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COMMENTS

RESTRICTIONS ON THE USE OF COOPERATIVE APARTMENT PROPERTY

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THE CONCENTRATION of our population in metropolitan areas, resulting in a strong social and economic interdependence of our citizens, has been the compelling factor for increased legislation and judicial decision in the area of land use controls. In our early agrarian society, little thought was given to what a nearest neighbor was doing with his land or to whom he may have sold it. As the distance between neighboring landowners shrank, these factors became increasingly important until today, as evidenced by our complex zoning regulations, the development of the principles of equitable servitudes and the increasing sanction of restrictive covenants are of paramount importance.

A more recent development, parallel in principle to this horizontal concentration, is the vertical concentration of our metropolitan population into large multi-story apartment buildings. Ordinarily, to avail oneself of the benefits of apartment living, a person was required to give up the advantages of home ownership. This was the situation which led to the development of the cooperative apartment plan.

This comment will examine the methods used by the apartment community in controlling the use and occupation of the individual apartment and its common facilities, the legal problems in their application, and the need for special legislation and enlightened judicial decision in this regard.

The Organization of the Cooperative Apartment

With some variation and combination the cooperative apartment is organized under one of three basic forms.[1] The corporate form is by far the most extensively used. The trust form is not commonly used. The fee ownership form or condominium is at the present time a rarity,[2] but seems to be receiving the increased interest of real estate developers and community planners.[3]

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[1] For a complete discussion of the cooperative apartment scheme and the form under which it exists, see: Note, *Cooperative Apartment Housing*, 61 HARV. L. REV. 1407 (1948); Castle, *Legal Phases of Cooperative Buildings*, 2 SO. CAL. L. REV. 1 (1928); Yourman, *Some Legal Aspects of Cooperative Housing*, 12 LAW & CONTEMP. PROB. 126 (1947); *Symposium—The How & Why of Real Estate Cooperatives*, PRAC. LAW. Nov. 1959, p. 59. For forms: 8 AM. JUR. LEGAL FORMS ANNOTATED §§ 8:374-81; 1A MODERN LEGAL FORMS §§ 2191-2209.

[2] POWELL, REAL PROPERTY § 632 (1954).

[3] Borgwardt, *The Condomniium*, 36 CAL. S. BAR. J. 603 (1961).

The corporate form utilizes two basic instruments: corporate stock and long term leases. The legal title to the entire project is vested in a non-profit corporation,[4] which operates and maintains the building and facilities and provides for financing. The "tenant-owner"[5] acquires his interest through the purchase of corporate stock equal in amount to the value of his apartment; and concomitant thereto takes a proprietary lease[6] on said apartment. The rent reserved under the lease is a proportionate share of the expenses of operation and maintenance and the discharge of the financial obligation on the project. The corporation is governed by a board of directors elected by, and comprised of, tenant-owners.

The trust form is similar in function to the corporate form. Title is vested in a trustee who issues to the tenant-owners certificates of beneficial interest guaranteeing exclusive occupancy of a particular apartment and use of the common facilities during compliance with the terms of the trust, *i.e.*, payment of a proportionate share of expenses. In contrast to the corporate form, the management of the property is controlled by the trustee. This factor, which diminishes the degree of "ownership," is thought to be the reason for the lack of popularity of this form.[7]

The condominium or fee ownership form differs radically from either the trust or corporate forms. The tenant-owner, in this form, is given legal title in fee to the air space constituting his apartment and is made a tenant in common with the other tenant-owners in the remainder of the project. Covenants in the deeds provide for the payment of a proportionate share of the maintenance costs and for the appointment of a manager for the project. The tenant-owner also covenants not to seek judicial partition of the common area during the life of the project. Cross-easements of support and right of way are provided for in the subdivision of the building.[8]

As can be seen, even from this very superficial study, the legal relationships created by the formation of a cooperative apartment are not readily classifiable into the standard niches used in our legal system. Pachel, in his work on the law of cooperatives, stated, "There is a growing tendency on the part of courts not to accept blindly existing rules of law where the reasons for those rules have no applicability to cooperatives."[9] The available decisions bear him out in this regard.[10]

[4] CAL. CORP. CODE § 12201.

[5] This name will be used throughout this note to describe the person holding an interest in an apartment under the cooperative system regardless of the form.

[6] Since the continuance of the lease is dependent on the lessee's holding of the requisite number of shares, the term "proprietary lease" is used in this field.

