

## CONDOMINIUM LAWS PRESENTATION

- 1) The problem. Kentucky's laws for organizing condominiums date to 1962, the Horizontal Property Act. It's meager and far behind the times.
- 2) Financial operation. The current law gives no guidance on financial administration and records of a condo association. Except for an odd, unenforceable provision there be a yearly audit.
- 3) Consequently, many poorly run projects are in trouble, and owners and potential buyers don't know the half of it. Let's face it, most condos are "amateur" operations; if they do not have a strong professional management company to guide them, or an excellent, dedicated board, their property can deteriorate.
- 4) Major capital expenditures may be needed, and low income owners may not be able to handle assessments, or the project may indeed be in such trouble it is abandoned, leaving the owners with pennies on the dollar for their equity.
- 5) The definitions are also poor. Kentucky condos are now limited to interior walls of a building, one can't use a condo form to organize boat slips, parking lots, camp sites, etc. timeshares and leaseholds and other property estates are also not covered by the law.
- 6) The solution? Condo owners and property law professionals agree Kentucky should at least take the first, most sensible start to remedy this problem. Passage of the Uniform Condominium Act. This is the modern law, that has existed in most urbanized states for over 20 years. It gives everyone, owners, sellers, lenders the same uniform financial reporting. It requires all condo associations to keep up to date records and to disclose needed capital repairs; before they overwhelm a project.

Here's an outline of the Act in our bill form and what it does.

Title 1 of the Act is definitions and applicability, our sections 1-14.

Sect. 2 applies this law just to Kentucky projects. The bill also is drafted to avoid other issues and sections of Kentucky law, such real estate agent regulation, title marketability and the like. Just to focus on unique condominium reforms.

Sect. 3. has definitions, allowing any real property estate to be in a condo regime.

Title 2 deals with creation of the condominium, sections 15-35.

Sect. 15 deals with the filings of property recordation, the surveys, etc, by professional engineers and the like.

Sect. 18 deals with unit description.

Sect. 27 allows subdivision of units.

Sect. 32 special partial termination rules.

Title 3 deals with the running of the condominium association, sections 36-54

Sect. 38 for new condos there is a three phase election process.

Sect. 40 new condos can terminate some of the developers contracts

Sect. 51. Liens for assessments, we included collection fees.

Sect. 53 Required records of the association.

Now let me go back and explain in a little more detail what you may be most interested in, the provisions that relate to existing condos-

Most of these are fairly routine-

Section 5 gives a clear formula for tax assessment by unit.

Section 6 disallows zoning discrimination.

Section 7 a formula for eminent domain takings

Section 17 construes bylaws as severable and not against the rule on perpetuities

Section 18 unit description rules for recordings

Section 37 powers of the board to amend bylaws, budget, contract, insure, etc.

Section 46 tort liability formula for developer, board, and owners

Sect.51 liens for assessments, have that now, but 6 month rule, 3 year limit, and legal fees

Sect. 53 board must keep records for Section 63.

Section 43, the certificate, the big one. The board must have an up to date set of records so that any seller of units can give this certificate to a buyer-

The certificate has –

- 1) disclosure of any rights affecting the alienability of the unit
- 2) amount of monthly assessments and any unpaid assessments or special assessments due
- 3) other fees payable b owners
- 4) Anticipated capital expenses for current and 2 following years
- 5) Amount of cap reserves, and any projects portions reserved for
- 6) Most recent balance sheet, and i/e statement if there is one
- 7) Current operating budget
- 8) Any unsatisfied judgments or pending suits against association
- 9) Statement on insurance
- 10) Statement by board if there are any violations by alteration to unit or common areas
- 11) Whether board knows of any health code violations
- 12) Statement on any leasehold provisions affecting unit
- 13) Board has 10 days to issue this certificate on request.

Also must give copy of declaration, minus plats, bylaws, and condo rules to buyer with certificate.

## Conclusion-

We put Kentucky condos on a sound legal footing. Most major are answered. The finances are now uniform, lenders and buyers know what they are getting into to. Associations know what they are supposed to do to run a tight ship.

The actual major decisions, such as a reserve fund are left to the association, but everyone knows what is happening.

We also have a much better situation for lenders, if the association needs to make a financial arrangement, the securitized interests are much clearer.