

GOVERNMENTAL POLICIES CONCERNING RESIDENTIAL
CONDOMINIUM DEVELOPMENT IN
BRITISH COLUMBIA

by

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ABSTRACT

The provision of adequate housing for all its people remains a problematical objective for Canada. A new type of cooperative housing--condominium--has recently received specific legal sanction in most provinces and territories in Canada with the exception of Newfoundland, Prince Edward Island and the North-West Territories. This thesis considers this innovative housing concept in light of the population trends and housing needs of British Columbia and shows that condominium is merely one of a variety of alternative housing types but one that may prove increasingly effective in helping meet future housing demand.

The historical evolution of the condominium concept is outlined after which the author carefully distinguishes between condominiums and other similar forms of housing. The author affirms that Federal and Provincial housing policies do not discriminate against residential condominiums and further hypothesizes that Municipal housing policies and bureaucratic procedures do not frustrate their development, in contrast with the findings of a similar study concerning a similar form of housing--continuing cooperatives, which found that a lack of specific Provincial and Municipal policy had retarded their formation.

Governmental policy is reviewed in general and its specific application to residential condominium development is assessed with the conclusion generally confirming the author's original affirmation and hypothesis.

TABLE OF CONTENTS

	PAGE
Abstract	iii
Table of Contents	v
Acknowledgements	ix

CHAPTER

I. INTRODUCTION	1
The Ideal and Reality in Housing; Housing in Canada 1945 - Mid 1960's, the Problem Emerges; Urbanisation and Population Growth; The Task Ahead; Some Aspects of the Housing Market; The Emergence of Condominium - Past and Present; The Alternatives in Housing; Condominiums in Canada; Housing and Urban Planning; Hypothesis; Definitions; Assumptions; Methodology; Limitations; Conclusion.	
II. AN OUTLINE HISTORY OF THE CONCEPT OF CONDOMINIUM OWNERSHIP	32
Introduction; The Ancient World; Rome and Roman Law; Condominium in Europe in the Middle Ages; Germany-an Example of Conflict of Law; Switzerland and Austria; Other European Countries; Civil Law and Common Law; France; Codification of the Law-The Code Napoleon; Belgium; Other Countries; France-The 1938 Legislation; Spain; Post-War Legislation; Yugoslavia; Latin America; Puerto Rico; Louisiana; Quebec; Scotland; England; The United States; Australia and New Zealand; Canada; The Far East; Conclusion.	

CHAPTER	PAGE
III. THE MODERN CONCEPT OF CONDOMINIUM	74
The Word "Condominium"; Two Concepts- Politics and Realty; Other Terms for Con- dominium; Problems encountered in the Use of the Term; The Three Meanings; Two Essential Elements in a Condominium Project; Variety in Form and Function; Two Legal Concepts of a Unit; The Condominium as a Cooperative; Condomin- iums and Continuing Cooperatives Limited Liability Housing Companies; Common Law Condominiums and Planned Unit Develop- ments with a Home Owner's Association.	
IV. FEDERAL POLICY	109
Legislation as Housing Policy; The First Federal Initiative in Housing, 1919; The Dominion Housing Act, 1935; The First National Housing Act, 1938 and Constitutional Power; Wartime Measures; National Housing Act, 1944; Central Mortgage and Housing Corporation Act, 1945; The Basic Principles of Federal Policy; National Housing Act, 1954; The 1964 Amendments; Federal Financial Policy; Residential Condomin- iums and Federal Policy; Impending Changes in the Federal Role; Conclusion.	
V. PROVINCIAL POLICY	138
Introduction; Housing Legislation; Provin- cial Condominium Housing Programmes; Other Legislation Related to Housing; Strata Titles Act; Conclusion.	
VI. MUNICIPAL POLICY	165
Introduction; The Municipal Act; The Vancouver Charter; Regional Districts; Town Planning Act; Other Relevant Vancouver Legislation; An Example of a Proposed Munici- pal Housing Policy-The Vancouver Proposals; Municipal Survey on Residential Condominium Policies and Bureaucratic Procedures; Necessity for Policy; Possible Municipal Frustration of Residential Condominium Development; Conclusion.	
VII. CONCLUSION	185
Condominiums and Continuing Cooperatives; Trends and Further Research.	

CHAPTER	PAGE
BIBLIOGRAPHY	191
Public Documents	191
Books	192
Reports	193
Articles and Periodicals	196
Theses	198
Unpublished Material	199
The Press and Magazines	199
Other Sources	200
APPENDICES	201
Appendix A - English "Condominium" Schemes	201
Appendix B - Leasehold Condominiums	203
Appendix C - Kinds of Estates	207
Appendix D - Pilot Project: Champlain Heights	209
Appendix E - Strata Titles Act	210
Appendix F - Questionnaire.	211
Appendix G - Vancouver Bureaucratic Procedures	212
Appendix H - Vancouver Bureaucratic Procedures	213
Appendix I - CMHC Condominium Information Sheet	214

LIST OF FIGURES

FIGURE		PAGE
1.	The Variety in Form and Function of Condominium	82
2.	The Strata Titles Act - Diagramatic Representation	150

LIST OF TABLES

TABLE		PAGE
1.	Municipal Survey on Residential Condominium Policies and Bureaucratic Procedures	177

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CHAPTER I

INTRODUCTION

The Ideal and Reality in Housing; Housing in Canada 1945-mid 1960's, the Problem Emerges; Urbanisation and Population Growth; The Task Ahead; Some aspects of the Housing Market; The Emergence of Condominium-Past and Present; The Alternatives in Housing; Condominiums in Canada; Housing and Urban Planning; Hypothesis; Definitions; Assumptions; Methodology; Limitations; Conclusion.

THE IDEAL AND THE REALITY IN HOUSING

The Government of Canada endorsed the Universal Declaration of Human Rights of the United Nations, part of which states:

Article 25. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and 1

The Report of the Guidelines Committee of the Canadian Conference on Housing (1968) declared as a goal that " . . . all Canadians have the right to be adequately housed, whether they can afford it or not."2

The Federal Task Force stated as a matter of principle that: "Every Canadian should be entitled to clean, warm shelter as a matter of basic human right."3

The Canadian Welfare Council classifies the rights enumerated in Article 25 above as social rights distinct from civil and political rights.4 How does the real compare with the ideal, that is to say to what extent has this right to housing been attained in Canada? It has been estimated that during the years 1966 and 1967 housing demand exceeded housing availability by 25,000 units.5 This in simple absolute terms was the measure of the housing shortage in those years. According to the Task Force, Central Mortgage and Housing Corporation (CMHC) estimated that there were in

Canada about 5,500,000 housing units, of which at least half a million were substandard, to serve some 5,700,000 family and non-family users in 1968.⁶

HOUSING IN CANADA 1945 - MID 1960'S -
THE PROBLEM EMERGES

Until the mid 1960's Canada's housing performance in relation to the country's growing needs and demands for housing was very good.⁷ In the mid 1960's when there was a marked acceleration in new family and household formation, new housing expenditures did not increase enough and there emerged " . . . a serious shortage of housing in many of the country's major metropolitan areas by 1967."⁸

It is interesting and relevant to digress for a moment and remark that it was perhaps only during the 1960's that demand grew for alternative types of housing⁹ and to repeat the view, expressed by the Canadian Conference on Housing, that there should be a choice in ownership of housing --i.e., private, cooperative, non-profit and public.¹⁰

To return to the housing situation, Dr. Albert Rose has described it as a "housing crisis" and Professor A.J. Diamond has stated that housing is the worst problem Canada has faced since the Depression.¹¹ The Canadian Conference on Housing has stated that housing is not only an urgent problem and that an emergency exists for low-income groups

but that it is also an increasingly serious problem for middle income groups.¹²

However, the existing housing stock in Canada compares well in some respects with the rest of the world. For instance, 49% of the entire stock has been built since 1945, the highest ratio of new housing in the Western World. In qualitative terms Canadian housing is second only to the United States in the provision of baths and flush toilets and its average of 5.3 rooms per dwelling makes it the "roomiest" in the Western World. Canada has a high ratio of 63 per cent owner occupied dwellings and at 0.7 persons per room has one of the lowest density ratios among the industrialized nations.¹³

URBANISATION AND POPULATION GROWTH

Canada is increasingly and rapidly becoming an urban nation¹⁴ with a growing population,¹⁵ estimated at 21,324,000 on 1 April 1970.¹⁶ At present seven out of every ten Canadians live in urban areas and by 1980 eight out of ten--some 20 million people will do so, mostly in 29 major urban centres,¹⁷ but one third of the Canadian population will live in either Montreal, Toronto or Vancouver.¹⁸

If the statistics are impressive in themselves, even more so is the physical effect which this massive migration, equal in scope to the first settlement and development of Canada, has had and is having on the national landscape.¹⁹

The 1980 population forecasts for Canada, using the "component method" based on varied assumptions range from a low of 23.8 million to a high of 26.7 million.²⁰ Due mainly to climatic conditions, lack of transportation and other facilities the Canadian population has been distributed mostly in settlements on the Atlantic and Pacific coasts, the Prairies, and the Great Lakes - St. Lawrence Lowlands. That is, on less than one per cent of the land²¹ which places Canada among the most highly urbanised countries of the world.

The population of British Columbia has been projected by the Lower Mainland Regional Planning Board (LMRPB) using five previous projections which were projected and interpolated on a semi-log basis to derive Census year figures.²² Since two of these projections had three basic assumptions each with a projection, the total set of projections was nine.²³ These range from a low of 2.4 million to a high of 3.7 million by 1986 and the LMRPB has accepted the following projection:²⁴

1971 - 2,144,000

1976 - 2,447,000

1981 - 2,793,000

1986 - 3,188,000

and in the longer range their estimates are:²⁵

2001 - 4,500,000

2006 - 5,000,000

2021 - 6,300,000

2026 - 6,800,000

To calculate the population of the Lower Mainland²⁶ the "ratio" method was used and based on the historic "share" of the total Provincial population that was housed in the Lower Mainland²⁷ which resulted in the following forecasts for the Region:²⁸

1971 - 1,158,000

1976 - 1,321,000

1981 - 1,508,000

1986 - 1,722,000

This was further broken down into the Metro and Valley Areas distribution, based on the historic ratio between them, with the resulting forecasts:²⁹

<u>Metro Area</u>	<u>Valley Area</u>
1971 - 1,026,000	132,000
1976 - 1,169,000	152,000
1981 - 1,335,000	173,000
1986 - 1,524,000	198,000

These forecasts were further broken down into municipalities but for the purposes of this paper the author does not consider it necessary to go into such detail. If such figures are required the source has been indicated. In short then:

The next 20 years will likely see a 70 per cent increase in the Region's population--growth that will have major implication for the Region, particularly for housing, transportation, and municipal servicing. 30

The Lower Mainland with over half the Province's population is land-poor. Its stock of usable land is small--less than 800 square miles, which is about one-fifth of one per cent of the total area of the Province. In this Region the population density of 1,070 people per square mile is greater than that of the Netherlands with 905 per square mile, in 1960. In 1963 there was about half an acre of land per person in the region which will have been reduced to one city lot per person by the year 2000.³¹ These figures and trends are indicative of at least two things: firstly³² the need for careful land use and secondly³³ the inevitability of higher density housing such as garden apartments and terrace houses.

The major source of future housing demand is net family formation which is expected to increase from the current rate of 118,000 to 145,000 per year by 1976. The number of marriages will likely continue to increase due to the effect of the high birth rates in the early post-war period; they increased from 128,000 in 1961 to 176,000 in 1968. This will be augmented by the continuing increase in non-family household formation which is up from 28,600 a year in the latter half of the 1950's to an estimated 50,000 a year in the latter part of the 1960's.³⁵

THE TASK AHEAD

In order to provide adequate housing for Canadians it has been estimated that:

A minimum of 1 million additional units over the next five years would allow the housing market to keep pace with new demand plus making at least some inroad into the current backlog of overcrowding, obsolescence and general shortage of supply. It is estimated that an average of 165,000 units per year are required to meet the demands of new family and non-family formations while maintaining a minimum replacement program of 10,000 units a year. Thus an average of 200,000 units a year will create a "surplus" of 35,000 units annually to help relieve the present shortage and, hopefully, to at least begin to create the kind of vacancy rates which are required if the market is to be a truly competitive one. In setting a target of 1 million additional units by 1973, it should be stressed that this is a minimum objective; the Task Force would earnestly hope that actual achievement would run considerably above this. 36

In light of the foregoing, completions in 1969 were 195, 826.³⁷

CMHC has pointed out that such a programme would allow for a reduction of family doubling-up to the extent of 70,000 or 80,000 families, increasing vacancies, increasing rates of replacement of existing housing and an expansion in the number of unmarried adults establishing separate households.³⁸

At the same time this programme would not in five years entirely eliminate the "backlog" of housing needs as measured by doubled-up families, otherwise crowded families and the occupancy of substandard dwellings. One reason is that as housing conditions improve, the formation of non-

family households, the number of vacancies and demolition of units not necessarily deficient all increase. The number of units required to be added by 1973 to prevent a deterioration in housing conditions would be about 180,000 units a year and the number required to completely eliminate overcrowding, doubling-up and use of substandard units is not known since it would require the definition of needs and requirements--an ethical question.³⁹ To prevent a deterioration in housing conditions in Metropolitan Vancouver the number of new dwellings required during 1965-70 was estimated at 7,000 annually.⁴⁰ This might give an idea of the scale of approximate future requirements in the area.

In 1969 the total number of completions in Metropolitan Vancouver was 1,916 whereas by the end of March 1970 completions were 4,106 with 10,390 units under construction. However, indications are that demand remained strong since the inventory of newly completed and unoccupied dwelling units declined to 1,387 units.⁴¹

Further indications as to the strong demand are provided by the vacancy rates, which in Vancouver, for apartments are low or minimal⁴² varying by location and type of apartment and are the lowest in Canada.⁴³ A similar situation exists in all the major Canadian cities with the exception of Montreal.⁴⁴

Housing starts by April 1970 across Canada were running about 40 per cent below that month of the previous

year, according to the Minister Responsible for Housing. The Minister thought that total starts in 1970 would be about 180,000 compared with the 200,000 anticipated if the Federal Government's 1969-73 commitment were to be maintained at an annual rate.⁴⁵ Starts for the month of May 1970 were 50.1 per cent below May 1969 figures for urban areas, a drop to 8,392 units from 16,814 units.⁴⁶

The trend to more apartments and row-houses continued in Metropolitan Vancouver with 1,014 single-detached, semi-detached and deuplex starts compared to 2,278 row, apartment and other starts by the end of March 1970.⁴⁷

In 1968 also the trend to a predominance of rental units over owner-occupied units was in centres of 10,000 population, more than two to one.⁴⁸ In 1965 the Technical Planning Board of Vancouver estimated that by 1981 there will be 68,900 apartment units in Vancouver constituting 49.2 per cent of all dwelling units, a change from the 1961 situation when there were 29,200 apartments making up 24.7 per cent of all dwelling units.⁴⁹

SOME ASPECTS OF THE HOUSING MARKET

The urban residential land markets are among the quantitatively most important of all urban markets, and most urban problems are related in one way or another to the operation of the urban land and housing markets.⁵⁰ Mention has

been made of the components of demand and population density and land scarcity in Metropolitan Vancouver and also the performance of supply; reference has been made to the housing shortage and there remains the problem of housing costs to the consumer:

Housing is a universal need, yet the private market on which Canadians have relied is anything but universal in its present scope and application. Housing, in a word, is too expensive for too many Canadians. If it is not true, as popular charge would have it, that any Canadian earning less than \$8,000 a year cannot buy a home in today's market, it is true that this statement does apply in some metropolitan areas, while in many others "average" income will not buy a family an "average" home. ⁵¹

Not only do the low income groups suffer in competing for shelter⁵² but so do the "affluent poor,"⁵³ those earning the "average" income of between \$5,000-\$7,500 a year who are forced to rent accommodation⁵⁴ and whose housing costs are well above the 20-27 per cent of income CMHC holds acceptable for housing expenses.⁵⁵ The major impact of the housing shortage in Vancouver is on the renter with a young family.⁵⁶

The rising costs of obtaining shelter are generally a reflection of land scarcity and the cost of servicing land which results in high land costs,⁵⁷ on high interest rates⁵⁸ and the imperfect competition in the market as indicated by low vacancy rates. This shortage, reflected by minimal vacancy rates, mentioned earlier, is an important cost factor in itself.⁵⁹ The rising cost of building materials,⁶⁰ construction labour⁶¹ and strikes⁶² also contribute to increased housing costs. A further difficulty is that of the larger downpayment required, which between 1964 and 1968 increased by 44 per cent.⁶³

Although rising incomes have generally matched rising housing costs⁶⁴ the impact of the shortage in housing is in housing of certain types for certain segments of the population comprising housing demand. The impact has been felt first and hardest by low income families⁶⁵ but also on non-family groups with fixed or limited incomes such as widowed persons, single divorced persons, students and senior citizens.⁶⁶ Also affected are young families wishing to move from rental units to self owned housing.⁶⁷ The middle and high income families are affected mainly in the location, size and added facilities and luxuries that they can afford in their housing and many probably delay buying homes due to higher downpayments and monthly charges.⁶⁸

THE EMERGENCE OF CONDOMINIUM - PAST AND PRESENT

The conditions presently obtaining in British Columbia bear some similarity to those out of which in other times in other places there emerged condominium housing arrangements. The conditions include limited building space in walled cities in the Middle Ages and on islands today such as Puerto Rico and Hawaii and the land poverty of the Lower Mainland of British Columbia mentioned earlier, the shortage of housing due to destruction in wars or due to a growing population, tight economic conditions, the high cost of dwellings and the desire for occupant-ownership of dwellings.⁶⁹

The importance of condominiums in other countries is perhaps useful in showing in perspective the potential of condominiums in Canada. Condominiums are important because they may be a most effective means of providing mass housing and in some countries have already superseded other types of dwellings.⁷⁰ Belgium builds 90 per cent of its total residential development in condominium;⁷¹ 98 per cent of the Hawaiian market is condominium⁷² and in Australia 66 per cent of new housing is condominium.⁷³ During 1962-1968 it was estimated that between 50,000-60,000 condominium units were built in the United States.⁷⁴

In the urban conditions of today the utilisation of the condominium concept in providing housing can result in greater population density and thus lower land cost, lower servicing costs, and lower construction costs because they are distributed among more buyers. Similarly services and facilities such as maintenance and swimming pools, etc. can be included at a price more people can afford.⁷⁵ Another advantage of condominium is that, as intensive urban development is concentrating ownership, particularly of multiple housing, in fewer and fewer hands, condominium will provide the possibility of ownership of homes, which is considered by some to be a basic strength of Canadian society.⁷⁶

THE ALTERNATIVES IN HOUSING

Condominium, therefore, becomes one alternative in the choice of housing accommodation available to British Columbians. The range of alternatives is given below,⁷⁷ in which condominium can be recognized as the second alternative:

1. a dwelling owned in fee simple with no common facilities or common control;
2. a dwelling owned in fee simple with some common property and facilities and some form of control proportionate to the value or size of the dwelling and subject to the Strata Titles Act;⁷⁸
3. a dwelling leased from a continuing cooperative in which the occupant lessee is a shareholder, with some common facilities and with each lessee having equal control irrespective of the size or value of the dwelling and subject to the Cooperative Associations Act;
4. a dwelling leased from a company in which the occupant lessee is a shareholder with some common facilities with some form of control proportionate to the value of the dwelling and subject to the Companies Act; and
5. a leased dwelling with or without some common facilities over which the occupant lessee has no control and either (a) subject to the Landlord and Tenant Act and/or lease, or (b) managed by the British Columbia

Housing Management Commission subject to the Short Form of Leases Act.⁷⁹

CONDOMINIUMS IN CANADA

In 1969, although complete statistics are not available, it was estimated that there were between 2,000-3,000 units of condominium housing in Canada⁸⁰ including completions, units under construction and imminent starts⁸¹ of which 25 per cent of the completions were in British Columbia.⁸² The estimates for British Columbia are that in 1969 close to 1,000 units⁸³ were being developed and that during 1966-1970 some 2,000 units⁸⁴ were developed. Although the Vancouver Office of Central Mortgage and Housing Corporation has recently collected statistics on condominiums that it finances in British Columbia, at the time of writing these statistics have not been analysed.⁸⁵ The Ontario Housing Corporation has announced plans for five condominium developments that will construct 8,685 units for sale by the Fall of 1974.⁸⁶ "Nineteen-seventy will be the year of the Condominium in Metro Toronto."⁸⁷ The 2,500 condominium units that it is estimated will be built in townhouse clusters and highrise towers represent more than a quarter of all the single family, owner-occupied dwellings to be built during 1970 in Metropolitan Toronto and it is expected that in a few years condominium units will outnumber single family houses in the annual starts and completions.⁸⁸

HOUSING AND URBAN PLANNING

It is accepted that Planners must be concerned with all the varied aspects of a city and its problems and needs.⁸⁹ One of these problems⁹⁰ involving a basic need is urban housing⁹¹ and it is suggested⁹² condominiums may aid in solving the problem of the housing shortage and provision for future housing needs. Continuing cooperatives have also been suggested as another means to solve the problem.⁹³ The Federal Task Force has stated that:

. . . at least part of the problem in the field of housing and urban development can be traced to the fact that governments in Canada . . . have not spelled out their primary goals and priorities in this area. 94

The Task Force then recommended that the Federal Government do so and declared among the principles that should be adopted the following:

. . . the aim of the government policies should be to generate sufficient housing stock of various forms so that all Canadians may exercise their own freedom of choice as to the style and tenure of housing in which they live. 95

Condominium developments will widen this choice of style and tenure.

In a paper on the social effects of housing, Marvin Lipman stated that there were certain themes, which offer direction in creating the kind of housing environment desirable, and which included:

- (i) increasing our understanding of the relationship between man, his housing and his environment, through experiment and research.
- (ii) increasing the range of choices in housing environment for all our citizens, including the low income groups.
- (iii) building into our housing environments the kind of amenities which make it more than shelter.
- (iv) providing the kinds of opportunities in housing which allow for different forms of management, ownership, etc. and which encourage responsibility and independence, particularly for the low income group. 96

It is suggested that condominiums could be especially effective in meeting the last three requirements mentioned by Lipman.

Condominium developments may often involve large parcels of land and the utilisation of urban land i.e., urban land policy has always been of central importance to urban planners. A.G. Dalzell, an early President of the Town Planning Institute of Canada emphasized in his writings that the basic problems of town planning and housing were land problems, and today urban land policy is receiving increasing attention from planners.⁹⁷

Governments have been involved in housing at various levels and in various ways involving community planners for some decades⁹⁸ and while the effect of Governmental policies concerning continuing cooperatives has been considered,⁹⁹ their effect on condominium development remains to be analysed.¹⁰⁰

HYPOTHESIS

In British Columbia there are two types of housing cooperatives;¹⁰¹ continuing cooperatives and title cooperatives, the latter being more commonly known as condominiums. Although the absence of specific Provincial and Municipal policies for the promotion and implementation of continuing cooperatives has retarded their formation¹⁰² the housing policies of the Federal Government do not discriminate against condominiums¹⁰³ and the Provincial Government does have specific policies on condominium housing.¹⁰⁴

The author contends that the lack of specific Municipal policy and bureaucratic procedures does not frustrate the development of condominium housing and consequently will attempt to answer the following questions:

What, if any, are the specific Municipal policies and bureaucratic procedures concerning residential condominium development, and
What, if any, is their effect on such development?

DEFINITIONS

Condominium, unless otherwise clear from the context, means any or all of the following:-¹⁰⁵

The form of land ownership and tenure subject to special legislation regulating condominiums, in which

1. Land buildings and other facilities are subdivided into
 - (a) units, that are separately owned in fee simple, and
 - (b) common property shared and controlled by all of the unit owners, and

2. In reference to British Columbia are subject to the Strata Titles Act, unless referred to as "common-law" or "non-statutory" condominiums.

Policy means:

Any relevant legislation, or interpretation, regulation, standards or programme stemming therefrom or any policy resolution, view attitude or intention whether expressed generally or stemming from any specific relevant governmental decision.

Bureaucratic Procedures means;

The procedures and documentation necessary to legally obtain permission to develop land and construct buildings and facilities.

ASSUMPTIONS

The assumptions¹⁰⁶ in this thesis are:

That all levels of Government and their proper agencies in Canada are, or should be, concerned with improving the existing housing situation, and

That they are, or should be, not averse to adopting policies which will aid in the accomplishment of an improvement in the housing situation.

METHODOLOGY

By way of introduction the current housing situation and future urban housing needs are described and condominium

suggested as one alternative housing type and one useful way of meeting future housing demand. In order to provide the necessary background and perspective to the study, given the subject's novelty in Canada, consideration is given to the evolution of condominium in Chapter II followed in Chapter III by consideration of the nature of condominium housing in which a clear distinction is drawn between condominiums and similar phenomena.

The next three Chapters - IV, V and VI deal with Federal, Provincial and Municipal Policies respectively. The latter Chapter, on Municipal Policy, in which the hypothesis is tested, is derived in part from a questionnaire sent to some of the municipalities in British Columbia in which condominium housing has been developed. Chapter VII concludes with the major observations drawn from the whole paper.

LIMITATIONS

In addition to examining legislation a further method of establishing Federal, Provincial and Municipal housing policies would be to conduct a thorough search of the minutes of debates at the three levels mentioned as well as all press releases, conference minutes and relevant reports etc. to discover references to housing and residential condominiums from which to deduce their respective policies. The main limitation of this thesis is that such a search was not con-

ducted by the author (and is suggested as a useful future topic for a thesis). The reasons being firstly the paucity of such records at the provincial level, i.e. no Hansard and secondly, a lack of time and resources to carry out such a search especially since at the Municipal level a number of Municipalities would have to be considered. However, in the case of Federal housing policy Barrow's deduced principles were accepted.

Further limitations are mentioned in the text, e.g. those regarding the usefulness of the postal survey of municipalities in Chapter VI.

CONCLUSION

This thesis is in parts--descriptive, theoretical and empirical. The major original contributions of this work are, in the author's opinion as follows.

In Chapter I the author presents a framework of the range of alternatives in housing in British Columbia and in Chapter II a "nutshell" history of the evolution of the condominium concept to which the author's original contribution is the outline of the legal background and role of Scottish and Quebec condominiums, in the latter case from New France until today. Neither of these countries' experience is to be found in any detail in the sources on condominium evolution.

In Chapter III the author has carefully drawn the distinction between condominiums and similar forms of housing (over which there exists much confusion in the public mind) and in Chapter V has described Provincial housing policy and in Chapter VI has outlined the scope of Municipal housing policy.

CHAPTER I - NOTES

1. Quoted in Canadian Welfare Council, Social Policies for Canada, Part 1, (Ottawa: 1969), p. 1.
2. Michael Wheeler, (ed.), "Recommendations of the Conference," The Right to Housing, (Montreal: Harvest House Ltd., 1969), p. 331.
3. Report of the Task Force on Housing and Urban Development, (Ottawa: Queen's Printer, 1969), p. 22.
4. Canadian Welfare Council, op. cit., p. 1.
5. Background Papers for the Federal Provincial Conference on Housing and Urban Development, Housing Policy, Problems and Priority, (Ottawa: December, 1967), p. 1. Cited by Marianthi Constantinu, Housing Cooperatives in British Columbia, unpublished Master's thesis in Community and Regional Planning (Vancouver, B.C.: University of British Columbia, 1970), p. 4.
6. Task Force, op. cit., p. 14.
7. Economic Council of Canada, Perspective 1975, Sixth Annual Review, (Ottawa: Queen's Printer, 1969), p. 100.
8. Ibid.
9. This is supported by the opinion expressed by Dr. H.P. Oberlander, (Director of the School of Community and Regional Planning at the University of British Columbia), et al., concerning one alternative, i.e. cooperative housing and cited by Constantinu, op. cit., p. 76.
10. Op. cit, supra, note 2.
11. Dr. Rose of the School of Social Work and Prof. Diamond of the School of Architecture, both of the University of Toronto, quoted in Brief submitted to the Federal Task Force on Housing and Urban Development, Vancouver, B.C., November 1968, by the British Columbia Provincial Council of Carpenters, (prepared by the Trade Union Research Bureau, Vancouver, B.C.), p. 1.
12. The Right to Housing, op. cit., and see also David V. Donnison, "Agenda for Housing" in Ibid., 234, 235.

13. Task Force, op. cit., p. 6.
14. Ibid., p. 9.
15. For births, deaths, immigration and population, for Canada 1921-69, see Canadian Housing Statistics 1969, (Ottawa: CMHC, 1970), Table 76, p. 58. For population projections under various assumptions see Wolfgang Illing, et al., Population, family, household and labour force growth to 1980, (Ottawa: Economic Council of Canada, Queen's Printer, 1967), Table 2-E, p. 25. For total population and urban and large city shares by region see Economic Council of Canada, Fourth Annual Review, From the 1960's to 1970's, (Ottawa: Queen's Printer, 1967), p. 186.
16. Dominion Bureau of Statistics reported in The Sun, Vancouver, B.C., 28 May 1970.
17. Economic Council of Canada, op. cit., pp. 41, 186.
18. Economic Council of Canada, Fourth Annual Review, op. cit., supra, n. 15, quoted in Constantinu, op. cit., p. 2.
19. Task Force, op. cit., p. 9.
20. See Illing, op. cit., supra, n. 15, p. 25.
21. Economic Council of Canada, Fourth Annual Review, op. cit., supra, n. 15, p. 4.
22. Lower Mainland Regional Planning Board (LMRPB), Population Trends in the Lower Mainland, (New Westminster, B.C.: 1968), p. 11.
23. Ibid., p. 12.
24. B. C. Bureau of Economics and Statistics, in LMRPB, op. cit., p. 12.
25. LMRPB, op. cit., p. 42.
26. For map see LMRPB, op. cit.
27. Ibid., pp. 13-14.
28. Ibid., p. 14.
29. Ibid., p. 17.
30. Ibid., p. 3.

31. LMRPB, Chance and Challenge, (New Westminster, B.C.: 1963), p. 4.
32. Ibid.
33. Ibid., p. 9.
34. For a detailed discussion of housing needs and demands see Malcolm McD. Barrow, Federal Housing Policies and the Developing Urban Structure: Conflicts and Resolution, unpublished Master's thesis in Community and Regional Planning, (Vancouver, B.C.: University of British Columbia, 1967), Chapter IV.
35. CMHC, Canadian Housing Statistics 1968, (Ottawa: Queen's Printer, 1969), p. xii. For total family and non-family household formations and projections see Illing, op. cit., Table 3-4, p. 69 and for components of housing demand based on demographic trends see Economic Council of Canada, op. cit., supra, n. 7, Table 6-5, p. 99.
36. Task Force, op. cit., p. 23.
37. CMHC, Housing Statistics, B.C. Region, March 1970. (Vancouver, B.C.: 4 April 1970), p. 1. For the Annual historical figures, see Canadian Housing Statistics 1969, (Ottawa: CMHC, 1970), Table 1, p. 1.
38. CMHC, op. cit., supra, n. 35, p. xiv.
39. Ibid., p. xiv.
40. M.J. Audain, The Housing Situation in Vancouver, A Briefing For Volunteers, (Vancouver, B.C.: United Community Services, 1966), p. 4.
41. CMHC, op. cit., supra, n. 37, p. 1.
42. For a comparative summary of vacancy rate see Real Estate Trends Supplement, (Vancouver Real Estate Board, 1970), Tables 1, 2 and 3, pp. 13, 14.
43. G.R. Brown, An Analysis of the Vancouver Housing Market 1966-68, A Joint Report of the Seminar in Governmental Urban Land Policies, Faculty of Commerce and Business Administration, (Vancouver, B.C.: University of British Columbia, 1968), p. 20.

44. Task Force, op. cit., p. 15.
45. The Sun, Vancouver, B.C., 28 May 1970.
46. CMHC preliminary data quoted in The Sun, Vancouver, B.C., 10 June 1970.
47. CMHC, Housing Statistics, B.C. Region, op. cit., supra, n. 37, p. A-36.
48. CMHC, Canadian Housing Statistics 1969, (Ottawa: 1970), p. viii.
49. Quoted in the Vancouver Tenants Organization Committee (presently the Vancouver Tenants Council) Brief to the Task Force on Housing and Urban Development, (Vancouver, B.C.: 1968), p. 2.
50. Richard F. Muth, "Urban Residential Land and Housing Markets" in Issues in Urban Economics, Harvey S. Perloff and Lowdon Wingo, Jr., (eds.) (Baltimore: The Johns Hopkins Press, 1968), p. 285.
51. Task Force, op. cit., p. 14.
52. Ibid., p. 15 and Constantinu, op. cit., pp. 5-6.
53. Task Force, op. cit., p. 15.
54. For apartment rents in Metropolitan Vancouver see Brown, op. cit., Appendix A-X and Real Estate Trends 1968, (Vancouver Real Estate Board, 1969), p. B-9 and Supplement 1969, p. 17.
55. Task Force, op. cit., p. 15 and Constantinu, op. cit., p. 5.
56. Brown, op. cit., p. 33.
57. For residential land costs in Metro Vancouver, see Real Estate Trends 1970, op. cit., p. A-4.
58. CMHC, op. cit., supra, n. 48, p. x and Table 52 and for interest rate levels see CMHC, Canadian Housing Statistics February 1970, p. 7. And also:

In summary, the following are the major factors contributing to the high cost of financing;

1. The demand for capital is high on a worldwide scale.
2. Because of a number of international developments - high rate of inflation, U.S. balance-of-payments deficits, the war in Vietnam, political upheavals,

etc.,--confidence in the stability of currencies has weakened, and lenders are wary about supplying funds.

3. Not only are interest rates rising under such conditions, but the preference for various types of securities changes to the disadvantage of long-term fixed-income securities such as mortgages.
4. The United States is faced by a persisting dilemma on the one hand, the necessity to pursue full employment policies to avoid mounting unemployment under conditions of extremely rapid labour force growth--i.e. policies which imply easier money and credit, as well as a certain amount of inflation (depending on the choice of trade-offs between unemployment and price increases)--and, on the other hand, the need to pursue more deflationary policies designed to correct its balance of payments.
5. Canada has become more closely tied to developments outside its borders, and is therefore likely to be affected not only by existing pressures on interest rates, but also by developments in prices--with an additional push arising from the remaining scope for Canadian prices and costs to rise more than those in the United States.

Wolfgang M. Illing, "The Rising Cost of Housing and Problems of Financing" in the Right to Housing, op. cit., pp. 161-162.

59. Task Force, op. cit., p. 15.
60. For prices of residential building materials 1963-70, see Real Estate Trends 1970, supra, n. 57, p. A-3.
61. For basic wage rates in the construction industry see Real Estate Trends 1969, supra, n. 42, p. 22.
62. For instance in British Columbia during the summer of 1970 forestry and construction workers were on strike.
63. Brown, op. cit., p. 12.
64. Ibid., p. 12.
65. Ibid., p. 22 and Constantinu, op. cit., p. 4, et. seq.
66. Brown, op. cit., p. 21.
67. Ibid., p. 21.
68. Ibid., pp. 23-25.