[7] 4 POWELL, REAL PROPERTY § 632 (1954).

[8] For an excellent analysis of this form see Borgwardt, *The Condominium*, 36 CAL. S. BAR J. 603 (1961).

[9] PACHEL, COOPERATIVES 49 (3rd ed. 1956).

[10] In applying rent control laws the tenant-owner has been held to be the owner of

Therefore, it is necessary, in analyzing the problems of the cooperative apartment plan, to bear in mind that the courts have considerable leeway in applying the law in litigation involving the peculiar nature of this scheme. Since the cooperative apartment plan is in accord with sound public policy and fulfills a distinct social need, the decisions of the courts should be geared to preserve the scheme, not destroy it.

Restraints on Alienation

In analyzing the cooperative apartment scheme, two important reasons for control of the alienation of the interests created therein become readily apparent. First, and most obvious, is the proximity of the dwelling units and the substantial financial outlay involved. Unlike individual housing, the apartment is denuded of the isolating protection of surrounding grounds. Also, the apartment dweller is required to share the common facilities with his neighbors. In addition, the tenant-owner, unlike the ordinary apartment dweller, has invested a good deal of money in his home; often making it financially impossible to move from unpleasant surroundings.

A second and somewhat more tangible reason for the control of alienation rights is the financial interdependence of the tenant-owners. Each tenant-owner is required to contribute his share of the operating and maintenance costs as well as to the discharge of the financial obligation on the cooperative property. The creditors of these obligations have their claim against the group as a whole whether it be a corporation, trust or tenant in common. Therefore, if one tenant-owner fails in his obligation, his share must be borne by the other tenant-owners.

Restrictions on Transfer of Corporate Stock

The general tenor of stock transfer restrictions in the cooperative apartment scheme is that no transfer may be made without the express consent of the board of directors or a substantial majority of the stockholders.[11] These provisions may be found in the articles of incorpora-

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his apartment: Kenny v. Tompson, 338 Ill. App. 403, 87 N.E.2d 229 (1949); Tudor Arms Apartments v. Shaffer, 191 Md. 342, 62 A.2d 346 (1948); 542 Morris Park Ave. Corp. v. Welkin, 120 Misc. 48, 197 N.Y. Supp. 625 (App. T. 1922). A California case, *In re* Estate of Pitts, 218 Cal. 184, 22 P.2d 694 (1933) held that although the corporation held the legal title, for all intents and purposes the entire equitable ownership was distributed to the tenant-owners; therefore the "lessees" had an interest in real property. A landlord-tenant relationship has been recognized between the corporation and the tenant-owners: Mayer v. Chelton, 321 Pa. 209, 183 Atl. 773 (1936); Hicks v. Bigelow, 44 A.2d 924 (D.C. Munic. Ct. App. 1947) where the court said, in effect, that there was a landlord-tenant relationship between the corporation and the tenant-owner; but, in substance the apartments were owner-occupied. Other decisions showing a willingness of the courts to consider the peculiarities of the cooperative apartment plan will be discusssed as they apply to the subject matter of this comment.

[11] 8 AM. JUR. LEGAL FORMS ANNOTATED § 8.380 (Calif. Bylaws of Corporate Form of Cooperative Apartment.)

tion,[12] and are usually found in the bylaws.[13] It is required that statements of such a restriction be placed on the stock certificate.[14]

As a general rule corporate stock, being personal property, carries with it the inherent right of free transferability at the will of the holder.[15] However, reasonable restraints have been held valid,[16] and are expressly provided for in California by statute.[17]

The problem then is to determine whether or not the restriction outlined above is reasonable. Restrictions requiring consent of the corporation have not yet been approved in California,[18] although those giving the corporation a first option have.[19] One California case, *Oakland Scavengers Co. v. Gandi*,[20] approved a provision which provided that on the death of the stockholder the corporation took the shares as trustee and could, at their election, transfer the stock to his son or sell the stock and distribute the proceeds to the deceased stockholder's estate. Although the bylaw in this case was invalid on other grounds, the court upheld the provision as a contract *not against public policy.*

The reasonableness of provisions restricting the transfer of corporate stock is said to depend on the necessity of the particular enterprise in overruling the general public policy against restraints on alienation.[21] The socio-economic reasons for such restrictions in the cooperative apartment plan seem adequate to supply this element of necessity. Cases in other jurisdictions have so held,[22] and in the light of the *Oakland Scavengers* case it seems certain that California will follow suit.

