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SEPARATE ASSESSMENT OF CONDOMINIUMS

By ROBERT H. TOURTELOT*

Condominiums must overcome at least one big hurdle before winning wider acceptance in the U.S., many lawyers and builders say. The FHA won't insure mortgage loans for condominiums unless city assessors agree to tax each apartment on an individual basis. In many states, some cities may not have the authority, or may be reluctant, to tax individual units in multi-family buildings, since it would be a sharp departure from regular real estate practice. Enabling legislation, lawyers say, may be necessary in some states to clear up this tax problem.¹

THERE exist today in the United States three forms of community apartment real estate projects: the Massachusetts trust, the community apartment with a corporate structure,² and the condominium. This comment will attempt to shed some light on the ramifications of enabling legislation which would require local assessors separately to assess the condominium form of real estate ownership.

The Condominium Interest

Condominium ownership may be either in the nature of a freehold or a leasehold.³ Some developers, rather than buy, will lease for 99 years the land upon which they plan to develop their condominium project. Either by making use of an existing structure upon the land or by erecting their own building they will then sell the exclusive right to ownership of an apartment in the air space plus an undivided interest in cotenancy in the land and common elements of the building.⁴ If the developer has purchased the land in fee simple then the condominium owner's interest also can be in fee simple. If, however, the developer has only taken a leasehold in the property he cannot convey a greater interest than that which he himself has.⁵ Therefore the condominium interest also must be a leasehold.

* Member, second year class.

¹ Penn, *Novelty In Realty*, The Wall Street Journal, Mar. 8, 1962, p. 1, col. 1.

² McCullough, *Co-operative Apartments in Ill.*, 26 CHI-KENT L. REV. 303, 306 (1948).

³ Interview with Robert D. Fraser, Pres., Albert-Lovett Corp., San Francisco, Cal., Oct. 12, 1962.

⁴ *Ibid.*

⁵ CAL. CIV. CODE § 1108.

Alternative Methods of Assessment

Basically, a condominium project may be assessed in either of two ways: the assessor may assess the whole structure in a lump-sum assessment, tendering one tax bill covering the entire project; or he may, local statutes permitting, assess the apartments individually along with each apartment's proportionate undivided interest in the land and the common elements of the building.⁶ This latter method, as will be pointed out, will require additional work by the local assessor's office.

The requirements for FHA mortgage insurance (condominium) with regard to tax assessments actually go farther than the above quotation from a recent article on condominiums indicates.⁷ It is not enough that the present local assessor *agree* to assess on a unit basis for there is always the possibility that a subsequent assessor may decide to assess the entire structure as a unit.⁸ Section 234 of the Housing Act of 1961⁹ (which spells out the FHA's new condominium program) provides that in order for the condominium program to be workable in a particular jurisdiction, that jurisdiction, through enabling legislation, *must* recognize the division of ownership on a condominium basis, and *must* provide for taxes to be assessed against the individual unit in the condominium with its undivided interest in the common elements rather than against the structure as a whole.¹⁰ In jurisdictions where the assessors, either by statutory direction or administrative determination, assess taxes on a building basis rather than on a unit basis, the FHA has stated that mortgage insurance under Section 234 clearly would not be available.¹¹ In some jurisdictions (California included) the local assessor can, at his discretion, assess each unit along with its corresponding undivided interest in the common elements as a taxable entity; but he cannot be compelled to do so if he chooses otherwise.¹²

⁶ Interview with Russell L. Wolden, Assessor, City and County of San Francisco, Oct. 22, 1962. Mr. Wolden is Chairman of the Legislative Committee of the State Association of County Assessors, and is also a representative on the condominium committee.

⁷ Penn, *Novelty In Realty*, The Wall Street Journal, Mar. 8, 1962, p. 1, col. 1.

⁸ Remarks of Tom L. Davis, Esq., Chief of Cooperative and Condominium Housing Section, Office of General Counsel, FHA, Wash., D.C., condominium conference held at the Claremont Hotel, Berkeley, Calif., on Nov. 28, 1961, sponsored by Associated Home Builders of the Greater East Bay (hereinafter cited as condominium conference).