69. J. Leyser, "The Onwership of Flats - A Comparative Study," International and Comparative Law Quarterly, (Vol. 7, January 1958), p. 320, and E.H.Q. Smith, "Old Wine in New Bottles," Habitat, (Vol. XII, Nos. 4-5, 1969), p. 2 and A. Ferrer and K. Stecher, Law of Condominium, (Oxford, N.H.: Equity Publishing Corporation, 1967), Vol. 1, pp. 26, 29, 33 and 37 and A Rosenberg, Condominium in Canada, (Toronto: Canada Law Book Ltd., 1969), p. 2-2 and Task Force, op. cit., p. 17.
70. Ferrer and Stecher, op. cit., p. iv.
71. Quoted in Leyser, op. cit., p. 35, n. 16.
72. E. Sully, "Developers Look at Condominium," Habitat, (Vol. XII, Nos. 4-5, 1969), p. 29.
73. Michael Pine, "City Repair, Air Rights and Condominium," Habitat, (Vol. XII, No. 4-5, 1969), p. 62.
74. A. Schreiber, "The Lateral Housing Development: Condominium or Home Owners Association?," University of Pennsylvania Law Review, (Vol. 117, No. 8) p. 1106, n. 13.
75. Rosenberg, op. cit., pp- 1-2 and R.J. MacLeod, "Developers Look at Condominium," Habitat, (Vol. XII, Nos. 4-5, 1969), p. 26. And also:

The condominium may offer the buyer amenities and luxuries which might otherwise be beyond his means such as a golf course, view of the ocean or a lake, a swimming pool, or an attractive recreation area. In addition, he may receive more housing for his money since the percentage of land costs in relation to the actual cost of the unit tends to be less than the percentage for a single-family dwelling. A residential lot, for example, might represent 20 to 25% of the total cost of an average property, whereas in a condominium it usually would tend to be less, perhaps around 10 to 15 per cent.

from W.R. Beaton, "The Detached-House Condominium," Urban Land, (Vol. 3, 29 March 1970), p. 5.

76. J.P. Roberts, "Condominium Ownership in British Columbia," Real Estate Trends in Metropolitan Vancouver, (Vancouver, B.C.: Vancouver Real Estate Board, 1966), p. B-1.

77. The author's list of alternatives, which excludes--in the first alternative--the ease of, for example, a shared driveway or a party wall, i.e. a common facility in a semi-detached house or duplex; and--in the second alternative--common law or non-statutory condominiums; and--in the fifth alternative--cases where Tenants Councils or Associations have been formed and which have bargained with the landlord thereby gaining some, albeit small, measure of control over their housing conditions. For instance, a committee of tenants of the Vancouver, B.C. Little Mountain public housing project has been running the project since the late Fall of 1970 and intends to ask for equal representation with Government appointees on the B.C. Housing Management Commission (The Sun, Vancouver, B.C., 7 January, 1971). In Vancouver, B.C. during April 1971 a significant number of tenants of Wall and Redekop Ltd., withheld their rent in order to coerce the landlord into justifying a rent increase. At the time of writing (April, 1971) the matter has not been resolved.

Additionally the rights of ownership of property are subject to Governmental power to levy taxes and to seizure of property in the event of non-payment; to regulation concerning land use, health, etc., and to expropriation by the Crown or municipalities.

78. See Chapter V.
79. Short Form of Leases Act, R.S.B.C. 1960, C.357 as amended.
80. See Chapter II for the Canadian jurisdictions with special condominium legislation.
81. R.T. Ryan, "The Lenders' View 1," Habitat, (Vol. XII, Nos. 4-5, 1969), p. 18.
82. Smith, op. cit., p. 11.
83. The Hon. Grace McCarthy, Minister Without Portfolio, Address, to the Provincial Assembly, Monday 16 February, 1979, p. 11.
84. David Davidson, "Strata Title Development - Condominium," Real Estate Trends in Metropolitan Vancouver 1970, (Vancouver, B.C.: Vancouver Real Estate Board, 1971), p.B-1.
85. Personal interview with Mr. J. Lowdon of CMHC's Vancouver Office, 13 November 1970.

86. Richard R. Snell, "The Third Alternative," Habitat, (Vol. XII, No. 4-5, 1969), p. 23. In Canadian Homes (June 1970), p. 1, it is stated that the Ontario Government has plans for 10,000 condominium homes.
87. Toronto Daily Star, Real Estate Section, 28 February 1970.
88. Ibid.
89. See, for examples, the wide range of subjects covered in planning texts and journals. See Barrow, op. cit., pp. 13-16 and 120, 121 for a more detailed discussion of the relationship between urban planning and housing.
90. Economic Council of Canada, supra, n. 7, p. 164.
91. Historically, housing reform was one of the activities that preceded modern planning and today governmental policies and programmes in housing and urban renewal are major factors in city development.
92. In that it has been called the most effective method of providing mass housing, supra, n. 70 and also half of the ten contributors to an article entitled "Operation Housing" in Western Homes and Living, (February 1970), pp. 22-30 mention condominiums as part of the solution to meeting future housing needs.
93. Constantinu, op. cit., p. 8.
94. Task Force, op. cit., p. 22.
95. Ibid.
96. Marvin Lipman, Social Effects of the Housing Environment, (Canadian Conference on Housing, Background Paper No. 4, September 1968), p. 12.
97. Mary Rawson, Submission on the Benson White Paper by the Town Planning Institute of Canada, (working draft prepared for the Committee on the Public Presence of the Town Planning Institute of Canada, July, 1970), pp. 4-5. See also p. 18 for elaboration on land taxation and urban problems and planning.
98. The Dominion Housing Act was passed in 1935, see also Chapter IV and Albert Rose, Canadian Housing Policies, (Canadian Conference on Housing, Background Paper No. 2, June 1968) and Task Force, op. cit., pp. 4-6. Municipalities have been involved through zoning and building regulations and some provinces have had legislation respecting housing for some time.

99. By Constantinu, op. cit.
100. Claude Morin, Condominium, (report prepared for the Advisory Group of CMHC Ottawa, 1967), pp. 7-8 in which it is stated that condominiums have not been studied from a planner's point of view.
101. Constantinu, op. cit., pp. 9-11. See also infra Chapter III.
102. Constantinu, op. cit., pp. 63-71.
103. Infra., Chapter IV.
104. Infra., Chapter V.
105. Infra., Chapter III.
106. Following Constantinu, op. cit., p. 15.

CHAPTER I I

AN OUTLINE HISTORY OF THE CONCEPT OF CONDOMINIUM OWNERSHIP

Introduction; The Ancient World; Rome and Roman Law; Condominium in Europe in the Middle Ages; Germany-an Example of Conflict of Law; Switzerland and Austria; Other European Countries; Civil Law and Common Law; France; Codification of the Law-The Code Napoleon; Belgium; Other Countries; France-The 1938 Legislation; Spain; Post-War Legislation; Jugoslavia; Latin America; Puerto Rico; Louisiana; Quebec; Scotland; England; The United States; Australia and New Zealand; Canada; The Far East; Conclusion.

INTRODUCTION

If you would know what a thing is you must know how it came to be what it is Let us therefore begin with the historical background. 1

This chapter will present an outline of the evolution of condominium arrangements and their diffusion in time and space until the adoption of legislation in Canada in the latter 1960's.

For the purposes of this chapter a condominium means the subdivision of ownership of land and buildings and their associated facilities into separately owned units and property belonging in common to all the unit owners and the implied operating rules.

THE ANCIENT WORLD

The earliest record of a condominium arrangement is contained in papyrus in the Brooklyn Museum which records that a form of condominium was used by the ancient Hebrews 2,500 years ago.² There is also the recorded sale of part of a building nearly 2,200 years ago in Ancient Babylon during the First Dynasty.³

Some researchers have found evidence of condominium arrangements in Ancient and Classical times among the Greeks, Hebrews, Egyptians and Muslims and others also consider passages in Homer's Odyssey and in Herodotus as indications of the existence of similar arrangements.⁴

ROME AND ROMAN LAW

While "condominium," a Latin word is commonly used in North America there is disagreement as to whether the condominium concept, as it is manifested today, actually was a feature of real property legal practice in Classical Rome. Various authors have been cited⁵ as having found evidence of condominium arrangements in Classical Rome. However, such arrangements would be contrary to the legal principles of *superficies solo cedit* (whatever is attached to the land forms part of it) and *dominus soli est coeli et inferorum vel usque ad infera* (property rights extend up into the heavens and down to the centre of the earth).⁶

In spite of these maxims there evolved the right of *superficies*, which permitted the erection and ownership of buildings on land owned by another. Martin-Granizo⁷ theorizes that following, and based on, *superficies* the next step would be the splitting of ownership of parts of a building. The maxim *dominus soli* etc., mentioned above was also expressed as *cujus est solum ejus est usque ad coelum* (he who has the

land has up to the heavens) in which there is no mention of the underground rights thereby constituting a weakening of the maxim as expressed *dominus soli* etc., mentioned above. And since the latter was sometimes modified to allow separate ownership of the mineral rights⁸ and was followed by the evolution of the right of *superficies* it does seem logical that individual ownership of parts of buildings could also evolve. Certainly, out of necessity and on an informal basis this custom did arise in Classical Rome⁹ but without legal sanction.

CONDOMINIUM IN EUROPE IN THE MIDDLE AGES

It was however, in the Middle Ages with the surrounding of many towns by walls and other fortifications that the condominium arrangement became common.¹⁰ This was a result of the necessity of using more intensively a fixed supply of land secure within the walls.

GERMANY - AN EXAMPLE OF CONFLICT OF LAW

The situation in Germany during the early decades of the 12th century has been described by Gonzalez¹¹ and Hubner:¹²

From the 1100's onward we find extremely widespread in German Towns so-called 'Story' or 'Roomage' Ownership ('Stockwerks-', 'Geschoss-', 'Gelass-', 'Etageneigentum-')--ownership of the individual stories of a building. Houses were horizontally divided and the specific parts so created . . . were held by different persons in separate ownership . . . especially in Bohemia and South Germany . . . and above all in Switzerland. 13

Again the condominium arrangements adopted by the poorer classes became common and widespread and were, as in Rome, informal and without legal sanction. In the 19th century there was however, official opposition to the idea on legal grounds and also from the police and tax collectors and even the Codifications of the law by Prussia and by Saxony in the mid 19th century did not allow condominium ownership.¹⁴ A legal controversy over condominium lasted until the coming into force of the German Civil Code in 1900.¹⁵

According to the Code, ownership of part of a building was forbidden but it was provided that: "Laws approved by the States to establish in detail the rules governing cases in which each each one of the co-owners of an individual house has the exclusive enjoyment of part of such house are not hereby repealed."¹⁶ This provision nicely permitted the continuation of customary condominium arrangements in certain parts of Germany while at the same time giving expression to Roman principles of law and well illustrates the conflict between customary law and later Codified law based on the Roman principles of immoveable property ownership mentioned earlier.

It is opportune at this point to state that customary law has been defined by the celebrated French jurist Robert Pothier as: " . . . laws that usage has established and that were kept unwritten, through a long tradition."¹⁷ and which were, in the case of France, only written down in the early 16th century. That there was a real conflict between customary law and the acceptance of Roman Law principles into the prevailing legal doctrine is clearly borne out by the following:

. . . . Notwithstanding that this peculiar legal institute [i.e. condominium] was totally irreconcilable with the alien law of the Reception [of Roman Law principles] it remained part of the law It was preserved as a particularistic legal institution in many localities even in the face of statutory prohibitions. ¹⁸

In Germany the condominium concept was not expressly recognized or comprehensively regulated legally (except as indicated above) until 1951 when a law permitting apartment ownership was approved, followed by a new law in 1953.¹⁹

SWITZERLAND AND AUSTRIA

Switzerland's experience in condominium is similar to Germany's in that having been common since at least the 12th century as mentioned earlier, it was later prohibited by the Swiss Code of 1912 but provision was made therein to respect the local customs which resulted in differing concepts and regulation of condominium in each Canton.²⁰ Switzerland

has adopted legislation enabling and regulating condominium²¹ and it is of passing interest to note that Turkey, having adopted the Swiss Civil Code, authorized condominium ownership before the Swiss²² although based on the then proposed Swiss legislation.

In Austria, which has a legal system similar to Germany and Switzerland, informal condominium arrangements had been known for many years and as in Germany and Switzerland had been legislatively proscribed but nevertheless permitted in 1879 and again in 1912 but were finally authorized by law in 1948 as amended in 1950.²³

OTHER EUROPEAN COUNTRIES

In many other European countries forms of condominium existed and were recognized under customary law, e.g. Spain, Portugal, Belgium, Italy and France.²⁴ Examples of these are the customs of the Spanish Basque Provinces and a compilation of Spanish law in the year 1263 which contained much customary law and which has been cited as implying condominium situations; in Portugal an article of the Phillipine Ordinances of 1603, providing for buildings where different owners owned the cellar and upper storey; and in Belgium a 1657 Statute of Brussels and the Customs of Antwerp, Ghent and Louvain; and in Italy the "statuti" of Milan and the usage of Genoa and Sardinia.

CIVIL LAW AND COMMON LAW

While no reference has yet been made to the British Isles in connection with condominium arrangements which from the 16th century on existed under common law it will be appreciated that there are two main schools of legal thought in the modern Western world²⁵ variously described on one hand, as the Anglo-American or Common Law system and Civil Law, Continental or Franco-German system on the other hand and that:

. . . the first [is] founded upon English Common Law and equity and therefore predominantly inductive and empirical and the second [is] founded on the law of Rome and its modern offshoots in many recent codifications, and therefore predominantly systematic and deductive. 26

Because of these differences in the legal systems the evolution of the condominium in Anglo-American law will be dealt with after consideration of the concept in the Civil law countries and will be preceded by a consideration of Quebec and Scotland.

FRANCE

However, to return to Continental Europe, it was from France that the greatest impetus to condominium legislation was derived, firstly from customary law, secondly from the Code Napoleon, and thirdly from the 1938 legislation.

Some of France's experience is also of special interest to those interested in the antecedents of condominium legislation in Canada since part of the law of France was also the law of New France out of which grew Quebec Civil law and whose "new" Civil Code of 1866, the year before Canadian Confederation, owed much to the Code Napoleon.

In France during the later Middle Ages there were many legal provisions concerning forms of condominium ownership. In the cities of Nantes, Saint-Malo, Caen, Rouen, Rennes, Lyons, Chambery and especially Grenoble condominium ownership was common and in Orleans and Paris even single rooms were owned separately such was the shortage of housing. Paris in 1672 passed legislation defining the rights of "apartment" owners while the Coutumes (customary laws) of the Provinces of Orleans, Berry, Bourbonnais, Brittany, Montargis and Nivernais and a local custom of Auxerre contained articles regulating condominium ownership.²⁷

CODIFICATION OF THE LAW - THE CODE NAPOLEON

It was from these *coutumes* that the concept of condominium ownership passed into the Code Napoleon. Yet this codification, which was to influence the law of many countries either by conquest of French arms and colonisation or by persuasion and inspiration to the jurists of other countries, only adopted the Article concerned, Article 664, which followed

the example of Article 257 of the *coutume* of Orleans,²⁸ as a result of the observations on the original draft of the Code by two regional appeal courts in whose districts separate ownership of floors was common, those of Lyons and Grenoble.²⁹

Thus this Code, which later exerted so much influence upon the law of countries of the Roman codified tradition, did not prohibit condominium ownership (unlike Germany, Austria and Switzerland) on theoretical grounds as being a deviation from the Roman Law principles mentioned earlier.

Important though it was, the inclusion of Article 664 in the Code Napoleon dealt only with repair and reconstruction of a house owned in part by separate owners. This same article adopted later by the Civil Code of Quebec and renumbered as Article 521 (1866-1969) reads in the English version as follows:

When the different storeys of a house belong to different proprietors, if their titles do not regulate the mode of repairing and rebuilding, it must be done as follows:

All the proprietors contribute to the main walls and the roof, each in proportion to the value of the storey which belongs to him;

The proprietor of each storey makes the floor under him;

The proprietor of the first storey makes the stairs which lead to it, the proprietor of the second storey makes the stairs which lead from the first to his, and so on.

However, it can be seen that these provisions apply in the absence of special regulations made between the parties concerned. "And there are generally such special accords. And, in almost all cities where this division of houses is practised,

there are local usages and a special jurisprudence."³⁰

As mentioned above the importance of Article 664 was that through the prestige and influence of the Code Napoleon the concept passed into, or remained a part of the modern law of many countries of the world.

All told, the Napoleonic Code has made an amazing trip around the world: introduced into thirty-five states, translated, copied, and adapted in thirty-five others, with an influence that is still lasting today. ³¹

BELGIUM

It was not until 1924 that a European country adopted comprehensive legislation containing a set of basic rules governing condominium ownership. In July of that year the Belgian Code was amended by Article 577 bis. Until then Article 664 of the Code Napoleon had been law, but, as in France, agreements between the co-owners in the majority of cases had regulated condominium ownership and jurisprudence had been established through litigation.³²

The Belgian legislation is considered to have contained few innovations and was based on principles drawn from French and Belgian experience, jurisprudence and legal commentaries and anyway the rules governing condominiums were applicable only if there were no special covenants and provisions between the co-owners.³³ The two striking points about this Belgian

law are firstly that it was the first modern legislation of a comprehensive nature giving express legal sanction to condominium ownership and secondly, that it included provisions which made possible the financing of modern large-scale projects.³⁴

OTHER COUNTRIES

Before the next legislation of major importance, in 1938 in France, a number of other European countries adopted legislation of varying comprehensiveness, providing express legal sanction to condominium ownership and basic rules regulating the operation of the condominiums administrative bodies. Thus, Hungary in 1924, Romania in 1927, Sweden in 1931 and 1942, Bulgaria in 1933,³⁵ and Italy in 1935, 1942 and 1947.³⁶

FRANCE - THE 1938 LEGISLATION

The French legislation of 1938 was of major importance in the diffusion and evolution of the condominium concept.

One aspect of the French condominium experience should be stressed. France is unquestionably the jurisdiction where the modern condominium idea was developed . . . [and] The Law of June 28, 1938, has been called "a remarkable codification of the fruits of experience and observations of the text writers."³⁷

The one very serious drawback to the pre-1938 system built up by agreements and jurisprudence which was overcome by the 1938 legislation, was that the *reglement de copropriete* could not bind successors in title.³⁸

The 1938 legislation, which repealed Article 664 is divided into two chapters. The first deals with building societies and the second with co-ownership or condominium. The second chapter regulates not only the individual rights of each co-owner but also clarifies" . . . the rights and obligations of the owners of flats with regard to the common parts of the building"³⁹ and:

It creates an assembly of co-owners known as the "syndicat," and provides for its representation by an executive agent known as the "syndic" or trustee. It also covers most of the other aspects usually regulated under modern condominium statutes. ⁴⁰

The 1938 enactment was supplemented and amended in 1939, 1943, 1955, 1959⁴¹ and 1965.⁴²

SPAIN

In 1939 Spain adopted comprehensive condominium legislation. Reference was made earlier to the customary legal antecedents to the modern legislation but in addition to these in 1885, a few years before the adoption of a Civil Code in Spain in 1889 after more than half a century of effort, an author had set down some of the rules which were customarily accepted in the city of Valencia governing the rights of co-ownership in a condominium arrangement.⁴³

The 1889 Spanish Civil Code adopted an article based on Article 664 of the Code Napoleon, and which was not therefore comprehensive. By 1939 the long acknowledged need for reform led to the approval of new legislation which however, was not truly comprehensive but did overcome certain legal doctrine which had developed and which was inimical to the development of a true modern condominium concept.⁴⁴ In 1960 a comprehensive condominium law was enacted taking into account as stated in its preamble " . . . the needs inherent to the social realities with which it is designed to deal."⁴⁵

POST - WAR LEGISLATION

After the Second World War the Greek Civil Code of 1946 Article 1,117 regulated condominium and Austria as mentioned earlier passed a condominium law in 1948 followed by Germany and the Netherlands in 1951, Portugal in 1955, Switzerland in 1966 and Luxembourg recently.⁴⁶

JUGOSLAVIA

Jugoslavia has a type of cooperative that is similar to condominium. There are two main types of housing cooperatives. The first type organises planning and construction of new apartment buildings by selling shares to prospective occupants. The second type is formed by owner-occupants to

manage their building and to attend to its upkeep. If the building is "socially" owned, i.e. by the commune, it can be bought by the cooperative as a whole or by the individual residents who receive title to their own separate apartment. All housing cooperatives must join the General Cooperatives Union, and their members are therefore entitled to such privileges as tax exemptions and other concessions granted only to the socialised sector of society.⁴⁷

LATIN AMERICA

Continuing with the Civil Law countries and turning to the New World, it was in 1928 that Brazil passed condominium legislation whose roots are to be found in the Phillipine Ordinances of 1603 mentioned earlier.

While the 1928 Law, as amended, is not really an adequate condominium statute because of its sketchy provisions, it needs to be recognized that its earlier adoption was very far-sighted and made possible a great deal of the vigorous urban growth evident in modern Brazil. 48

The amendments mentioned were passed in 1943 and 1948.

The idea of condominium legislation spread to other South American countries quite rapidly but the legislation itself took longer to materialise and before the outbreak of the Second World War only Chile in 1937, had followed Brazil's example.⁴⁹ However, in 1939 there was held in Buenos Aires the first Pan American Housing Congress, at which an Argentinian advocated condominium ownership which led to the Congress

supporting a resolution calling for the enactment of horizontal property legislation.⁵⁰

In Argentina pressure for condominium legislation continued from 1928 onwards and several bills were introduced in the Argentine Congress proposing the adoption of a comprehensive horizontal property law. The 1869 Civil Code of Argentina, however, expressly prohibited condominium following the Roman Law doctrines mentioned earlier. Also in 1869 the year of adoption of the Argentine Civil Code:

. . . there were no practical housing problems to be solved by allowing horizontal property ownership. Eighty years were to elapse before the shortage of housing space in Buenos Aires and other urban centres would lead the Argentine Congress to repeal Article 2617 of the Civil Code and to approve a comprehensive condominium statute, on September 30, 1948. 51

Since 1948 many other Latin American countries have adopted condominium legislation.⁵² Of these countries some borrowed directly from other countries e.g. Cuba's 1950 legislation was based on the 1939 Spanish law and Venezuela's ". . . was patterned after provisions contained in the Argentine, Bolivian, Columbian, Cuban, Chilean, French and Uruguayan Horizontal Property Acts."⁵³ Also some countries had certain provisions regulating condominium arrangements already in existence, e.g. the Construction Ordinances of the City of Havana, 1961, sec. 341-353, but others, even though their legal systems were based on the Code Napoleon, had no, or inadequate, provisions.⁵⁴

In 1952 Cuba passed a new Condominium law which is of interest to North Americans:

. . . since it served as a model for the Puerto Rican Act, and thus it indirectly set the pattern for most of the condominium statutes adopted by the several states of the United States. 55

These in turn had some influence on certain Acts passed by the Canadian Provinces.

In 1889 the new Spanish Civil Code was extended by Royal Decree to Cuba, Puerto Rico and the Phillipines. Cuba thus had rudimentary rules regulating condominium in addition to the Havana City Ordinances.

However, these regulations, which remained in force after Cuban independence from Spain, were as inadequate in Cuba as they were in Spain and the Cuban courts followed the precedents of the Spanish courts in the interpretation of the law. Cuba did not, however, adopt the 1939 Spanish Law until 1950 but while the Spanish did not correct the shortcomings of their 1939 law until 1960 it took the Cubans only two years to formulate and enact entirely new legislation.

In 1952 the 1950 decree was reexamined and on the basis of a comparative study of the horizontal property statutes adopted in other jurisdictions, Act No. 407 was finally drafted and approved. Act No. 407 is a comprehensive statute, which incorporates most of the best features contained in other advanced laws on the subject. 56

It is perhaps of passing interest to note the fate of this law since the Cuban Revolution led by Fidel Castro.

. . . the horizontal property device has assumed great importance and is playing an unexpected role under the Fidel Castro Communist regime. The Cuban Urban Reform Act of October 14, 1960 (see text in 224 Informacion Juridica, p. 79 (1962), published by the Foreign Legislation Committee of the Spanish Ministry of Justice) prohibits, with certain minor exceptions, all urban real property lease contracts. It decrees the sale to the tenant of the leased premises, on the basis of the payment, during a fixed number of years, of a sum equivalent to the rent payments. Art. 20 of the Act provides that in the case of any and all apartment buildings, the Provincial Urban Reform Council for the area in which the property is located will subject it to the horizontal property regime by issuing a resolution to that effect, thus making it possible for the tenants to purchase the "apartments" they occupy. Presumably this means that the Council will also draw up the master deed and the bylaws for the building. 57

This is interesting for two reasons. Firstly it throws more light on how the condominium concept is fitted into the communist or more strictly speaking, the socialist, system and the role of condominium home ownership in a communist or socialist state about which Leyser and other Western authors when writing on condominium are silent.⁵⁸ Secondly there is a certain degree of similarity between the Cuban Urban Reform Act and "A draft program of housing reform--the tenant condominium (for low and middle income housing)" by William J. Quirk and others,⁵⁹ by which the city of New York would gain control of slum property which it would rehabilitate and sell to the occupant tenants as a condominium.

PUERTO RICO

Puerto Rico's early experience in condominium development was similar to that of Cuba and the Spanish Civil Code's condominium provisions were extended to Cuba in 1889. After the cession of Puerto Rico to the United States in 1898 and the subsequent revision of the Civil Code the wording of these provisions remained unchanged though the articles were re-numbered. However, " . . . it is also true that in Puerto Rico, at that time, there were no housing problems that needed to be solved by having recourse to the horizontal form of tenancy. Urban land was cheap and readily available."⁶⁰

In 1951, Puerto Rico, following in Spain's and Cuba's footsteps, amended the Civil Code in exactly the same terms as had Spain in 1939 and Cuba in 1950. In 1958 a bill presented in the House of Representatives based on the Argentine Horizontal Property Act was withdrawn and another based on the Cuban Legislation of 1952 submitted in its place which became law in that year. The reason the Cuban model was preferred being that the Cuban and Puerto Rican Civil Codes and Mortgage Laws were very similar.⁶¹

This legislation greatly influenced that later adopted throughout the United States:

It is also to Puerto Rico's credit that it furnished the impetus for the drive in Congress to amend section 234 of the National Housing Act in order to authorize the FHA to insure mortgages on condominium dwellings thus opening the way for a new source of financing and creating the main incentive for the adoption of comprehensive horizontal statutes in all but one of the states. ⁶²

Having entered a North American jurisdiction, most of which are common law, consideration will be given to Louisiana, Quebec and Scotland before proceeding to the common law jurisdictions in England, North America and elsewhere.

LOUISIANA

When the State of Louisiana adopted the Code Napoleon in the early 19th century Article 664 of that code was omitted from the new Civil Code of Louisiana. However, in spite of Article 505 of the Louisiana Code which states:

The ownership of the soil carries with it the ownership of all that is directly above and under it 63

the next article provided as follows:

All the constructions, plantations and works, made on or within the soil, are supposed to be done by the owner, and at his expense, and to belong to him, unless the contrary be proved, without prejudice to the rights of the third persons who have acquired or may acquire by prescription the property of a subterranean piece of ground under the building of another, or any part of the building. 64

It had been felt that this article recognised the possibility of part ownership in a building.⁶⁵ In the case of *Lasoyne v Emerson*,⁶⁶ however, the Supreme Court of Louisiana ". . . adhered to an entirely orthodox and conservative point of view" ⁶⁷ by referring to the traditional Roman Law concept expressed in Article 505 and by making no references to Article 506.

In 1962 Louisiana enacted a comprehensive horizontal property statute patterned after the Puerto Rican law as adopted by Arkansas. In this connection perhaps the following quote well explains why Quebec relied upon the French condominium law rather than modifying another Canadian or American act from a Common Law jurisdiction:

It has been pointed out that it is unfortunate that the Louisiana Act was not modelled directly after the Puerto Rican Act, Louisiana and Puerto Rico both being Civil law jurisdictions. Arkansas had made certain changes in the statute to accommodate it to its common law system, and these changes and omissions were carried directly into the Louisiana statute, thus engrafting into Louisiana real property law concepts deemed entirely alien and inappropriate.⁶⁸

QUEBEC

In the Province of Quebec, or Lower Canada, as it then was, codification of civil law was completed in 1866. From 1663 until that time, since Louis XIV had extended the Custom of Paris to " . . . our countries of Canada, Acadia and the Island of Newfoundland . . ."⁶⁹ Quebec had been under feudal law.

The Custom of Paris is the only custom that was officially made applicable to Canada. It was compiled in 1510 and reformed in 1580. Until codification in 1866, it constituted the basis of the civil law in Canada. ⁷⁰

In 1675 the Intendant Duchesneau was directed to ensure that the Superior Council and all inferior courts

decide cases according to the Edicts and Ordinances of the King of France and the Custom of Paris. Until that time, that is from 1608 when Champlain founded Quebec, some land grants had been made under the Custom of the Vexin Français, some under the Custom of Paris and others under the Custom of Normandy.⁷¹

The confusion as to the validity of English and French civil law which prevailed in Quebec after its cession to the British Crown was not completely cleared by the passage of the Quebec Act, 1774, which reintroduced French civil law into Quebec. This was because of the unfamiliarity of English judges with French civil law and its related jurisprudence.⁷²

There was nothing more uncertain and more confused than the laws of Lower Canada by the middle of the nineteenth century and many lawyers looked with envy at the Code Napoleon and the Civil Code of Louisiana that had made order out of chaos. Codification, it was said, would also enable lawyers, notaries, and judges to know the exact state of the law in Lower Canada, when it was becoming more and more difficult since the enactment of the Code Napoleon to obtain copies or commentaries on the old laws of France.⁷³

In 1857 the Attorney-General of Lower Canada, Georges-Etienne Cartier initiated a law that established a Commission to reduce the civil law in Lower Canada into two codes. In framing the two codes, i.e., the Civil Code and the Code of Civil Procedure the Commissioners were bound by section 6 to:

. . . embody therein such provisions only as they shall hold to be actually in force, and they shall give the authorities on which they believe them to be so; they may suggest such amendments as they shall think desirable, but shall state such amendments separately and distinctly, with the reasons on which they are founded. 74

Section 7 of the Act stated that the Codes should be:

. . . framed upon the same general plan, and shall contain, as nearly as may be found convenient, the like amount of detail upon each subject, as the French Codes known as the Code Civil, the Code de Commerce, and the Code de Procedure Civil. 75

In suggesting the adoption of Article 664 of the Code Napoleon the Commission had this to say:

This article provides for the case, of a rather rare occurrence here, when the different storeys of the same house belong to distinct proprietors, and determines the manner and the proportions in which each of them must contribute to the necessary repairs and reconstructions: each makes along those which are in his own interest or which are caused by his fault, whilst he contributes, in proportion to his interest only to those which are to the common advantage of all.

This article, conformable to Article 664 of the Code Napoleon, is for us a new disposition, adopted not in amendment but in addition to the law actually in force. 76

Until the enactment of the New Civil Code in 1866 condominium arrangements were presumably regulated by the provisions of the Custom of Paris. The sources of the new law which became Article 521 of the Civil Code of Lower Canada are given as:

Orleans 257. - Lamoignon, tit. 20, art. 32. - 2
Bousquet, p. 146. - 7 Locré, pp. 442, 443. - 2
Pand. Franc. 436. - C.N. 664. 77

Even though authorities such as the Codifiers and Migneault⁷⁸ have mentioned that cases of part ownership in buildings existed in Quebec, Rosenberg has stated that in spite of Article 521 prior to the passage of Bill 29 concerning co-ownership of immoveables in 1969 ". . . there have been no divisions of buildings by storeys or apartments except in the form of cooperatives."⁷⁹ Dessaulles, however, stated in 1965:

A condominium does exist in Westmount as a result of a great deal of energy and initiative. The agreement is some twenty-two pages long and has several pages of plans attached to it. The City of Westmount does send separate tax bills and separate mortgages were obtained. ⁸⁰

When the author made enquiries about this "condominium" he was assured by the City assessor that M. Dessaulles was misinformed as to the separate tax bills.

Bill 29, Quebec's condominium legislation, was passed by the National Assembly in November 1969 having been first introduced into the Assembly the year before. This was the culmination of six years of work initiated by the Montreal Real Estate Board who instructed Pierre Dessaulles to draft a condominium Bill. In this project M. Dessaulles worked closely with the Nadeau Commission for the Revision of the Civil Code of the Province of Quebec.⁸¹ The Bill was derived partly from the 1965 French legislation⁸² and consists of amendments to the Civil Code as Article 441 et seq. entitled "of co-ownership of immoveables established by declaration"

in the Title of Ownership, and repeals Article 521 copied from the Code Napoleon.

One unique aspect of the Quebec law concerns the management of a condominium:

The law officers of the Department of Justice who studied the Board's draft extremely thoroughly arrived at what is an entirely new formula which replaces the association of owners which exists in other jurisdictions. It was felt that this association did not play an important role, was unwieldy, and that it should be combined with the management functions and exercised by one or more persons who would be "administrators of the immoveable" and who would have broadly speaking, the duties and powers of trustees . . . at first the Board . . . was different about this new system, mostly on account of its novelty and the fact that there would be no experience in other countries to be drawn from . . . [but it now approves] this concept. 83

Since this law is so recent its effect cannot yet be gauged. However, it will benefit persons who live in cooperative apartments in the heart of urban areas which can now become organised as condominiums.⁸⁴ One of the best known Montreal luxury apartment cooperatives plans to turn itself into a condominium by declaration, if favoured by the lessee shareholders.⁸⁵

SCOTLAND

It has been said of the law of Scotland that: " . . . as it stands [it] gives us a picture of what someday will be the law of the civilized nations,--namely a combination between the Anglo-Saxon system and the Continental system."⁸⁶ Because

Scots Law, though derived from Roman Law, Feudal Law, Continental Law, native customary law and natural law⁸⁷ and more recently influenced by Anglo-American Law has a markedly closer affinity with the Franco-German school than with the Anglo-American⁸⁸ it will be considered at this point before turning to the common law jurisdictions.