Restrictions Prohibiting Assignment or Subletting

The proprietary lease in the cooperative apartment plan generally contains a covenant by the tenant-owner to the effect that he will not

[12] Thomsen v. Yankee Mariner Corp., 106 Cal. App. 2d 454, 235 P.2d 234 (1951); CAL. CORP. CODE § 305(c).

[13] CAL. CORP. CODE § 501(g).

[14] CAL. CORP. CODE § 2403(c).

[15] 12 FLETCHER, CYCLOPEDIA CORPORATIONS § 5442 (Perm. ed. 1932).

[16] See cases collected in 61 A.L.R.2d 1318 (1958), 65 A.L.R. 1165 (1930), 138 A.L.R. 647 (1942).

[17] CAL. CORP. CODE § 501(g): The bylaws of a corporation may make provisions not in conflict with law or its articles for special qualifications of persons who may be shareholders, and reasonable restrictions upon the right to transfer or hypothecate shares.

[18] Oppenheim, *The Close Corporation in California—Necessity of Separate Treatment*, 12 HAST. L.J. 227 (1961); however, see 11 OPS. CAL. ATTY. GEN. 83 (1948), where it is advanced that they should be approved.

[19] Vannucci v. Pedrini, 217 Cal. 138, 17 P.2d 706 (1932); Thomsen v. Yankee Mariner Corp., 106 Cal. App. 2d 454, 235 P.2d 234 (1951).

[20] 51 Cal. App. 2d 69, 124 P.2d 143 (1942).

[21] Oppenheim, *The Close Corporation in California—Necessity of Separate Treatment*, 12 HAST. L.J. 227, 235 (1961).

[22] 68 Beacon St. v. Sohier, 289 Mass. 354, 194 N.E. 303 (1935); 1165 5th Ave. Corp. v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); Penthouse Properties v. 1158 5th Ave., 256 App. Div. 685, 11 N.Y.S.2d 417 (1939); Weisner v. 791 Park Ave. Corp., 6 N.Y.2d 426, 190 N.Y.S.2d 70, 160 N.E.2d 720 (1959).

assign the lease or sublet the premises without the written consent of the board of directors or a substantial majority of the stockholders of the corporation. The covenant is made binding on the executors and administrators as well as on assignees of the lessee. Related provisions usually specify that assignments may be made only to persons holding the required number of shares of stock, and that the assignee must furnish the board of directors with a written statement assuming all the covenants in the lease and all of his assignor's obligations to the corporation.[23]

Little needs to be said concerning the validity of covenants in a lease requiring that the lessee first obtain the consent of the lessor before assigning the lease or subletting the leased premises. Such provisions have been held fair and reasonable and are not in violation of the Rule Against Restraints on Alienation.[24] This is true even though the lessor may arbitrarily withhold his consent, regardless of the proposed assignee's qualifications,[25] and impose whatever conditions he desires for his approval.[26]

The remedy available to the lessor for a breach of this covenant is the privilege to declare a forfeiture.[27] The California Code of Civil Procedure[28] specifically provides for restitution of the leased premises to the lessor on three days notice to the person then in possession. The lessor, however, does not have the privilege of declaring the assignment void.[29]

It may be argued that by the combination of the proprietary lease with the ownership of the appurtenant stock, the tenant-owner has more than a leasehold interest in the demised premises;[30] and therefore, the restriction on the right to alienate is repugnant to the interest created,[31] and therefore void. This argument would have some merit if it were designed to preserve the cooperative scheme rather than to destroy it.[32] Since it is *not*, there would seem to be no reason why the courts should deviate in this case from the basic legal principles of landlord and tenant. Cases in point clearly have not.[33]

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[23] 8 AM. JUR. LEGAL FORMS ANNOTATED § 8.378.

[24] Kendis v. Cohn, 90 Cal. App. 41, 265 Pac. 844 (1928).

[25] Richard v. Degen & Brody, Inc., 181 Cal. App. 2d 289, 5 Cal. Rptr. 263 (1960).

[26] *Ibid.*

[27] Randol v. Tatum, 98 Cal. 390, 33 Pac. 433 (1893).

[28] CAL. CODE CIV. PROC. § 1161(4).

[29] Randol v. Tatum, 98 Cal. 390, 33 Pac. 433 (1893).

[30] *Accord, In re* Estate of Pitts, 218 Cal. 184, 22 P.2d 694 (1933).

