

BOOK REVIEWS

CONDOMINIUM LAW AND PRACTICE—FORMS. By Patrick J. Rohan† and Melvin A. Reskin.†† New York: Matthew Bender & Company, 1965. \$31.50.

A talented young professor of law, whose interest in condominium began while searching for a suitable subject for his J.S.D. thesis, has joined with a member of the Connecticut bar to produce the first general text on condominium law and practice. The concept of condominium is a product of recent evolution in the United States.¹ The word and idea became popularized following the passage of the National Housing Act of 1961² and the subsequent enactment of condominium statutes in all but a few of the fifty states. In their preface the authors declare that the volume was written to make available, in one compilation, all the relevant statutes and practices developing under them.

The authors divided their labors. Mr. Reskin compiled the comparative analysis of the various statutes and the FHA Model Act, emphasizing legal requirements, documentation and agreements necessary for financing the condominium. Professor Rohan wrote the portions concerning insurance, casualty loss, partial and complete termination of the condominium and other disruptions of condominium status. Also included is a chapter dealing with the counseling of prospective condominium unit purchasers. In two chapters written by Joseph M. Lobel³ consideration is given the income tax treatment of the condominium association and of the individual unit owner. The final one-third of the volume consists of an appendix containing a bibliography, citations of state con-

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¹ Although the word is obviously of Latin derivation, the authors rightly suggest that it is doubtful if the Roman law had any such concept as our modern usage connotes. However, the concept, by whatever name it was called, at least antedates the middle ages and has a long history in various forms in many areas of the world. The authors make mention of this history and occasionally mention foreign law and practice by way of illustration but do not attempt any definitive comparative analysis. ROHAN & RESKIN, *CONDOMINIUM LAW AND PRACTICE* § 2.01 (1965).

² National Housing Act, 75 Stat. 160 (1961), 12 U.S.C. 1707 (1964), as amended, 12 U.S.C. 7157 (1964).

³ Member of the New York bar.

dominium statutes, and documents taken from four different types of existing projects.

The authors have provided the profession with its first reference work devoted exclusively to condominium. As such, it is and will continue to be a useful text, a compendium of forms and statutes and a source of ideas for the practitioner attempting to educate himself in a new and burgeoning field of real estate activity. It will also serve those already familiar with the subject, but who seek reassurance for their present practices or inspiration for modification of them. This is done, in the main, by comparative analyses of the various statutory treatments and of the various techniques and forms of agreement for creation and government of this newest form of cooperative ownership. The authors and the publisher have wisely chosen to publish the work in loose leaf form, thereby permitting future revisions and additions as the law and practice of condominium develop with statutory amendments, judicial decisions, and new, more carefully refined, forms of agreements.

A work of this type, coming as it does so early in the history of condominium, is by necessity primarily devoted to description and analysis of the provisions of the various state enabling acts and the FHA Model Statute. Copious footnotes quote and classify the various provisions by typology and by the substantive and procedural treatment given them.⁴

In the portions of the work dealing with what the authors call "Selected Problem Areas" there is a lengthy chapter on financing the condominium, almost the whole of which is devoted to financing through the use of FHA Insurance under section 234 of the National Housing Act.⁵ The authors have literally quoted and incorporated the voluminous regulations, forms, and model agreements used in connection with FHA approved projects and the insurance of mortgage loans under section 234. Such wholesale incorporation and reproduction of regulations and forms in the mainstream of the book rather than in the appendix additions seems to this reviewer undesirable. A little more "selection" of specific problem areas in financing would have made this section more readable, more useful to the practitioner and more responsive to its title. Problems of conventional financing, particularly with federally insured savings

⁴ Footnotes often run several pages.

⁵ 78 Stat. 780 (1964), 12 U.S.C. 7157 (1964).

and loan associations, were not discussed at all, although in some states, there is little or no use of FHA financing.

In addition, the absence of any discussion of construction financing through conventional sources was disappointing and it is to be hoped that this "problem area" will receive attention in some later supplement. The problem of minimizing mechanic's lien risks and the weightier question of whether or not and how to use individual unit loans from the beginning rather than a blanket construction loan could be explored with the other more commonplace features of construction lending, but which pose special problems in the condominium context.

The discussions of the other "Selected Problem Areas" includes an examination of restrictions, controls, restraints on alienation, problems of casualty loss and insurance, and problems caused by destruction, obsolescence and eminent domain.

As might have been expected, the absence of decided cases and the ambiguities or omissions in statutory provisions have led the authors into raising many difficult and technical questions only a few of which are or can be answered with any degree of confidence. The authors rightly indicate, however, that one has reason to hope that courts will not blindly apply traditional real property concepts to condominium problems but rather will search to find ways to support the necessary agreements and relationships to make this hybrid of cooperative ownership work. In this connection the authors cite with obvious approval the leading case of *Gale v. York Center Community Cooperative, Inc.*,⁶ in which the Illinois Supreme Court upheld qualified restraints on alienation in cooperative association agreements.⁷

In the section considering the problem of disruption of the condominium status, which subsumes partial and complete destruction, obsolescence and the effect of eminent domain, as in others the authors have adopted the technique of analyzing the various statutory approaches to the problem pointing out, hypothetically, situations which do not seem to be resolved satisfactorily by statutory ap-

⁶ 21 Ill. 2d 86, 171 N.E.2d 30 (1961).