Dessaulles has stated that: "In Scotland co-ownership or common ownership exists and is based on the same principles of Roman law and the same servitudes [89] recognized by our [Quebec] law."⁹⁰

The most recent of the "Scottish legal trinity,"⁹¹ Bell, in 1829 stated:

A species of right differing from common property takes place among the owners of subjects possessed in separate portions, but still united by their common interest. It is recognized in law as "Common Interest". It accompanies and is incorporated with the several rights of individual property. 92

This "Common Interest" is found most frequently in flatted houses⁹³ or tenements. The "Law of the Tenement" which takes effect only in the absence of a Deed of Conditions regulates the rights and obligations of the proprietors in a manner similar to Article 664 of the Code Napoleon but in much greater detail and at too great a length to be a given detailed consideration here. In 1925 the law was laid down in the case of Smith vs Guliani. A Deed of Conditions may be entered into by the proprietors and is a contract setting

out the basis for the management of the tenement, repairs and cost sharing and descriptions of jointly owned facilities.⁹⁴

Scottish flatted houses or tenements with separate ownership were, in the words of a Scots lawyer:

. . . forced on us centuries ago by the fact that Edinburgh was an overpopulated walled city and its citizens had to build upwards; money was scarce and had to be kept in circulation; so the separate flats were sold. Customs arose out of joint ownership and eventually lawyers decided what, in law, was the nature of the rights and obligations created thereby.⁹⁵

As Lord Justice-Clerk Thompson so aptly expressed it in 1958: "Custom has hallowed what convenience dictated."⁹⁶

Exactly why the condominium concept flourished in Scotland but did not in England, given the similar medieval urban condition is not apparent. It has been suggested that since Scots lawyers at that time flocked to continental law schools the continental precedents influenced development in this field.⁹⁷ It is perhaps more than a coincidence that with the popularity of the Law Faculty of Orleans the Law of the Tenement should bear in principle such a similarity to Article 664 of the Code Napoleon since that was derived from Article 257 of the Custom of Orleans.

It is also interesting to speculate as to when the influence of Continental comprehensive condominium statutes will result in similar legislation in Scotland. Additionally there is the added influence of proposed legislation in England.

ENGLAND

In the common law or Anglo-American legal systems the concept of part ownership in buildings has been accepted in England for many centuries. New Square, Lincoln's Inn in London has been cited as an example of "superimposed freeholds."⁹⁸ The three references commonly quoted are "Coke on Littleton," a case dated 1508, and Halsbury.⁹⁹

In Coke on Littleton it is stated: "A man may have an inheritance in an upper chamber, though the lower buildings and soile be in another . . . "¹⁰⁰ and in Halsbury's Laws of England it is stated:

For the purposes of ownership, land may be divided horizontally, vertically or otherwise, and either below or above the ground. Thus separate ownership may exist in strata of minerals, in the space occupied by a tunnel, or in different storeys of a building. ¹⁰¹

The Law of Property 1925, s. 205 (ix) contains the following provision: ". . . land includes . . . buildings or parts of buildings (whether the division is horizontal or vertical or made in any other way) . . . "¹⁰²

The freehold sale of flats in England was uncommon until after World War II. In discussing a Scottish case in 1935 Lord Buckminster said in reference to England:

The division of a single building into a series of tenements held in fee simple in separate ownership is not a familiar incident of proprietorship in England, but it exists, and has for a long time existed, and with the growth of flats it may become less uncommon in the future. Where it occurs, the rights of the several owners are regulated either by a system of mutual covenants or by easements arising from express or implied grant or acquired by user. ¹⁰³

Although such division of ownership in a building has now ". . . become a permanent part of the English way of life."¹⁰⁴ It is effected without the benefit of enabling legislation, but such legislation has been proposed. Rights can, however, be created by easements and obligations by covenants. The latter causes the difficulty since the courts are reluctant to enforce affirmative covenants running with the land. Leyser suggests that various workable schemes for the transfer of flats in fee simple were possible due perhaps only to the ingenuity of English solicitors¹⁰⁵ and these are comparatively free from litigation.¹⁰⁶ For a list of items covered in such contracts see Appendix A.

The Wilberforce Committee report states that the present law is unsatisfactory and inconvenient especially with regard to enforcing maintenance and repair obligations which have given rise to mortgage security difficulties. The report recommends the adoption for new construction of two schemes, one, for larger projects, similar to the Conveyancing (Strata Titles) Act, 1961 of New South Wales, upon which the British Columbia, Alberta and Saskatchewan legislation is also based. The report also recommends a simpler model for smaller condominium projects.¹⁰⁷

THE UNITED STATES

In the United States ". . . quite a few instances may be found of the conveyance of freehold estates in separate parts of buildings, long before the adoption of special condominium statutes"¹⁰⁸ and those instances which gave rise to litigation originated in jurisdictions scattered all over the United States. Thus apartment ownership has been accepted under common law for well over a century in the United States.¹⁰⁹

In a sense related to apartment ownership, or ownership of part of a building is the establishment of title to, and conveyancing of air rights, e.g., in the case of air rights over railway tracks which evolved in the United States some decades ago, especially in Chicago.¹¹⁰

However, in the United States the, . . . need to adopt comprehensive statutes has been dramatized by the occasional reluctance of courts to accord legal recognition to condominium ownership as a distinct form of tenancy. ¹¹¹

The most succinct explanation of the necessity for comprehensive condominium legislation in a Common law jurisdiction is the following:

The common law furnishes an inadequate background to solve [the] problems of condominium operation. An initial purchaser of a condominium unit could bind himself contractually to pay for building repair, janitorial service, air conditioning replacement and elevator repair. But a second purchaser would not be bound by that contract unless he assumed its obligations. Obligations could be made "covenants running with the land" to bind subsequent purchasers, but court enforcement of affirmative

covenants is unpredictable. Delegation of managerial authority to a council of co-owners might be upheld as an "agency coupled with an interest," but again, court effectation is unreliable. The common law's inadequacies make implementing legislation imperative to condominium operation. 112

However, an American example of how the lack of enabling legislation proved surmountable is provided by the following account of a "common-law" condominium:

The example of the eleven veterans who purchased their separate apartments in New York in 1947 illustrates the creation of a condominium-type structure in the United States before the term was generally employed. In this case it was necessary for each purchaser to have a fee ownership in a separate portion of the real estate in order to take advantage of the Veterans' Administration guarantee on home mortgages under the then-existing law and regulations. This was accomplished by making each of the eleven owners a tenant in common of the land and building, excluding from the land and building the "areas occupied by the apartments, and then conveying to each one of the eleven his own particular area which comprised the space in the apartment that he was buying. 113

In 1958 Puerto Rico was the first area of the United States to enact special condominium legislation followed by Hawaii. Rosenberg has drawn attention to the similarity of the impetus to condominium development in Europe during the Middle Ages and Puerto Rico and Hawaii. In the former case a lack of building space inside the fortified area led to condominium arrangements and in the latter cases the building space was restricted not by walls but by the ocean.¹¹⁴ By 1969 all the states with the exception of Vermont had passed enabling legislation, as had the District of Columbia.¹¹⁵

AUSTRALIA AND NEW ZEALAND

Both Australia and New Zealand have developed in recent years schemes for apartment ownership. Prior to the enactment in two Australian States of condominium legislation the stock cooperative was gaining in popularity and certain favourable changes in the law affecting easements for services of cooperative buildings were passed in Victoria; in addition there were schemes similar to those adopted in England. However in 1961 after a year of discussion New South Wales enacted the Conveyancing (Strata Titles) Act. This Condominium act is considered to be a well founded law since the draft was the subject of an exchange of ideas from lawyers, accountants, businessmen, bankers, financiers, insurance companies and public servants.¹¹⁶

Although the authors of the standard Australian text on Strata Titles have written that there was no precedent for the New South Wales law and that it can be fairly labelled "made in Australia" it is understandably nevertheless true that the Australian legislation has many features similar to European and Latin American condominium legislation.¹¹⁷

New South Wales was followed in 1967 by the State of Victoria which enacted a Strata Titles Act.¹¹⁸ New Zealand which also experienced a marked growth in cooperatives appears to be moving towards adoption of comprehensive condominium legislation.¹¹⁹

CANADA

In the Canadian common law jurisdictions the schemes similar to those worked out in England for the freehold or long term leasehold transfer of apartments were not utilized¹²⁰ while cooperatives and companies were the form manifested in answer to the needs of people who desired to "own" apartments.

Rosenberg has written that there is little doubt that at common law in Canada it is possible to own separate parts of a building or air space and that there are a number of schemes throughout Canada which could be called condominium schemes to some extent but, he adds, they " . . . are however, of little historical significance since they do not involve the subdivision of a building."¹²¹ The same author shows the necessity for special enabling legislation by pointing out the following ways by which, at Common Law a non-statutory condominium unit could be separated from the common property:

1. If the common elements are subject to separate realty tax, a lien for unpaid taxes could result in separation.
2. A conveyance of the unit without its common interest would result in separation if such a conveyance were allowed under the Act.
3. An encumbrance enforceable against the common elements alone, if foreclosed (and if allowed by the Act), would result in separation.

All the Canadian Acts provide protection against these contingencies. 122

By the end of 1969 only Newfoundland, Prince Edward Island and the North West Territories had not followed the example of British Columbia and Alberta, the first two Provinces in Canada to enact special condominium legislation in 1966.¹²³

The British Columbia, Alberta and Saskatchewan Acts are very similar in their provisions and are modelled after the Conveyancing (Strata Titles) Act 1961, of New South Wales. The Ontario, Manitoba and New Brunswick Acts and Yukon Territory Ordinance are similar to each other and, in part, similar to some American legislation. They do, however, contain some provisions that are quite novel. The Nova Scotia Act is in many respects similar to the United States' Federal Housing Administration Model Act.¹²⁴ The Quebec law received special mention earlier in this chapter.

THE FAR EAST

In the Far East, Japan whose legal system is an offshoot of the Code Napoleon, had an inadequate legal provision in the Civil Code until 1962. The changes which occurred in post-war Japan necessitated new legislation which was enacted in 1963.¹²⁵ Hong Kong is also reportedly considering legislation.¹²⁶

CONCLUSION

In conclusion then it has been shown that condominium was at odds with Roman Law yet flourished with the sanction of customary law in those countries of the Roman legal tradition. In France the concept passed into the Code Napoleon, which because of its global influence caused a greater diffusion of the concept. In the Common Law jurisdictions the common law was no barrier to condominium arrangements, but in the aftermath of the First World War, housing conditions had deteriorated to such an extent causing the start of the trend to modern condominium legislation in both common law and civil law countries. The concept arrived in North America via French Law in the case of Quebec and via Australia in the case of some Western Canadian Provinces. The concept came from Europe to Latin America and thence to the United States from whence it influenced some other Canadian legislation.

CHAPTER II - NOTES

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97. Ferrer and Stecher, op. cit., p. 71. In which mention is made of the European precedents, Cooper, op. cit., p. 9. Discusses the powerful attraction of Bologna, Pisa, Paris, Orleans, Leyden and Utrecht for Scots Law students.
98. Buckland and McNair, Roman Law and Common Law, 78 (1936) cited by Ferrer and Stecher, op. cit., p. 65.
99. 72 Eng. Rep 262 (1508) cited by Ferrer and Stecher, op. cit., p. 65.
100. Co. Litt. 42b quoted by Ferrer and Stecher, op. cit., p. 65, n. 84.
101. Halsbury's Laws of England, 2nd. ed., Vol. 27, p. 603, quoted in Ferrer and Stecher, op. cit., p. 65.

102. Quoted by Ferrer and Stecher, op. cit., p. 65.
103. Smith and Guilianani (1924) S.C. 247 and (1935) S.C. (H.L.) 45 quoted by Rosenberg, op. cit., p. 2-11 and Ferrer and Stecher, op. cit., p. 72.
104. Edward F. George, The Sale of Flats, 2nd, Ed. (London: 1959), p. vii cited by Ferrer and Stecher, op. cit., p. 66.
105. Leyser, op. cit., p. 51.
106. Rosenberg, op. cit., p. 2-9.
107. Wilberforce Committee Report, Report of the Committee on Positive Covenants Affecting Land, Cmd 2719, (London: HMSO, 1965), p. 2. Quoted in Rosenberg, op. cit., pp. 2-10.
108. Ferrer and Stecher, op. cit., p. 59, n. 66 for list of U.S. cases.
109. Ibid., p. 62.
110. Stuart S. Ball, "Division into Horizontal Strata of the Landscape Above the Surface," 39 Yale Law Journal 616 (1930), p. 651.
111. Ferrer and Stecher, op. cit., p. 59.
112. John Mixon, "Apartment Ownership in Texas: Cooperative and Condominium," 1 Houston Law Review, 226, 239 (1964).
113. Rohan and Reskin, op. cit., pp. 4-5.
114. Rosenberg, op. cit., p. 2-8.
115. Schreiber, op. cit., p. 1106, n. 14.
116. See A.F. Rath, P.J. Grimes and J.E. Moore, Strata Titles, (Sydney, N.S.W.: Law Book Co. Ltd., 1966), Cited by Rosenberg, op. cit., pp. 2-12.
117. Rosenberg, op. cit., p. 2-12.
118. Ibid., p. 2-13.
119. Ibid., p. 2-13.
120. Ibid., p. 2-13, 2-14.
121. Ibid., p. 2-13.

122. Ibid., pp. 7-7.
123. B.C., "Strata Titles Act" was effective 1 September 1966; and Alberta, "Condominium Property Act," proclaimed 1 August 1966; Ontario, "The Condominium Act," proclaimed 1 September 1967; Manitoba, "Condominium Act," effective 25 May 1968; Nova Scotia, "Condominium Property Act" proclaimed 1 June 1968; Saskatchewan, "The Condominium Property Act" proclaimed 1 November 1968; Yukon Territory, "The Condominium Ordinance" effective 9 December 1968; New Brunswick, "The Condominium Property Act" assented to 18 April 1969; Quebec, "An Act respecting co-ownership of immoveables," assented to 28 November 1969.
124. Rosenberg, op. cit., p. 1-5 and various authors Habitat (XII, 4-5, 1969), pp. 5-12.
125. Ferrer and Stecher, op. cit., pp. 80-81.
126. Rosenberg, op. cit., p. 2-14. In the Phillipines the Old Spanish Civil Code Art. 396 remains in force merely having been renumbered to art. 490 of the 1949 Phillipine Civil Code. Ferrer and Stecher, op. cit., p. 48, n. 1.

CHAPTER III

THE MODERN CONCEPT OF CONDOMINIUM

The Word "Condominium"; Two Concepts - Politics and Realty; Other Terms for Condominium; Problems encountered in the Use of the Term; The Three Meanings; Two Essential Elements in a Condominium Project; Variety in Form and Function, Two Legal Concepts of a Unit; The Condominium as a Cooperative; Condominiums and Continuing Cooperatives, Limited Liability Companies, Housing Companies, Common Law Condominiums and Planned Unit Developments with a Home Owners' Association.

THE WORD "CONDOMINIUM"

The word "condominium" is a Latin word which generally signified joint ownership (or co-ownership)¹ in Roman Law.² Its present elaborate and restricted meaning or meanings in respect of real property as established by legislation in many jurisdictions is much different and more refined than the original Roman Law concept.

THE TWO CONCEPTS - POLITICS AND REALTY

In the Middle Ages in Europe the Roman Concept also had a territorial and political significance. The Oxford Dictionary describes condominium as: " . . . joint rule or sovereignty. Condominium is the subject of various Latin treatises of the 17th-18thc. chiefly by Germans, e.g. Fromanus De Condominio Territoriali, Tübingen, 1682"

The Oxford and Webster's dictionaries do not define condominium in the same way and this reflects the different meanings understood in Britain and the United States. In the former the term "condominium" means solely a territorial and political joint sovereignty and another term is used for a real property condominium. In the United States two meanings are understood, witness Webster's definition:-

. . . joint dominion or sovereignty: a: Roman Law: ownership by two or more persons holding undivided fractional shares in the same property and having the right to alienate their share resembling tenancy in common in Anglo-American law rather than joint tenancy with its rights of survivorship b: joint sovereignty or rule by two or more states over a colony or politically dependent territory

There are then two concepts of condominium and perhaps the better known historical examples of the territorial political concept are the sometime German-Danish condominium over Schleswig-Holstein; the Anglo-Egyptian condominium over the Sudan and the Anglo-French condominium over the New Hebrides. The short-lived proposal to form a North Atlantic Treaty Organization condominium over Cyprus furnishes a more recent example of this concept of condominium.³

In this thesis the author is concerned only with the concept of condominium as a scheme for the co-ownership of land, buildings and associated facilities and not with the territorial political condominium.

OTHER TERMS FOR CONDOMINIUM

In North America the word condominium is used popularly, even though enabling legislation may refer to condominium as "horizontal property"; "strata lot ownership"; "unit ownership"; "apartment ownership"; or "co-ownership of immoveables". Other terms are used e.g. in Italy the term is "condominio";

in France "co-ownership"; in Spain "horizontal property"; in England "flat ownership" or "flying freehold" and in Scotland the term "flatted house" or "tenement" means a condominium apartment block. In German countries "storey" or "roomage" ownership and in Japan "compartmented ownership"⁴ are the terms used.

PROBLEMS ENCOUNTERED IN THE USE OF THE TERM

The word "condominium" has received considerable publicity in recent years⁵ but the concept that this word denotes with respect to real property is not generally understood.⁶ Indeed in 1967, a Canadian author stated that the word "condominium" suffers from the disadvantage of meaning nothing to most people,⁷ and how far this has changed since then is an open question. The 1969 Report of the Federal Task Force on Housing and Urban Development noted that condominium arrangements had only recently been introduced in Canada but that they were not generally known and less accepted at that time.⁸ The author has found in discussing the topic with a wide circle of acquaintances many misunderstandings as to the variety possible in the nature and form of a condominium development.

"Condominium" is a word that has regrettably been invested with a restrictive meaning by some.⁹ For example

the Random House Dictionary of the English Language defines condominium as ". . . an apartment house . . ." which is to restrict its meaning to residential use and its form to a block. In a recent pamphlet published by a Bank there appears the following statement: "Condominiums can be either vertical in the form of a high rise structure, or horizontal in the town house form."¹⁰ This is hardly the whole truth and would restrict the meaning of the term and belie its flexibility. Another example can be cited from advertisements in Vancouver newspapers for ". . . A Terrace Garden Home . . . featuring --Fee simple ownership (not a Condominium)."¹¹ While this may be so, the wording may give the impression to some that simple ownership or fee-simple is not possible in a condominium.

Further examples can be given in this respect. One definition of condominium was drafted thus:

. . . individual ownership in fee simple of a one-family unit in a multi-family structure coupled with ownership of an undivided interest in the land and in all other parts of the structure held in common with all of the other owners of one-family units. ¹²

This would restrict the concept to family-units and another author defined condominium as "a freehold interest in a horizontal slice in a verticle column of air"¹³ which excludes the possibility of leasehold condominiums which, in Canada are permissable in Manitoba and Quebec under their respective condominium enabling legislation (but see also Chapter V and Appendix B).

THE THREE MEANINGS

The term "condominium" can be used to denote any or all of the following:¹⁴

- a form of land tenure or ownership
- a project so owned
- a unit, in a project so owned, with its owner's interest in the common property.

TWO ESSENTIAL ELEMENTS IN A CONDOMINIUM PROJECT

There are two essential elements of the relationship between separate individual and common indivisible ownership inherent in the Condominium concept. Firstly there is the division of property into units that are to be individually owned whether freehold or leasehold, and the common property to be owned in common by the owner's of the units; and secondly, an administrative framework to enable the owners to manage the property. "This concept is indifferent to the use to be made of the property, to the design of the buildings, and to the location of the boundaries between individual and common ownership."¹⁵

VARIETY IN FORM AND FUNCTION

Condominiums, per se can cover a variety of projects. The word "building" alone says nothing of its form, function or cost and carries no connotations of the social characteristics of the owner or occupants of the "building". The term condominium is similar in the sense that it refers only to the three meanings mentioned earlier. The author suggests that, in form, condominiums could be classified as follows:

1. vertical, either (a) high rise or (b) low rise
i.e. of more than three storeys;
2. horizontal, i.e. row housing of two storeys or less;
3. lateral detached, e.g. detached dwellings, whether
in a cluster development or not (see Figure I).

Condominiums, then, can be residential, commercial, industrial or recreational or a mixture of these types of use. A residential condominium might include a traditional family house or houses and/or a multiple unit block or blocks and/or a high rise block or blocks and might also include commercial establishments and public institutions.¹⁶

An increasingly popular housing concept in Florida is the single family detached house condominium. It is a departure from the typical residential condominiums namely, low-rise and high-rise apartments and townhouses.¹⁷

An example might be where a high rise condominium contains residential apartments, each of the apartments would

be individually owned while the remainder of the property including the roof, the basement, parking area and facilities such as elevator system, heating system, tennis courts, swimming pool, sauna bath and gardens etc., would be owned in common indivisably by the owners of the apartment units. An administrative framework enables the owners to manage the property for the common benefit and each apartment owner must contribute to the common expenses of the building and facilities.

In this example it is imaginable that such a building, if located downtown in a large city might be subdivided with the ground floor occupied by commercial establishments such as a restaurant, flower shop and barber with, say, the next two or three floors occupied as business offices or medical practitioners or even a school or library. Above all this could be the residential apartments. In such a building the shops, offices, school, library and apartment occupants could either own the space they occupied or lease it from the owners. Such a building with such different users might require quite complicated administrative arrangements but the drawing up of a workable administrative framework would surely not defeat expert lawyers or large scale urban land developers and property managers.

Condominiums have been developed for all income groups¹⁸ and certain projects have been specifically designed for a

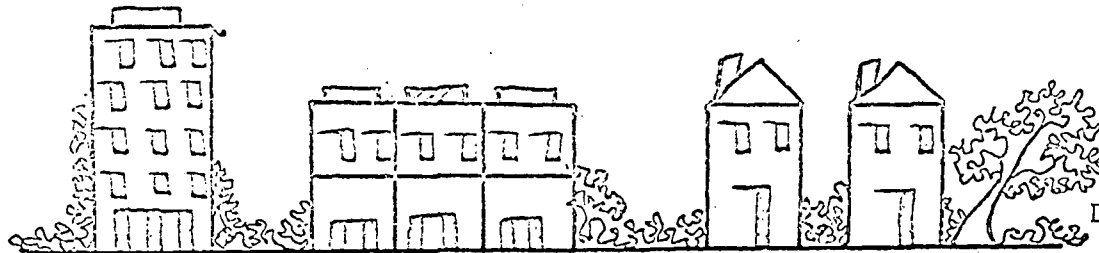
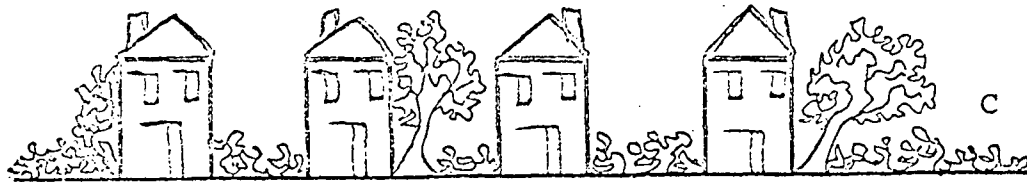
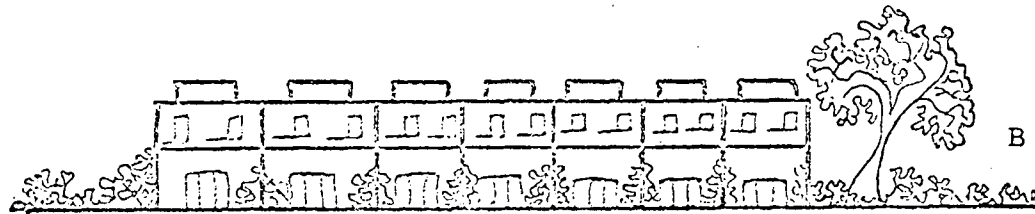
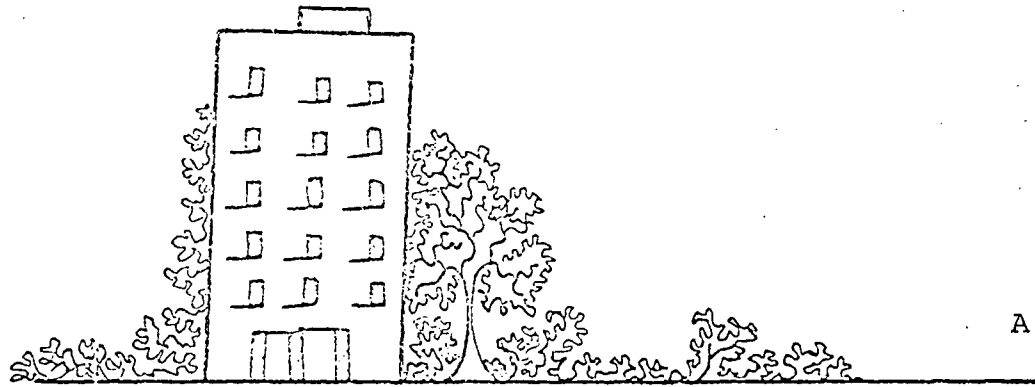


FIGURE I

THE VARIETY IN FORM AND FUNCTION OF CONDOMINIUM

CONDOMINIUM

is

- I. 1. A Type of Ownership
2. A Project With this Ownership
3. A Unit in Such a Project

*and can be in
form:*

- II. A. Vertical - Either High or Low
- B. Horizontal - of One or More Strata
- C. Lateral Detached - of one or More Strata
- D. Mixed

and in Function:

- III. (i) Residential
- (ii) Commercial
- (iii) Industrial
- (iv) Institutional
- (v) Recreational or
- (vi) A Mixture of the Above.

special sector of the housing market, e.g. retired people¹⁹ and the Government of the Province of British Columbia views this type of housing with special favour as being suitable for retired people.²⁰

Another example of the flexibility of the condominium concept is the recreational or resort condominium.²¹ Examples of this type of development which have been recently advertised in Vancouver are located at Whistler Mountain, B.C.²² and Sun Valley, Idaho.²³ Both of these are ski resorts. The Whistler development advertisement exhorts: "Ski at Whistler this Winter and live in your own condominium chalet!" In the absence of the owner the chalet can be rented.²⁴ The Sun Valley, Idaho advertisement states: "Ski . . . Sun Valley, Idaho from your own Condominium Chalet! An investment in living in this fabulous year round playground Rental management is available in your absence to show a handsome investment return."²⁵ Yet another example of this type of Condominium is provided by the following:

Freeport, Grand Bahama - In this active resort city of hotels operated by large hotel chains, there is one luxury condominium hotel owned by hundreds of small investors.

The Coral Beach Hotel of 300 suites on a five-acre site is the only condominium hotel in the Bahamas.

The complex in Freeport's exclusive resort area, Lacaya, offers "the little guy" a chance to be part-owner of a hotel project while giving him a vacation retreat when he needs it.

When he is not using his apartment the investor's unit becomes a one-bedroom hotel suite. While he is absent, the investor shares in the profits of the hotel - not only his suite, but in the recreational, restaurant and beverage facilities. 26

Another example is provided by the campsite condominium. A chain of million dollar condominium resorts in which Gulf Oil Company is participating, called "Venture Out in America, Inc." is being developed for campers in the United States and which will provide a paved patio, utility hook-ups, picnic tables and plantings. Plush surroundings will include landscaped grounds, heated swimming pools and playgrounds. Each campsite will be individually owned and the owner can let his site when he is absent and divide the rent with the developer.²⁷

Theoretically the use and type of condominium is varied and can be mixed but this may be affected by law. The enabling legislation might explicitly allow or disallow certain types of development. In Canada for instance, only Manitoba and Quebec allow leasehold condominium development while an enabling amendment is being considered in British Columbia.²⁸ Otherwise restrictions will be the result of planning bylaws²⁹ and decisions of the developers and condominium co-owners themselves. But see also Appendix B for further comment on leasehold condominiums.

THE TWO LEGAL CONCEPTS OF A UNIT

Having considered the nature of condominium as a system of land tenure and the flexibility of form and use in specific projects let us consider the nature of a single unit in a condominium.

There are two legal concepts of a unit. The Common Law concept is of a cube of space while the Civil Law concept is of a part of a building to which the owner has an exclusive right of use.³⁰ However:

There is ample authority that both a part of a building and a cube of space constitute land and may be the object of the bundle of rights comprising ownership. 31

Theoretically the estate (or class of ownership) created in an air space could be freehold or non-freehold.³² There are problems with the air space theory--to cite one example--if a building shifted and settled then theoretically trespass might occur since ownership would be described in terms of a cube of space rather than the physical partitions of a building. While there is a proposed theoretical remedy for this³³ it is mentioned as being merely one theoretical legal difficulty associated with the air space theory.

In British Columbia, with which this thesis is basically concerned, the term "strata lot" used to describe an individually owned part of a condominium project, suggests that the enabling legislation, the Strata Titles Act, subscribes to the air space theory. In fact this is not the case for a strata plan must " . . . define the boundaries of each strata lot by reference to floors, walls and ceiling."³⁴

This physical structures theory holds that the individual owner will hold "an exclusive estate"³⁵ in his unit, or strata lot. What kind³⁶ of ownership or estate is created

in the strata lot in British Columbia? The Strata Titles Act states that land may be subdivided into strata lots by the deposit of a strata plan which may be dealt with in the same manner and form as any land the title to which is registered under the Land Registry Act.³⁷ For each three dimensional strata lots a Certificate of Indefeasible Title is issued in the same form provided under the Land Registry Act with the addition thereon at the top of the certificate of the words "Strata Titles Act (Section 3)" and showing the owner's share in the common property created by the strata plan.³⁸ The Certificate of Indefeasible Title certifies that the person named therein "is absolutely and indefeasibly entitled in fee-simple" to the land described as a strata lot in the strata plan.³⁹

The "bundle of rights comprising ownership" quoted above includes the interest and rights of the owner of the unit in the common property as mentioned earlier. In British Columbia the units are held in fee simple while the unit owners are tenants in common in respect of the common property.⁴⁰ However, there may exist cases of limited common property.⁴¹ For example where a residential high rise condominium has a laundry room with a washing machine and dryer on every floor then such facilities could be restricted to the residents of the respective floors.

The "bundle of rights" is also subject to the provisions of the enabling legislation under which, in British Columbia for example, bylaws provide for the control, management, administration, use and enjoyment of the strata lots and common property.⁴² Perhaps it can be said that in essence a new form of real property ownership has been created by legislation, a modification of an estate in fee simple which could perhaps be called an "estate in condominium,"⁴³ even though common law has evolved a rule that no new estates can be created.⁴⁴

CONDOMINIUMS AND CONTINUING COOPERATIVES

It is necessary at this point having described the characteristics of condominiums and the condominium concept to relate this to, and distinguish between, other forms of cooperative housing, since condominiums fall generally into that category.⁴⁵

Cooperative housing

. . . consists basically of people getting together to provide housing for themselves by joint action in either building or financing or management and maintenance of their housing units. ⁴⁶

There are two types of cooperative housing in British Columbia, the Continuing Cooperative or Cooperative in Perpetuity and the Title Cooperative or Condominium.⁴⁷ There are a few continuing cooperative projects in British Columbia. The

Western Cooperative Housing Society was incorporated in 1966 and its first project partially completed in 1969. Since then two other projects have started construction while four more are under consideration, only one of which is in the city of Vancouver, and together with the Simon Fraser University Students Cooperative constitutes the total in British Columbia, although the Carpenter's Union is considering cooperative housing projects for its members.⁴⁸ In contrast, 49 housing companies which will be discussed below, were established between 1958-1970 in Vancouver alone.⁴⁹

In British Columbia continuing cooperatives are registered as corporations under the Cooperative Associations Act,⁵⁰ while condominiums are subject to the Strata Titles Act. The Cooperative Associations Act, which gives a general description of cooperative enterprise and the general principles under which it is to be organised, operated and administered,⁵¹ subjects all types of cooperatives, i.e. producer's, consumer's, housing and building cooperatives except credit unions⁵² and condominiums to its provisions. "Cooperative" insurance companies in British Columbia are in fact registered under the Companies Act or are subject to Federal jurisdiction.⁵³

If legislation can be viewed as a vehicle for implementing Provincial Government policy then it is clear that one form of cooperative, i.e. the title cooperative or condominium

subject to a special act concerning it alone, is viewed either as more complex or with greater favour than the continuing cooperative, which is not subject to a separate act but is included with all other types of cooperatives excluding only credit unions and condominiums.

In a continuing cooperative the occupant of an apartment is a tenant of the association which owns the land and building. The occupant is a shareholder in the association which leases the apartment to the shareholder. The occupant's relationship to the property is that of a lessee who has some control over his landlord's action, the extent of his influence depending partly on the size of the corporation.⁵⁴ In a condominium in British Columbia, as mentioned earlier, the strata lots are owned in fee simple. However, both a strata lot owner and a continuing cooperative occupant lessee are entitled to the Annual Home-owner Grant of \$170 p.a. and to assistance under the Provincial New-Home Building Assistance Act (renamed the Provincial Home Acquisition Act in 1970).⁵⁵ The occupants of a continuing cooperative are not tenants in common of the common property, unlike strata lot owners who are, and it is the association that owns the land and buildings.

In the mortgaging of a continuing cooperative there is one blanket mortgage whereas in a condominium individual mortgages are negotiated which is an advantage since a prospective owner can arrange financing to suit his needs.

Indeed mortgageability has been traditionally regarded as one of the most essential characteristics of ownership of a fee simple estate.⁵⁶ If a continuing cooperative shareholder defaults on his share of mortgage payments the association as a whole, i.e. the other shareholders, to prevent foreclosure, would between them have to assume the defaulter's share. This situation would not arise in a condominium except as regards an owner's share of common expenses.

Although during the economic depression of the 1930's nearly all the housing cooperatives in the United States failed⁵⁷ in Canada this was not the case for it was not until 1938 that the first continuing cooperative was established in Sydney, N.S.⁵⁸ However, joint liability, inability to arrange individual mortgages and the lack of an estate in fee simple are the major disadvantages of continuing cooperatives vis a vis condominiums.⁵⁹ A condominium strata lot is assessed and taxed separately⁶⁰ whereas a continuing cooperative is assessed and taxed as an association, and such blanket assessment could result in blanket liens upon failure to pay even if such failure is the result of only one shareholder being unable to pay his share.

If a condominium owner wishes to sell his strata lot he should receive the market price, and thus may benefit from a capital gain or suffer a capital loss. In a continuing cooperative the shareholder's shares in the association may

(a) be sold at their market value to the association which then resells them to the next occupant or (b) the vending shareholder may receive the par value plus a certain fixed percentage of the value of the shares during the period they were held by him.⁶¹ One advantage of a sale of continuing cooperative shares over the sale of a strata lot is that it may be much easier to return shares to a cooperative association than to sell to advantage privately owned property at short notice if the need to move arises. In addition such a transfer does not involve agent's and legal fees.

