller in writing. The seller then has thirty days to refund all payments made pursuant to the contract.

Developers are also required to file a copy of the public offering statement with the Real Estate Commission. All sales are voidable by the purchaser until the Commission approves the public offering statement. The Commission has twenty days from receipt to approve or disapprove the proposed statement. The statement is to disclose, among other things, the identification and description of the time-share units, the number and type of units in the development, a copy of a current certificate of title, any restraint or time-share transfers, and all conditions concerning the use of the unit or other development facilities.

The guidelines further require that some type of escrow arrangement be made by the developer so that refunds to rescinding purchasers can be promptly paid. Promotional devices and "gags" are prohibited unless there is a public disclosure that the device is being used for the purpose of soliciting sales of time-share periods or to gain the names and addresses of prospective purchasers that will be solicited at a later date. Finally, the Commission's guidelines insure that the development is properly maintained and managed by requiring that some form of management entity be formed by the developer prior to the first sale of a time-share period. Within three years after the date of the approval of the public offering statement, this organization must be transformed into a non-profit, corporate, owner management association.

While these guidelines are a step in the right direction, their utility is limited by the fact that they are not binding on developers. Rather they are rules which guide real estate brokers in conducting property sales. To sell a time-share unit, one must be a licensed real estate broker. Adherence to rules of the Commission is necessary in order to maintain a real estate license. Therefore, a broker could stand to have his license revoked if he became involved in the sale of time-share units which do not meet the minimum guidelines promulgated by the Commission.

Reform of existing condominium enabling acts or adoption of URETSA would be a more effective method of further protecting time-share purchasers from many of the problems that arise from having multiple owners of a single piece of property. Inconsistency, ambiguity and erratic interpretations of time-share agreements make it extremely unclear as to what is being purchased and what rights go with this form of property ownership. Statutory guidelines would improve marketability by providing stability, and ownership protection, adding to the value of time-share interests as security for loans, and giving purchasers and developers more of the consistency and predictability they need.

Martha Murphy

## THE UNIFORM CONDOMINIUM ACT

The past twenty years of condominium development have proven the original Federal Housing Administration (FHA) Model Act to have been a good start, but inadequate in many aspects. As a result of complaints from developers and consumer unit owners, the Uniform Condominium Act (UCA) was developed as a substitute for the FHA Model Act. It was approved by the National Conference of Commissioners on Uniform State Laws in 1977 and by the American Bar Association in 1978. Unif. Condominium Act (1978). The UCA has since been amended in 1980. The following is a glance at the highlights of the UCA, known also as the "second-generation" condominium act.

The heart of the UCA is consumer protection. To accomplish this, the UCA, as its primary requirement, adopts a policy of full and fair disclosure by the developer. The disclosure is to be made in the form of a "public offering statement" that includes copies of the condominium documents and other additional information, such as financial data and a report on the condition of the property if time-share or conversion condominiums are involved. Each purchaser is given 15 days from the receipt of the public offering statement to cancel the transaction if he so desires. This right to cancel is effective, even if a purchase contract has been executed. If the developer fails to provide the offering statement, the purchaser has a right to sue the developer for any damages that may have occurred, other relief, and a penalty of 10 per cent of the unit sales price. Unit owners are also required, upon resale of a unit, to make similar statements or disclosures about the property.

The UCA not only provides the consumer with detailed information about the condominium project, but also requires that units be conveyed free of all liens unless the public offering statement specifies otherwise. The Act contains provisions for express and implied warranties in condominium sales. Finally, purchasers are protected from fraudulent development practices by requiring that the project and unit be "substantially completed" according to the plans and plats prior to the recording of the declaration and any conveyances of units, with certification of the completed work by an independent engineer, architect, or surveyor. Only buildings that are part of the initial condominium need be completed, however.

The second goal of the UCA is to bring condominium transactions more in line with other transfers of real estate. First-generation statutes usually provide that first mortgages on a condominium have priority over the association's lien against a unit for unpaid assessments. Realizing the importance of maintaining of a well-kept project to the value of the real estate, the UCA purports that the payment of condominium assessments is just as important to banks as it is to the association. It thus provides that expense liens come ahead of mortgages or deeds of trust for all assessments due during the six months preceding an action to enforce a lien.

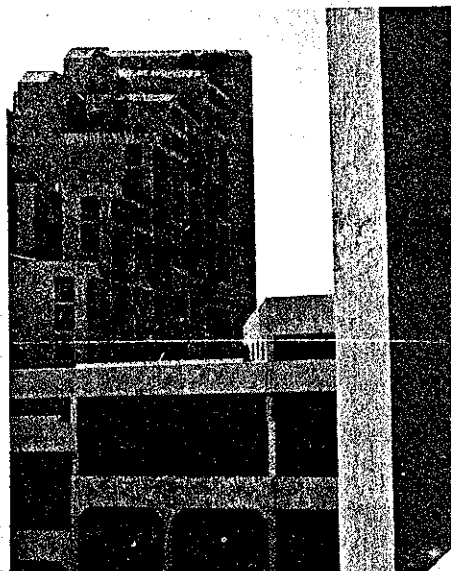
The purpose of this provision is to stimulate banks to begin to provide escrow arrangements for unit assessments as they commonly do for taxes in other real estate transactions.

The UCA does more than provide guidelines for consumer protection. In order to make condominium projects more reliable investments, it also seeks to aid developers. The Act accomplishes this by adopting the concept of "flexible condominiums." With a flexible condominium, the developer is able to add to or take away property from the project and convert common areas into new units, within certain guidelines, thus giving him a variety of approaches to the structure of the development. For example, if future transactions are provided for in the declaration, the developer would be able to enlarge the project by adding new units to the property, as long as the construction is of compatible architectural style and the addition takes place within the seven year statute of limitations.