⁹ National Housing Act § 234, 75 Stat. 160 (1961), 12 U.S.C. § 1715y (Supp. 1961).

¹⁰ National Association of Home Builders, Wash., D.C., brochure discussing the FHA's New Condominium Program, Sept. 1961.

¹¹ *Ibid.*

¹² 37 CAL. OPS. ATT'Y. GEN. 223, 227 (1961). This assumes that the condominium has common elements attached to it, and that the interest of each owner is a fee simple determinable. Then, on the basis of each owner having an interest in the reversion, we should be able to assume the legality of the assessor making a lump-sum assessment of the entire structure.

The FHA will insure mortgages if the project meets all other requirements, but it has stated that the risk in those jurisdictions where separate assessment is left to the discretion of the local assessor is to be borne by the mortgagee.¹³ The FHA's reasons for requiring separate assessment are nothing more than good business sense. Tax assessment on any other basis creates the possibility that a tax lien could quickly amount to more than the value of any particular unit in the structure and thus present a situation which would be unsatisfactory from a mortgaging standpoint.¹⁴

No cases can be found interpreting the present California statutes on this subject. However, a recent opinion by the California Attorney General states that while it appears that the statutes do not presently require county assessors to separately assess the undivided interests of tenants in common in real property, there is nothing in the present law which would prohibit an assessor from separately assessing such interests.¹⁵ The opinion then states that a cotenant has no right to compel the separate assessment of his undivided interest.¹⁶ The attorney general bases his conclusion upon an interpretation of section 2803 of the California Revenue and Taxation Code, which reads as follows:

Any person showing evidence by presentation of a duly executed and recorded deed, purchase contract, deed of trust, mortgage, or final decree of court of an interest in any parcel of real property, except possessory interests,¹⁷ which does not have a separate valuation on the roll, and *who is not the owner or contract purchaser of the entire parcel as assessed*, may apply to the tax collector to have the parcel separately valued on the roll for the purpose of paying current taxes. [Emphasis added.]

According to the opinion of the attorney general a cotenant ordinarily could not satisfy the requirement of being one *who is not the owner of the entire parcel as assessed*. The opinion further states that an owner of an undivided interest in real property is a part owner of the whole along with his cotenants and has correlative rights and duties respecting the payment of taxes. These rights and duties prevent him from paying his share of the taxes assessed against the entire structure

¹³ Remarks of Tom L. Davis, condominium conference.

¹⁴ National Association of Home Builders, Wash., D.C., brochure discussing the FHA's New Condominium Program, Sept. 1961.

¹⁵ 37 CAL. OPS. ATT'Y GEN. 223, 226 (1961).

¹⁶ *Id.* at 227.

¹⁷ CAL. REV. & T. CODE § 107 defines possessory interest as: "Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person."

for his own benefit.¹⁸ Section 2801 of the Revenue and Taxation Code provides for the separate payment of taxes on any "parcel of real property" separately valued on the tax roll. One might argue that the owner of an undivided interest in real property does qualify as one *who is not the owner of the entire parcel as assessed*.¹⁹ A successful argument on this point would be of little use. It is the opinion of the attorney general that, although one may have the right to have a parcel separately valued in California, he does not have the right to have an undivided interest in a parcel separately valued.²⁰ More specifically, an undivided interest in real property is not a parcel. In order for one to compel separate valuation of an interest in real property, he must not own all the parcels contained in the original assessment and his interest must be a "parcel of real property". The opinion of the attorney general concludes that the owner of an undivided interest does not meet these requisites for separate assessment.²¹ In support of the conclusion, the attorney general states:²²

From the standpoint of administration, the separate assessment of undivided interests frequently causes confusion, and in some counties the number of undivided interests would, if separately assessed, greatly increase the number of items on the assessment roll. . . . For this reason, there recently has been a definite trend toward the elimination of separate assessment of undivided interests. From the standpoint of the owners, little can be done with an undivided interest by itself. Since the cotenants must cooperate in the management and other use of the property, it seems logical to require them to co-operate in the payment of taxes. It is apparent that there are sound practical and policy reasons why such separate assessments should not be made.