A cooperative association is administered through the management committee and the bylaws and regulations that it enacts. These are not laid down in the Cooperative Associations Act in detail as is the case for condominiums where the strata corporation is bound by the First and Second Schedules of the Strata Titles Act. This lack of direction for cooperatives has been considered a shortcoming by Constantinu who has stated:

Housing cooperatives involve complexities of real estate property taxation, administration and sharing of costs which are not common to other types of cooperatives. A clear and detailed definition of these complexities is necessary. This would also aid full understanding of the legal nature of these cooperatives. 62

This need has been met for condominiums by the Strata Titles Act. The author quoted above goes on to recommend:

THAT TO THE BRITISH COLUMBIA STATUTES BE ADDED AN ACT WHICH WILL DEFINE THE REGULATIONS, DESCRIBE THE PROCEDURES, THE RIGHTS, DUTIES AND BYLAWS INVOLVED IN THE FORMATION AND OPERATION OF A HOUSING COOPERATIVE PROJECT.

or alternatively

THAT TO THE EXISTING COOPERATIVE ASSOCIATIONS ACT OF THE B.C. STATUTES, A SECTION BE ADDED WHICH WILL DEFINE AND DESCRIBE THE LEGAL SPECIFICATIONS EXCLUSIVE TO HOUSING COOPERATIVES³. . . . (3: such as city by-laws and taxation on land and improvements applicable to the project owned by an association) 63

Under the Vancouver Charter⁶⁴ a strata lot owner who is 19 years of age, a British subject and who is "the registered owner of any real property held in his own right in the city" is entitled to have his name entered on the list of electors as an owner elector. The shareholder occupant of a cooperative apartment is also entitled to have his name entered on the list of owner-electors if he is of 19 years of age and a British subject, and:⁶⁵

- (i) the principal lessee of a suite used solely as a dwelling, in a building of which a corporation is the registered owner; provided
 - (A) such corporation operates on a non-profit basis; and
 - (B) the memorandum of association of such a corporation stipulates that such building shall be owned and operated for the benefit of occupant shareholders only; and
 - (C) such principal lessee is the holder of shares in the corporation approximately equivalent in value to the capital cost of the suite . . .

Under the Municipal Act⁶⁶ a strata lot owner if he is a Canadian citizen or other British subject o. 19 years of age and "who is the owner of real property in the municipality"⁶⁷ is entitled to have his name entered on the list of electors as

an owner-electtor. Similarly the occupant shareholder of a continuing cooperative:⁶⁸

. . . who occupies with his household as his ordinary residence a suite that is owned by a corporation in which he holds capital stock equivalent in value to the capital value of the suite and that is an owner-occupied apartment building as defined in the Provincial Home-owner Grant Act;

is entitled to have his name entered on the list of electors as an owner-electtor. The Provincial Home-owner Grant Act does not in fact define an "owner-occupied apartment building" merely defining an "owner-occupied building" as follows:⁶⁹

owner-occupied building" means a parcel of land

- (a) the owner of which is a corporation the memorandum of association of which stipulates that any building or buildings owned or operated by the corporation shall be owned and operated exclusively for the benefit of shareholders in the corporation who are occupants of the building or buildings; and
- (b) that is shown as a separate taxable parcel on a taxation roll for the current year prepared under the Taxation Act or on a real-property tax roll for the current year prepared by the Collector of a municipality; and
- (c) that has a building or buildings in which there is an eligible apartment residence.

Under both the Vancouver Charter and the Municipal Act there are three classes of electors:- owner,-, tenant,-, and resident-electors, and the significance of being an owner-electtor in the City of Vancouver is that only the owner-electors may vote on by-laws requiring the assent of this class of elector, that is to say, on certain by-laws authorizing Council to borrow money.⁷⁰ Similarly under the Municipal Act certain by-laws authorizing a council to borrow money require the assent of only the owner-electors.⁷¹

Since condominium projects can include a mixture of uses, in the case of a strata lot owner being a corporation engaged in a business for profit then under the Municipal Act such a corporation would have one vote and be entitled to have its name entered on the list of electors as an owner-elect⁷². It is unlikely that a business corporation would be operated in an apartment in a continuing cooperative but even if a similar business occupied and operated in an apartment in a continuing cooperative the business corporation would not be entitled to vote as an owner-elect⁷³ because it would not be the owner of the building, being merely a lessee of the Cooperative Association. Similarly under the Vancouver Charter a strata lot owner were it a corporation could vote as an owner-elect⁷³ since it would be a registered owner of real property whereas a business corporation in a continuing cooperative could not vote, not being the registered owner of real property.⁷³

CONDOMINIUMS AND LIMITED LIABILITY HOUSING COMPANIES

In Canada there are projects which are organised on principles similar to a condominium. Constantinu refers to two such projects⁷⁴ which involve the British Columbia Teachers Federation (BCTF)⁷⁵ but which are in fact more similar to continuing cooperatives and are incorporated as limited liability companies under the Companies Act.⁷⁶ In such projects the company owns the land, building(s) and facilities

and leases the apartments to the shareholding occupant lessees.

Originally the BCTF Cooperative Association (BCTF Coop)⁷⁷ bought the land and contracted with a builder for construction of the building and facilities. A Housing Company was then set up and was completely owned by the BCTF Coop which then sold the shares to the incoming occupant lessees. Thus the ownership of the housing company passed entirely into the hands of the occupant lessees who retained the BCTF Coop as managers for a fee. Originally the shares were to be sold only to teachers but sufficient demand from them was not forthcoming and today only about 20 per cent of the occupants are from that profession. The choice to incorporate as a limited liability company rather than a cooperative was due to the desire to enable the different values of the apartments to be reflected in the voting rights of the occupant lessees.

Perhaps the main difference between a continuing cooperative and a limited liability housing company arises over voting rights. In a continuing cooperative each shareholder has one vote regardless of the amount of his shareholding while in a company the shareholders have voting powers commensurate with the value of their shareholding. For instance the lessee of a two bedroom apartment will subscribe to more shares than the lessee of a bachelor apartment, since

the value of the apartments differ. This method of ascribing voting power bears a similarity to that established under the Strata Titles Act which is discussed in Chapter V.

In the case of the two companies managed by the BCTF Coop there is a blanket mortgage on the building and the company is assessed for taxation. The method of establishing the share of monthly expenses recoverable from a particular apartment occupant is as follows. First the total monthly costs are calculated excluding mortgage repayments. This is then divided by the total area in the building in square feet resulting in a figure of \$x per sq. ft. This figure is then multiplied by the area in square feet of the particular apartments which results in the amount the particular occupiers are assessed by the management.

The mortgage repayments are handled separately but there have been cases where monthly maintenance and mortgage payments have been mixed up resulting in extra expense to the lessees due to special assessments necessary to make up the losses sustained in the confusion.⁷⁸ The disadvantages of being a lessee rather than an owner as regards blanket mortgages and taxation are the same as those discussed earlier in connection with continuing cooperatives.

However one point remains to be mentioned. The advantages of being a strata lot owner rather than an occupant lessee in a continuing cooperative or company are perhaps not that important to some people and in any case the share-

holding lessees of such cooperatives and companies in British Columbia can vote as owner-electors and receive the home-owner grant and home acquisition grant or loan as mentioned earlier. Nevertheless the possibility exists of such cooperatives or companies finding it advantageous to convert to condominiums registered under the Strata Titles Act. In some cases this could only be done after the mortgage has been paid off, even assuming that the occupants would want to go to the trouble and expense of a survey and registration of the strata plan. If they did their ownership would convert to that of fee simple with all its legal and financial implications and separate mortgages, if required, could perhaps be negotiated but a mortgagee would hardly convert a blanket mortgage into, say, 50 separate mortgages with much enthusiasm.

The Honourable Grace McCarthy, Minister without Portfolio, has stated:⁷⁹

I can see a real possibility in existing apartment blocks and garden apartments which are now being rented becoming either subdivided under the Strata Titles Act or individual units sold to members of a cooperative.

In this case, the new Provincial Government legislation will most likely be used. Under the new Provincial Home Acquisitions Act a Grant of up to \$500 or a second mortgage loan (on very easy terms) of up to \$2,500 is available to tenants who have been renting for two years to purchase an older housing unit.

Furthermore the Minister had stated earlier:⁸⁰

. . . I predict that many existing apartment blocks will be subdivided and many people who prefer to live in an apartment will be able to buy a suite with the help of the proposed legislation . . .

This subdivision of older apartment blocks is merely one special way of using a combination of the Strata Titles Act and the older premises provisions of the Provincial Home Acquisitions Act.

It remains to be seen whether continuing cooperatives and housing companies will convert⁸¹ to condominiums but since the passage of the Strata Titles Act it seems reasonable to suppose that more condominiums, rather than continuing cooperatives or limited liability housing companies, will be established.

Since 1966 only three new companies have registered with the Voters Registration Department at Vancouver City Hall whereas from 1958--when the occupant lessees of such housing companies were first entitled to vote as owner-electors--until 1970, a period of 12 years, the total number of housing companies registered with the Voters Registration was 49.

Thus the manifestation of these housing companies, which differ from continuing cooperatives, in only one important point, i.e. voting power, and which appeared in British Columbia at least ten years before the first continuing cooperative, and because of their number and stability, suggest the existence of an alternative to continuing cooperatives. This may have been an additional factor in the retarded development of continuing cooperatives.⁸²

Having described the two types of housing cooperatives i.e. continuing cooperatives and condominiums as well as limited liability housing companies mention is made in passing of projects organised on the same principles as a condominium incorporated by the Strata Titles Act but whose legal foundation rests in the common law. These are referred to in the literature as "common law condominiums" or "non-statutory condominiums."

COMMON LAW CONDOMINIUMS AND THE NEED
FOR ENABLING LEGISLATION

It is possible to have a kind of condominium project at common law without enabling legislation, though whether or not it can be truly called a condominium depends on the definition used. 83

British, American and Canadian experience in such projects is mentioned in Chapter II and such projects usually do not manifest characteristics that appertain implicitly to those registered under the Strata Titles Act or similar legislation. For instance, separate taxation of each strata lot, the ability to mortgage each strata lot separately, limited tort and contract liability, a system of enforcing positive covenants as between remote purchasers of strata lots and the possibility of the strata corporation enacting restrictions on the use of the project.⁸⁴

And:

In fact, many of the essential elements of the condominium, such as the ability of the unit owners to enforce positive covenants against other unit owners and against the owner's association, the ability of the owner's association to enforce the same positive covenants against the unit owners, the limitation of liability against each unit owner as occupier of the common property, the right to separate realty tax assessment and separate taxation and the ability to mortgage separately can only be fully and adequately achieved with the assistance of legislation.

Another author has stated further reasons for the enactment of enabling legislation: to render the condominium safer for the lender, purchaser and other parties and to permit a certain uniformity which will remove the mysterious nature of condominium ownership from lawyers, developers, lenders and prospective home-owners.⁸⁶

Having discussed the relationship between condominiums and continuing cooperatives, limited liability housing companies and the necessity for condominium enabling legislation there remains one more similar organisation which should be considered to distinguish it from a condominium. This will aid in clarifying further the concept of condominium and is necessary because further reference will be made to it in consideration of zoning to which it is related⁸⁷ which follows in Chapter VI.

CONDOMINIUMS AND PLANNED UNIT DEVELOPMENTS WITH A HOME OWNER'S ASSOCIATION

There exist in the United States organisations called Homes Associations in connection with Planned Unit Developments⁸⁸

which have been defined as follows:⁸⁹

A planned unit development is a residential land subdivision of individually owned homes with neighborhood owned open areas and recreational facilities. It is a relatively new approach to a time proven concept of residential land use. Basically it incorporates a variation of the "village square" idea.

and can be traced back conceptually to medieval England.⁹⁰

A Homes Association:⁹¹

. . . is an incorporated non-profit organization operating under recorded land agreements through which (a) each lot owner in a described land area is automatically a member and (b) each lot is automatically subject to a charge for a proportionate share of the expenses of the homes association's activities, such as common property maintenance.

In light of the earlier discussion of the forms and functions of condominiums the planned unit development with a homes association can be seen to be very similar to a condominium. It is in fact a form of common law condominium and one has been established for over 50 years.⁹² Because of its similarity to a statutory condominium there exists a choice between organising a condominium or a homes association in cases where development takes the form of free-standing single family dwellings with fee simple ownership built on a single parcel of land with associated common facilities of various natures.⁹³ A recent analysis, published in 1969, of the advantages and disadvantages of the condominium form of organisation in such cases compared to the home owners' association came to no firm general conclusion as to which form is presently more advantageous.⁹⁴ This, however,

contrasts with an opinion expressed in 1964 that:

In the single-family home context--whether detached, semi-detached, or townhouses, the homes association is a superior form of organization to the condominium.⁹⁵

The 1964 conclusion was perhaps based on inadequate experience in condominium development and is invalid in such categorical terms. The condominium as the form of organisation for a "lateral" project is experiencing a substantial measure of popularity as "detached-house condominiums" in Florida.⁹⁶

The author found no examples of such developments in Canada and as mentioned previously will confine his attention to statutory condominiums registered under the Strata Titles Act of British Columbia.

CHAPTER III - NOTES

1. These two terms i.e. "joint ownership" and "co-ownership" are used interchangeably in this paper.
2. Roscoe Pound, Jurisprudence, (Vol. 5, 1959), pp. 162, 163 cited in Ferrer and Stecher, op. cit., p. 14.
3. Gen. Grivas, Memoirs of General Grivas, (London: Longmans, 1964), p. 185.
4. Ferrer and Stecher, op. cit., Chapter 4.
5. e.g. articles in Canadian Homes, (February 1969 and June 1970); Habitat, (Vol. XII, No. 4-5, 1969); American Homes, (January 1970); Vancouver Life, (Vol. 17, No. 12, June 1969); Risk, "Condominiums and Canada," University of Toronto Law Journal, (Vol. 18, No. 1, 1968) and Rosenberg, op. cit., to name a few fairly recent articles and books.
6. Claude Morin, op. cit., p. 2, where restrictive definitions are quoted.
7. Ibid., p. 4.
8. Report of the Task Force, op. cit., p. 17.
9. Morin, op. cit., p. 4.
10. Royal Bank of Canada, Mortgage Matters, Vol. 2, No. 4, no date.
11. Advertisement for Mary Hill Homes in Port Coquitlam, B.C. seen by the author during the early part of 1970.
12. C.E. Ramsey, "Condominium: The New Look in Coops," 3 Home Title Guaranty Co., 1961.
13. Spahn, (Transcript), The Emerging Profile of Condominium, Condominium Institute, Third Annual Conference, (Berkley, California: 1963), p. 12.
14. Morin, op. cit., p. 2.
15. Report of Ontario Law Reform Commission on the Law of Condominium, (Province of Ontario, Department of the Attorney General, 1967), p. 4.

16. R.B. Dennison and Pierre Dessaulles, "Les multiples applications pratique du condominium," Habitat, (Vol. XII, No. 4-5, 1969), pp. 59-60.
17. Beaton, op. cit., p. 3.
18. "Developers look at Condominium," Habitat, (Vol. XII, No. 4-5, 1969), pp. 26-45.
19. e.g. in Victoria, B.C. see Habitat, (Vol. XII, No. 4-5, 1969), p. 33 and in Florida see Beaton, op. cit., p. 3.
20. Press Release, Office of the Hon. Isabel Dawson, Minister Without Portfolio, Government of the Province of British Columbia, 8 July 1970.
21. K.B. Romney and P.J. Rohan, "Resort Condominiums: the housing industry's prescription for relaxation, retirement and real estate investment," Connecticut Law Review, (Vol. 2, No. 1, June 1969).
22. "Condo . . . what?" Vancouver Life, (Vol. 17, No. 12, June 1968), pp. 6-9.
23. The Sun, Vancouver, B.C., Sunday, 24 January 1970 - see also American Homes.
24. Vancouver Life, (17:12: June 1968), p. 9.
25. The Sun, Vancouver, B.C., Sunday, 24 January 1970.
26. Montreal Star, Travel Section, 6 December 1969.
27. Julie Chandler; from Woman's Day quoted in Reader's Digest, (July, 1970), p. 20.
28. Davidson, op. cit., p. B-1.
29. Ontario Law Reform Commission, op. cit., p. 5.
30. Morin, op. cit., p. 4.
31. W.K. Kerr, "Condominium, Statutory Implementation," St. John Law Review, (May 1963), p. 1239 and see also Ferrer and Stecher, op. cit., p. 2.
32. Frank S. Sengstock and Mary C. Sengstock, "Homeownership; A Goal for all Americans," Journal of Urban Law, (46:3:1969), p. 404.

33. Ibid., n. 159.
34. Strata Titles Act, S.B.C. 1966, c. 46, 3.4.(1)(d).
35. Sengstock and Sengstock, op. cit., p. 405.
36. For the various kinds of estate see Appendix C.
37. Strata Titles Act, op. cit., c. 46, s. 3(1).
38. J.H.R. Robertson in Rosenberg, op. cit., Appendix C, p. 17-3.
39. Land Registry Act, R.S.B.C., 1960, c. 208, Schedule 1, Form F.
40. Strata Titles Act, S.B.C., 1966, c. 46, s. 5(1).
41. Morin, op. cit., p. 4 and Strata Titles Act S.B.C. 1966, c. 46, First Schedule, 3(f).
42. Strata Titles Act, S.B.C., 1966, c. 46, s. 13(1) and (2) and First and Second Schedules.
43. This phrase was used by John Geisler in "Provincial Legislation," 4-5, Habitat, XII, 1969, pp. 6, 12.
44. See Appendix T.
45. Constantinu, op. cit., pp. 9-11.
46. Ibid., p. 7.
47. Ibid., pp. 9-11.
48. Ibid., pp. 31-33 and telephone conversation, 5 August 1970. The Western Cooperative Housing Society is now defunct. A United Cooperative Housing Society was incorporated on 6 March 1970. See Chapter VI.
49. Mr. Harvey of the Voters' Registration Department at Vancouver City Hall, telephone conversation 20 May 1970.
50. Cooperative Association Act, R.S.B.C., 1960, c. 77.
51. Constantinu, op. cit., p. 62.
52. Credit Unions Act, S.B.C., 1961, c. 14.

53. Information from Cooperative Union of Canada, Vancouver, B.C., telephone conversation on 15th August 1970.
54. Sengstock and Sengstock, op. cit., p. 435.
55. Provincial Home Owner Grant Act, R.S.B.C. 1960, c. 308 as amended and the Provincial New Home Building Assistance Act, S.B.C., 1967, c. 39, renamed the Provincial Home Acquisition Act S.B.C., 1970, c. 40.
56. Schlitt, "Condominiums," New York Law Journal, (2:147: 1962), cited by Sengstock and Sengstock, op. cit., p. 411.
57. James MacDonald in "Cooperative and Non-Profit Housing - A Panel Discussion," The Right to Housing, op. cit.,
58. Sengstock and Sengstock, op. cit., p. 411, n. 185.
59. Rosenberg, op. cit., p. 3-4.
60. Ibid., p. 13-2.
61. Constantinu, op. cit., p. 10.
62. Ibid., p. 46.
63. Ibid., p. 73.
64. Vancouver Charter, S.B.C., 1953, c.55; s.7 (a)(1).
65. Ibid., s.7 (a)(ii), (A)(B) and (C).
66. Municipal Act, R.S.B.C., 1960, c. 255.
67. Ibid., s. 31 (a)(i)(A).
68. Ibid., s. 31 (a)(i)(B).
69. Provincial Home Owner Grant Act, R.S.B.C., 1960, c. 308, s. 2.
70. Vancouver Charter, S.B.C. 1953, c. 55, s. 184; s. 242; s. 245; s. 267.
71. Municipal Act, R.S.B.C., 1960, c. 255, s. 247(b).
72. Ibid., s. 31(ii).
73. Vancouver Charter, S.B.C., 1953, c. 55, s. 7(b).

74. Constantinu, op. cit., p. 30. Constantinu was in error (a) in stating that the projects were held by the BCTF under the Societies Act and (b) there are in fact not two but 49 companies in the City of Vancouver alone. Information from Mr. Harvey, Voters Registration, City Hall, Vancouver, B.C. and Mr. Bentley, BCTF Coop. by telephone conversation--20 May 1970.
75. i.e. Oakmont Housing Co. Ltd., and Oakridge Towers Ltd.
76. Companies Act, R.S.B.C. 1948, c. 58 as amended.
77. The B.C.T.F. is incorporated under the Societies Act, R.S.B.C. 1948, c. 311 and the B.C.T.F. Coop is incorporated under the Cooperative Associations Act, R.S.B.C. 1960, c. 77 and the two housing companies under the Companies Act, R.S.B.C. 1948 c. 58.
78. The information on projects such as the Oakmont Housing Co. Ltd., was obtained from Mr. Bentley from the BCTF Coop in a series of telephone conversations in May 1970.
79. The Hon. Grace McCarthy, Minister Without Portfolio, Press Release, p. 3, (undated--presumably Summer 1970).
80. The Hon. Grace McCarthy, Address, to the Provincial Legislative Assembly, (Monday, 16 February, 1970), p. 10.
81. Mr. Bentley of the BCTF knows of none which have done so.
82. Constantinu, op. cit., p. 8. The existence of this alternative would, in fact, be a further limitation in addition to the "social cultural" factors mentioned.
83. Rosenberg, op. cit., p. 1-3.
84. Rosenberg, op. cit., p. 1-3.
85. Ibid., p. 1-4.
86. Morin, op. cit., p. 11.
87. And see Uwe Rossen, Zoning for Comprehensively Planned Developments, unpublished Master's Thesis in Community and Regional Planning, (University of British Columbia, 1969), p. 31.

88. Federal Housing Authority, Planned Unit Development with a Homes Association (Land Planning Bulletin No. 6), (Washington, D.C.: revised edition 1964).
89. Byron R. Hanke, "Planned Unit Development and Land Use Intensity," University of Pennsylvania Law Review, (3:114:1965), p. 18.
90. Urban Land Institute, Technical Bulletin No. 50, The Homes Association Handbook, 1964, foreword.
91. Hanke, op. cit., pp. 19-20.
92. St. Francis Wood, San Francisco, California cited in Urban Land Institute, Technical Bulletin No. 50, op. cit., forward.
93. Schreiber, op. cit., pp. 1104-1162.
94. Ibid., p. 1155.
95. Beaton, op. cit., p. 3.
96. Urban Land Institute, op. cit., p. 10.

CHAPTER IV

FEDERAL POLICY

Legislation as Housing Policy; The First Federal Initiative in Housing, 1919; The Dominion Housing Act, 1935; The First National Housing Act, 1938 and Constitutional Power; Wartime Measures; National Housing Act, 1944; Central Mortgage and Housing Corporation Act, 1945; The Basic Principles of Federal Policy; National Housing Act, 1954; The 1964 Amendments; Federal Financial Policy; Residential Condominiums and Federal Policy; Impending Changes in the Federal Role; Conclusion.

LEGISLATION AS HOUSING POLICY

In this chapter, Federal Housing Policy *per se* and its evolution will be discussed. Only against such a background, it is felt, can any Federal policy concerning residential condominiums be placed in perspective.

Albert Rose has discussed the problem of the nature of housing policy and whether Canada in fact has any such policy.¹ He stated that:

. . . legislation is not tantamount to housing policy *per se* or to the implementation of a course of action intended by the government enacting such legislation. 2

And added:

The major essentials in Canadian housing policy are legislation, financial resources, responsibility for initiating action, and appropriate administrative arrangements. 3

Rose concluded that to maintain that there is no Federal housing policy is ridiculous⁴ and stated further:

. . . it is now apparent that Canada no longer suffers from a lack of "housing policy", if housing policy is equated in an substantial measure with housing legislation. 5

The author is, of course, interested in housing policy but will consider at the Federal level mainly the legislation (which in fact specifies the responsibility for initiating action) and the administrative arrangements. Financial resources allocated in support of housing policy and programmes, while an important measure of a government's degree of

commitment, fluctuate and are so much dependent upon the whole of government spending and perception of national priorities as well as the national and international political and economic situation that they deserve separate treatment. It is accepted that in ignoring this aspect of housing policy a limitation is placed upon the claim of examining Federal "housing policy" as defined by Rose above, but it is felt that nevertheless the legislation and administration components of housing policy can stand apart for the purpose of analysis. Barrow equated legislation in substantial measure with policy, and Constantinu in examining housing policy and Cooperatives in British Columbia considered only legislation.⁶ Indeed Rose has stated that:

Under the circumstances, the analyst can do no better than infer the most important elements of national housing policy from the enactment of legislation, and the encouragement or discouragement of various aspects of the total national housing programme. 7

THE FIRST FEDERAL INITIATIVE IN HOUSING, 1919

The first Federal legislation concerning housing was enacted in 1919 and its purpose was to give employment to ex-servicemen returning from World War I.⁸ The consequent limited programme, i.e. Federal Housing Project was successful but the Government did not consider either housing or unemployment a proper field for Government action.⁹

The economic depression of the 1930's caused the Federal Government to act in the field of housing, among others,¹⁰ on an unprecedented scale. A committee was set up to study the housing situation and to make recommendations for "the inauguration of a national policy of house-building."¹¹ The committee's report led to the first extensive Federal Housing legislation--the Dominion Housing Act in 1935.

THE DOMINION HOUSING ACT, 1935

This Act authorized loans to home-buyers by institutional lenders defined as "approved lenders". The maximum loan - to - value ratio was to be 80 per cent, of which the approved lenders provided 60 per cent and the Federal Government 20 per cent. The interest rate was fixed at five per cent and on the Federal Government's share at three per cent. This Act revolutionized the traditional lending pattern:

It effected the following changes: (1) a higher ratio loan; (2) subsidized interest rate by Crown participation in the loan; (3) an initial loan term of ten years; (4) a contract of renewal for a further ten years at terms to be agreed upon at the initial maturity; (5) blended equal monthly repayments of principal and interest; (6) the payment of taxes monthly in advance so as to create a tax fund for future tax payments; and (7) the establishment of minimum standards of construction, subject to on-site inspections to ensure compliance. All of these were drastic changes in the mortgage realm and opened the gates of home-ownership to many to whom it was previously denied.¹²

The Act was not as effective as it was hoped it could have been, especially in the field of low-income housing.¹³

In 1937 the Dominion Housing Act was augmented by the passage of the Home Improvement Loans Guarantee Act under which the Federal Government could grant guaranteed loans for the improvement of existing homes. This Act was said to have been more effective in promoting house building and repair than the Dominion Housing Act itself.¹⁴

THE NATIONAL HOUSING ACT OF 1938

The first National Housing Act (NHA) was passed in 1938 and its purpose was to assist in the construction of new homes. There were three parts--Part I laid down the qualifications of lenders, the conditions under which they should operate and terms affecting the making of loans. Part II provided for the construction of low rental housing units by means of limited-dividend housing corporations and through local housing authorities and Part III provided for assistance to municipalities for low cost housing.¹⁵ An agency operating under the aegis of the Department of Finance was created to administer the Act¹⁶--the National Housing Administration, from which it could be said the present Central Mortgage and Housing Corporation is descended.

CONSTITUTIONAL POWER

The operation of the NHA highlights the "most important background fact in Canadian housing which is undeniably that Canada is a Federal state."¹⁷ Housing falls within Provincial jurisdiction as specified in the British North America Act, Section 92, which enumerates the subjects over which the Provinces have jurisdiction. The following subjects are considered to be relevant to housing, in subsections of Section 92:¹⁸

- 2. Direct Taxation within the Province for the Raising of a Revenue for Provincial Purposes
- 8. Municipal Institutions in the Province
- 10. Local Works and Undertakings
- 11. The Incorporation of Companies with Provincial Objects
- 13. Property and Civil Rights in the Province
- 16. Generally all Matters of merely local or private Nature in the Province. ¹⁹

Although the constitutional responsibility for the provision of housing to individuals and families has been assigned to the Provinces by judicial interpretation of Section 92,²⁰ nevertheless the Federal Government in the NHA has constructed the framework in which Provincial housing policies may operate,²¹ by the provision of money to Provinces, and Municipalities. However, the other most important constitutional fact must be that Federal policy implementation is predicated upon local initiative and since the Municipalities are indeed the creatures of the Provinces,²² this means that

only with Provincial permission can a Municipality participate in a Federal programme, by virtue of Provincial legislation enabling the signing of agreements.²³ In British Columbia the Housing Act is the enabling legislation authorizing the Province to draw up agreements with the Federal and Municipal Governments for the purpose of constructing Federal-Provincial public housing projects and undertaking urban renewal projects and sharing the costs of such projects.²⁴

It is because local initiative is necessary to participate in Federal programmes that although Part I of the 1938 NHA was used extensively, nevertheless from " . . . the fact that negligible use was made of Parts II and III, it would seem that provincial and municipal governments were indifferent to the facilities which the Act offered."²⁵

WARTIME MEASURES

During the Second World War the urbanisation that occurred with increased industrialisation as the economy was mobilised, together with the already inadequate housing stock produced an intolerable housing shortage in urban centres.²⁶ A Crown Corporation, Wartime Housing Ltd., was set up in 1941 by the Federal Government to determine needs and allocate the new houses constructed according to the needs, and to control and fix rents of housing units.²⁷ This was of course

part of the Federal Government's wartime emergency legislation including control over prices, wages, rents, allocation of material and conscription.²⁸ Rose has said that Wartime Housing Limited

. . . can be seen now as a rudimentary federal housing agency, one of whose major tasks was direct negotiation with the elected and appointed officials of municipal governments. 29

In 1943 the Advisory Committee on Reconstruction established by the Federal Government set up a Sub-Committee on Housing and Town Planning with the following terms of reference:

To review the existing legislation and the administrative organization relating to housing and community planning, both urban and rural, throughout Canada and to report such changes in legislation or organization and procedure as may be necessary to ensure the most effective implementation of what the Sub-Committee considers to be an adequate housing program for Canada during the years immediately following the war. 30

The foundation of Federal housing policies as reflected in the NHA of 1944 which followed the Final Report of the Sub-Committee is contained in the four following basic proposals of the Sub-Committee:

1. A three-pronged program of action involving legislation to induce a greater supply of housing to meet requirements of:
 - (a) the large metropolitan areas:
 - (b) the smaller cities and towns; and
 - (c) the farm areas.
2. A housing policy geared to meet the needs of the three established income groups; lower third, middle third, and upper third.

3. Legislation to make effective use of town planning, efficient administration by bringing diffused housing programs under one act; and what the Sub-Committee considered a critical element, the participation of the provincial governments.
4. Recommendations as regards methods that could be used to reduce building costs. 31

Rose has called this report "a milestone in the enunciation of potential assumption of social responsibility by government."³²

NATIONAL HOUSING ACT OF 1944

The rationale of the NHA of 1944 is seen to be, in the words of the preamble to the Act,

. . . to Promote the Construction of new Houses, the Improvement of Housing and Conditions and the Expansion of Employment in the Postwar Period. 33

The main changes implemented by the NHA of 1944 were, in the case of home-ownership financing: the increase of the amortization period from ten to between twenty and thirty years; the increase of the loan-to-value ratio so that the mortgagor could borrow 95 per cent of the first \$2,000; 85 per cent of the next \$2,000 and 70 per cent of the remainder. The interest rate was set by the government and was related to long-term Government bond interest rates.³⁴

Various measures concerning low-rental housing were re-enacted and extended in some cases and provisions concerning

slum clearance were included.³⁵ The home improvement and extension loans provisions were continued and community planning and housing research were established as part of Government policy.³⁶

CENTRAL MORTGAGE AND HOUSING CORPORATION ACT OF 1945

The following year, 1945, in order to administer the NHA the Federal Government enacted legislation to create a wholly owned Crown Corporation, the Central Mortgage and Housing Corporation (CMHC).³⁷ CMHC replaced the National Housing Administration and was to supersede or absorb all the lesser agencies such as Wartime Housing Ltd.³⁸

Under the CMHC Act a Minister of the Crown is responsible for the administration of the NHA, to supervise CMHC, "and thus the housing policy and programme of the Government of Canada."³⁹ The corporation is run by a Board of Directors including the President, Vice-President and eight other Directors. The President, Vice-President and two other Directors form the Executive Committee. The powers of the Board are outlined in Section 18 which states that on behalf of Her Majesty and in place of the Minister the Board may

have, exercise and perform all rights, powers, duties, liabilities and functions of the Minister and the Housing Acts or under any contract entered into under the said Acts, except the authority of the Minister under the said Acts to pay moneys out of the Consolidated Revenue Fund, or under Section 22 of the National Housing Act, to make grants for slum clearance.

In 1947 the NHA was amended⁴⁰ giving CMHC authority to make direct mortgage loans "to ensure an adequate source of mortgage financing throughout the Dominion."⁴¹ Further amendments to the NHA were passed in 1949, the most important of which was Section 35 (now Section 35A). Under this section the Federal Government can undertake in conjunction with any Provincial Government or Agency projects (a) for the acquisition and development of land for housing purposes; (b) for the construction of housing projects or housing accommodation of the hostel or dormitory type for sale or for rent and (c) the acquisition, improvement and conversion of existing buildings for a housing project or for housing accommodation of the hostel or dormitory type. In such projects 75 per cent of the capital cost and profits and losses are borne by the Federal Government which would also be responsible for the planning, design and construction leaving the Province to bear 25 per cent of the cost.

THE BASIC PRINCIPLES OF FEDERAL POLICY

Barrow has concluded that towards the end of the 1940's Federal Government housing policy was based on the following principles of which (1), (2), and (3) formed the core:

1. Every Canadian family desires home-ownership and therefore provision of this form of housing accommodation was to be a major objective.

2. The private market is the best way of supplying the housing needs of the nation.
3. The Government's responsibility would be discharged if it made it attractive for private institutional lenders to enter the housing market. But some direct government involvement would be necessary to even out the regional disparities.
4. Subsidizing low-rental housing should be rejected. If the market is considered the best way of supplying housing for the nation, one cannot very well accept subsidized housing as part of policy.
5. Federal-provincial relations should be carefully considered. Unless the provinces are prepared to co-operate with the Federal Government and indeed initiate the necessary projects, nothing should be done. 42

Barrow noted that the Federal Government had clearly established itself as an important source of funds for home-ownership and intended to influence community planning and consequently local government. He noted also that the principles he had deduced were " . . . not designed to facilitate housing construction for moderate and low-income families." 43

Adequate funds for home-ownership were not forthcoming from private citizens' capital from CMHC or from the approved lenders to clear up the backlog of housing needs from wartime and to keep pace with the demand from growing family formations and immigration. 44

Woodward has this to say:

The approved lenders, the majority of which were life insurance companies, had responded well to the challenges of each successive change in the Housing Acts. Nevertheless, it was becoming increasingly apparent that it was not within their financial capacity to provide the mortgage funds required to meet Canada's growing housing needs. New sources of mortgage funds had to be found and towards this end a new National Housing Act was passed in 1954. 45

Mr. R.H. Winters, the Minister of Reconstruction and supply stated:

. . . . The main object of this legislation is to broaden the supply of mortgage money by making that form of investment more attractive, increasing the number of lenders and making more funds available for mortgage lending. 46

NATIONAL HOUSING ACT OF 1954

Barrow has stated that the NHA of 1954 brought about a series of major changes:

It brought chartered banks into the mortgage lending field. It terminated the system of joint lending. To replace that system, it made provisions to insure mortgage loans supplied by approved lenders to assist in financing new housing. The new Act provided that all mortgage loans were to extend over twenty-five years with a possible maximum of thirty years. Before this time the maturity term was a matter decided on by the lender and the borrower, the latter being often in the more unfavourable position. 47

Amendments to the Bank Act were also necessary to complement the new NHA. Between 1954 and 1962 further amendments to the NHA were passed concerning the loan-to-value ratio of insured mortgage loans, federal loans for municipal sewage treatment projects and university housing projects.