[31] CAL. CIV. CODE § 711.

[32] PACHEL, COOPERATIVES 49 (3d ed. 1956).

[33] 68 Beacon St. v. Sohier, 289 Mass. 354, 194 N.E. 303 (1935); Weisner v. 791 Park Ave. Corp., 6 N.Y.2d 426, 190 N.Y.S.2d 70, 160 N.E.2d 720 (1959); 1165 5th Ave. Corp. v. Alger, 288 N.Y. 67, 41 N.E.2d 461, 141 A.L.R. 1157 (1942); Penthouse Properties v. 1158 5th Ave., 256 App. Div. 685, 11 N.Y.S.2d 417 (1939).

Restraining Alienation in the Fee Forms

A somewhat more difficult problem is encountered when similar restraints are sought to be imposed in the condominium or fee-form cooperative apartment. As a general rule, restraints on the alienation of a fee simple interest are void.[34] This rule applies regardless of the form used to impose the restraint,[35] and cannot be circumvented by agreement outside the granting instrument.[36] A provision which requires that the grantee obtain the consent of the grantor or a third person before alienating his interest is well within this rule.[37] It would seem then that any attempt to restrain the alienation of a tenant-owner's interest under the fee form would be futile. This being the state of the law at the present time, what arguments could be advanced for change with respect to the cooperative apartment scheme either through legislative modification or enlightened judicial decision excepting the tenant-owner's interest from the general rule?

First of all, the repugnancy test, although given lip service in the statutes and judicial decisions, is not the real criteria for invalidity. The true reason for this rule is to prevent the withdrawal of property from commerce which, in most cases, is contrary to public policy.[38] With public policy the true criteria, it would seem then the question to consider should be: Does the public benefit more in allowing the cooperative apartment scheme to be preserved by the imposition of this restraint or in having the tenant-owners' interest alienable without first obtaining the approval of his co-tenant-owners?[39] The public advantages of the cooperative apartment and the need for controlling transfers of interest created therein has been demonstrated. As a practical matter, the only real danger in validating this restraint would be the possibility of an arbitrary withholding of approval. This danger is minimized by requiring only a simple majority for approval and by the realization that an arbitrary withholding by a tenant-owner is apt to be responded to in kind when he desires to sell his interest.

In a Maryland case, *Northwest Real Estate Co. v. Serio*,[40] the court was confronted with a provision in the deeds to all the lots in a new subdivision which provided that no owner would have the right to sell

[34] CAL. CIV. CODE § 711: A condition restraining alienation, if repugnant to the interest created, is void.

[35] Title Guarantee & Trust Co. v. Garrott, 42 Cal. App. 152, 183 Pac. 470 (1919).

[36] Wharton v. Mollinet, 103 Cal. App. 2d 710, 229 P.2d 861 (1951).

[37] Prey v. Stanley, 110 Cal. 423, 44 Pac. 908 (1895) (by contract); Murray v. Green, 64 Cal. 363, 28 Pac. 118 (1883); RESTATEMENT, PROPERTY § 406, comment *h* (1944).

[38] 3 TIFFANY, REAL PROPERTY § 592 (2d ed. 1920).

[39] SIMES & SMITH, FUTURE INTERESTS § 1168 (1956) where it is stated that the test should be: ". . . balancing the beneficial character of the purposes of the restraint as against the extent to which the alienability would be hindered if the provision in question were held valid."

[40] 156 Md. 229, 144 Atl. 245 (1929).

or convey without the consent of the grantor for four years. The provision expressly recited that the purpose of the restraint was to preserve the high class of the neighborhood. The majority of the court held that the restraint was void. Chief Justice Bond in a vigorous dissent argued that the restraint was necessary to insure the prospective purchasers and the developer that the value of their property would not be depreciated by an invasion of undesirable neighbors, and that modern urban development, a distinct public benefit, requires such assurances. He then went on to say:[41]

> The view I venture to urge, then, is that the general prohibition of restraints on alienation should be considered as having some relation to the facts to be dealt with, not that the law should be changed, but that there should be a recognition of change in the conditions with which the law has to deal, and a discriminating pursuit among modern conditions of the one object always sought by the law—the protection of public interest.