⁷ The court weighed the utility of the restraint—a right of first refusal—against the supposed injurious consequences which could be argued to flow from its enforcement and concluded that the restrictions were valid as being reasonably necessary to the continued existence of the cooperative. The court found that their utility outweighed the public interest, if any, in preserving freedom of alienation in such circumstances. *Ibid.*

proaches. This technique is useful as a means of challenging the practitioner to make a more careful analysis of his own statute and the agreements with which he implements it so as to achieve the maximum that ingenuity and careful draftsmanship can achieve. The authors conclude this section with the observation that the novelty of the problems for the establishment and operation of condominium seemingly preoccupy most legislators thereby causing inadequate and stereotyped treatments of the problems created by disruptions of the condominium status. It is suggested that attention should be given to the solutions European countries have reached as a result of long experience with individual unit ownership systems.⁸ Judicious use of more comprehensive and detailed condominium declarations in this area as well as the adoption of more precise statutory provisions will undoubtedly do much to alleviate the difficulties envisioned by the authors. A careful study of this portion of the text in the light of the practitioner's own condominium statute should go far in giving inspiration for the development of declarations and other agreement forms calculated to reduce some of the ambiguities and difficulties latent in present statutes.

The problems of casualty loss and insurance raise most of the knotty problems created by potential losses from all forms of destructive and disruptive hazards and of unit owner liability for other accidents. The authors take the view, as do most practitioners in the field, that insurance companies have simply not caught up to the modern concept of condominium. Consequently they are still trying to fit their stock policies and existing concepts of hazard and liability insurance into the condominium picture. The authors conclude that this cannot be done without major alterations in the ordinary hazard and casualty insurance forms. A theoretically workable solution is suggested⁹ but it remains to be seen whether the insurance fraternity will adopt this or some other route toward the ultimate development of policies designed to cover the multiple perils existing in condominium unit ownership. Ideally it will do so through appropriate mechanics permitting administration of insurance proceeds by the managing agents of the cooperative group but with coordination and integration of the varying needs of protection for unit owners individually and collectively. Although

⁸ See ROHAN & RESKIN, *op. cit. supra* note 2, at § 12.06.

⁹ *Id.* at § 11.06 (4).

the authors do not attempt to analyze in detail present insurance practices, the discussion points out common problems, describes pitfalls to be avoided, gives useful objectives to be sought, and provides suggestions as to means of obtaining them if the insurer will consent to policy modification.

Although included in the general portion of the book referred to as "Selected Problem Areas," the chapter dealing with the subject matter from the point of view of counsel for a unit purchaser¹⁰ is really a separate feature and is somewhat unusual in a work of this type. In the midst of an admitted compendium of condominium law and practice, this chapter is a direct bow to the popular "how-to-do-it" concept so dear to the hearts of the advocates of practical handbooks for the practicing lawyer and of post admission education. It provides, in a running commentary, a rather complete check list of areas of concern for the best protection of the interests of the unit purchaser. However, it does so at the cost of reiterating some of the problems discussed elsewhere in the volume. While this section is by no means a "handy-dandy" answer to all the problems of representing condominium purchasers and condominium owners associations, it will certainly serve to stimulate the thinking of the practitioner, unfamiliar with condominium, who must often do the best he can on short notice with the complicated purchase agreements, declarations, by-laws and other forms involved in the typical condominium transaction.

The income tax chapters proceed in a straightforward manner to spell out, on the basis of the code, revenue rulings and interpretations, the place which the unit owner and the condominium association can expect to occupy in the Internal Revenue scheme of things. It will come as no surprise that in general the authors' conclusions are that tax treatment of the unit owner's property interest will be substantially the same as that accorded a free standing home owner. Varying possibilities of the type of tax treatment for the condominium association, either as a partnership, or more likely an association taxed as a corporation,¹¹ may come as more or less of a surprise to those neophytes in this area of "to be" or "not to be" tax law.

The first work of any consequence in a new field dealing with many novel and untried problems and suggested solutions thereof,

¹⁰ *Id.* at § 13.01.

¹¹ See Treas. Reg. 301.7701 (1965).

is always somewhat difficult to evaluate because of the want of any other existing work in the field to compare it with. This is because the first available volume is apt to be either uncritically praised as a monumental effort, the best in its field (a safe statement when there is no other), or hypercritically taken to task for an inability to solve or suggest viable solutions for all of the complex problems and questions which the authors profess to see. On balance this reviewer will go on record as recommending the volume to practitioners engaged in the field of condominium. It adequately covers the basic concepts and furnishes reference material not otherwise readily available. It does at the very least encourage one to think positively about the workability of the condominium concept (as the authors obviously do) and it will provide in its text discussion, its copious footnotes, and the compendium of forms, enough suggestions, comments, and examples to furnish real inspiration and assistance to the practitioner called upon to represent the developer, the buyer or the association of owners of a condominium project.

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THIS HONORABLE COURT: A HISTORY OF THE SUPREME COURT OF THE UNITED STATES. By Leo Pfeffer.† Boston: Beacon Press, 1965. Pp. 470. \$10.95.

Leo Pfeffer, constitutional lawyer and legal scholar, professor of political science and would-be historian, has written a history of the Supreme Court which will annoy the specialist, regardless of the mantle he wears. In the splinterized academia no one could hope to satisfy all of the specialists all of the time, but one would expect that Pfeffer could satisfy some of them some of the time. To the criticism that the author was writing for the general reader and not for an academic audience,¹ this reviewer can only respond that with Pfeffer's impressive credentials the general reader deserves a better book. What the reader did receive is essentially a rehash of Supreme Court decisions, mixed with some uneven history and biography spiced with a sprinkling of personal judgment.²

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¹ See Cherrington, Book Review, 79 HARV. L. REV. 227 (1965), in which the volume is appraised as useful and interesting for the lay reader.

² The book contains an index of cases cited, but no footnotes and only a highly selective, briefly annotated bibliography.