Until the late 1950's the Canadian house building industry concentrated on the production of one main product i.e. the single family detached house on vacant land which was the only type eligible for NHA financing.⁴⁸ It has been

pointed out by many critics that until 1964 the Federal Government's policy was concerned only with the production of housing units and hardly at all with the distribution of housing among the various income groups.⁴⁹ To elaborate, Rose has pointed out that it was only by 1967 that the percentage of public housing unit starts of total housing starts had risen to about 5 per cent.⁵⁰

THE 1964 AMENDMENTS

In 1964 Amendments were passed which, to quote Rose " . . . virtually re-wrote most of the social provisions of the National Housing Act."⁵¹ Since these do not directly concern the subject of this thesis they will be mentioned only in passing to provide the perspective in which the total array of Federal policy should be viewed. The limited dividend section was expanded by authorizing loans to non-profit corporations owned by a Province, Municipality or any of their agencies or a charitable corporation for the construction or purchase of a housing project or hostels and rooming houses as low-rental projects. Part III of the NHA was re-titled "Urban Renewal", a change from "Urban Redevelopment". This part included cost sharing and Federal contributions for plan preparation and implementation, plus loans and insured loans. The Provinces were recognised as the authority which must approve urban renewal plans and for the first time recognition was given to the necessity for

assisting in the relocation of the people affected by the renewal. In 1969 the Federal Government decided to suspend nearly all urban renewal projects in order to reconsider the entire process and its aims. In the field of "Public Housing", as Part IV was titled, mention was made of Provincial housing agencies which clearly pointed the way to an increased role for the Provinces in this field. CMHC was permitted to make loans to assist a Province, Municipality or public housing agency to acquire land for public housing to a maximum of 90 per cent of the cost of acquisition and servicing. This was complemented by the provision allowing for loans to construct, acquire and operate public housing projects and CMHC was authorized to contribute 50 per cent of the operating losses of public housing for a period of up to 50 years. Under Section 35A CMHC may undertake with a Municipality upon its initiative and with the Province's concurrence, to assemble raw land for residential development in areas where lack of serviced land is hampering housing growth. CMHC can provide up to 75 per cent of the capital cost with the Province bearing the rest, some of which it recovers from the Municipality. The serviced lots are then sold and the proceeds are shared on the same basis. The lots are sold on a first-come first-served basis through the local CMHC office and:

. . . purchasers are expected to select lots appropriate to the proposed house design. Plans and specifications of the house require approval by CMHC whether or not the house is financed through the facilities of the NHA. To assure orderly development of the project, construction of individual houses must be started within six months of lot purchase and completed within 18 months after commencement of construction. 52

Costs of municipal services not recovered by the Municipality in the general tax rate are included in the lot sales prices or recovered through local improvement charges over a period of years.

FEDERAL FINANCIAL POLICY

It has been mentioned previously that the role of the Federal Government (which was the first level of Government to act in the field of housing), has basically been to provide the legislative framework of housing policy, to set up and administer its programmes, to provide mortgage and other funds and to encourage the Provinces to accept their responsibility for meeting housing needs. The implementation of Federal policy forming "the heart of our housing policy during the past 25 years"⁵³ has been the effort to provide an adequate supply of mortgage money, to manipulate the interest rate and to set out to appropriate terms to encourage individual home ownership. Funds were made available under the prevailing markets, down payments were reduced in proportion to the amount loaned and the amortization period increased.

Barrow has stated that there are five components of an NHA mortgage:⁵⁴

1. loan-to-value ratio;
2. down payment required;
3. interest rate;
4. amortization period; and
5. debt service ratio. 55

All of these, except the downpayment which is indirectly affected, are directly affected by Government legislation or regulation. Thus the loan-to-value ratio⁵⁶ for homeownership is 95 per cent of the first \$20,000 and 80 per cent of the balance of the value with the maximum loan being \$25,000 for all housing except apartments for which the maximum loan is \$18,000. The interest rate for loans by approved lenders under Part I is now free, having been freed by amendment in 1969. The mortgage insurance fees are between 1 per cent and 1 1/4 per cent. The interest rate for direct loans by CMHC was 9 1/2 per cent in September 1969. The amortization period was amended in 1969 to be up to 40 years for new and existing housing but 25 years has been the usual term for Condominiums in British Columbia.⁵⁷

The fact remains that the Federal Government's policy of relying on the money market to provide loans which CMHC will insure (CMHC will only lend directly under Section 40 where private funds are not available)⁵⁸ is still the

mainstay of its housing policy and yet there "is an overall shortage of mortgage funds".⁵⁹ The Task Force on Housing and Urban development, however, carried on the tradition by recommending that:⁶⁰

The Federal Government seek to encourage and co-ordinate the efforts of private lending institutions to meet the vast majority of Canada's residential mortgage requirements by setting annual targets, by canvassing these lenders twice annually to ensure that their investment intentions are adequate to meet these goals, and by paying particular attention to the needs of the various regions of Canada.

A special effort be made to enlist the increasing participation of Canada's rapidly growing pension funds in the field of residential mortgage financing.

The Task Force considered the role of special lending institutions such as building societies in Britain but recommended that a similar system be set up in Canada only if existing lenders fail to allocate sufficient residential mortgage funds to meet national goals. It is interesting to note that in France the 1938 condominium law consisted of a Part I dealing with cooperative building societies.⁶¹

RESIDENTIAL CONDOMINIUMS AND FEDERAL HOUSING POLICY

In Canada condominium ownership, by general definition, has always been possible under the National Housing Act. Even so, the recent amendments to the National Housing Act made specific note of this type of housing. But since housing comes within provincial jurisdiction complementary provincial enabling legislation has not, until very recently, been enacted. ⁶²

The amendments mentioned in the above quotation were added in the 1968-69⁶³ session of Parliament and refer in Section 7 to condominium units which are defined in Section 2 (6a) as follows:

(6a) 'condominium unit' means a bounded space in a building designated or described as a separate unit on a registered condominium or strata lot plan or description or similar plan or description registered pursuant to the laws of a province, and intended for human habitation, and includes any interest in land appertaining to ownership of the unit.

Cooperative housing projects, defined as being registered as pursuant to the laws of Canada or the Provinces and the Yukon Territory also receive special mention in the NHA⁶⁴ and are treated equally with condominium units in terms of insurable loans for the construction of,⁶⁵ and for the purpose of discharging a loan secured by a mortgage on,⁶⁶ a cooperative housing project or condominium unit. However, as regards an insurable loan for the purchase or improvement of an existing dwelling unit, a condominium is specifically mentioned but a cooperative housing project is not, and would appear not to qualify.⁶⁷ In addition, a loan to a cooperative housing association is not insurable unless CMHC approves the associations instrument of incorporation and bylaws: and the Act also makes further conditions concerning the shareholders, at least 80 per cent of whom must occupy the completed project.⁶⁸

In the case of a cooperative housing association which is incorporated to construct houses and which having constructed houses and conveyed them to the members or shareholders of the association--the Act provides for members or shareholders to obtain an insured loan for the house and for it to be considered a loan to a home owner.⁶⁹ In this way a blanket mortgage can be converted to individual mortgages if the association sells the houses to members or shareholders.

CMHC is charged with the responsibility of distributing

. . . information leading to the construction or provision of more adequate and improved housing accommodation in Canada. 70

Rose has commented that

. . . it was never the policy of the Corporation to 'shout from the rooftops' in an effort to advertise or sell the available housing programmes. 71

CMHC has, however, devoted a whole issue of its journal, Habitat, Volume XII, Numbers 4-5, in 1969 to the subject of condominium. The question of distribution of information relates to the comments on public misunderstanding and ignorance about the concept of condominium mentioned in Chapter III.

Constantinu has mentioned a lack of information about continuing cooperatives.⁷² CMHC has assisted and encouraged the setting up of an organisation known as the Cooperative Housing Foundation involving the Canadian Labour Congress

and the Cooperative Union of Canada. Their aim is to interest sponsoring groups and to provide expert consultants⁷³ and thus a fundamental difference between continuing cooperatives and condominiums is implied. That is, that while continuing cooperatives develop spontaneously from the ideas and efforts of the cooperators without promotion by third parties,⁷⁴ condominiums (unless constructed by a cooperative association and then conveyed to the strata lot owner in the way mentioned earlier) are advertised by the developers who wish to sell the dwelling units. In this way distribution of information on the condominium concept is aided.

Differences of opinion between CMHC and developers have arisen over the possibility of placing restrictions on the resale and leasing of strata lots. CMHC has always insisted that the bylaws of a Strata Corporation should contain nothing which would require a strata lot owner to obtain the Strata Corporation's consent to the sale or leasing by the owner of his strata lot.⁷⁵ In any case, no restrictions on resale are permitted in projects financed under the NHA.⁷⁶ This question will be considered further in Chapter V where the Strata Titles Act will be discussed.

CMHC has been involved in trial condominium projects whereby direct financing was made available and the first applications which were approved were for a row housing project for sale to employees of Rayonier Canada (B.C.) Ltd. in the one-industry town of Rumble Beach, and a row housing

and apartment project in Port Moody.⁷⁷ In 1968 CMHC was authorized to undertake a limited programme of direct loans to merchant builders, some of which involved condominium projects in Ladner, Richmond and Port Moody, B.C.⁷⁸ CMHC is presently involved in Edmonton's first experimental housing project which is a proposal to construct 300 condominium townhouses.⁷⁹

The whole range of Federal housing policy has been briefly outlined because although undoubtedly most residential condominium development under the NHA will be under Part I --Insured Mortgage Loans rather than under the other parts there appears to be no reason why a governmental housing agency could not develop a project based on the condominium concept wherein the occupants pay rent to the agency but have some part in the management of the building. Indeed the scheme mentioned earlier by Quirk is relevant in that the idea of a "tenant-condominium" is proposed.⁸⁰ This is perhaps a widening of the concept but if the concept of leasehold condominiums can be entertained, as it is in Quebec and Manitoba, then why not the tenant condominium? If it can, then Parts II, VI and VII of the NHA (Being entitled respectively "Housing for Rental Purposes and Land Assembly, Public Housing and Loans for Student Housing Projects) could be used for residential condominium projects. In Ontario progress is being made toward arrangements for the sale of public housing units to tenants whose income has risen to the point where

they could afford to buy⁸¹ but whether a modified condominium arrangement is envisaged is not known.

Indeed perhaps the land assembly provisions are most relevant since condominiums themselves can represent an intensive use of land and since economies of scale accrue to large scale projects. Seen in this light land assembly and condominium together appear to have great potential as tools for reducing the costs of producing housing units. In Ontario the land assembly programme of the Ontario Housing Corporation encourages condominium housing through the provision of serviced building sites.⁸²

IMPENDING CHANGES IN THE FEDERAL ROLE

The Federal Task Force recommended the establishment of a Department of Housing and Urban Affairs⁸³ and with the announcement on 8 October 1970 of the creation of a Secretariat of Urban Affairs in the Speech from the Throne with Mr. Robert Andras as Minister, further Federal Government intervention on the Canadian urban scene can be expected. However, no policy statement has been issued at the time of writing.

CONCLUSION

This Chapter has taken the form of a historical review of the evolution of Federal housing legislation. In this manner, it is hoped the present Federal policies have been placed in a wider perspective. The place of condominiums and continuing cooperatives in Federal policy has been presented and contrasted. This Chapter is not meant to be a critique of Federal Policy merely an exposé viewed as an essential part of the total array of Federal, Provincial and Municipal policies.

CHAPTER IV - NOTES

1. Albert Rose, Canadian Housing Policies, (Ottawa: Canadian Welfare Council, Background paper prepared for the Canadian Conference on Housing, October 1968), pp. 1-4.
2. Ibid., p. 101.
3. Ibid., p. 3.
4. Ibid., p. 104.
5. Ibid., p. 101.
6. Barrow, op. cit., p. 17, and Constantinu, op. cit., p. 8.
7. Rose, op. cit., p. 32.
8. Barrow, op. cit., p. 25.
9. Ibid., p. 26.
10. Ibid., p. 27.
11. Quoted by Barrow, op. cit., p. 27.
12. H. Woodward, Canadian Mortgages, (Toronto: Collins and Company, 1957), p. 10, quoted by Barrow, op. cit., p. 29.
13. Barrow, op. cit., p. 30.
14. Ibid., pp. 30, 31.
15. National Housing Act, 1938.
16. Barrow, op. cit., p. 32.
17. Rose, op. cit., p. 2.
18. A.E. Grauer, Housing (Ottawa: A Study prepared for the Royal Commission on Dominion--Provincial Relations, 1939), p. 34, quoted by Constantinu, op. cit., p. 100.
19. British North America Act, 1867, s. 92.
20. Rose, op. cit., p. 3.

21. Ibid., p. 49.
22. A.N. McKay and D.W. Slater, "The Scope of Urban Policy," Urban Studies: A Canadian Perspective, edited by N.H. Lithwick and Gilles Pacquet, (Toronto: Methuen Publications, 1968), p. 220.
23. Ibid., pp. 4, 5.
24. M.J. Audain cited in Constantinu, op. cit., p. 61. The Act is the Housing Act, S.B.C. 1950, c. 31 as amended.
25. Barrow, op. cit., p. 32.
26. Ibid., p. 34.
27. Ibid.
28. Rose, op. cit., p. 21.
29. Ibid., p. 22.
30. Final Report of the Sub-Committee on Housing and Community Planning, cited by Barrow, op. cit., p. 35.
31. Report quoted in Barrow, op. cit., p. 35.
32. Rose, op. cit., p. 23.
33. Quoted in Ibid., pp. 23, 24.
34. Barrow, op. cit., p. 36.
35. Ibid.
36. Ibid., p. 37.
37. Central Mortgage and Housing Corporation Act, 1945.
38. Rose, op. cit., p. 24.
39. Ibid and Barrow op. cit., p. 38.
40. Quoted in Barrow, Ibid.
41. Woodward quoted in Ibid.
42. Barrow, Ibid., pp. 42, 43. See also Rose, op. cit., pp. 36, 37.
43. Barrow, op. cit., p. 43.

44. Ibid., p. 44.
45. Woodward, op. cit., pp. 20-28 quoted by Barrow, Ibid.
46. House of Commons Debates, (Vol. I, 1954), pp. 998, 999 quoted by Barrow, Ibid., p. 46.
47. Barrow, Ibid., p. 45.
48. Rose, op. cit., pp. 37, 38.
49. See for instance Barrow, op.cit., pp. 47, 48, 49 and Rose, op. cit., p. 38.
50. Rose, op. cit., p. 39.
51. Ibid., p. 42.
52. CMHC, NHA Federal Provincial Land Assembly, (Ottawa: Pamphlet 5024, 1967), p. 2.
53. Rose, op. cit., p. 37.
54. Barrow, op. cit., pp. 62, 63.
55. The debt service ratio (DSR) is calculated by the following formula:

$$\text{DSR} = \frac{x + y}{z}$$

Where x = the annual payment required to repay the mortgage at a given rate of interest for a given period of amortization;

y = taxes for school and general purposes on the property; and

z = net income.

DSR when expressed as a percentage should not exceed 27% as specified by CMHC under the NHA.

56. Now determined by National Housing Loan Regulations. CMHC Canadian Housing Statistics, (Ottawa: CMHC, 1969).
57. Conversation with Mr. J. Lowden of CMHC, Vancouver, 13 November 1970.
58. Task Force, op. cit., pp. 24, 26.

59. Ryan, op. cit., p. 17.
60. Task Force, op. cit., p. 26.
61. Ferrer and Stecher, op. cit., p. 27.
62. Smith, op. cit., p. 3.
63. RSC, 1968-69, c. 45, s. 1(1).
64. For details of the impact of the NHA on Cooperative Housing see Constantinu, op. cit., passim, and Barrow, op. cit., pp. 70, 71.
65. NHA, s. 7(1)(a)(i).
66. NHA, s. 7(1)(a)(iv).
67. NHA, s. 7(1)(a)(iii).
68. NHA, s. 8(1)(a); (b) and (c).
69. NHA, s. 8(2).
70. NHA, s. 31.
71. Rose, op. cit., p. 52.
72. Constantinu, op. cit., pp. 74, 82.
73. MacDonald in The Right to Housing, op. cit., p. 283.
74. Miller, "Cooperative Apartments: Real Estate or Securities?" Boston University Law Review, (Vol. 45, 1965), p. 469, quoted in Sengstock and Sengstock, op. cit., p. 429.
75. R.W. Ford and R.E. Fowler, "The Lenders' View II," Habitat, (Vol. XII, No. 4-5, 1969), p. 21.
76. Ryan, op. cit., p. 18.
77. Ford and Fowler, op. cit., p. 19.
78. Ibid., p. 21.
79. The Edmonton Journal, Thursday 23 July 1970.
80. See Chapter II, n. 59.

81. The Hon. S.J. Randall, "Housing Policies in Ontario," The Right to Housing, op. cit., pp. 258, 259.
82. Ibid.
83. Task Force, op. cit., p. 72.

CHAPTER V

PROVINCIAL POLICY

Introduction; Housing Legislation;
Provincial Condominium Housing
Programmes; Other Legislation Related
to Housing; Strata Titles Act;
Conclusion.

INTRODUCTION

This Chapter attempts to outline the housing policy and programmes of the Government of British Columbia with particular reference to the role of condominiums.

The question of what constitutes housing policy was considered in the previous Chapter. In the light of that discussion British Columbia can be said to have a housing policy since it has (a) legislation; (b) it allocates financial resources for housing; (c) it has initiated housing programmes and (d) it has an administrative framework.¹ Whether these factors amount to an adequate housing policy is a matter of definition as to the need and proof that the need is being satisfied.

The Vancouver Housing Association, a voluntary group interested in housing and incorporated under the Societies Act, stated in 1967:²

Unfortunately, . . . our province has no comprehensive housing policy. It is true that substantial assistance is given by the Provincial Government to non-profit pro-societies building for elderly people. A Provincial programme of capital grants to new home purchasers has also recently been inaugurated, but the primary purpose of this latter programme appears to be to encourage home ownership.

The Association then criticised the Government of British Columbia for not taking advantage of Federal programmes to assist poorer families by initiating public housing programmes; and contrasted British Columbia unfavourably with

Ontario in this regard.³ Furthermore the Association stated that a Provincial Housing Department with a Minister as head should be established and pointed to the other Provinces which have Provincial Housing Corporations.⁴ In 1966, the Community Planning Association of Canada also submitted a brief to the Provincial Government on this subject i.e. the need for such a corporation.⁵

However, British Columbia in

. . . preference to establishing a crown corporation
 . . . has refurbished the housing authority approach
 by appointing federal, provincial and municipal
 officials to constitute a Provincial Housing Manage-
 ment Commission. 6

which is, however, not comparable to, say, the Ontario Housing Corporation:

When the British Columbia Housing Management Commission was set up in 1967 it was said of it:

This body will supplant the system of local housing authorities, which were comprised of private citizens serving voluntarily. The newly established commission will manage all public housing provided under government auspices in British Columbia. Federal, Provincial and Municipal partnership interests will be served by employees, the relationship to the owners will be direct, and a multiplicity of authorities will be avoided. 7

The members of the Commission are, for general business:
 --two employees of the Province appointed by it; two employees of CMHC appointed by it; in addition to which is appointed one employee of the Regional District or Municipality appointed by it, for specific business, i.e. pertaining to that Regional District or Municipality or a project located therein.⁸

The administrative framework for housing other than public housing, is composed of a Minister Without Portfolio, the Hon. Grace McCarthy who has a special responsibility for housing, a Housing Commissioner, who is also Deputy Minister of Municipal Affairs, and a Special Housing Assistant. An additional point concerning the administrative framework is that with the creation, by the Provincial Government, of Regional Districts which are in effect federations of local governments,⁹ the Province allows authority over public housing to be granted to Regional Districts upon agreement of all the local governments concerned.

For the same reasons as outlined in Chapter IV the question of financial resources will not be considered and attention will be focused on legislation as the embodiment of the Province's housing policy.

BRITISH COLUMBIA HOUSING LEGISLATION

The Housing Act of 1950¹⁰ has already been mentioned in Chapter IV--it merely authorized the Province to enter into Federal-Provincial-Municipal joint projects under Part VI--Public Housing--of the NHA,¹¹ and also the establishment of housing authorities e.g. the Vancouver Housing Authority.¹² One other feature of Provincial policy is British Columbia's programme of establishing land banks in metropolitan areas¹³ pursuant to sections 35A and 35C of the NHA, mentioned in the previous chapter.

The Elderly Citizens' Housing Aid Act provides for "senior citizens" housing with grants to Regional Districts, Municipalities or non-profit corporations which since 1970 are as follows-- (a) in the case of self-contained low rental housing 33 1/3 per cent of the cost of construction (or reconstruction of existing housing) with the sponsoring agency making a cash grant to the construction or reconstruction equal to 10 per cent of the cost; and (b) in the case of low rental boarding homes 35 per cent of the cost of construction (or reconstruction of existing housing) with the sponsoring agency putting up 15 per cent of the cost.¹⁴

As mentioned in Chapter III, under the Provincial Home Owner Grant Act of 1957¹⁵ as amended, homeowners including strata lot owners, received an annual grant--\$160 in 1970--to offset local property taxes.

Under the Provincial Home Acquisition Act¹⁶ grants of \$500 or \$525, (depending on the date of entitlement) were available to persons who had between 1 April 1966 and 9 February 1968 completed construction of a new home or had by July 1 1968 entered into a binding contract to purchase premises or stock in a new or existing continuing cooperative or housing company¹⁷ and who had been residents of the Province for one year and who intended to occupy the building for five years or more.¹⁸

Under section 3A of the same Act (a) a grant of \$1,000 for new premises, or \$500 for older premises, or (b) a loan secured as a second mortgage of \$5,000 for new premises, or \$2,500 for older premises, is available to a person who has in the case of new premises (a) completed the construction of, or undertaken to buy the premises the construction of which was not started before 9 February 1968 in the case of a grant and not occupied before 9 February 1969 in the case of a loan; or undertaken to purchase shares in a continuing cooperative or housing company; (b) who is the first occupant; (c) has been a resident of British Columbia for at least one year; or in the case of older premises (a) has been a tenant for at least 2 years and (b) purchased the older premises between 1 April 1970 and 31 March 1971 and, in both the case of both new and older premises, intends to remain in the dwelling for at least five years.

However, an owner in an Indian Reserve incorporated pursuant to s. 10A of the Municipal Act is only entitled to a grant and not to a loan under the Provincial New-Home Building Assistance Act (now entitled the Provincial Home Acquisition Act which consolidates all such legislation with the exception of the Provincial Home Owner Grant Act).

In the case of a mortgage the terms and conditions are prescribed by regulation--the interest rate will not

exceed 8 3/4 per cent and will never be higher than the rate charged by CMHC for first mortgages on single family dwellings.¹⁹ If the principal wage earner dies, any outstanding amount is forgiven and the mortgage removed.²⁰ The loan must not exceed the amount of the first mortgage or exceed the difference between the cost of the property and the first mortgage. The loans and the amortization period must not exceed that of the first mortgage. If a homeowner who has received a grant wishes to sell his home he may do so if he has occupied it for five years. If not he may transfer the grant to a second home or repay the grant. In the case of a loan, if the homeowner wishes to sell before full repayment has been made, the outstanding amount on the loan, including accrued interest owing at the time of the sale, must be repaid.²¹ There has been at least one case of a condominium owner who did not repay whereupon the Province seized his strata lot.²² A mortgagor who meets his repayments is entitled annually to a refund of ten per cent of his preceding year's payments or up to \$50 for new premises and \$25 for older premises whichever is the less.²³

The Province will also advance funds to Municipalities for the acquisition of existing homes for subsidized rental but in placing a ceiling acquisition price of \$14,000 has frustrated action as a result of the difficulty of purchasing suitable accommodation at such a price.²⁴

A statistical summary of the result of the Public Housing, Urban Renewal and Land Assembly components of Provincial policy can be found in the Report of the Director, Housing and Urban Renewal Division in the Annual Report of the Department of Municipal Affairs. It will be remembered that local initiative i.e. Municipal initiative is usually the case rather than Provincial initiative--the Province usually merely approves the former's initiative. The Province will not, however, accept hostel-type housing under the NHA.²⁵

PROVINCIAL POLICY AND RESIDENTIAL CONDOMINIUMS

As mentioned in Chapter III strata lot owners and occupant shareholders of continuing cooperatives and housing companies, are eligible to receive the annual homeowner grant and to receive grants or loans under the Provincial Home Acquisition Act. There is therefore equal treatment between these types of ownership under the Act reviewed. The importance of the Strata Titles Act itself, with reference to condominiums vis a vis continuing cooperatives, and the possibility of existing apartment blocks being subdivided under the Strata Titles Act thus permitting the strata lot owners to avail themselves of the older premises provisions of the Provincial Home Acquisition Act, was mentioned in Chapter III.

PROVINCIAL CONDOMINIUM HOUSING PROGRAMMES

Although the Provincial Government has "no stated policy on condominiums"²⁶ it has initiated an innovative and demonstration project by which will be constructed 132 condominium 3-bedroom townhouses for families earning between \$5,000 and \$7,000 annually. The project will be built by Dawson Developments Limited, of Vancouver on 6.9 acres of City owned land at Champlain Heights, South East Vancouver. It will be ready for occupancy in 1971 and will make use of 2 1/2 million dollars from CMHC's housing innovations fund at 7 7/8 per cent interest with a 35 year amortization period and Provincial Home Acquisition Grants will also be available (see Appendix D). The Provincial Government sees homeownership in condominiums for low income families as a partial alternative to public housing and thus as an advantage to municipal taxpayers where they pay 12 1/2 per cent of the operating losses.²⁷

Another programme, called the "5-5-5 plan" involves condominiums and senior citizens. The British Columbia Housing Management Commission will act as developer and the Province will provide interim financing of up to \$120,000 for a pilot project in Victoria. This project, for which a site has yet to be found will be a demonstration project of 10 or 12 condominium apartment units for sale for approximately \$15,000 each. It is designed for people over 60 years of

age with fixed incomes of less than \$5,000 a year who own a home that is no longer suitable for them due to size, maintenance and rising property taxes. A similar scheme for Vancouver which received approval in principle from City Council 1 October 1970 calls for 100 apartments on a 1.2 acre site in city-owned Champlain Heights.

In both of these projects the applicant is expected to put up \$5,000 cash realized from the sale of their previous home and obtain a first mortgage of \$5,000 from CMHC and a second mortgage of \$5,000 under the Provincial Home Acquisition Act which is paid only after occupation.²⁸

OTHER LEGISLATION RELATING TO HOUSING

Although the legislation reviewed forms the core of Provincial housing policy mention is made in passing of the Town Planning Act, Municipal Act, Vancouver Charter, Landlord and Tenant Act and the Leasehold Regulations Act which as Provincial statutes also affect housing in general. The effect of the Town Planning Act, Municipal Act, Vancouver Charter and the Leasehold Regulations Act will be considered in Chapter VI. The Landlord and Tenant Act, which is really outside the scope of this study, was revised in 1970 and is perhaps one of the most modern pieces of legislation in Canada concerning residential tenancies. There remains

however, one more important Provincial Statute to discuss, without which this study would never have been undertaken, namely the Strata Titles Act, which makes possible modern condominium development in British Columbia.

THE STRATA TITLES ACT

Although "self-owned suites" have been in existence for some time in British Columbia and are advertised in the Vancouver Sun as "suites for sale"²⁹ they usually take the form of what the author describes as housing companies³⁰ or continuing cooperatives, the development of which has been considered by Constantinu,³¹ and both of which are regulated by legislation.

The importance of the Strata Titles Act (STA) lies in the authorization of the creation and regulation of the condominium form of ownership in British Columbia. Because of this fact and the novelty of condominium in British Columbia the author will consider in some detail the provisions of the Act--but see Figure 2 for a diagrammatic representation.

The Hon. Grace McCarthy has stated that the Act was ". . . initiated by officials of the Attorney General's Department at the direction of the Attorney General,"³² but the Real Estate Institute of British Columbia had advocated condominium legislation and had published an informative booklet on the subject in September 1965.³³

The STA³⁴ is Chapter 46 of the Statutes of British Columbia 1966 and came into effect on 1 September 1966. It was amended by Chapter 42 of the Statutes of British Columbia 1968, and one regulation under the act has been passed by the Lieutenant-Governor--B.C. Reg. 196/66.³⁵ The 1968 Amendment was necessary to include single storey townhouses, or single storey dwellings on a single lot since by the original wording in Section 2, two strata were necessary.³⁶ Since the amendment, vertical, horizontal or lateral projects³⁷ of one or more storeys or strata have been possible.

Section 3 of the STA authorizes the subdivision of land into strata lots by the act of depositing a strata plan. The strata lots created are the condominium units and may be treated in the same way as land registered in the register of indefeasible fees under the Land Registry Act which applies to condominiums.³⁸ Upon deposit of the strata plan the owners of the strata lots constitute and are members of a body corporate under the name "The Owners Strata Plan No." and referred to as a strata corporation, to which the Companies Act does not apply. The strata corporation has perpetual succession, a common seal (which is governed by the First Schedule) and may sue and be sued.³⁹

The strata plan includes a survey of the parcel of land and defines the boundaries of the strata lots by reference to floors, walls and ceilings and unless otherwise

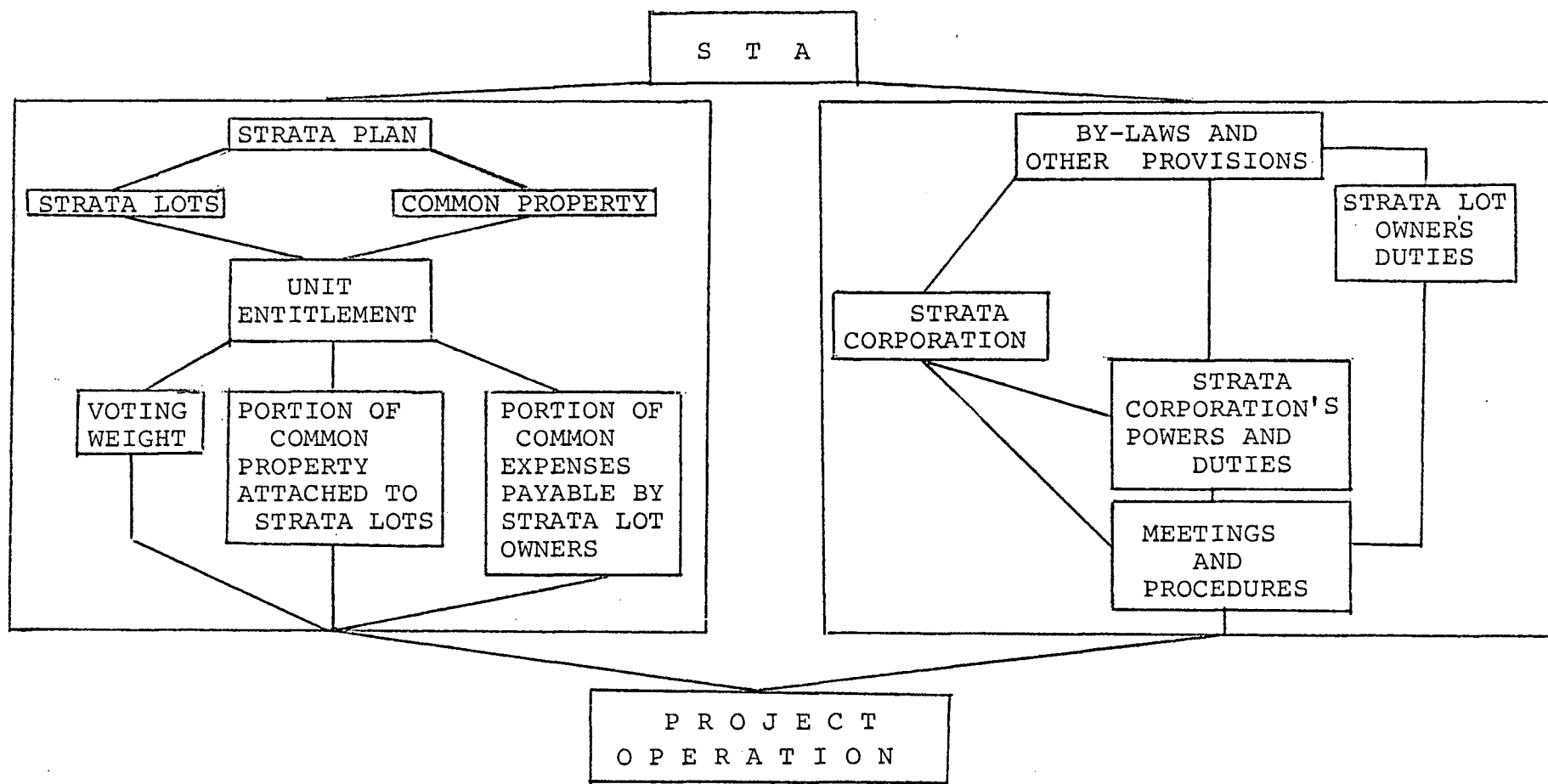


FIGURE II THE STRATA TITLES ACT - DIAGRAMATIC REPRESENTATION

stipulated in the strata plan the boundaries will be the centre of such floors, walls and ceilings. It follows therefore that the building must be substantially complete before depositing the strata plan. The common property is shown as being whatever is included in the survey of the parcel that is not a strata lot.⁴⁰ As mentioned in Chapter III leasehold condominiums are not provided for but an enabling amendment is under consideration.⁴¹ However see Appendix B.