One exception to the rule against restraints on alienation generally recognized by the courts and legislature is the control of the transfer of an interest in a partnership. This exception is based on the proposition that a business man should be permitted to select his associates in such an organization.[42] Such a privilege is necessary to preserve the harmony of operation and thus the very existence of the firm. Is it not equally as important for a person to have the privilege of selecting the persons with whom he is going to have to share his home? There seems to be some hope that the courts will recognize the cooperative apartment scheme as an exception to the general doctrine against restraints on alienation.[43]

Restrictions on the Use of Cooperative Apartment Property

Equally important to the maintenance of the cooperative apartment scheme as the control of who are to be its members is the control of the tenants' activities while occupying that status. The economic and social interdependence of the tenant-owners demands cooperation on all levels of cooperative life if a tolerable living situation is to be maintained. Each tenant-owner is required to give up some of the freedoms he would otherwise enjoy if he were living in a private dwelling and likewise is privileged to demand the same sacrifices of his co-tenant-owners with respect to his rights.

By analogy, the cooperative apartment is really a community within a community, governed, like our municipalities, by rules and regulations for the benefit of the whole. Whereas the use of lands within

[41] *Id.* at 239, 144 Atl. at 248 (dissent).

[42] SIMES & SMITH, FUTURE INTEREST § 1166 (1956).

[43] *Id.* § 1168: "One may well anticipate that, in the face of new purposes which are definitely in accord with good public policy, the courts may make new exceptions to the old doctrines with respect to direct restraints."

a city is controlled by zoning ordinances, the use of the apartments within the cooperative project is controlled by restrictive covenants. The use of the common facilities in the project is controlled on the same theory that the use of city streets and parks is regulated. In both situations compliance with the regulations is the price to be paid to live in and enjoy the benefits of the particular organization.

Restrictions in the Cooperative Apartment

Restrictions on the use of cooperative apartment property is provided for by covenants made by the tenant-owner in the instrument which creates his interest. Concerning the use of his apartment, he generally covenants: to use the apartment only for the purpose of a private dwelling, to keep the interior of the apartment in good repair, and not to make structural alterations therein without the consent of the governing body. It is also generally provided that the governing body may from time to time make "house rules" which the tenant-owner covenants to observe.[44] Such rules contain provisions regulating the use of the common facilities, the times for conducting noisy activities, the keeping of pets, and any other provisions necessary to promote the harmony of the group.[45]

Enforcement of the Restrictions

It may be safely stated that all the tenant-owners are bound by the common restrictions. If the tenant-owner is the original covenantor or an assignee of an original covenantor who has assumed the covenants as a condition to the approval of the assignment,[46] he is bound on the theory of privity of contract in most jurisdictions. In the condominium where such approval may not be required,[47] the covenants should nevertheless bind assignees of the tenant-owner's interest. Borgwardt argues that the burden of these covenants can be made to run with the land as covenants between adjoining landowners.[48] If no legal remedy is available, the covenant will be enforceable in equity.[49] The two requirements for such enforcement are: first, the assignee or grantee of the covenantor takes the transfer with knowledge of the restrictions and; second, the circumstances are such that it would be inequitable to permit him to avoid the restriction.[50]

The corporation or trustee, occupying the position of covenantee, may enforce the provisions on that basis. The grantor of a fee who is

[44] For a recommended lease containing these covenants see: 1A MODERN LEGAL FORMS § 2194 (1953).

[45] *Id.* § 2195 for an example of house rules.

[46] See the discussion of transfers of interest, *supra.*

[47] In the section on restraints on alienation, *supra,* it is argued that such a requirement should be valid but that it is not under existing law in California.

[48] Borgwardt, *The Condominium,* 36 CAL. S. BAR J. 603 n.5 (1961).

[49] Marra v. Aetna Constr. Co., 15 Cal. 2d 375, 101 P.2d 490 (1940); 4 POMEROY, EQUITY JURISPRUDENCE § 1295 (5th ed. 1941).

[50] Marra v. Aetna Constr. Co., 15 Cal. 2d 375, 101 P.2d 490 (1940).

the original party to the covenant in the condominium may enforce the restriction only so long as he owns part of the property benefited by the restriction.[51] In most cases where the fee form is used, the developer does not retain any interest in the project once all the apartments are disposed of and hence he has no basis to enforce any of the restrictive covenants in the deed.