Assessors' Viewpoint

Conceding that this may be true when applied to undivided interests in general, does the conclusion also follow when the discussion is limited solely to the condominium? It would seem not. One of California's foremost City and County Assessors,²³ having been specifically authorized to speak for all of the California assessors on the subject

¹⁸ 37 CAL. OPS. ATT'Y GEN. 223, 227 (1961), citing *Willmon v. Koyer*, 168 Cal. 369, 143 Pac. 694 (1914).

¹⁹ Comment, 50 CALIF. L. REV. 299, 325 (1962). The writers criticize this conclusion by the attorney general, and state that: "The cotenants interest is not entire as that word is commonly understood."

²⁰ 37 CAL. OPS. ATT'Y GEN. 223, 228-29 (1961).

²¹ *Id.* at 227.

²² *Ibid.*, citing *Toothman v. Courtney*, 62 W. Va. 167, 58 S.E. 915 (1907) to the same effect.

²³ Interview with Russell L. Wolden, City and County Assessor, San Francisco, Calif., Oct. 22, 1962.

of condominium, stated that the assessors are quite amenable to enabling legislation which would require them separately to assess and tax the individual units in a condominium along with the corresponding undivided interests in the common elements of the structure.

However, such compulsory separate assessment must be limited solely to fee simple interests.²⁴ It appears that the feasibility of restricting separate assessment to fee simple interests is one of the main points of conflict in California as to the proposed condominium legislation.²⁵ Is the increase in the number of items on the roll an administrative burden? This assessor stated that in view of the tabulating equipment which is in use today in a modern assessor's office the increase in number of items could easily be handled. The assessors feel that it is practical to assess condominiums on an individual basis with each owner getting a separate tax bill.²⁶ In addition, they are fully aware of the present FHA requirements for condominium mortgage insurance. However, in order to receive the overall support of these assessors proposed condominium legislation must not be worded in such a way as to require them to assess separately anything other than a fee simple interest.²⁷

Proposed Legislation for California

A proposed condominium act was drafted in San Francisco last year for the purpose of submission to the special session of the state legislature. The draft contained provision for separate assessment of a condominium. It also contained as a proposed addition to the California Civil Code the following definition of a condominium:²⁸

A condominium is an interest in real property consisting of an undivided interest in common portions of a parcel of real property together with a separate interest in space in an apartment, industrial and/or commercial building on such real property, such as an apartment, office, or store. A condominium may include in addition a separate interest in other portions of such real property.

²⁴ *Ibid.*

²⁵ Interviews with various members of the condominium committee, San Francisco, Calif., Oct. 1962. This committee was formed at the suggestion of the California Real Estate Commission for the purpose of formulating a suitable condominium act to be submitted to the next session of the California State Legislature (1963).

²⁶ Remarks of E. F. Wanaka, Ass't. Assessor, Contra Costa County, and Forrest Simoni, Assessor, Richmond, Calif., condominium conference; Interview with Russell L. Wolden, City and County Assessor, San Francisco, Calif., Oct. 22, 1962.

²⁷ Interview with Russell L. Wolden, Oct. 22, 1962.

²⁸ Proposed condominium act as drafted by the condominium committee: "To amend Civil Code by adding § 783." The draft in which this definition appears was subsequently discarded although the definition itself may be found in later drafts.