The strata plan must specify the unit entitlement of each strata lot. This determines the voting rights or weight of each strata lot owner (but see also the First Schedule Section 26) and the proportion of the indivisible common property that accrues to each owner as a tenant in common and the proportion payable by each owner of the contributions levied by the strata corporation for operating expenses etc.⁴² Further provisions concerning voting rights are contained in Section 22, e.g. in the case of an infant being an owner and an owner being unable to control his property. Since the strata plan must specify the unit entitlement and since the strata plan is deposited before the strata lots are sold this means that the developer determines the unit entitlement by either--taking a percentage of the cost or value to the total cost or value--or a percentage of the area to the total area.⁴³

Under the STA a mortgagee may vote in place of the strata lot owner if he has given written notice of his mortgage

to the strata corporation.⁴⁴ In practice a standard mortgage form may be used with three additional covenants which cover points touched upon in the STA:

1. A covenant on the part of the mortgagor that he would pay any levies or any contributions levied against him by a strata corporation promptly when due.
2. A covenant by the mortgagor that he would carry out the duties required by the strata by-laws such as paying rates and taxes, repairing and maintaining his strata lot.
3. A covenant by the mortgagor to give an assignment of his power to vote to the mortgagee. The mortgagee must then give written notice of this power to vote to the strata corporation, and the mortgagee will then be notified of any meetings, he could then give a proxy to the strata owner if he so desires to vote at such meetings. Alternatively, he can issue a general unrestricted proxy to the strata owner to vote at all meetings but which can be revoked at any time if the mortgagee so desires. In this event, the mortgagee can request the strata corporation to send it copies of notices of all meetings together with the agenda for such meetings so that the mortgagee may know whether it wishes, at any point to revoke its general proxy and to take part in the meeting itself. 45

In Chapters II and III the problems involving affirmative covenants running with the land at common law were discussed. Under the STA sections 11 and 12 the necessary system of easements both in favour and against strata lot owners is created. These easements which are implied without registration in respect of each strata lot included in a strata plan, cover, support, shelter, passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems, and other services such as

telephone, radio and television, through or by means of any pipes, wires, cables, chutes or ducts.

In Chapter III the absence of rules for running a continuing cooperative was mentioned. The STA, Section 13, provides that the building shall be regulated by by-laws concerning the control, management, administration, use and enjoyment of the strata lots and common property. The by-laws set forth in the First and Second Schedules take effect automatically upon deposit of a strata plan in a Land Registry Office and are effective until amended, repealed or superseded by new by-laws, which to be effective must be registered with a Land Registrar and reference thereto added to the strata plan.¹⁶

The First Schedule contains the duties of an owner which are to permit the strata corporation entry for maintenance and repair, and to carry out work ordered by any public authority and to pay his rates, taxes and levies, etc. An owner must also maintain his property in a state of good repair and by his behaviour not interfere with other people's enjoyment of common property, and not use his property in such a way as to be a nuisance or hazard to others and to notify the strata corporation of any change of ownership or any mortgage or other dealing in connection with his property. The second Schedule enacts that an owner shall not use his lot for any purpose which may be illegal or injurious to the reputation of the building or make undue noise or keep any

animals if so notified by the strata corporation. If the strata plan expressly stipulates the use of a strata lot, the owner may not use the lot for any other purpose.

The duties of the strata corporation are covered in Section 14 and parts of the First Schedule. One of these duties concerns the insurance of the building against fire to its replacement value unless otherwise decided by the owners and to which the provisions of Section 15 apply. Other duties call for the corporation to keep the common property in a state of good and serviceable repair, and to comply with notices and orders emanating from any public or local authority.

Further duties of the corporation, mentioned in the First Schedule are to control, manage, and administer the common property for the benefit of all owners. Further maintenance duties are detailed concerning elevators and other fixtures and fittings to common property, lawns and gardens, etc. The corporation must also produce the insurance policy or policies and the premium receipt or receipts if required by certain persons. Other duties are prescribed in Sections 18 and 19 concerning the disposition of the building and procedures to be followed if it were destroyed. The corporation must under Section 20 have a mail box in the building for the purpose of being served documents including ordinary mail, summons, notices, orders and other legal documents.

The powers of a corporation are found in various sections of the STA but mainly in Section 14 and the First Schedule. Sections 8, 9, and 10 concern the disposition of common property and the execution and acceptance of easements or restrictive covenants burdening or benefiting the land included in a strata plan and the acquisition of more common property.

In Section 14 the financial powers of the corporation are laid down. These include the establishment of a fund for administrative expenses sufficient for the control, management and administration of the common property, payment of insurance premiums and any other obligations. The corporation has the power to determine the amounts to be raised and to levy contributions on the owners in proportion to their unit entitlement and to recover by an action in Court any share of expenses attributable to an owner who is in default.

Further powers are laid down in the First Schedule, these provide that the corporation may purchase, hire or otherwise acquire personal property for use by owners as common property; borrow money in performance of its duties or exercise of its powers; secure repayment of money borrowed by it and the interest thereon; invest money in the administrative expenses fund; make agreements concerning amenities or services with an owner or occupant of a strata lot; grant exclusive use or special privileges concerning

common property to an owner; and do all things reasonably necessary for the enforcement of the by-laws and control, management and administration of the common property.

The by-laws cannot be added to, amended or repealed except, in the case of the First Schedule, by unanimous resolution and, in the case of the Second Schedule, by special resolution. A unanimous resolution must include all those entitled to vote and a special resolution must be passed by at least three-quarters of the total unit entitlement and membership--both resolutions are defined in Section 2. However, no by-law or addition or amendment to or repeal of any by-law can operate to prohibit or restrict a devolution of strata lots or any transfer, lease, mortgage or other dealing or to change any easement implied or created by the STA. Although such restrictions could not be included in by-laws it could be included in the strata lot deeds since a strata lot is registered under the Land Registry Act under which a vendor can stipulate for right of first refusal.⁴⁷

The First Schedule provides for the Strata Corporation's powers and duties to be exercised and performed by the Council of the Corporation, subject to restrictions and directions given at general meetings. The Council is composed of between three and seven members elected at an annual general meeting and all matters before the council are determined by a simple majority. The First

Schedule further provides for the removal of council members, filling of vacancies, quorums, chairman, meetings, employment of agents on behalf of the corporation, delegation of powers and duties to particular council members, and the keeping of minutes and accounts which are to be open to inspection by the owners and mortgagees.

General meetings of all owners are regulated and procedures laid down. A general meeting must be held three months after the registration of the strata plan with subsequent general meetings held once a year except that other general meetings called extraordinary general meetings, may be held if required by owners entitled to twenty-five per cent of the total entitlement. Seven days notice must be given but accidental omission to give notice to any owner or first mortgagee does not invalidate any meeting. The types of business transacted at general meetings and quorums are defined. If a quorum of half those entitled to vote is not present at the first meeting it is adjourned to a week later at which time if a quorum is not present then after one half hour those present are considered a quorum and can proceed with the meeting. At a general meeting resolutions are determined by a show of hands and thus a simple majority based on one-man-one-vote but no owner may vote if he has not paid his contributions to expenses, except on a resolution requiring unanimity. A poll may be demanded in which

case the votes correspond to the unit entitlement of the voters. Proxies are allowed, but must be appointed in writing and may be either general or for a particular meeting. Further provisions concern co-owners and proxies, successive interest and trustees.

Section 16 provides for resubdivision of any lot or lots in the strata plan and Section 23 provides for the Lieutenant-Governor in Council to make certain administrative regulations under the Act; the one regulation concerning procedural details of the acceptance, numbering and deposit of a strata plan--B.C. Reg. 196/66--was mentioned earlier.

Section 21 provides for an administrator to be appointed by the Supreme Court of British Columbia for reasons presented by any person, having an interest in a strata lot, to the Court and accepted by it. The administrator would, to the exclusion of the Strata Corporation, have the powers and duties of the corporation or such of these powers and duties as the Court might order.

There remains one further matter in the STA to consider namely Section 17--valuation of the condominium project for assessment and tax purposes. For the purpose of valuation only the project is considered as a single parcel owned by the Strata Corporation and the taxes assessed based on the valuation are then apportioned among the strata lot owners in proportion to their unit entitlement and for which they

are liable. The strata corporation is not liable for any rate, tax, or charge and common property cannot be subject to any lien, charge, sale or other process in respect of unpaid taxes.

CONCLUSION

In summary, then, British Columbia's housing policy is based on the legislation reviewed. It emphasises home ownership and assistance for the elderly. As far as condominium is concerned Provincial policy does not discriminate against it, giving it the same treatment as traditional homes, continuing cooperatives and housing companies. However, condominium does have specific legislation, something continuing cooperatives and housing companies do not have. The two condominium projects initiated by the Province are experimental demonstration projects the success of which, it is hoped, (when completed) will encourage developers to undertake similar projects.

This Chapter is not intended to be a critique of Provincial housing policy as a whole but is presented as necessary background to a consideration of residential condominium development. However, the scope of the role of condominium in such policy can be contrasted to that of other Provinces as a measure of its adequacy. If the role of condominium in British Columbia is compared with the role

of condominium in Ontario, generally considered to be one of the most progressive in terms of housing policy⁴⁸ it is apparent that in the latter's policy the role of condominium is much greater and accorded high priority.

The Ontario Housing Corporation (OHC), established in 1964 as "the residential building arm of the provincial government"⁴⁹ has seven main programmes labelled "Home Ownership Made Easy" (HOME). One of these seven programmes is the "Encouragement of condominium housing through the provision of serviced building sites"⁵⁰ which is aided by the "main thrust in the provision of home ownership . . . the land assembly program"⁵¹. The OHC has announced plans for five condominium projects which will produce 8,685 dwellings by the Fall of 1974 and other projects are under consideration.⁵² Against this British Columbia's announced plans to date (for one hundred and twenty-eight units) are paltry.

CHAPTER V - NOTES

1. See quotation from Rose, in Chapter IV, n. 3.
2. Vancouver Housing Association, Bulletin No. 65, (Vancouver, B.C.: April, 1967), p. 1 and see Audain, op. cit., pp. 15-17 for more on voluntary housing groups.
3. Vancouver Housing Association, op. cit., p. 1
4. According to Rose, op. cit., pp. 53-92 all of the Provinces with the exception of British Columbia and Saskatchewan had established such corporations by 1968.
5. Community Planning Association of Canada in British Columbia, Brief to the Provincial Government on Need for a B.C. Housing Corporation, (25 July 1966).
6. J.E. Brown in "The Public Sector - a Panel Discussion," The Right to Housing, op. cit., p. 252.
7. J.T. Williams, Report of Department of Municipal Affairs, 1967 (Victoria, B.C.: Queen's Printer, 1968), p. W41.
8. Public Housing, A Possible Function of the Fraser-Burrard Regional District, (Vancouver, B.C.: A Technical Committee, 1968), p. 32.
9. Ibid.
10. Housing Act, S.B.C., 1950, c. 31, as amended.
11. Ibid., s. 3.
12. Ibid., s. 11.
13. Brown, op. cit., p. 252.
14. Elderly Citizen's Housing Aid Act, S.B.C., 1955, c. 19, s. 2, as amended.
15. Op. cit., in Chapter III, n. 55.
16. 1970, c. 40 formerly the Provincial New-home Building Assistance Act, S.B.C., 1967, c. 39.

17. As described by the author in Chapter III.
18. These grants are still available according to the Hon. Dan Campbell and the Hon. Grace McCarthy, A Home of Your Own, (Booklet published by the Government of British Columbia, no date.)
19. Ibid.
20. Provincial Home Acquisition Act, s. 3A(6).
21. Campbell and McCarthy, op. cit.
22. Conversation with Mr. J. Lowden, CMHC, Vancouver, B.C., 13 November 1970.
23. Provincial Home Acquisition Act, s. 3A(5).
24. Letter from Peter Crisp, Victoria, B.C. to Marianthi Constantinu, 23 September 1969.
25. Public Housing, A Possible Function of the Fraser-Burrard Regional District, op. cit., p. 10.
26. Letter from the Hon. Grace McCarthy to the author 6 August 1970.
27. Hon. Grace McCarthy in an Address to the Legislature, 16 February, 1970 and Press Release 7 December 1970.
28. Hon. Grace McCarthy, Address to the Legislature, 16 February, 1970; Hon. Dan Campbell, Address to the Legislature, 13 February 1970; Hon. Grace McCarthy, Press Release, 27 February 1970; Hon. Isabel Dawson, Press Release, 8 July, 1970; and The Province, Vancouver, 2 October, 1970.
29. The Sun, Advertising Section no. 220, Vancouver, B.C.
30. See Chapter III.
31. Op. cit.
32. Letter to the author, op. cit., since this was written the Attorney-General has presented a bill to the Legislature to enable the registration of title to air space, Bill 37, 1971.
33. Roberts, op. cit., p. B-1.

34. See Appendix E.
35. British Columbia Gazette, Part II, Victoria, B.C., 29 September 1966.
36. Watson T. Hunter, Q.C., "British Columbia," Habitat, Vol. XII, No. 4-5, 1969), p. 10 and Rosenberg, op. cit., pp. 5-1, 5-2, n. 1.
37. See Figure I, Chapter III.
38. Land Registry Act, R.S.B.C., 1960, c. 208, as amended, s. 2A.
39. STA, s. 1 and s. 6.
40. Ibid., s. 1 and s. 4.
41. G.A. Williams, Land Agent of the Corporation of the District of North Vancouver in Conversation with the author, February 1971.
42. STA, s. 4 and s. 5(1).
43. Hunter, op. cit., p. 11.
44. STA, s. 7.
45. Hunter, op. cit., pp. 11, 12. The mortgage for the Rumble Beach, B.C. project contained similar clauses, Rosenberg, op. cit., p. 12-7, n. 14.
46. Rosenberg, op. cit., p. 4-5 has drawn attention to the following from Rath, Grimes and More, op. cit., pp. 32, 33:

A matter of some interest is whether a new set of by-laws must necessarily follow the First-Second Schedule pattern. It is conceivable that all the First and Second Schedule by-laws might be repealed and a new set of by-laws introduced, not designated as either First or Second Schedule by-laws, and either providing their own code of amendment or containing no provisions for amendment. There appears to be nothing in the [New South Wales] Act to prevent such a course being followed . . . Upon registration of the Strata plan, and for some time thereafter, usually only one person will be the owner of all the lots and the common properties. That person may be bound by contract to effect amendments to the by-laws. The sole owner at this stage constitutes the council of

the body corporate . . . and may . . . convene . . . an extraordinary general meeting. In theory, he should give himself the notice . . . required . . . Thus, by following the procedure outlined . . . the sole proprietor may pass 'unanimous' resolutions for the purpose of achieving any desired alteration in the by-laws. Presumably, he could 'repeal' all the by-laws and substitute for them an entirely different set.

47. See Rosenberg, op. cit., p. 12-6, n. 12.
48. See, for instance, Rose op. cit., pp. 50, 51.
49. The Hon. S.J. Randall, "Housing Policies in Ontario," The Right to Housing, op. cit., p. 257.
50. Ibid., p. 258.
51. Ibid., p. 259.
52. Snell, op. cit., p. 23.

CHAPTER VI

MUNICIPAL POLICY

Introduction; The Municipal Act; The Vancouver Charter; Regional Districts; Town Planning Act; Other Relevant Vancouver Legislation; An Example of a Proposed Municipal Housing Policy- The Vancouver Proposals; Municipal Survey on Residential Condominium Policies and Bureaucratic Procedures; Necessity for Policy; Possible Municipal Frustration of Residential Condominium Development; Conclusion.

INTRODUCTION

This chapter attempts to outline the legislative framework of Municipal housing policy and considers as an illustration of Municipal policy the case of the City of Vancouver's housing policy as the background to the testing of the hypothesis, bearing in mind that condominiums are a form of cooperative and that Constantinu found in the case of continuing cooperatives that a lack of specific Municipal policies retarded their development.¹

The basic legislation affecting the powers and duties of municipalities in the housing field is contained in the Vancouver Charter and the Municipal Act.² Although Municipalities are "creatures" of the Province and both the statutes referred to above are Provincial Acts; it is appropriate to consider them in this chapter. The method used to discover the sections of the Acts relevant to housing was to search their indices.

THE MUNICIPAL ACT

This Act applies to all local governments in British Columbia excepting Vancouver, but including Vancouver as a member municipality in the Greater Vancouver Regional District. The parts and sections of the Act that are relevant to housing are as follows:

A. Parts:

1. Part IV Assessment and Taxation (s. 317-437);
2. Part XII Acquisition and Disposal of Property, including compensation and leasing (s. 464-503);
3. Part XXI Community Planning (s. 694-723) which deals, among other things, with an Official Community Plan, Advisory Planning Commission, Zoning, Subdivision of Land, and Building Regulations;

B. Other Sections:

1. Compensations for land taken for sewer and storm drains (s. 531);
2. Buildings dangerous and a nuisance to public health and safety (s. 635);
3. Buildings - Fire protection regulations (s. 642);
4. Buildings erected or used in contravention of by-laws (s. 735);
5. Buildings dilapidated or dangerous to public safety or health (s. 873);

C. Further sections specifically related to housing:

1. Powers to contract under the NHA (s. 214-215);
2. Power to establish and manage housing accommodation for the aged, infirm and disabled to acquire and hold real and personal property (s.640);

D. Duty to make suitable provision for the poor and destitute (s. 639).

THE VANCOUVER CHARTER

The parts and sections of the Vancouver Charter related to housing are as follows:

A. Parts:

1. Part IV Buildings (s. 304-308);
2. Part X Real Property (s. 339-454);
3. Part XXVI Compensation for Real Property Expropriated or Injured (s. 531-558);

4. Part XXVII Planning and Development (s. 559-574) which, among other things deals with Development Plans, Zoning, Permits, Building By-laws and an Advisory Planning Commission);

B. Other Sections:

1. Subdivision of property (s. 292);
2. Demolition of buildings a nuisance or danger to public health or safety (s. 324 a);
3. Leasing of land (s. 190, 193).
4. Various sections concerning Crown lands;

C. Sections specifically concerning housing:

1. Power to acquire real property and renovate or construct building for the provision and management of housing accommodation for such persons as the council shall think fit (s. 193);
2. Standards for multiple dwellings (s. 330(k));
3. Power to establish and maintain homes for the aged, infirm or disabled (s. 330(n));

D. Duty to make suitable provision for the poor and destitute (s. 183).

REGIONAL DISTRICTS

Regional Districts, mentioned earlier, are regulated by s. 765-798F of the Municipal Act and apply to Vancouver as a member municipality of the Greater Vancouver Regional District. The Sections 765-798F pertain, among other things, to Regional Plans, Technical Planning Committees, Advisory Planning Commissions and the functions or powers of the Regional Districts. The Greater Vancouver Regional District recently assumed public housing as one of its functions.³

TOWN PLANNING ACT

Under this Act⁴ Municipalities are empowered to draw up Official Town Plans, to expropriate property, to pass zoning and building regulation by-laws and to establish a Town Planning Commission. However, all of these powers are also similarly conferred by the Municipal Act and Vancouver Charter in much greater detail.

AN EXAMPLE OF OTHER RELEVANT LEGISLATION - VANCOUVER

The following examples of municipal legislation drawn from Vancouver are outlined to illustrate the scope of municipal legislation in the housing field.

Various by-laws made pursuant to the Vancouver Charter have been passed by City Council concerning housing namely: the zoning and development, building,⁵ plumbing, health, rodent, lodging house and tidy by-laws. A study in 1957 had recommended the passage of a by-law which would consolidate all matters concerning housing⁶ and although such a by-law has not yet been attempted by either the City of Vancouver or any other Municipality in British Columbia (to the author's knowledge) the Lieutenant-Governor in the Speech from the Throne at the opening of the Legislature in January 1971 stated that the Provincial Government intended to present a Bill which would standardize and coordinate housing regulations throughout the Province i.e. a standard housing by-law⁷.

That the Province has to do this is probably explained by the following:⁸

Maintaining standards in housing has also been a local responsibility but the role of cities in the past has not been positive or constructive. The regulation of housing conditions and occupancies, particularly for the low income households is not popular.

However, pursuant to the Rent Control Act⁹ the Vancouver Rental Accommodation Grievance Board was established by Council in 1969 to administer regulations contained in Schedule A of the by-law¹⁰ concerning standards to be observed in residential tenancies. The Municipal District of Surrey has a similar by-law and other municipalities have also considered similar legislation.¹¹

AN EXAMPLE OF A PROPOSED MUNICIPAL HOUSING POLICY -
THE VANCOUVER PROPOSALS

In January 1970 the Vancouver City Planning Department published the *Vancouver Urban Renewal Study, 1971-75 Proposals*. This report authorized by CMHC, contains (a) recommendations for an "overall policy for the role of government in improving housing and the physical condition" of the city;¹² (b) recommended programmes and (c) recommended procedures for implementing these programmes, involving citizen participation and called Community Improvement and Development Programmes for each local area of the city.¹³

As far as housing is concerned the report recommends (a) various types of housing; (b) the number of units to be built per year of the 5 year period and (c) the amount of funds required, but no specific proposals for Municipal-Provincial cost sharing are made, no change in the present basis being assumed. In addition sometimes a specific project location is mentioned.

The recommended housing programme¹⁴ to improve welfare and amenity by improving housing conditions would provide for:

1. public housing either through the Regional District or City, primarily for senior citizens, non-family households and the handicapped;
2. the city to stimulate senior citizen and low-rental projects by non-profit groups by making funds available through the million dollar revolving fund for housing approved by ratepayers as part of the 1971-75 Five Year Plan;
3. city initiated "experimental housing" under future Federal innovative programmes;
4. for low income families Federal and Provincial Governments to continue to encourage home ownership within public housing projects and in single family dwellings;¹⁵ and
5. Federal and Provincial Governments to encourage rehabilitation of older homes requiring major repairs in areas not likely to redevelop by 1981.

In reference to (1) above, it is assumed that Federal and Provincial Governments will continue to accept most of the financial burden and that the city's contribution will be in the form of a share in the cost of rental subsidies, currently 12 1/2 per cent while receiving full taxes.

In reference to (3) above, although the report does not define "experimental housing" it will be remembered that the projected low income and senior citizens' condominium townhouses and apartments in Champlain Heights, described in the previous chapter, and the continuing cooperatives mentioned elsewhere in this chapter would probably fall into such a category. However, the report does not specifically recommend any policy or programmes for either continuing cooperatives or condominiums as a form of ownership, merely stating¹⁶ that the present policy of providing sites for various types of housing should continue.

In reference to (5) above the city is proposing new or modified NHA provisions and a new Provincial programme of grants.

The report does not specify whether a policy of leasing or selling city owned land should be adopted, or guidelines for either course of action. This question provides scope for further city policy and this aspect of city residential land policy or lack of it is illustrated by the following examples, where in one case land is sold and in another land is leased. In the case of the continuing cooperative proposed for Champlain Heights the City Council Planning and Development Committee approved the non-profit United Cooperative Housing Society's plan to construct 105 low income three and four bedroom townhouse units. In what Constantinu described as an *ad hoc* decision City Council had earlier

passed a resolution whereby a 6.6 acre site in city owned Champlain Heights would be reserved for sale to cooperative groups only.¹⁷ However, in the event the site was leased to the Society at 80 per cent of market value. The city could reserve sites for the other form of housing cooperative i.e. condominium on the same basis--non-profit--and the question of the possibility of leasehold condominiums under the S.T.A. would be raised. (see Appendix B).

In the other case 94 residential lots¹⁸ zoned R.S.-1, One Family Dwelling District, were offered for sale based on a fixed price with priority being given to persons wishing to build homes for themselves. Other conditions were that construction must commence within 18 months of the date of sale and the rate of interest for sale of lots on terms was to be 9 3/4 per cent and applications to purchase were to be accompanied by a cheque to the value of 5 per cent of the property as a guarantee of good faith.

Many of the proposed programmes of the city would utilise the land assembly provisions of the NHA and the million dollar revolving housing fund of the city both of which have been mentioned elsewhere in this paper.

MUNICIPAL SURVEY ON RESIDENTIAL CONDOMINIUM POLICIES
AND BUREAUCRATIC PROCEDURES

In order to discover the existence and extent of any special Municipal policies or bureaucratic procedures concerning residential condominium development eleven Municipalities chosen at random were surveyed by postal questionnaire.

The two questions posed were:¹⁹

What, if any, are the policies of your municipality concerning condominium housing development?

What, if any, are the special procedures necessary to develop a condominium project in your municipality (e.g. rezoning is often necessary)?

The effectiveness of the survey will have been affected possibly by the questions being of an open nature, the different positions and therefore biases of the respondents and more importantly by the fact that it is probably rare for a Municipality to have a formally enunciated and accepted comprehensive housing policy in which condominiums may be conceived to play a role. Furthermore no Regional Districts were questioned since very few, to the best of the author's knowledge have assumed any housing function and those that have confine their attention to elderly citizens and public housing. In spite of these limitations, however, the responses are felt to provide valid answers.

The results are shown in Table I. Richmond did not reply and Nanaimo's answer was unusable. Of the other respondents none stated affirmatively that they had special

policies or bureaucratic procedures and six stated that they had none. Vancouver, New Westminster and Kamloops stated that they "encouraged" condominium development while Penticton "favoured" such development.

It will be recalled that the author's definition of policy in Chapter I included:

. . . any policy resolution, view, attitude or intention whether expressed generally or stemming from any specific relevant governmental decision.

It can be concluded therefore that save for generally favourable attitude towards residential condominium development expressed by some respondents, the Municipalities have no special policy or bureaucratic procedures concerning such development. As mentioned earlier Constantinu's study also found no special policy for continuing cooperatives.

The extent of encouragement by Municipalities to condominium housing may be similar to that of the City of Vancouver in connection with continuing cooperatives. Vancouver advertised in the press for proposals for a Cooperative Housing Development on a parcel of City owned land, the same parcel for which condominium development is favoured. Similarly the District of North Vancouver advertised an "opportunity" to develop a unique low density townhouse or cluster housing scheme. The advertisement was directed to "condominium and apartment developers."²⁰

The conclusion reached above based on the survey of municipalities raises the question as to whether special policy or bureaucratic procedures should be considered necessary for condominium housing development. The author feels that, since to benefit from the provisions of the NHA initiative must come from local government, (Municipality or Regional District) then in conjunction with Municipal development plans and/or Regional District plans, a Municipal or Regional District housing policy should be formulated in which condominiums should be considered, and that this policy should be adopted by the Municipality or Regional District.

If this is not the case the zoning map may become a substitute. This point and the difficulty of deducing Municipal policy mentioned in Chapter I in reference to the limitations of this thesis is illustrated by the following. Vancouver "City Council will allow the development of townhouses in rooming-house and duplex zones on sites of a minimum size 12,000 sq. ft."²¹ In so doing Vancouver made an "experimental policy"²² decision affecting housing by amending the Zoning and Development By-law. Furthermore it is possible that some townhouses will be condominiums, but the crucial point is that townhouses, (defined in the by-law) and not condominiums, (which are not defined or mentioned in the by-law) are specifically referred to.

It so happens, however, that the example mentioned in the previous paragraph is in fact one of the programmes

TABLE I

MUNICIPAL SURVEY ON RESIDENTIAL CONDOMINIUM POLICIES AND BUREAUCRATIC PROCEDURES

MUNICIPALITY	SPECIAL POLICY	SPECIAL PROCEDURES	RESPONDENT
Vancouver	No - but condominium encouraged for Champlain Heights	No	Deputy Director of planning
New Westminster	Condominium encouraged and attempts made to attract development	No	City Planner
Burnaby	No	No	Senior Planner
Richmond	--	--	--
Nanaimo	--	--	Building Inspector
Port Alberni	No	--	Planning Administrator
Prince George	No	No	City Manager
Dawson Creek	No	--	City Clerk
Kamloops	Condominium encouraged	No	Director of Planning and Inspections
Penticton	Condominium favoured	--	Assistant Planner
Victoria	No	No	Senior Planner

outlined in Vancouver's proposed housing policy. However, the zoning change mentioned occurred before the publication of the proposed housing policy and therefore the point made earlier that Municipal housing policies are not generally to be found in one formal document but in the records of myriads of decisions and recommendations of tabled or untabled reports, is still valid.

NECESSITY FOR POLICY

It could be said that there are two possible levels of Municipal or Regional housing policy; the first was described in an earlier paragraph, i.e. general policy stating the role that condominium (and other types of housing) should play in a comprehensive Municipal or Regional housing policy formulated in conjunction with a Municipal or Regional development plan which could in fact move from the general to the particular by stating the quantity, location and approximate cost for the various types of housing envisaged. A second or more specific level of policy might also be conceived which would deal with land use controls and development procedures²³ and how these should treat proposals for condominium housing projects.

From Figure I in Chapter III it will be recalled that one of the meanings of the term "condominium" is a type of real property ownership and that condominium projects can

take four basic forms and be used in six basic ways. Should a condominium project in terms of land use and development by-laws be treated in a special way? If so on what grounds? Condominium projects are physically not unique on account of the nature of their type of ownership. For instance a condominium high rise apartment project in terms of land use and development by-laws is physically merely a high rise apartment project and the type of ownership is immaterial. Simply because the form of ownership of a project is condominium does not appear to constitute grounds for special treatment (i.e. for special conditions or exemptions) in terms of land use and development by-laws (except perhaps in the case of lateral condominiums which will be discussed below.)

There has been some loose talk on the subject of zoning for condominiums which results from and/or causes confusion; for example Davidson in connection with condominiums has stated that "It is essential that new zoning by-laws be designed" ²⁴ The author does not quarrel with the statement as such taken out of context, but feels it is misleading in that in context i.e. in specific reference to condominium it can be interpreted as calling for special condominium zoning. Another example is furnished by the Hon. Grace McCarthy's statement that planning officials "are aware of the need for zoning for condominiums but councils (with a few exceptions) will need to be educated." ²⁵

The view expressed earlier by the author that, given zoning, with the exception of lateral condominiums, no special zoning is necessary for condominium development is supported by the following quotations:

It is commonplace to talk of condominiums as if they were a dwelling type. They are not. The condominium is essentially a form of property ownership and it therefore makes no sense to legislate for them in a zoning by-law that regulates the use of land not its ownership. 26

It is unrealistic to treat a development differently purely because of the ownership pattern alone. The impact on the surrounding area and the demand for public services would be the same whether an apartment building is a rental unit cooperative or condominium. 27

Most of the Southern California Communities that have accepted condominium developments have been able to fit these projects into existing zoning ordinances, usually medium or high density residential zones, with appropriate set-back provisions for a relinquishment of minimum yard requirements to be accounted for by common area greenery. Some communities in Orange County are fitting condominium projects into planned development zoning ordinances whilst others are drafting original provisions to provide for "high-rise" condominium development Zoning ordinances and subdivision regulations should be applicable to condominium projects according to their use, without regard to the legal form of their ownership, just as they are applicable to other land uses without regard to the form of ownership. 28

POSSIBLE MUNICIPAL FRUSTRATION OF RESIDENTIAL
CONDOMINIUM DEVELOPMENT

The foregoing argument for not according special treatment to condominiums in zoning and development by-laws was qualified by the author's reservation concerning lateral condominiums which will now be considered.

The only possible instance of municipal zoning by-laws frustrating the development of residential condominiums would occur where proposed lateral condominiums are to be located in residential single family dwelling zones where such zones permit only one dwelling on one lot. In such cases the lateral condominium project cannot be developed since a strata plan, to be registered, can only show one parcel (a synonym for "lot"²⁹) which is subdivided into strata lots which are defined by walls, ceilings and floors.³⁰ Since in a lateral project the strata plan would have to show more than one strata lot (which in the case of a lateral condominium would be in fact a free-standing single family dwelling house) on the parcel, then clearly such a development would not be permissible. However, if the zoning and development by-law in question provides for a zone which enables extraordinary developments which cannot be fitted into the ordinary single family residential zone, this obstacle can be circumvented by rezoning to--using Vancouver as an example--CD-1, Comprehensive Development. Only if such rezoning is

denied or if the municipal zoning and development by-law cannot accommodate the lateral condominium in the manner described, i.e. by not having a special zone or device, then and only then, can municipal policy be said to frustrate residential condominium development.

CONCLUSION

In general then, since condominium is a form of ownership and not a use of land, Municipal policy at the secondary or specific level and Municipal bureaucratic procedures cannot be held to frustrate residential condominium development. In the specific case of lateral condominiums, however, unless Municipal by-laws provide the necessary flexibility, the possibility does exist of frustrating the development of a lateral residential condominium. If this be the case in any Municipality the passage of an appropriate amendment to the by-law to provide the requisite flexibility is recommended.

CHAPTER VI - NOTES

1. Constantinu, op. cit., pp. 63-71.
2. S.B.C. 1953, c. 55 as amended and R.S.B.C. 1960, c. 255, as amended, respectively.
3. See Public Housing, A Possible Function of the Fraser-Burrard Regional District, (Vancouver, B.C.: A Technical Committee, March 1968) and R.C. Andrews, Chairman's Report 1970, (Vancouver, B.C.: Greater Vancouver Regional District, 27 January, 1971). The Fraser-Burrard District has been renamed the Greater Vancouver Regional District.
4. S.B.C. 1925, c. 55 as amended.
5. By-law no. 4193 based on the National Building Code of Canada, a model document published by the National Research Council, Ottawa. The Premier of British Columbia indicated in early February 1971 that this code would be applied throughout the Province.
6. Audain, op. cit., pp. 51-52.
7. As reported in The Sun, Vancouver, B.C., 21 January 1971.
8. Vancouver Urban Renewal Study 1971-75 Proposals, (Vancouver City Planning Department, 1970), p. 73.
9. R.S.B.C. 1960, c. 338.
10. By-law nos. 4448 and 4465, (1969).
11. Conversation with Mr. Bruce York of the Vancouver Tenants Council.
12. Vancouver Urban Renewal Study, op. cit., letter of transmittal. CMHC paid for 75 per cent of the cost of the study with the City paying 25 per cent under Part V of the NHA.
13. Ibid., p. ix.
14. Ibid., pp. 86-88.
15. Ibid., p. 87. The details have not yet been worked out. As mentioned earlier tenants at the Little Mountain project have attained an increasingly greater measure of control of the management of the project. The City does not take a stand on this matter however.

16. Ibid., p. 99. Since this was written Council resolved to sell certain sites in Champlain Heights for Condominium development only. The Sun, Vancouver, B.C., 22 March, 1971.
17. Constantinu, op. cit., pp. 67, 110.
18. Lots 1-94 (Inclusive) D.L. 339, Plan no. 13659.
19. For questionnaire see Appendix F.
20. The Sun, Vancouver, B.C., 16 January 1971.
21. Ibid., 21 January 1971.
22. Ibid.
23. As an example of development procedure an outline of that followed in Vancouver is attached as Appendices G and H.
24. Davidson, op. cit., p. B-1.
25. McCarthy, Address . . ., op. cit., p. 11.
26. Martin Chesworth, Apartment Study, (North Vancouver, B.C.: Corporation of the District of North Vancouver Planning and Property Department, 1968), Part One, p. 44.
27. American Society of Planning Officials, Information Report No. 159, Condominium, (Chicago: June 1962), p. 11.
28. Wallace, L. Mitchell II, "Fee in Condominium, IV Government Regulations, A. Community Planning," Southern California Law Review, (Vol. 37, 1964), pp. 106, 107. See also California Civil Code s. 1370 and California Business and Professions Code, s. 4525.
29. Land Registry Act, R.S.B.C. 1960, c. 208 as amended, s. 2.
30. STA, s. 3(2)b.

CHAPTER VII

CONCLUSION

Condominiums and Continuing
Cooperatives; Trends and Further
Research.

CONDOMINIUMS AND CONTINUING COOPERATIVES

Condominiums have gained acceptance for similar reasons today as caused their evolution and spread in the past. Today, however, the modern concept of condominium is subject to detailed legislation and although condominiums are a type of cooperative they have certain characteristics which in our present economy and law are clear advantages over the other variety of cooperative housing.