What if the covenantee is unwilling, or unable as in the case of the condominium, to enforce the covenants? Is the tenant-owner to go remediless in the face of violations by his co-tenant-owners? Unfortunately there are no cases directly in point with which to dispose of this problem. One probable reason for this lack is the fact that a board of directors in the corporate form which is unwilling to enforce the restrictions will probably soon be replaced by a more diligent group since the injured tenant-owners are also voting stockholders. Also, problems which arise under the restrictions will usually be settled by social pressure within the group without the need of litigation. As for the condominium, its rarity accounts for the lack of litigation concerning it in any regard.

If the need does arise, however, on what basis may it be argued that the tenant-owner may enforce the restrictive covenants made by his co-tenant-owners with the corporation, trustee or grantor? There is no legal privity between the tenant-owners based on the fact that they are tenants in the same building or that they acquired their interest from the same landlord or grantee.[52] Consequently, the remedies for breach of covenant are excluded and resort will have to be made to principles of equity.

It may well be argued that the restrictive covenants create equitable servitudes on all the apartments in favor of the entire project and every other apartment. The basic illustration of the doctrine of equitable servitudes is concerned with the restrictions placed on all the lots of a given tract of land.[53] It would seem to make little difference in the theory of this doctrine whether the "lots" were spread out horizontally or stacked vertically in a single building. An examination of the basic requirements for the creation of equitable servitudes and the enforcement of covenants as such gives some strength to the argument that the restrictions in the cooperative apartment scheme can be enforced under this doctrine.

First, the covenant must be made expressly for the benefit of the other lots in the tract.[54] Second, the dominant or benefiting tenement

[51] Kent v. Koch, 166 Cal. App. 2d 579, 333 P.2d 411 (1958).

[52] McDowell v. Hyman, 117 Cal. 67, 48 Pac. 984 (1897).

[53] 4 POMEROY, EQUITY JURISPRUDENCE § 1295 (5th ed. 1941); 14 CAL. JUR. 2d *Covenants* § 102 (1954).

[54] 14 CAL. JUR. 2d *Covenants* § 103 (1954) citing: Alderson v. Cutting, 163 Cal. 503, 126 Pac. 157 (1912); Fontana Farms Co. v. Criss, 77 Cal. App. 2d 190, 174 P.2d 890 (1946).

must be clearly specified.[55] Third, the restrictions must be uniform as to each lot so as to show that the plan is common to all lot owners.[56] And finally, it must be shown that the restrictions are incident to the ownership of a lot in the tract.[57]

Applying these rules to cooperative apartment regulations, indicates that they should be enforceable by the tenant-owners on the same theory that like regulations are enforceable by lot owners in a specific tract of land. Clearly the regulations are adopted for the benefit of each and every tenant-owner. The entire project, formed on the idea of cooperation, is the beneficiary of uniform compliance with these restrictions. The rules are made for the entire group to promote the very purpose of the project—the maintenance of a home for the tenant-owners. The rules by their very nature are incident to the privilege of living in the cooperative plan.

It would seem then that a court exercising the powers of equity would be willing to give relief to a tenant-owner by enforcing the restrictive covenants made by his co-tenant owners for his benefit. The relationship between tenant-owners, there being no privity between them, would not give rise to an action at law; indeed by the very nature of the cooperative-system it would seem inequitable to treat them as strangers and force them to seek their relief on that basis.

Conclusion

The cooperative apartment scheme is a unique method of real estate development in which the benefits and economies of apartment living are combined with the security of home ownership. It is one solution to the increasing need for housing in our metropolitan areas where the available residential property is at a premium.

The legal problems involved in the cooperative apartment are also unique in that the interests created in the project and the legal relationship between the parties are not readily classifiable by the law of landlord & tenant, partnerships, corporations, property, trusts, or any other standard niche of our legal system. The courts, then, will be required anew to determine the property interests and the legal relationships which are applicable to the particular controversy at hand.

The courts, in dealing with the problems of cooperative apartment development, should keep in mind the important benefits the public derives from these projects. The law should be applied in a manner consistent with the protection of the public interest. Recognizing the needs of the cooperative system and applying the law consistent with their fulfillment, is the only way that this goal can be achieved.

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[55] *Id.* § 104, citing Werner v. Graham, 181 Cal. 174, 183 Pac. 945 (1919); Martin v. Ray, 76 Cal. App. 2d 471, 173 P.2d 573 (1946).

[56] *Id.* § 105, citing Moe v. Gier, 116 Cal. App. 403, 2 P.2d 852 (1931).

[57] *Id.* § 106, citing Werner v. Graham, 181 Cal. 174, 183 Pac. 945 (1919).