Under such a definition a condominium could be construed to include life estates and estates for years. This, in the opinion of the assessors, would represent an unwarranted administrative burden.²⁹ For this reason the draft was opposed by leading California assessors and as a result was never presented by the governor to the special session of the legislature.³⁰

Let us consider for a moment, from the assessor's viewpoint, the ramifications of such a definition when combined with a provision compelling separate assessment. The valuation for a fee simple interest, once it is made, remains the same upon the tax roll except for normal periodic readjustments necessary to reflect permanent improvements to the realty and substantial increases or decreases in property value.³¹ However, a different picture is presented when the assessor is required to separately assess an estate for years. A definite rule has been laid down in California regarding the valuation of leasehold interests for the purpose of property taxation in the case of *L. W. Blinn Lumber Co. v. Los Angeles County*.³² It was there held that the combined net earnings of a lease over the entire term is its ultimate value. Its present value as of any date upon any assumed rate of interest can be computed from this basis. The excess of annual benefits over burdens must of necessity be the important factor in making an appraisal. Any system employed in the valuation of leasehold estates must take into account the duration of the lease as well as the fact that the estate of the lessee is a limited one.³³ So, too, the capital employed, whether making an outright purchase of the lease or in assuming lease payments periodically, must, with interest, be amortized during the life of the lease in order to prevent the waste of capital and to reflect the true worth of the premises. Improvements placed upon the property which revert to the lessor must be taken into account and amortized by the end of the lease, and taxes and other fixed charges must also be considered.³⁴ The additional workload to the assessor should be fairly obvious. The resulting changes in the leasehold valuations each year would also necessarily reflect a change in the assessed valuation for the entire structure. California assessors as a result have indicated they are not in favor of separate assessment of anything less than a fee simple interest.³⁵

²⁹ Interview with Russell L. Wolden, Oct. 22, 1962.

³⁰ Both the City and County Assessors of Los Angeles and San Francisco opposed the proposed Act as drafted. Interview with Russell L. Wolden, Oct. 22, 1962.

³¹ Interview with Russell L. Wolden, Oct. 22, 1962.

³² 216 Cal. 474, 14 P.2d 512 (1932).

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ Interview with Russell L. Wolden, Oct. 22, 1962.

The Developers' Viewpoint

A formidable argument is also presented by those involved in real estate sales and development. The developers are generally of the opinion that limiting mandatory separate assessment to fee simple interests would affect the marketability of condominiums which consist of leasehold interests. What security would the owner of a condominium consisting of a leasehold interest have under such a provision against losing his apartment as a result of the landlord failing to pay the taxes? The person from whom the leasehold was originally secured holds title to the property in fee simple, and he, as reversioner, will have the land and building back in fee simple absolute when the lease expires. A tax or assessment impressed by lawful authority constitutes an encumbrance upon the title to the land. The primary duty of paying taxes rests upon the person who holds the legal title.³⁶ Where land is leased the owner of the fee is deemed to be the owner of the whole estate for purposes of taxation.³⁷ The Code makes no specific provision for separate assessment of a leasehold and reversion to the lessee and the owner of the fee respectively. The usual procedure is to assess the entire value of the land to the owner of the reversion.³⁸ Therefore, if the reversioner fails to pay these taxes at any time the building is subject to a tax lien and foreclosure. As a result the condominium owner would stand to lose his apartment through no fault of his own. The owner of an undivided interest or his successor may, of course, redeem the entire property.³⁹

Co-op Apartments

A proposed condominium act can be worded so as to include within its purview the community apartment with a corporate structure. With this in mind, some discussion of the co-operative apartment set-up seems in order.

In a co-operative apartment the purchaser receives stock in a corporation that holds the title in fee simple to the entire property.⁴⁰ This gives him an interest in the corporation owning the building and a lease entitling him to occupy a particular apartment within the building. The proprietary lease is commonly drawn for 50 years, with all

³⁶ *In re Backesto*, 63 Cal. App. 265, 218 Pac. 597 (1923).

³⁷ *San Pedro, L.A. & S.L.R. Co. v. City of Los Angeles*, 167 Cal. 425, 139 Pac. 1071 (1914), overruled on other grounds by *San Pedro, L.A. & S.L.R. Co. v. City of Los Angeles*, 180 Cal. 18, 179 Pac. 393 (1919).

³⁸ *San Pedro, L.A. & S.L.R. Co. v. City of Los Angeles*, 180 Cal. 18, 179 Pac. 393 (1919).

³⁹ *Graham v. Reed*, 83 Cal. App. 516, 257 Pac. 131 (1927).