In spite of widespread misunderstanding about the nature of the condominium concept, in the present Canadian economy, condominiums (or title cooperatives) whose existence widens the range of housing types available, are more likely to be effective in meeting housing demand and adding to housing stock than continuing cooperatives. In addition to the differences arising from the different form of ownership between condominiums and continuing cooperatives an important factor is that the former are generally built and marketed by private enterprise developers. This process utilizes the skill and experience of housing developers in locating and acquiring a site, constructing, financing, advertising and selling the finished units. Continuing cooperatives are generally built by non-profit cooperative associations which are lacking in the skill and experience of profit seeking developers and consequently many have not been successful.

This is not to say that condominiums are not important in cooperative enterprise since recently four projects have received financial assistance from credit unions.¹ Such assistance, pioneered in British Columbia, has been attributed to the need to combat a decline in credit union membership by involvement in the provision of housing to credit union members. In one case the Abbotsford Credit Union organised the Abbotsford Co-op Housing Association which late in 1969 completed a 30 unit condominium project--thus providing an example of the total integration of condominiums within cooperative enterprise.

Although Federal Government policy gives basically the same benefits to condominiums as to traditional homes and to continuing cooperatives it does impose extra conditions upon the latter. There seems to be further scope for the general condominium concept of ownership to be exploited by the Federal Government or CMHC in arrangements whereby public housing tenants could own their own unit. Provincial policy differentiates fundamentally in its treatment of condominiums and continuing cooperatives. The former are regulated by a specific "tailor-made" act while the legislative framework of the latter is too general and inadequate. Municipal policy, apart from general decisions to allow for a variety of housing types and *ad hoc* decisions to reserve a site has little if any bearing on either form of housing cooperative

Development since in terms of zoning and development by-laws the form of ownership is immaterial, only in the case of lateral condominiums might municipal policy be crucial.

TRENDS AND FURTHER RESEARCH

Due to the constraints of time and lack of data an analysis of the impact of Governmental policy in terms of actual residential condominium development in British Columbia could not be made. However, it can be stated that the majority of developments in British Columbia to date (February 1971) have been of the town- or row- house design type.² CMHC has recently begun to collect statistics on condominiums that it finances under the NHA (for an example of the items see Appendix I).

Condominium development offers scope for further research of interest to urban planners for many reasons. Although most residential high rise development in city centres has been for rental projects, in terms of high density impact on the surrounding area the form of ownership is not directly material to the actual physical impact. What will be of interest to planners and others is the extent to which home owners rather than tenants might come to live in the city centre. Home owners can vote upon money by-laws in British Columbia whereas tenants cannot, and even though this may change in the future, home owners are widely felt to have more of a stake and interest in municipal affairs and to be more

stable in terms of population turnover. The impact of condominium recreational facilities as well as those of rental projects will no doubt interest Parks Boards.

Condominiums as social systems which have been likened to mini-municipalities will undoubtedly attract interest since planners and others have in the past been concerned with neighbourhood social relations. A number of points of interest come readily to mind--community vs. privacy--participation, control and education through involvement. To paraphrase Socrates and Jane Jacobs--the city is indeed the people and also a network of their relationships.

CHAPTER VII - NOTES

1. The Sun, Vancouver, B.C., 7 January 1971.
2. Davidson, op. cit., p. B-1.

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APPENDICES

APPENDIX A

English "Condominium" Schemes

A typical contract for the transfer of a flat in fee simple will cover the following main aspects:

1. Payment by the Purchaser of a fixed sum plus a perpetual yearly rent charge.
2. Transfer by the Vendor, to the Purchaser of the Flat situated as shown on an annexed plan together with the easement rights and privileges mentioned in an attached Schedule.
3. Purchaser covenants to:
 - (A) Bind all persons deriving title under him to observe the restrictions set forth in the Schedule.
 - (B) Pay the yearly rent charge.
 - (C) Keep the Flat, and all walls, party walls, sewers, drains, pipes, cable, wires and appurtenances in good condition, in particular so as to support, shelter and protect the parts of the building other than the Flat.
 - (D) Contribute a fixed part of the common expenses.
 - (E) Keep the Flat insured against loss or damage by fire.
 - (F) Permit Vendor to enter the Flat to examine the condition thereof and make good any defects for which Vendor may be liable.
4. Grant of a right of re-entry in favor of Vendor in case of default.
5. Vendor covenants:
 - (A) To impose the same restrictions on other Purchasers.
 - (B) To maintain the main structure, gas and water pipes, drains and electric cables, the main entrances, passages, landings staircases, boundary walls and fences.
 - (C) To decorate the exterior of the building in such manner as shall be agreed by a majority of the owners or lessees of the flats.

6. Vendor declares that he holds the common parts and the benefit of the covenants made by all the Purchasers, as trustee for such Purchasers.
7. Vendor remains liable on the covenants made by him so long as he remains the owner of the rent charge reserved.
8. One or more schedules are attached to the contract, to spell out the details about:
 - (A) The restrictions imposed in respect of the Flat,
 - (B) The easement rights and privileges included in the transfer,
 - (C) The rights and privileges excepted and reserved from the transfer,
 - (D) The costs and expenses in respect of which the purchaser is to contribute.

A typical contract for the sale of a flat by means of a long term lease would be similar in many respects to a sale freehold. The main differences would be:

- (a) Term - the transfer is not made in perpetuity, but for a long term, such as 99 years.
- (b) Lessee agrees not to make alterations or remove fixtures.
- (c) Lessee agrees not to underlet the premises during the closing years of the lease term, and to surrender possession at the expiration of such term.

Otherwise, the terms of a contract for the sale of a flat by means of a long-term lease would be substantially the same as those for the sale of a flat freehold.

Source: Edward George, "The Sale of Flats," 19, The Conveyancer and Property Lawer (N.S.), 1955, p. 7. cited by Ferrer and Stecher, op. cit., pp. 66-68.

APPENDIX B

Leasehold Condominiums502. Condominium on Leasehold Land502.1 *Freehold title generally essential*

The Ontario, British Columbia, Alberta, Saskatchewan and Nova Scotia Acts require that the title of the developer be freehold,^{3,6} which *prima facie* means that a condominium project in these five provinces cannot be developed on leasehold land. However, with the co-operation of the owner of the freehold there may be a method of developing a leasehold condominium project in these provinces. This method is fully outlined in §502.3 *infra*. The Manitoba Act, on the other hand,^{3,7} allows condominium projects on freehold or leasehold land.

The desirability of having a condominium project on leasehold land is obvious. Many projects which appear to be most suitable for condominium development are developed on leasehold land. "The Colonnade" on Bloor Street in Toronto, which would be an ideal project for condominium, is built on land owned by Victoria College, and leased under a 99-year lease. The Ontario Housing Corporation has a plan whereby, instead of selling land for development, they are leasing it on a long term basis. Many of the financial institutions have recently adopted policies whereby, instead of mortgaging property, they first purchase the land and lease it back to the owners, and then mortgage the building and leasehold interest of the developer.

In addition to these reasons, the Manitoba Government had a specific reason for providing that the Manitoba Act would apply to leasehold estates. There is a development scheme by the City of Winnipeg under which it is hoped to develop a large number of housing units on leasehold lands, and to sell them as separate condominium units.

502.2 *The Manitoba approach*

The method used in the Manitoba Act leaves a large number of problems unanswered. The Act simply provides that "land" means land, whether leasehold or in fee simple, under the provisions of the Real Property Act, and that "owner" means the owner of the freehold estate or estates or leasehold estate or estates in a unit and common interest.^{3,8}

A number of American statutes provide for the inclusion of leasehold estates in the same manner. However, these provisions do not begin to answer the many problems of leasehold condominium developments. In such a development the developer is a tenant of the freehold owner. When he sells a condominium unit he assigns his interest in the particular unit and the common elements to the purchaser, who thereby assumes the burden of a portion of all the tenant's covenants under the head lease. If, then, as will almost invariably be the case, the head lease contains a tenant's covenant to pay taxes, what would be the effect of one of the unit purchasers failing to pay the taxes on his unit? Surely this would constitute a default under the head lease, giving the freehold owner the right of re-entry or forfeiture of the whole lease. If this is so, then every other unit purchaser will be in jeopardy, since they will all be dependent on one another for the performance of the covenants in the head lease. One of the essential features of condominium--the independence of the unit owner--will be destroyed.

Furthermore, if the head lease is in default and the freehold owner re-enters or forfeits the lease, or threatens to do so, does this not constitute a breach of the developer's covenant with the unit purchaser for quiet enjoyment?

If, on the other hand, the effect of such breach of a covenant in the head lease is not to place the whole lease in default but only that portion pertaining to the particular unit, this of necessity implies a fragmentation of the lease. Surely this could not result without the consent of the landlord, or express statutory provision.

In Manitoba, therefore, a court faced with a breach of any tenant's covenant by a unit owner will have two alternatives. It can find either:

- (a) That the whole of the head lease is in default, or
- (b) That the landlord's rights are fragmented so that he has only a fractional right against each individual owner.

Under the second alternative the landlord would be in the position of having as many individual leases as there were units. If this is the intention, then a number of additional provisions are necessary. The consent of the landlord to any registration as a condominium must be required. Surely his rights cannot be so fragmented without his knowledge or consent. If there is such a fragmentation, the proportions must be specified. Presumably the logical ratio for apportioning all of the obligations under the head lease would be in the unit proportions for ownership of the common

elements or payment of common expenses. There would have to be a provision to that effect in the statute. There are a number of other detailed provisions that would be necessary to properly cover the fragmentation of the lease in this way.

502.3 Alternative method

There is an alternative method of developing a condominium project on leasehold land that is suitable for any jurisdiction where there is a condominium statute, which it is suggested would, in a simple, straightforward way, and using instruments and methods with which lawyers and conveyancers are familiar, accomplish the desired result. The method proposed requires close co-operation between the owner of the land and the developer.

Assume that the Ontario Housing Corporation owns land on which a 200-unit condominium project is to be erected, and the land is to be leased for 99 years at a rental of \$20,000 per year. The Housing Corporation would enter into a lease with the developer for 99 years, which would enable him to complete the building and obtain the necessary interim financing. There would be an agreement that on completion of the building the 99-year lease would be surrendered and the project would be registered under the Act by the Ontario Housing Corporation as owner. The corporation would then simultaneously lease by separate leases each of the two hundred units to the developer. Each lease would, of course, include the common interest and would be for a period of 99 years. If the units were identical in value and in unit proportions, the rent under each lease would be \$100 per annum. The Housing Corporation would then have the same revenue--that is, \$20,000 per year--but from two hundred separate leases. The developer would sell each of the units, that is the leasehold interest in each unit together with its common interest, to each purchaser. The leasehold interest in each unit and common interest could be separately mortgaged.

Each unit would be separately taxed and the tenant of each unit and common interest would be responsible for these taxes. The landlord's and tenant's covenants with respect to each unit and common interest would be completely separate. The financial independence, which is a necessary element of the condominium concept, would be as complete as in a freehold project. In one respect only would the project differ from a freehold project: each of the unit owners would have in addition to his separate realty tax obligation and his separate obligation for mortgage payments, the obligation to pay his separate "land rent."⁴⁰

The only real limitation remaining on the complete independence of each unit owner would be one that exists in all condominium projects, that is, his potential liability in the event that other unit owners fail to meet their fair share of the common expenses.

The form of the lease with the Housing Corporation, or with the land owner in other cases, would contain very few covenants. The major covenants after the covenant to pay rent, would be (1) to comply with all the requirements of the declaration, by-laws and statute; (2) to pay common expenses as and when assessed; and (3) to pay realty taxes.

Would the courts say that this was a play by the developer to do indirectly that which the statute directly prohibits? They should not. Not only would allowing such an approach be beneficial to the further development of the condominium concept; it would be consistent with the Act to the extent that the "owner" at the time of registration is the owner in fee simple. In the example referred to, the "owner" would be the Ontario Housing Corporation. All Canadian Acts clearly permit units and common interests, once created, to be leased (as well as sold or mortgaged) independently.

³⁶Ontario, s. 2(1); British Columbia, s. 3(2)(a); Alberta and Saskatchewan, s. 3(3); Nova Scotia, s. 3. See also R.C.B. Risk, "Condominiums and Canada," 18 U. of T.L.J. 1 (1968), at p. 16.

³⁷See ss. 1(n), (p), 2(2), 4(2), 20(3)(b).

³⁸A. 1(n), (p).

³⁹E.g., Alaska, Arizona, Connecticut and District of Columbia.

⁴⁰This is not in any way a real interference with the independence of each unit owner, but merely an additional financial obligation independently assumed.

Source: Rosenberg, op. cit., pp. 5-10, 5-14.

Note: The District of North Vancouver is attempting to have developed a leasehold condominium on District owned land.

APPENDIX C

Kinds of Estates

In summary, the term "estate" signifies ownership of a possessory interest in land. Homeownership is ownership of a possessory interest in a building located on land and land itself. Homeownership is the ownership of an estate in land.

Through the years, the common law has given recognition to six kinds of estates. The number six appears to be a fixed one as the common law evolved a rule that no new estates could be created.⁶ The estates which have gained recognition are as follows:

1. The fee simple. Such an estate confers upon its holder absolute ownership of land so far as our, or any, law can conceive of it. It is ownership of infinite duration.
2. The fee tail. This estate confers upon the grantee and his descendants ownership of the land without the right of alienability.
3. The life estate. Such estate confers upon its holder the right to exercise dominion over land during the life of some person.
4. The estate for years. This is a lease. Its owner has a possessory interest in land for a specific period of time. The period may be very short, such as a week or even a day; or very long, as one hundred years.
5. Tenancy from year to year. This is an estate in which the owner may exercise dominion over land for a specific period of time with automatic successive renewals. Thus, a renter, who rents from month to month, is assured of a renewal of his estate for one month additional to that in which he is exercising his rights over the land.
6. Tenancy at will. When a person occupies another's land with either party free to terminate the relationship such occupancy is achieved with the permission of the owner. The occupancy is an interest in land that constitutes an estate denominated as a tenancy at will.⁷

The first three estates are called freehold estates, a term indicative of their historical dignity. The latter are called non-freehold estates.

Homeownership implies some greater interest in one's habitat than is enjoyed by a "renter" or "tenant". Homeownership imports to a layman something more than an estate for years or any other lesser estate. Homeownership is the antithesis of an estate for years, or tenancy from year to year, or a tenancy at will. Without further comment, a study of homeownership will concern itself with the non-freehold estates only for the purpose of comparison.

In the popular mind one of the principal concomitants of homeownership is the development of an "equity."⁸ An equity represents the investment-security factor of ownership.⁹ Investment implies the ability to convert equity into a cash reality. Such conversion requires alienability, a characteristic excluded by the nature of the fee tail and absent as a practical matter in a life estate, which is terminable by death--a certainty. Therefore, the only estate that properly concerns a study of homeownership is the fee simple estate.^[12]

A fee simple estate denotes an estate in land constituting the greatest possible aggregate of rights, powers, privileges, and immunities.¹⁰ It is the maximum amount of legal ownership known to Anglo-American jurisprudence. It is an estate distinguishable by two essential elements: its potentially infinite duration, and its inheritability by collateral as well as local descendants.¹¹

(Author's comment: N.B. in British Columbia:-

"(Part II Residential Tenancies) 35. For the purposes of this Part the relationship of landlord and tenant is one of contract only, and a tenancy agreement does not confer on the tenant an interest in land." Landlord and Tenant Act, R.S.B.C. 1960, c. 207 as amended.)

⁶1 Coke, Commentary Upon Littleton § 27 (1853).

⁷A. Casner & W. Leach, Cases and Text on Property 293 (1951).

⁸See supra, p. 330. ⁹See supra, pp. 328-9.

¹⁰Moynihan, Introduction to the Law of Real Property 29 (1962).

¹¹Id., at 30. [12] Of homeownership, but not of housing.
Source: Sengstock and Sengstock, op. cit., pp. 380-381.

APPENDIX D

PILOT PROJECT: CHAMPLAIN HEIGHTS

The following figures pertain to the unit price of each of the 128 townhouses which will be built in Champlain Heights in Vancouver, British Columbia.

The townhouse will be built on 6.9 acres of land. They each contain three bedrooms and full basement.

The selling price includes all financing expenses, selling expenses and mortgage fees. The selling price is \$16,200 and is payable as follows:

Selling Price		\$16,200
Home Acquisition Grant	\$1,000	
CMHC 1st Mortgage	14,700	
Cash Down Payment	<u>500</u>	<u>16,200</u>

Allowing taxes of \$350.00 per year, less the homeowner grant of \$160.00 and assuming a 35 year amortization and 7-7/8% interest rate, the monthly payments would be as follows:

Principal and Interest	\$101.74
Taxes (after grant)	16.00
Total	<u>117.74</u>
Minimum Income assuming 27% G.D.S. Ratio	\$437.00/month

Source: News Release from the Office of the Hon. Grace McCarthy, Minister Without Portfolio, Government of British Columbia, 7 December 1970.

1966

STRATA TITLES

CHAP. 46

Strata Titles Act*[Consolidated for convenience only, July 1, 1968.]*

- Title.** 1. This Act may be cited as the *Strata Titles Act*. 1966, c. 46, s. 1.
- Interpretation.** 2. In this Act, unless the context otherwise requires,
- “building” means the building or buildings shown in the strata plan;
 - “common property” means so much of the land for the time being comprised in a strata plan that is not comprised in any strata lot shown in the plan;
 - “Court” means the Supreme Court of British Columbia;
 - “owner” means the person registered in the books of any Land Registry Office as owner in fee-simple of a strata lot, whether entitled thereto in his own right or in a representative capacity or otherwise;
 - “Registrar” means a Registrar within the meaning of the *Land Registry Act*;
 - “special resolution” means a resolution passed at a general meeting of the strata corporation of which at least fourteen days’ notice specifying the purpose of the special resolution has been given by a majority of not less than three-fourths of the total unit entitlement of the strata lots, and not less than three-fourths of all members;
 - “strata corporation” means the corporation created by section 6;
 - “strata lot” means a lot shown as such in a strata plan;
 - “strata plan” means a plan that
 - (a) is described in the heading thereto as a strata plan;
 - (b) shows the whole or any part of the land comprised in the plan as being divided into two or more strata lots, whether on one level or more, and whether or not connected with another or others;
 - (c) complies with the requirements of section 4, and includes a plan of resubdivision of any strata lot or strata lots in a strata plan;
 - “unanimous resolution” means a resolution unanimously passed at a duly convened meeting of the strata corporation at which all persons entitled to exercise the powers of voting conferred by or under this Act are present personally or by proxy at the time of the motion;
 - “unit entitlement” in respect of a strata lot means the unit entitlement of that strata lot, specified or apportioned in accordance with clause (f) of subsection (1) of section 4 or subsection (5) of section 16. 1966, c. 46, s. 2; 1968, c. 54, s. 2.

Subdivision
of land into
strata lots.

3. (1) Land may be subdivided into strata lots by the deposit of a strata plan, and the strata lots created thereby, or any one or more of them, may devolve or be transferred, leased, mortgaged, or otherwise dealt with in the same manner and form as any land the title to which is registered under the *Land Registry Act*.

(2) A strata plan shall not be accepted for deposit by the Registrar unless

- (a) the title to the land included in the strata plan is registered in the register of indefeasible fees; and
- (b) the land included in the strata plan is shown as a single parcel on a subdivision plan deposited pursuant to the *Land Registry Act*.

(3) The Registrar shall examine the application and the instrument and strata plan produced in support thereof, and, if satisfied that they are in order and in compliance with all the applicable requirements of the *Land Registry Act*, shall assign to the strata plan a serial deposit number and issue such new certificates of title for the strata lots shown upon the strata plan as may be necessary.

(4) Upon the issue of the new certificate of title, the former certificate shall be cancelled in like manner as provided in section 159 of the *Land Registry Act* in the case of a transfer of the whole or a portion of lands included in a certificate of title.

(5) A strata plan shall be deemed, upon registration, to be embodied in the register and, notwithstanding any other Act, the owner shall hold his strata lot and his share in the common property subject to any interests affecting the same for the time being notified on the registered strata plan and subject to any amendments to strata lots or common property shown on that plan. 1966, c. 46, s. 3.

Strata plans.

4. (1) A strata plan shall

- (a) delineate the plane boundaries of the land included in the strata plan and the location of the building in relation thereto;
- (b) bear a statement containing such particulars as may be necessary to identify the title to the land included in the strata plan;
- (c) include a drawing illustrating the strata lots and distinguishing the strata lots by numbers or letters in consecutive order;
- (d) define the boundaries of each strata lot by reference to floors, walls, and ceilings;
- (e) show the approximate floor area of each strata lot;
- (f) have endorsed upon it a schedule specifying in whole numbers the unit entitlement of each lot and a number equal to the aggregate unit entitlement of all lots, which unit entitlement shall determine
 - (i) the voting rights of owners;
 - (ii) the quantum of the undivided share of each owner in the common property; and

- (iii) the proportion payable by each owner of contributions levied under section 14;
 - (g) have endorsed upon it the address at which documents may be served on the strata corporation; and
 - (h) contain such other data as may be prescribed by regulation.
- (2) Unless otherwise stipulated in the strata plan, the common boundary of any strata lot with any other strata lot or with common property is the centre of the floor, wall, or ceiling, as the case may be.
- (3) Every strata plan tendered for deposit in a Land Registry Office
- (a) shall be accompanied by the certificate of a British Columbia land surveyor that the building shown on the strata plan is within the external boundaries of the land that is the subject of the strata plan, or that appropriate and necessary easements or other interests exist to provide for any part or parts of the building that is or are not within the boundaries; and
 - (b) shall be accompanied by whatever number of copies thereof may be required by the Registrar for taxing authorities; and
 - (c) shall comply with all regulations which may from time to time be made by the Surveyor-General for the purposes of this Act; and
 - (d) shall be signed by the owner of the land included in the strata plan and witnessed in like manner as instruments required to be registered under the *Land Registry Act*; and
 - (e) shall comply with subsection (1).
- (4) (a) Upon registration of an instrument or instruments evidencing a transfer of common property by a strata corporation, the Registrar shall cause the strata plan in which the property transferred was included to be amended by deleting that property therefrom.
- (b) Upon registration in accordance with the *Land Registry Act* of an instrument or instruments evidencing transfer of lands to a strata corporation, the Registrar shall cause the appropriate strata plan to be amended accordingly.
- (5) The Registrar shall register a charge against the common property included in the strata plan by endorsing a memorandum thereof on the strata plan. 1966, c. 46, s. 4; 1968, c. 54, s. 3.

Common
property.

5. (1) The common property shall be held by the owners as tenants in common in shares proportional to the unit entitlement of their respective strata lots.

(2) Save as in this Act provided, no share in the common property shall be dealt with except with the strata lot of the owner, and any instrument dealing with a strata lot shall operate to deal with the share of the owner in the common property, without express reference thereto.

(3) The Registrar shall show on every certificate of title for a strata lot included in a strata plan the owner's share in the common property created by that plan. 1966, c. 46, s. 5.

Strata
corporation.

6. (1) (a) The owner or owners of the strata lots included in a strata plan and his or their successors shall, upon deposit of the strata plan in a Land Registry Office, constitute and be members of a body corporate under the name "The Owners, Strata Plan No. " (the number to be specified shall be the registration number of the strata plan).

(b) In this subsection, "owners" includes the persons entitled to the land included in the strata plan under subsection (3) of section 18.

(2) The *Companies Act* and the *Companies Clauses Act* do not apply to a strata corporation.

(3) Subject to this Act, the strata corporation is responsible for the enforcement of the by-laws, and the control, management, and administration of the common property.

(4) A strata corporation

(a) has perpetual succession;

(b) shall have a common seal;

(c) may sue and be sued;

(d) may, as representative of the owners of the strata lots included in the strata plan, sue for and recover damages and costs, or either, in respect of any damage or injury to the common property caused by any person, whether an owner or not; and

(e) may be sued in respect of any matter connected with the land included in the strata plan for which the owners are jointly liable.

(5) A judgment against the strata corporation shall for all purposes be deemed to be a judgment against the owners of the strata lots included in the strata plan in respective amounts proportionate to their unit entitlements as shown on the strata plan, and execution may be made accordingly. 1966, c. 46, s. 6.

Voting rights
of mortgagees.

7. (1) Where an owner's interest is subject to a registered mortgage, the mortgage may provide that the power of voting conferred on an owner by or under this Act be exercised in all cases or in specified cases by the mortgagee.

(2) Subsection (1) does not apply to allow a mortgagee to vote unless the mortgagee has given written notice of his mortgage to the strata corporation. 1966, c. 46, s. 7.

Dispositions
of common
property.

8. (1) The owners by unanimous or special resolution may direct the strata corporation to transfer or charge common property, or any part thereof.

(2) Where a resolution is duly passed under subsection (1) and all persons other than owners having registered or statutory interests or estates in the land included in the strata plan which have been notified to the strata corporation have, in the case either of a transfer or a charge, consented in writing to the release of those interests or estates in respect

of the land comprised in the proposed transfer or, in the case of a charge, have approved in writing of the execution of the proposed charge, the strata corporation shall execute the appropriate instrument, and the instrument is valid and effective without execution by any person having an interest in the common property, and the receipt of the strata corporation for the purchase money, rent, premiums, or other moneys payable to the strata corporation under the terms of the transfer or charge shall be a sufficient discharge, and shall exonerate the persons taking under the transfer or the charge, as the case may be, from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such instrument presented for registration under the *Land Registry Act* shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was duly passed, that the instrument conforms with the terms thereof, and that all necessary consents were given.

(4) In favour of purchasers of the common property and in favour of the Registrar, the certificate mentioned in subsection (3) is conclusive evidence of the facts stated therein.

(5) The Registrar shall register each transfer by issuing to the transferee a certificate of title for the land transferred, and no notification of the transfer shall be made on any certificate of title or folium of the register.

(6) Upon registration of a transfer of common property, the Registrar shall, before issuing a certificate of title, amend the registered strata plan by deleting therefrom the common property comprised in the transfer. 1966, c. 46, s. 8.

Easements and
covenants
affecting the
land in the
strata plan.

9. (1) The owners, by unanimous or special resolution, may direct the strata corporation

- (a) to execute on their behalf a grant of easement or a restrictive covenant burdening the land included in the strata plan; or
- (b) to accept on their behalf a grant of easement or a restrictive covenant benefiting the land included in the strata plan.

(2) Where a resolution has been duly passed under subsection (1) and all persons other than owners having registered or statutory interests or estates in the land included in the strata plan which have been notified to the strata corporation have consented in writing to the release of those interests or estates in respect of the land comprised in the proposed grant, the strata corporation shall execute the appropriate instrument, and it is valid and effective without execution by any person having an interest in the land included in the strata plan, and the receipt of the strata corporation is a sufficient discharge and shall exonerate all persons taking under the instrument from any responsibility for the application of the moneys expressed to have been so received.

(3) Every such instrument presented for registration under the *Land Registry Act* shall be endorsed with or accompanied by a certificate under

the seal of the strata corporation that the resolution was duly passed and that all necessary consents were given.

(4) In favour of persons dealing with the strata corporation under this section and in favour of the Registrar, the certificate mentioned in subsection (3) is conclusive evidence of the facts stated therein. 1966, c. 46, s. 9.

Acquisition of more common property.

10. (1) The owners, by unanimous or special resolution, may direct the strata corporation to acquire in accordance with the direction any land to be added to the common property.

(2) Every document evidencing acquisition of land under subsection (1) that is presented for registration under the *Land Registry Act* shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was duly passed.

(3) Upon applying to register title to land acquired under this section, the strata corporation shall file with the Registrar an amendment to the strata plan or an amended strata plan satisfactory to the Registrar together with as many copies thereof as he shall require.

(4) It shall not be necessary to name as grantees the owners of the strata lots or refer to their unit entitlements in any conveyance to them if these words are used to describe the grantees: "The owners, Strata Plan No. , [address], a corporation subsisting under the *Strata Titles Act* on behalf of the strata lot owners thereof." 1966, c. 46, s. 10.

Easement implied.

11. (1) In respect of each strata lot included in a strata plan, there shall be implied, without registration,

- (a) in favour of the owner of the strata lot, and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every other strata lot capable of affording support;
- (b) as against the owner of the strata lot and to which the strata lot shall be subject, an easement for the subjacent and lateral support of the common property and of every other strata lot capable of enjoying the support of that strata lot;
- (c) in favour of the owner of the strata lot, and as appurtenant thereto, easements for the passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems, and other services (including telephone, radio, and television services) through or by means of any pipes, wires, cables, chutes, or ducts for the time being existing in the land included in the strata plan to the extent to which those pipes, wires, cables, chutes, or ducts are capable of being used in connection with the enjoyment of the strata lot; and
- (d) as against the owner of the strata lot, and to which the strata lot shall be subject, easements for the passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems, and other services (including tele-

phone, radio, and television services) through or by means of any pipes, wires, cables, chutes, or ducts for the time being existing within the strata lot, as appurtenant to the common property and also to every other strata lot capable of enjoying such easements.

(2) All ancillary rights and obligations reasonably necessary to make easements effective apply in respect of easements implied or created under this Act. 1966, c. 46, s. 11.

Easement for shelter.

12. (1) The owner of a strata lot included in a strata plan is entitled to have his strata lot sheltered by every part of the building shown in the strata plan capable of affording shelter.

(2) The right created by subsection (1) is an easement to which every part of the building shown in the strata plan capable of affording shelter is subject.

(3) The easement for shelter created by this section entitles the owner of the dominant tenement to enter on the servient tenement to replace, renew, or restore any shelter. 1966, c. 46, s. 12.

By-laws.

13. (1) The building shall be regulated by by-laws.

(2) The by-laws shall provide for the control, management, administration, use, and enjoyment of the strata lots and common property, and shall include

(a) the by-laws set forth in the First Schedule, which shall not be added to, amended, or repealed except by unanimous resolution; and

(b) the by-laws set forth in the Second Schedule, which shall not be added to, amended, or repealed except by special resolution; and until by-laws are made in that behalf, the by-laws set forth in the First and Second Schedules have force and effect from the time of the deposit of the strata plan in the Land Registry Office.

(3) No by-law or addition to or amendment or repeal of any by-law shall operate to prohibit or restrict a devolution of strata lots or any transfer, lease, mortgage, or other dealing therewith or to destroy or modify any easement implied or created by this Act.

(4) No addition to or amendment or repeal of any by-law under clause (a) of subsection (2) has any effect until the strata corporation gives notification thereof in the form prescribed by regulation to the Registrar. Upon receiving the notification, the Registrar shall make reference thereto on the deposited strata plan.

(5) The strata corporation shall, on the application of an owner or mortgagee of a strata lot or any person authorized in writing by him, make available for inspection the by-laws for the time being in force.

(6) The by-laws for the time being in force bind the strata corporation and the owners to the same extent as if such by-laws had respectively been signed and sealed by the strata corporation and each owner and contained covenants on the part of the strata corporation with each

owner and on the part of each owner with every other owner and with the strata corporation to observe and perform all the provisions of the by-laws. 1966, c. 46, s. 13.

Duties and
powers of
strata
corporation.

14. (1) The duties of the strata corporation include the following:—

- (a) To insure and keep insured the building to the replacement value thereof against fire and such other risks as may be prescribed under this Act, unless the owners by unanimous or special resolution otherwise resolve:
- (b) To insure against such other risks as the owners may from time to time determine by special resolution:
- (c) Subject to section 19, forthwith to apply insurance moneys received by it in respect of damage to the building in rebuilding and reinstating the building so far as the same may lawfully be effected:
- (d) To pay premiums on any policies of insurance effected by it:
- (e) To keep in a state of good and serviceable repair and properly maintain common property:
- (f) To comply with notices or orders by any competent public or local authority requiring repairs to or work to be done in respect of the land included in the strata plan or the buildings;

and the strata corporation, for the purpose of effecting any insurance under clause (a), shall be deemed to have and has an insurable interest to the replacement value of the building, and for the purpose of effecting any other insurance under this subsection shall be deemed to have and has an insurable interest in the subject-matter of the insurance.

(2) The powers of the strata corporation include the following:—

- (a) To establish a fund for administrative expenses sufficient for the control, management, and administration of the common property, for the payment of any premiums of insurance, and the discharge of any other obligations of the strata corporation:
- (b) To determine the amounts to be raised for the purposes aforesaid:
- (c) To raise amounts so determined by levying contributions on the owners in proportion to the unit entitlement of their respective strata lots; and
- (d) To recover from any owner by an action for debt in any Court of competent jurisdiction any sum of money expended by the strata corporation for repairs to or work done by it or at its direction in complying with any notice or order by a competent public or local authority in respect of that portion of the building comprising the strata lot of that owner.

(3) (a) Subject to clause (b), any contribution levied as aforesaid shall be due and payable on the passing of a resolution to that effect and in accordance with the terms of the resolution, and may be recovered as a debt by the strata corporation in an action in any Court of competent

jurisdiction from the owner at the time when the resolution was passed and from the owner at the time when the action was instituted both jointly and severally.

(b) The strata corporation shall, on the application of an owner or any person authorized in writing by him, certify

- (i) the amount of any contribution determined as the contribution of the owner;
- (ii) the manner in which the contribution is payable;
- (iii) the extent to which the contribution has been paid by the owner; and
- (iv) the amount of any rate paid by the strata corporation under section 17 and not recovered by it;

and in favour of any person dealing with that owner, the certificate is conclusive evidence of the matter certified therein.

(4) The policy of insurance authorized by this section and taken out by the strata corporation in respect of the building shall not be brought into contribution with any other policy of insurance, save another policy authorized by this section in respect of the same building. 1966, c. 46, s. 14.

Insurance.

15. (1) Where a building is insured to its replacement value, an owner may effect a policy of insurance in respect of any damage to his strata lot in a sum equal to the amount secured, at the date of any loss referred to in the policy, by mortgages charged upon his strata lot.

(2) Where a policy of insurance as described in subsection (1) is in force,

- (a) payment shall be made by the insurer under the policy to the mortgagees whose interests are noted thereon in order of their respective priorities, subject to the terms and conditions of the policy;
- (b) subject to the terms and conditions of the policy, the insurer is liable to pay thereunder
 - (i) the value stated in the policy; or
 - (ii) the amount of the loss; or
 - (iii) the amount sufficient, at the date of the loss, to discharge mortgages charged upon the strata lot, whichever is the least amount;
- (c) where the amount so paid by the insurer equals the amount necessary to discharge a mortgage charged upon the strata lot, the insurer is entitled to an assignment of that mortgage; and
- (d) where the amount so paid by the insurer is less than the amount necessary to discharge a mortgage charged upon the strata lot, the insurer is entitled to a mortgage of the mortgage to secure the amount so paid on terms and conditions agreed upon as provided in subsection (4), or, failing agreement, on the same terms and conditions as those contained in the mortgage by the owner.