The developer can exercise this privilege because the UCA grants him "special declarant rights." These specially defined rights permit the developer to "shape" the flexible condominium, to use easements for developing and improving the project, to maintain sales offices on the premises, and to control the unit owners' association for a limited time. The UCA also describes what happens to these rights when the developer defaults on a loan and is foreclosed upon. The FHA Model Act was silent in this area.

Although the UCA offers solutions to some condominium problems, it has not been received overwhelmingly by the states. Critics claimed the original version of the Act was too complex and confusing. Because of the criticisms, alternative proposals were made, resulting in amendments in 1980. Since then, several states have adopted versions of the UCA. Condominiums seem to rise and fall in popularity, but as long as they play an important role in the real estate market, the UCA can lead the way in providing guidelines for consumer protection in condominium purchases, as well as offer flexibility to developers.

Tim Weeks



## U.S. FISH AND WILDLIFE SERVICE

Fish and wildlife and the ecosystems upon which they depend provide innumerable benefits to society. For example, fishing and hunting are not only a source of livelihood for many but also represent favorite leisure-time activities for others. These activities involve the direct use of these resources. Other benefits, although more indirect, are also important. Since all living things, including people, are part of a total ecosystem, the presence of diverse, healthy fish and wildlife populations generally signals a healthy ecosystem which contains those elements necessary for human survival as well.

The primary federal agency charged with responsibility over our public fish and wildlife resources is the U.S. Fish and Wildlife Service (FWS) located within the Department of the Interior. For over 40 years, the FWS has functioned to protect and conserve fish and wildlife and their habitat. Under its legal authorities, primarily the Fish and Wildlife Coordination Act, the FWS conducts fish and wildlife impact investigations and recommends mitigation plans for a wide variety of development projects.

The Fish and Wildlife Coordination Act provides a basic procedural framework for incorporating fish and wildlife conservation measures into federal water development projects. 16 U.S.C. §§ 661-667d (1982). It requires that the FWS be consulted whenever any water body is proposed to be controlled or modified by a federal agency or by a public or private entity under a federal permit or license. The FWS then prepares a report on the effects of the project on fish and wildlife values. The federal agency sponsoring or permitting the project is required to give full consideration to the recommendations, including any mitigation plans, contained in the report.

The FWS office located in Daphne, Alabama, has responsibility for fish and wildlife resources in coastal Alabama and Mississippi. Some of the projects in which they are currently involved include "Special Management Area" (SMA) planning for the Port of Pascagoula, the Mobile Harbor expansion project, Bayou La Batre expansion, SMA planning for Port Blenville, and the Wolf-Jordan navigation project. For further information regarding FWS and its activities, contact: Fish and Wildlife Service, P.O. Drawer 1197, Daphne, AL 36526, (205) 690-2181.

*"This article is the fifth in a series of articles that are appearing in the Water Log describing federal, regional, state and local entities that exercise jurisdiction over coastal resources in Alabama and Mississippi.*

## WATER LOG

This newsletter is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. The purpose of the newsletter is to increase public awareness of coastal problems and issues.

If you would like to receive future issues of the WATER LOG free of charge, please send your name and address to: Sea Grant Legal Program, University of Mississippi Law Center, University, Mississippi 38677. We welcome suggestions for topics you would like to see covered in the WATER LOG.

This publication was prepared with financial assistance from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Sea Grant (under Grant Number NA81AA-D-00050), the State of Mississippi, and the University of Mississippi Law Center.

**Editor:**

Casey Jarman

**Associate Editor:**

Tim Weeks

**Editorial Assistants:**

Holt Montgomery

Martha Murphy

## NOTES

The National Advisory Committee on Oceans and Atmosphere (NACOA) has recently issued a report to the President and Congress with recommendations concerning the status of the U.S. Exclusive Economic Zone. Entitled "The EEZ of the U.S.: Some Immediate Policy Issues", the report is available from NACOA, 3300 Whitehaven St., NW, Washington, D.C. 20235; 202/653-7818.

In an Advanced Notice of Proposed Rulemaking issued June 1, NOAA has announced its intent to amend CZMA regulations to: (1) remove all references which identify OCS oil and gas lease sales as activities covered by the consistency clause; (2) solicit comments on whether NOAA should develop a definition of the term "directly affecting" and what the definition should be; and (3) solicit comments on other federal consistency regulations which may need revision.

Beginning on July 1, 1984, the Mississippi Bureau of Marine Resources (BMR) will receive all applications dealing with U.S. Army Corps of Engineers section 10 or section 404 permit requests in Mississippi coastal wetlands. The application should be sent to BMR, who will check it for completeness and then forward it to the Corps and the Mississippi Bureau of Pollution Control. For more information contact Wetlands Division Chief, Joe Gill, 864-4602.

On June 19, 1984, the House Merchant Marine and Fisheries Committee approved H.R. 3194, the Historic Shipwreck Preservation Act. This legislation attempts to clarify conflicts among state and federal laws and court decisions over shipwrecks and their cargoes. The bill gives states title to historic shipwrecks in their waters and consigns recent shipwrecks in state waters and all wrecks in federal waters to the jurisdiction of federal maritime law.

The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, handicap, veteran or other status.

The University of Mississippi  
Sea Grant Legal Program  
University of Mississippi Law Center  
University, MS 38677