⁴⁰ Interview with Robert D. Fraser, Pres., Albert-Lovett Corp., Oct. 12, 1962.

leases in the building expiring on the same date. The lease serves as a contract between the corporation and the buyer of the shares of stock allocated to his particular apartment. This lease gives the owner exclusive ownership of an estate for years of space in an apartment.⁴¹ The anticipated real estate taxes for the coming year are included in the annual maintenance charge which is assessed to each tenant-stockholder.⁴² If one tenant fails to discharge an assessment the corporation might then be unable to discharge the tax assessment in full and may, therefore, be in default. This leaves the solvent tenants faced with the necessity of making up the deficiency by means of an additional assessment to avoid losing their apartments and subsequently finding their interest in the corporate entity to be worthless. A financial inability on the part of the tenants to make this additional contribution would mean the loss of their apartments as a result of the subsequent tax lien and foreclosure proceedings.⁴³

One possible solution to this problem would not involve aid from the legislature. The suggestion is that the FHA sponsor assessment insurance along with the mortgage insurance which the FHA presently gives on mortgages taken by the corporation for the entire building. Additional assessments under such a plan would no longer be imposed upon solvent members because of another's default. The FHA would make good the defaulted assessment payments to the cooperative corporation over the duration of the mortgage, or pending the sale of the defaulter's interest, whichever period is shorter.⁴⁴

As a result of the noted adverse possibilities a group of attorneys in San Francisco has been working on the formulation of a proposed condominium act for California which is broad enough to cover condominiums and community apartments as well.⁴⁵ The proposed act defines a condominium as follows:⁴⁶

A condominium is an estate in real property consisting of:

- (a) An undivided interest in a parcel of real property together with exclusive fee ownership of space in an apartment, industrial or commercial building on such real property, such as an apartment, office or store, or
- (b) an undivided interest in an estate for years in a parcel of real property together with exclusive ownership of an estate for years of

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Comment, 68 *YALE L. J.* 542, 548 (1959), which points out that while this might not appear to be a problem today, during a depression or serious recession, mass cooperative tenant defaults could occur.

⁴⁴ *Id.* at 605.

⁴⁵ Condominium committee, San Francisco, Calif.

⁴⁶ Draft of proposed California condominium act, Feb. 1962.

space in an apartment, industrial or commercial building on such real property, such as an apartment, office, or store.

The separate assessment provision of this draft is, as written, all-inclusive and would apply to both parts (a) and (b) of the above definition. Again, it seems obvious that such an act as drafted would meet with positive resistance from the assessors. One possible solution to capture the support of the assessors would be the rewording of the separate assessment provision so as to limit its application solely to fee simple interests. This would allow retention of the broad definition of a condominium which would be in accord with other provisions of the act. However, there would remain the problem previously discussed of marketability.

Legislation in other Jurisdictions

The Commonwealth of Puerto Rico has been the leader in the use of condominiums.⁴⁷ Its "Horizontal Property Act," the first of its kind, has given impetus for the enactment of federal and state legislation in the United States. At the present time, in addition to the Commonwealth of Puerto Rico, six states have enacted specific legislation on the subject of condominiums.⁴⁸ Such legislation has been proposed in five states⁴⁹ and the District of Columbia. It is interesting to note that all of the acts which have been enacted to date were copied from the Puerto Rican "Horizontal Property Act" and are identified by the same title.

There is one marked distinction which exists between the legislation enacted before the Housing Act of 1961 was passed and that enacted afterward. The "Horizontal Property Act" of Puerto Rico contains no provision for separate assessment of a condominium. However, each of the six states which have enacted "Horizontal Property Acts," plus the six jurisdictions which have proposed such legislation, have added a section providing for separate assessment and taxation in order to conform to the requirements of section 234 of Title II of the National Housing Act. Typical of such additions is that which the state of Arkansas employed when drafting its "Horizontal Property Act". Under a section entitled "Separate Taxation," it reads as follows: "Taxes, assessments and other charges of this State, or of any

⁴⁷ Barnes, *Accelerated Growth of Condominiums Expected from New Housing Bill Law*, Lawyers Title News, Aug. 1961, at 5.