(3) Where a building is uninsured or has been insured to less than its replacement value, an owner may

- (a) effect a policy of insurance in respect of any damage to his strata lot in a sum equal to the replacement value of his strata lot less a sum representing the amount to which his strata lot is insured under any policy of insurance effected on the building; and,
- (b) notwithstanding any existing policies, effect a policy of insurance in respect of damage to his strata lot in a sum equal to the amount secured, at the date of any loss referred to in the policy, by mortgages charged upon his strata lot, and clauses (a), (b), (c), and (d) of subsection (2) apply in respect of any payment under the policy;

and, for the purposes of this subsection, the amount for which a strata lot is insured under a policy of insurance effected in respect of the building shall be determined by multiplying the value stated in the policy by the unit entitlement of the strata lot and dividing the product so obtained by the sum of the unit entitlements of all strata lots.

(4) For the purposes of clause (d) of subsection (2) and clause (b) of subsection (3), any insurer and mortgagee or mortgagees may at any time, whether before or after a policy of insurance has been effected by an owner, agree upon the terms and conditions of the mortgage of a mortgage.

(5) Nothing in this section shall limit the right of an owner to insure against risks other than damage to his strata lot.

(6) The policy of insurance authorized by this section and taken out by an owner in respect of damage to his strata lot shall not be brought into contribution with any other policy of insurance, save another policy authorized by this section and taken out in respect of damage to the same strata lot. 1966, c. 46, s. 15.

Resubdivision
of strata lots.

16. (1) Subject to the provisions of this section, this Act applies to any resubdivision of any strata lot or strata lots included in a strata plan by the deposit in the Land Registry Office of another strata plan.

(2) Upon deposit of a strata plan of resubdivision of a strata lot or strata lots included in a strata plan on deposit in the Land Registry Office, the Registrar shall amend the strata plan on deposit as prescribed by regulation.

(3) Notwithstanding section 6, the owners of strata lots in a strata plan of resubdivision are not a body corporate but are, upon deposit of the strata plan of resubdivision, members of the strata corporation formed on deposit of the original strata plan.

(4) On deposit of a strata plan of resubdivision, strata lots comprised therein become subject to the burden and have the benefit of any easements affecting the strata lot or strata lots in the original strata plan that is or are included in the plan of resubdivision.

(5) The Schedule endorsed on a strata plan of resubdivision, as required by section 4, shall apportion among the strata lots the unit entitlement of the strata lot or strata lots in the original strata plan that is or are included in the plan of resubdivision. 1966, c. 46, s. 16.

Valuation for
assessment
and tax
purposes.

17. (1) For the purposes of valuation of land and improvements for assessment and taxation, the land and improvements included in a strata plan shall be valued as a single parcel of land with improvements thereon as if it were all owned by one owner, and for that purpose, but no other, the land and improvements shall be deemed to be owned by the strata corporation.

(2) During the period that elapses from the time of registration of the strata plan and the making of a valuation for the purposes of assessment and taxation, the valuation then in force shall be deemed to be a valuation made in accordance with subsection (1).

(3) For the purposes of assessment and taxation,

(a) the values of the land and of the improvements as determined under subsection (1) shall be apportioned between or among all of the strata lots included in the strata plan in proportion to the unit entitlement of the respective strata lots as shown on the strata plan:

(b) each strata lot shall be deemed to be a separate parcel of land and improvements having values equal to those apportioned to it under clause (a); and

(c) the strata corporation is not liable for any rate, tax, or charge, and common property shall not be subject to any lien, charge, sale, or other process in respect of unpaid taxes. 1966, c. 46, s. 17.

Disposition on
destruction of
the building.

18. (1) Upon the building being deemed to be destroyed, the strata corporation shall forthwith lodge with the Registrar of Titles a notification of the destruction in the form prescribed by regulation.

(2) Upon receipt of notification under subsection (1), the Registrar shall make an entry thereof on the relevant strata plan in accordance with the regulations.

(3) Upon entry being made under subsection (2), the owners of strata lots in the strata plan are entitled to the land included in the strata plan as tenants in common in shares proportional to the unit entitlement of their respective strata lots.

(4) The owners of all strata lots, by unanimous or special resolution, may direct the strata corporation to transfer the land included in the strata plan, or any part or parts thereof.

(5) Where a resolution has been duly passed under subsection (4) and all persons other than owners having registered or statutory interests or estates in the land included in the strata plan which have been notified to the strata corporation have consented in writing to the release of those interests or estates in respect of the land comprised in the proposed dis-

position, the strata corporation shall execute the appropriate instrument, and the instrument is valid and effective without execution by any person having an interest in the land included in the strata plan, and the receipt of the strata corporation is a sufficient discharge, and shall exonerate the persons taking under the transfer from any responsibility for the application of the moneys expressed to have been so received.

(6) Every instrument under this section presented for registration under the *Land Registry Act* shall be endorsed with or accompanied by a certificate under the seal of the strata corporation that the resolution was duly passed and that all necessary consents were given.

(7) In favour of a purchaser of the land included in the strata plan and in favour of the Registrar, the certificate mentioned in subsection (6) is conclusive evidence of the facts stated therein.

(8) Upon presentation for registration under the *Land Registry Act* of an instrument of transfer of the land included in the strata plan by the strata corporation under this section, the Registrar, before issuing a certificate of title, shall make the entry prescribed by subsection (2).

(9) Where land is transferred by the strata corporation under this section,

- (a) the owners of the strata lots in which the land is included shall surrender to the Registrar their duplicate certificates of title for cancellation; and
- (b) the Registrar, after cancelling the folia of the register constituted by the certificates of title relating to the strata lots, shall register the transfer by issuing to the transferee a certificate of title for the land transferred. 1966, c. 46, s. 18.

Destruction of
the building.

19. (1) For the purposes of this Act, the building is deemed to be destroyed on the happening of the following events:—

- (a) When the owners by unanimous or special resolution so resolve; or
- (b) When the Court is satisfied that, having regard to the rights and interests of the owners as a whole, it is just and equitable that the building shall be deemed to have been destroyed and makes a declaration to that effect.

(2) In any case where a declaration has been made under clause (b) of subsection (1), the Court may by order impose such conditions and give such directions (including directions for the payment of money) as it thinks fit for the purposes of adjusting as between the strata corporation and the owners and as amongst the owners themselves the effect of the declaration.

(3) (a) Where the building is damaged but not deemed to be destroyed, the Court may by order settle a scheme, including provisions

- (i) for the reinstatement in whole or in part of the building; and
- (ii) for transfer or conveyance of the interests of owners of strata lots which have been wholly or partially destroyed to the other owners in proportion to the unit entitlements of the strata lots of which they are the owners.

(b) In the exercise of its powers under this subsection, the Court may make such orders as it deems necessary or expedient for giving effect to the scheme, including orders

- (i) directing the application of insurance moneys received by the strata corporation in respect of damage to the building;
- (ii) directing payment of money by the strata corporation or by owners or by some one or more of them;
- (iii) directing such amendment of the strata plan as the Court thinks fit, so as to include in the common property any enlargement thereof; and
- (iv) imposing such terms and conditions as it thinks fit.

(4) For the purposes of this section, an application may be made to the Court by the strata corporation or by an owner or by a registered mortgagee of a strata lot.

(5) On any application to the Court under this section, any insurer who has effected insurance on the building or any part thereof (being insurance against destruction of strata lots or damage to the building) has the right to appear.

(6) The Court may from time to time vary any order made by it under this section.

(7) (a) The Court, on the application of the strata corporation or any member thereof, may by order make provision for the winding-up of the affairs of the strata corporation.

(b) By the same order, the Court may declare the strata corporation dissolved as of and from a date specified in the order.

(8) On any application under this section, the Court may make such order for the payment of costs as it thinks fit. 1966, c. 46, s. 19.

Service of
documents
on body
corporate.

20. (1) The strata corporation shall, at or near the front building alignment of the parcel, cause to be continually available a receptacle suitable for purposes of postal delivery, with the name of the strata corporation clearly designated thereon.

(2) A document may be served on the strata corporation or the council thereof by post enclosed in a prepaid letter addressed to the strata corporation or the council, as the case may be, at the address shown on the strata plan or any amendment thereof, or by placing it in the receptacle referred to in subsection (1).

(3) For the purposes of this section, "document" includes summons, notice, order, and other legal process. 1966, c. 46, s. 20.

Administrator.

21. (1) The strata corporation or any person having an interest in a strata lot may apply to the Court for appointment of an administrator.

(2) The Court may in its discretion, on cause shown, appoint an administrator for an indefinite period or for a fixed period on such terms and conditions as to remuneration or otherwise as it thinks fit. The remuneration and expenses of the administrator shall be an administrative expense within the meaning of this Act.

(3) The administrator shall, to the exclusion of the strata corporation, have the powers and duties of the strata corporation or such of those powers and duties as the Court shall order.

(4) The administrator may delegate any of the powers so vested in him.

(5) The Court may in its discretion, on the application of the administrator or any person referred to in subsection (1), remove or replace the administrator.

(6) On any application made under this section, the Court may make such order for the payment of costs as it thinks fit. 1966, c. 46, s. 21.

Voting rights.

22. (1) Any powers of voting conferred by or under this Act may be exercised,

(a) in the case of an owner who is an infant, by his guardian;

(b) in the case of an owner who is for any reason unable to control his property, by the person who for the time being is authorized by law to control that property.

(2) Where the Court, upon the application of the strata corporation or of any owner, is satisfied that there is no person able to vote in respect of a lot, the Court

(a) shall, in cases where a unanimous resolution is required by this Act, and

(b) may, in its discretion in any other case, appoint the Public Trustee or some other fit and proper person for the purpose of exercising such powers of voting under this Act as the Court shall determine.

(3) The Court may order service of notice of such application on such person as it thinks fit or may dispense with service of such notice.

(4) On making any such appointment, the Court may make such order as it thinks necessary or expedient to give effect to such appointment, including an order as to the payment of costs of the application, and may vary any order so made. 1966, c. 46, s. 22.

Regulations.

23. The Lieutenant-Governor in Council may make regulations not inconsistent with this Act for and with respect to

(a) the manner and form of depositing a strata plan;

(b) the fees to be paid for any procedure or function required or permitted to be done under this Act; and

(c) the alteration or prescribing of any procedure or exercise of any power, right, or duty, statutory or not, under any other Statute, to the extent necessary to give full force and effect to this Act; and

(d) all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act. 1966, c. 46, s. 23.

Other
Statutes.

24. (1) For the purposes of the *Wife's Protection Act*, a strata lot shall be deemed to be land upon which is situate a dwelling.

(2) The *Plans Cancellation Act* does not apply to a strata plan. 1966, c. 46, s. 24.

Commence-
ment.

25. This Act shall come into force and effect on the first day of September, 1966. 1966, c. 46, s. 25.

SCHEDULES

FIRST SCHEDULE

Duties of an Owner

1. An owner shall

- (a) permit the strata corporation and its agents, at all reasonable times on notice (except in case of emergency, when no notice shall be required), to enter his strata lot for the purpose of inspecting the same and maintaining, repairing, or renewing pipes, wires, cables, and ducts for the time being existing in the strata lot and capable of being used in connection with the enjoyment of any other strata lot or common property, or for the purpose of maintaining, repairing, or renewing common property, or for the purpose of ensuring that the by-laws are being observed;
- (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his strata lot other than work for the benefit of the building generally and pay all rates, taxes, charges, outgoings, and assessments that may be payable in respect of his strata lot;
- (c) repair and maintain his strata lot, and keep it in a state of good repair, reasonable wear and tear and damage by fire, storm, tempest, or act of God excepted;
- (d) use and enjoy the common property in a manner that will not unreasonably interfere with the use and enjoyment thereof by other owners or their families or visitors;
- (e) not use his lot, or permit the same to be used, in a manner or for a purpose that will cause a nuisance or hazard to any occupier of a lot (whether an owner or not) or his family;
- (f) notify the strata corporation forthwith upon any change of ownership or of any mortgage or other dealing in connection with his strata lot.

Further Duties of Strata Corporation

2. The strata corporation shall

- (a) control, manage, and administer the common property for the benefit of all owners;
- (b) keep in a state of good and serviceable repair and properly maintain the fixtures and fittings (including elevators) used in connection with the common property;
- (c) where practicable establish and maintain suitable lawns and gardens on the common property;
- (d) maintain and repair (including renewal where reasonably necessary) pipes, wires, cables, chutes, and ducts for the time being existing in the parcel and capable of being used in connection with the enjoyment of more than one strata lot or common property;
- (e) on the written request of an owner or mortgagee of a strata lot, produce to such owner or mortgagee, or person authorized in writing by the owner or mortgagee, the policy or policies of insurance effected by the strata

corporation and the receipt or receipts for the last premium or premiums in respect thereof.

Further Powers of Strata Corporation

3. The strata corporation may
 - (a) purchase, hire, or otherwise acquire personal property for use by owners in connection with their enjoyment of common property;
 - (b) borrow moneys required by it in the performance of its duties or the exercise of its powers;
 - (c) secure the repayment of moneys borrowed by it, and the payment of interest thereon, by negotiable instrument, or mortgage of unpaid contributions (whether levied or not), or mortgage of any property vested in it, or by combination of those means;
 - (d) invest as it may determine any moneys in the fund for administrative expenses;
 - (e) make an agreement with any owner or occupier of a strata lot for the provision of amenities or services by it to the strata lot or to the owner or occupier thereof;
 - (f) grant to an owner the right to exclusive use and enjoyment of common property, or special privileges in respect thereof, the grant to be determinable on reasonable notice, unless the strata corporation by unanimous resolution otherwise resolves;
 - (g) do all things reasonably necessary for the enforcement of the by-laws and the control, management, and administration of the common property.

Council of the Strata Corporation

4. The powers and duties of the strata corporation shall, subject to any restriction imposed or direction given at a general meeting, be exercised and performed by the council of the strata corporation.

5. The council shall consist of not less than three nor more than seven owners and shall be elected at each annual general meeting. Where there are not more than three owners, the council shall consist of all owners.

6. Except where the council consists of all the owners, the strata corporation may, by resolution at an extraordinary general meeting, remove any member of the council before the expiration of his term of office and appoint another owner in his place, to hold office until the next annual general meeting.

7. Any casual vacancy on the council may be filled by the remaining members of the council.

8. Except where there is only one owner, a quorum of the council is two where the council consists of four or less members, three where it consists of five or six members, and four where it consists of seven members.

9. At the commencement of each meeting, the council shall elect a chairman for the meeting, who shall have a casting as well as an original vote; and if any chairman so elected vacates the chair during the course of a meeting, the council shall choose in his stead another chairman, who shall have the same rights of voting.

10. At meetings of the council all matters shall be determined by simple majority vote.

11. The council may

- (a) meet together for the conduct of business, adjourn and otherwise regulate its meetings as it thinks fit, and it shall meet when any member gives to the other members not less than seven days' notice of a meeting proposed by him, specifying the reason for calling the meeting;
- (b) employ for and on behalf of the strata corporation such agents and servants as it thinks fit in connection with the control, management, and administration of the common property, and the exercise and performance of the powers and duties of the strata corporation;

- (c) subject to any restriction imposed or direction given at a general meeting, delegate to one or more of its members such of its powers and duties as it thinks fit, and at any time revoke such delegation.
12. The council shall
- (a) keep minutes of its proceedings;
 - (b) cause minutes to be kept of general meetings;
 - (c) cause proper books of account to be kept in respect of all sums of money received and expended by it and the matters in respect of which receipt and expenditure take place;
 - (d) prepare proper accounts relating to all moneys of the strata corporation, and the income and expenditure thereof, for each annual general meeting;
 - (e) on application of an owner or mortgagee, or any person authorized in writing by him, make the books of account available for inspection at all reasonable times.
13. All acts done in good faith by the council are, notwithstanding it be afterwards discovered that there was some defect in the appointment or continuance in office of any member of the council, as valid as if the member had been duly appointed or had duly continued in office.

General Meetings

14. A general meeting of owners shall be held within three months after registration of the strata plan.
15. Subsequent general meetings shall be held once in each year, and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.
16. All general meetings other than the annual general meetings shall be called extraordinary general meetings.
17. The Council may whenever it thinks fit, and shall upon a requisition in writing made by owners entitled to twenty-five per centum of the total unit entitlement of the strata lots, convene an extraordinary general meeting.
18. Seven days' notice of every general meeting specifying the place, the date, and the hour of meeting, and in case of special business the general nature of such business, shall be given to all owners and first mortgagees who have notified their interests to the strata corporation, but accidental omission to give notice to any owner or to any first mortgagee or non-receipt of notice by any owner does not invalidate any proceedings at any such meeting.

Proceedings at General Meetings

19. All business shall be deemed special that is transacted at an annual general meeting, with the exception of the consideration of accounts and election of members to the council, or at any extraordinary general meeting.
20. Save as in these by-laws otherwise provided, no business shall be transacted at any general meeting unless a quorum of persons entitled to vote is present at the time when the meeting proceeds to business. One-half of the persons entitled to vote present in person or by proxy shall constitute a quorum.
21. If within one-half hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time; and if at the adjourned meeting a quorum is not present within one-half hour from the time appointed for the meeting, the persons entitled to vote present shall be a quorum.
22. At the commencement of a general meeting, a chairman of the meeting shall be elected.
23. At any general meeting a resolution by the vote of the meeting shall be decided on a show of hands, unless a poll is demanded by any owner present in person or by proxy. Unless a poll be so demanded, a declaration by the chairman that a resolution has, on the show of hands, been carried is conclusive evidence of

the fact without proof of the number or proportion of votes recorded in favour of or against the resolution. A demand for a poll may be withdrawn.

24. A poll, if demanded, shall be taken in whatever manner the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

25. In the case of equality in the votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to his original vote.

Votes of Owners

26. On a show of hands, each owner shall have one vote; on a poll, the votes of owners shall correspond with the unit entitlement of their respective strata lots.

27. On a show of hands or on a poll, votes may be given either personally or by proxy.

28. An instrument appointing a proxy shall be in writing under the hand of the appointer or his attorney, and may be either general or for a particular meeting. A proxy need not be an owner.

29. Except in cases where, by or under this Act, a unanimous resolution is required, no owner is entitled to vote at any general meeting unless all contributions payable in respect of his strata lot have been duly paid.

30. Co-owners may vote only by proxy jointly appointed by them or by one of the co-owners appointed by the other or others, and in the absence of such proxy or co-owner are not entitled to a vote on a show of hands except when a unanimous resolution is required by this Act, but any one co-owner may demand a poll. On any poll, each co-owner is entitled to that part of the vote applicable to a strata lot that is proportionate to his interest in the strata lot. The joint proxy (if any) on a poll shall have a vote proportionate to the interests in the strata lot of the joint owners who do not vote personally or by individual proxy.

31. Where owners are entitled to successive interests in a lot, the owner entitled to the first interest is alone entitled to vote, whether on a show of hands or a poll.

32. Where an owner is a trustee, he shall exercise the voting rights in respect of the lot to the exclusion of persons beneficially interested in the trust, and those persons shall not vote.

Common Seal

33. The strata corporation shall have a common seal, which shall at no time be used except by authority of the council previously given and in the presence of the members of the council or at least two members thereof, who shall sign every instrument to which the seal is affixed, except that where there is only one member of the strata corporation, his signature is sufficient for the purpose of this clause. 1966, c. 46, First Sch.

SECOND SCHEDULE

1. An owner shall not

- (a) use his strata lot for any purpose which may be illegal or injurious to the reputation of the building;
- (b) make undue noise in or about any strata lot or common property;
- (c) keep any animals on his strata lot or the common property after notice in that behalf from the council.

2. When the purpose for which a strata lot is intended to be used is shown expressly or by necessary implication on or by the registered strata plan, an owner shall not use his strata lot for any other purpose, or permit the same so to be used. 1966, c. 46, Second Sch.

APPENDIX F

QUESTIONNAIRE

Dear Sir:

During the last year I have been engaged in research on condominium housing in British Columbia in connection with my work at the School of Community and Regional Planning at the University of British Columbia. Condominium housing usually takes the form of multi-unit projects of any type and can be defined as follows:-

A form of land ownership, subject to the Strata Titles Act, in which:-

1. land, buildings and other facilities are subdivided into:-
 - (a) strata lots that are separately owned in fee simple, and
 - (b) common property shared and controlled by the Strata Corporation of which all strata lot owners are members.

An important part of this research is the discovery of any policies pertaining to such housing in the local jurisdictions of the Province. As a means of obtaining such information the following questions are put to you:

What, if any, are the policies of your municipality concerning condominium housing development?

What, if any, are the special procedures necessary to develop a condominium project in your municipality (e.g. re-zoning is perhaps necessary)?

If such information is not available to you, please forward the questions to any official able to answer them. Please mail your reply to:

Andrew Conradi

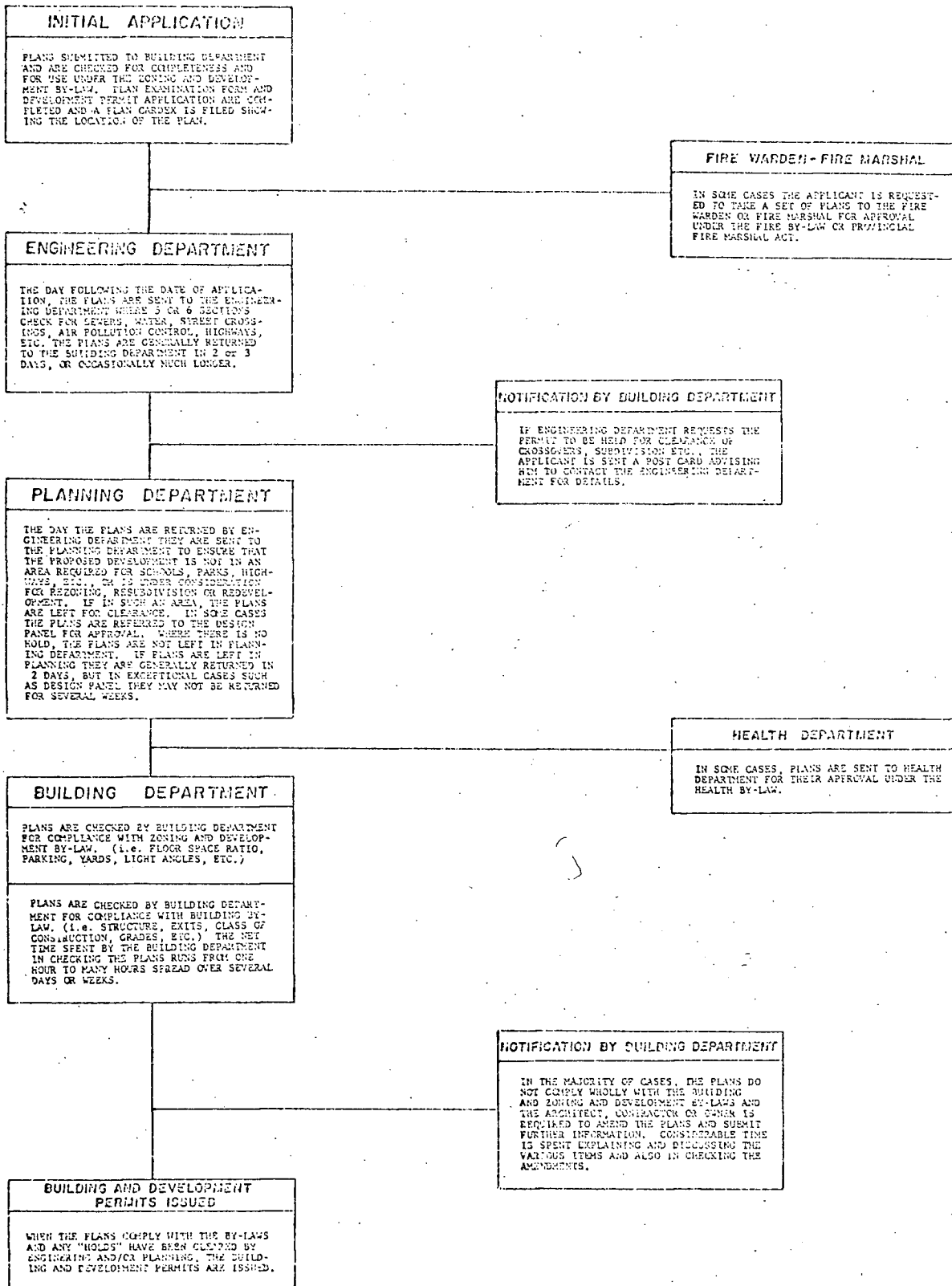
Hoping to hear from you at your earliest convenience,

Yours sincerely,

Andrew Conradi

APPENDIX G
(continued)

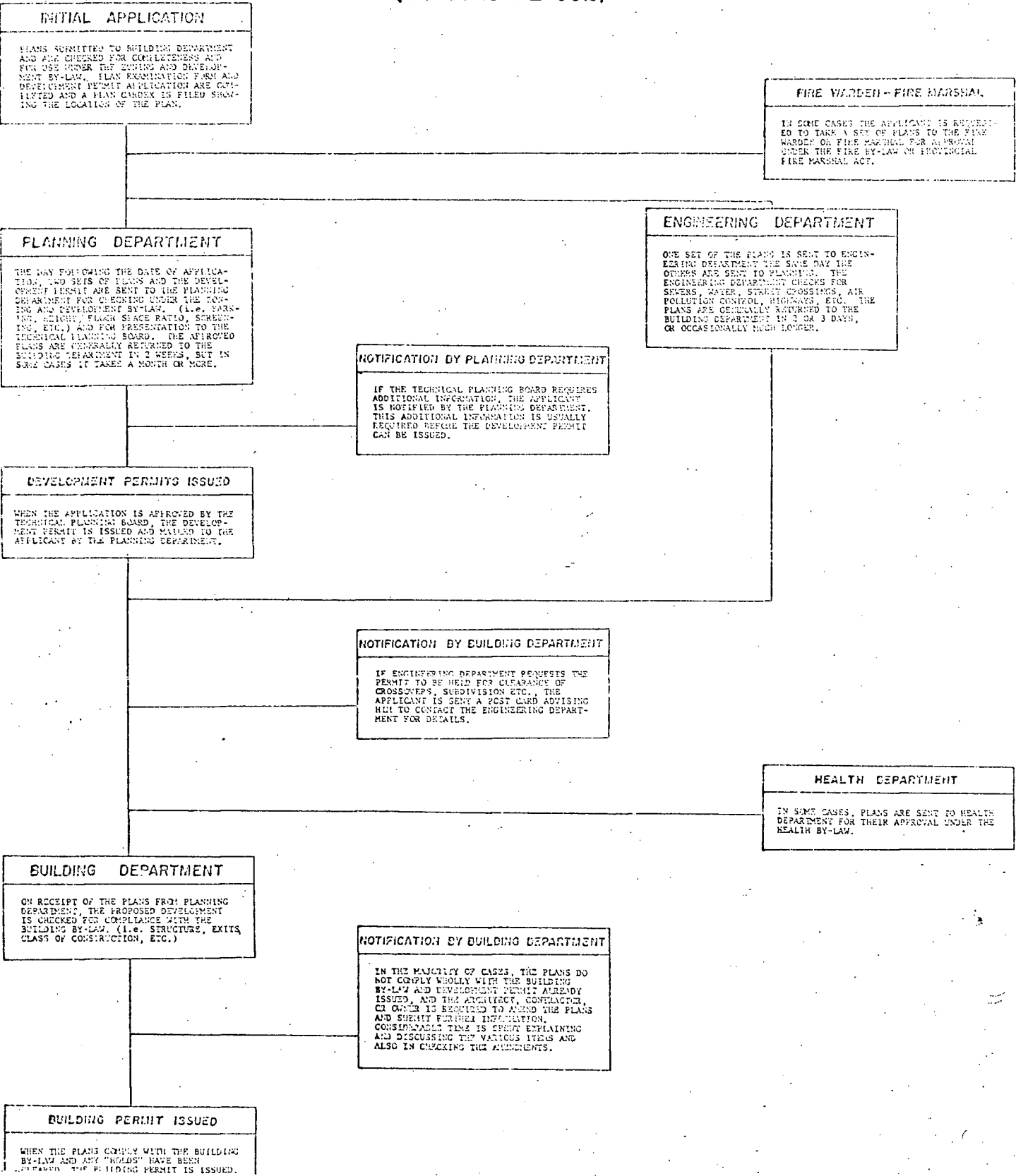
PROCEDURE FOR PROCESSING PLANS FOR
BUILDING AND DEVELOPMENT PERMITS
(OUTRIGHT USE)



Source: City of Vancouver, B.C. See also Rossen, *op. cit.*, for a description of the Development Permit System in the City of Vancouver.

APPENDIX G

PROCEDURE FOR PROCESSING PLANS FOR BUILDING AND DEVELOPMENT PERMITS (CONDITIONAL USE)



APPENDIX G

INFORMATION RE DEVELOPMENT PERMIT APPLICATIONS

The following information is to assist persons making development permit applications, as regards:

- (1) The minimum amount of information that must be submitted with any development permit application.
- (2) The Zoning and Development Fee By-law providing for the payment of fees at the time of filing of the application for the processing of ALL development permit applications.

(1) DRAWINGS AND INFORMATION REQUIRED
TO BE SUBMITTED WITH DEVELOPMENT PERMIT APPLICATIONS

As may be applicable, the following information must be shown on the required drawings or plans and submitted prior to or at the same time as the filing of a development permit application:-

DETAILED SKETCH PLANS, IN TRIPLICATE, CLEARLY INDICATING:-

<u>SITE PLAN</u>	(Scale not less than 1/16" or 1/20" to 1') with legal description, size of site and adjoining street names. Size and location, including required yards or setbacks, from all property lines of existing buildings, proposed buildings or additions, including accessory buildings. Size and location of off-street parking and off-street loading and unloading spaces, including screening, curbing, surfacing and access from streets or lanes. Landscaped areas. Finished grades of site relative to street grades and floor levels of buildings.
<u>ELEVATIONS</u>	(Scale not less than 1/8" to 1') with all elevations of proposed building or additions. Details of exterior finishes and materials for each elevation. Height of building above finished site grades.
<u>FLOOR PLANS</u>	(Scale not less than 1/8" to 1') Dimensioned layout and use of each floor of all existing and proposed buildings, additions and accessory buildings.
<u>ROOF PLANS</u>	(Scale not less than 1/8" to 1') general layout of all Heating, Ventilating, Air Conditioning or mechanical structures or equipment including ductwork etc; with elevations as necessary and details of all horizontal and vertical screening.

THE FOLLOWING INFORMATION MUST ALSO BE INDICATED ON THE DRAWINGS:

A statement, including an analysis of each floor etc. of:

- (1) The Floor Space Ratio for the development, as applicable in the appropriate District Zoning Schedule of the Zoning and Development By-law.
- (2) The number of off-street parking and off-street loading and unloading spaces REQUIRED and PROVIDED.
(Sections 12 and 13 Zoning and Development By-law refer)

The foregoing are the MINIMUM requirements of information to be shown on the required Sketch Plans. Development permit applications may not be accepted unless all the required information is submitted at the same time as the application is made.

Further, where applicable, explanatory drawings must be submitted showing compliance of a development with all Daylight Access, Horizontal and Vertical Light Angles as well as Side Yard Containing Angles, Height and Length, Bulk and Width requirements of the appropriate District Zoning Schedule.

NOTE: All copies of plans or drawings submitted shall be drawn on substantial paper of cloth--fully dimensioned, accurately figured, explicit and complete.

FOR FURTHER INFORMATION CALL

ZONING BRANCH
SECOND FLOOR
CITY HALL EAST WING

873-7613

W. E. Graham,
DIRECTOR OF PLANNING

14/10/70

SEE OVER REGARDING PROCESSING FEES

The following is an extract from the "Zoning and Development Fee By-law":

SCHEDULE 1

In the case of any development permit application under the following District Schedules and Sections, the fee shall be \$25.00;

(RA-1)	District Schedule, Section 2A (1)
(RS-1)	" " " 2A (1) and (2)
(RS-2)	" " " 2A (1) to (4) inclusive
(RS-3)	" " " 2A (1)
(RT-1)	" " " 2A (3) and (4)
(RT-2)	" " " 2A (3), (4), (5A), (6) and (7A)
(RM-1)	" " " 2A (3) and (4)
(RM-2)	" " " 2A (3) to (7) inclusive (14/9/65---*4198)
(RM-3)	" " " 2A (3) to (7) inclusive
(RM-4)	" " " 2A (4) to (8) inclusive
(C-1)	" " " 2A (19) to (21) inclusive
(C-2)	" " " 2A (36) to (40) inclusive
(C-3)	" " " 2A (42) to (46) inclusive
(C-4)	" " " 2A (40)
(C-5)	" " " 2A (48) to (52) inclusive
(CM-1)	" " " 2A (42A)
(M-1)	" " " 2A (55A)
(M-2)	" " " 2A (59A)
(P-1)	" " " 2A (1) to (5) inclusive

SCHEDULE 2

Type of Development	Fee
1. For a one-family dwelling, additions thereto, accessory building in connection therewith, validations and relaxations-----	\$ 3.00
2. For a new principal building or use, or for an addition to an existing building or use, being in all cases, other than a one-family dwelling: (14/9/65---*4198)	
Up to 5,000 square feet of gross floor area-----	\$ 12.00
For each additional 1,000 square feet of gross floor area or portion thereof-----	\$ 1.00
Maximum fee-----	\$ 150.00
3. For all parking areas (Private), parking areas (Public), storage yards, car sales lots, truck gardens, marinas, trailer courts, and other developments which in the opinion of the Director of Planning are similar	
Up to 12,000 square feet of site area-----	\$ 12.00
For every additional 2,000 square feet of site area or part thereof-----	\$ 1.00
Maximum fee-----	\$ 20.00
4. For accessory buildings or uses to a principal building or use already existing (being other than a one family dwelling) for validations and relaxations in cases other than a one family dwelling; for day care, homecraft, kindergartens, and similar development and uses as determined by the Director of Planning; and for changes in the use of an existing building, with no additions----- (14/9/65---*4198)	\$ 6.00

SCHEDULE 3

Type of Application	Fee
1. An application to amend the text of the Zoning By-law-----	\$ 50.00
2. An application to amend the zoning district plan (Schedule D) of the Zoning and Development By-law	
Up to 50,000 square feet of land area-----	\$ 50.00
For each additional 1,000 square feet of land area, or part thereof-----	\$ 1.00

W. E. Graham,
DIRECTOR OF PLANNING

SEE OVER

APPENDIX I

CMHC Condominium Information Sheet

These sheets maintained by CMHC contain the following information:

Reference number
Unit Type
Number of Bedrooms
L.F.A.
Sales Price
Land Cost
Adjustments
Basic Sale
Rate Appr.
Down Payment
Previous Tenancy
Age
Number of Dependents
Occupation
Purchaser's Income
Date of Sale

Source: CMHC, Vancouver, British Columbia.