⁴⁸ ARIZ. REV. STAT. ANN. §§ 33-551-561 (1962); ARK. STAT. ANN. §§ 50-1001-1023 (Supp. 1961); Hawaii Sess. Laws 1961. Act 180 (Amended by Act 9 (1962)); VA. CODE ANN. tit. 55 §§ 79.1-79.33 (Supp. 1962); So. Car. H.B. No. 2121 (1962); Ky. Senate Bill No. 31, 1962.

⁴⁹ Mass., N.J., N.Y., Okla., Ore.

political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building as a whole."⁵⁰

Notice that the section refers only to the "individual apartment" and says nothing regarding assessment of the undivided interests in the common elements.⁵¹ While such an omission is not desirable, practically speaking, it does not really thwart the purposes of the section. Let us suppose that the assessor was assessing the individual apartments separately in accordance with the section and assessing the land and common elements as a whole. There would be no increase in the number of items on the tax roll if he were separately to assess each apartment's undivided interest in the land and common elements along with the assessment for the individual apartment.

An improvement on the provision for separate assessment of the Arkansas Act is that which is found in the "Horizontal Property Act" of Arizona. It states as follows: "All real property taxes and special assessments shall be levied on each apartment and its respective appurtenant fractional share or percentage of the land, general common elements and limited common elements where applicable as such apartments and appurtenances are separately owned, and not upon the entire horizontal property regime."⁵²

The FHA has drafted a model statute which represents what that agency regards as the best framework within which to obtain the objectives of condominium ownership. It is intended as a guide to persons or groups interested in legislation which would permit section 234 (condominium) mortgage insurance in a particular jurisdiction. Section 22, which covers separate taxation, is as follows:⁵³

Each apartment and its percentage of undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, the property nor any of the common areas and facilities shall be deemed to be a parcel.

In light of the attorney general's interpretation of sections 2800-2803 of the California Revenue and Taxation Code it would appear

⁵⁰ ARK. STAT. ANN. §§ 50-1001, -1023 (Supp. 1961).

⁵¹ Some Acts define "individual apartment" as including the percentage of undivided interest in the common elements. Such a definition would seem to be quite practical.

⁵² ARIZ. REV. STAT. ANN. §§ 33-551, -561 (1962).

⁵³ FHA Model Statute § 22.

that the last sentence of the above definition would be an ideal addition to a provision for separate assessment in California.

It is also interesting to note that none of the existing "Horizontal Property Acts" have specified the exact interest of the condominium. Could it be that the assessors in these jurisdictions were unaware of the possible interpretation of such acts? The FHA in its Model Statute defines "apartment owner" as: [T]he person or persons owning an apartment in fee simple absolute and an undivided interest in the fee simple estate of the common areas and facilities in the percentage specified and established in the declaration.⁵⁴

Also, a bill to amend the Code of Laws of the District of Columbia so as to provide for the creation of a horizontal property regime for that jurisdiction specifies the interests created as follows:⁵⁵

A condominium unit owner shall have the exclusive fee simple ownership of his unit and shall have a common right to a share, with the other co-owners, of an undivided fee simple interest in the common elements of the property, equivalent to the percentage representing the value of the unit to the value of the whole property.

Other Jurisdictions and Separate Assessment

There is apparent diversity of opinion regarding the form of assessment where land is owned by cotenants in undivided interests arising for the most part from the statutes upon which the decisions are based.⁵⁶ But the general rule seems to be, at least where the law does not authorize the sale of an undivided interest to satisfy a tax, that land owned by a joint tenant or a tenant in common must be assessed as a single piece of property rather than to each of the cotenants for his undivided interest.⁵⁷ Nor is it the policy of the law in most jurisdictions to require the assessors to tax the different estates and interests which may exist in a single parcel of land to the respective owners thereof. Instead, the assessment is a unit upon the sum of the interests.⁵⁸

⁵⁴ FHA Model Statute § 2.

⁵⁵ H.R. 12256, 87th Congress, 2d Sess. (1962).

⁵⁶ See, e.g., *Russell v. Lang*, 50 La. Ann. 36, 23 So. 113 (1898), where the court held that the better way to assess property held by two or more parties in indivision was to assess to each his undivided interest.

⁵⁷ See, e.g., *Curtis v. Inhabitants of Sheffield*, 213 Mass. 239, 100 N.E. 365 (1913). See also *Lindsley v. Lewis*, 89 S.W.2d 413 (Tex. Civ. App. 1934). But see, *People v. Shimmins*, 42 Cal. 121 (1871), with dictum to the effect that even tenants in common are entitled to separate assessments.

⁵⁸ 51 AM. JUR. *Taxation* § 689; *Toothman v. Courtney*, 62 W.Va. 167, 58 S.E. 915 (1907), where the court decided that the burden of separately assessing undivided interests in real property was too great a burden for the state to bear. But see, *Russell v. Lang*, 50 La. Ann. 36, 23 So. 113 (1898).

The concept of condominium is quite new to the United States. The reasons which have caused the majority of jurisdictions in this country to be adverse to the idea of separately assessing undivided interests in real property simply do not apply to condominium. This appears evident from the increasing number of states which have enacted or proposed condominium legislation specifically requiring the assessors separately to assess and tax undivided interests in a condominium.⁵⁹ In some jurisdictions the legislation has been put through on emergency bills.⁶⁰

Institutional Lenders

The institutional lenders are also quite interested in the assessment scheme as it applies to condominium.⁶¹ If the mortgagor defaulted on his payments and the units were not individually assessed, the mortgagee might have to pay taxes due on the whole project since real property taxes must be paid before the mortgagee can redeem the property.⁶² Although a number of savings and loan associations have agreed to take mortgages on individual units, no bank inside the continental United States has wholeheartedly endorsed the idea.⁶³

The Bank of America and the Wells Fargo Bank have recently agreed to take on the financing of a San Francisco condominium project for experimental purposes.⁶⁴ This reluctance on the part of the institutional lenders is largely due to the lack of protection which they would prefer in this type of lending. They feel that there should first be enabling legislation passed which would require the assessors to assess each unit individually together with that unit's proportionate share of interest in the land and undivided common elements. This, they say, would provide a uniform method of assessment throughout the state as well as guarantee that an assessor would not subsequently reverse his position or that a successor would not adopt a different approach.⁶⁵ The developers of condominium projects are of the opinion

⁵⁹ See notes 49 and 50 *supra*.

⁶⁰ Arkansas and Virginia.

⁶¹ Remarks of Charles E. McCarthy, Vice-Pres., Bank of America, San Francisco, Calif., condominium conference. The title insurance companies seem to share these same views. Schlitt, *Condominiums—A Symposium*, *The Appraisal Journal*, Oct. 1962, at p. 456.

⁶² CAL. REV. & T. CODE §§ 4146-55 which provide that a cotenant may redeem his undivided interest in property upon which a tax lien has been placed would seem to be of no help in such a situation due to the fact that under the existing statutes there is no way the cotenant could compel the assessor to compute the amount of assessment due on his undivided interest.

⁶³ Comment, 50 CALIF. L. REV. 299, 329 (1962).

⁶⁴ *Ibid.*

⁶⁵ Remarks of Charles E. McCarthy, condominium conference.

that if condominiums are going to prosper in California, they will need the aid of enabling legislation.⁶⁶

Conclusion

As previously discussed, a provision in the condominium act for mandatory separate assessment and taxation will be necessary. The problem is to what extent should this provision apply, *i.e.* leasehold and fee simple, or just fee simple interests? Recognizing the need for security against tenant defaults for the solvent tenants it is submitted that a solution to this perplexing problem should not be brought about as a result of placing unwarranted burdens upon the local assessors.

⁶⁶Interview with Robert D. Fraser, Pres., Albert-Lovett Corp., San Francisco, Calif., Oct. 12, 1962.