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TWO ASPECTS OF THE ILLINOIS CONDOMINIUM PROPERTY ACT — THE CONDOMINIUM SURVEY AND FULL DISCLOSURE PROVISIONS

by MELBURN LAUNDRY*

INTRODUCTION

With the increasing maintenance problems and tax expense involved in the ownership of a single family home, many buyers are turning to the condominium as a way of life. By so doing access is had to a variety of recreational and athletic facilities without the maintenance burden commonly associated with a single family home. This is especially true of young buyers and former owners of large homes.

When dealing with condominium law, one must recognize at the outset that it is strictly a creature of statute. Moreover, the law must be characterized as being in its infancy, for typical of other state enactments, the Illinois Condominium Property Act¹ was not passed until 1963. Thus, in view of the geometric increase in condominium ownership and the underdeveloped state of the law, the practicing attorney should familiarize himself with its various aspects.

The following article deals with two problems that the condominium developer and his attorney will encounter in the establishment and sale of a condominium, and suggests forms that may be used to alleviate these problems. Part I provides an introduction into the legal concept of "condominium" and defines the basic statutory requirements for the establishment of a condominium with particular emphasis upon the technical problems that arise in the submission of the plat of survey. Part II examines a recent statutory requirement thrust upon the Illinois condominium seller — full disclosure of specified information to the prospective buyer.

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¹ ILL. REV. STAT. ch. 30, §§ 301-22 (1972) [hereinafter cited as the Act].

PART I

THE CONDOMINIUM SURVEY: ITS LEGAL AND PRACTICAL ASPECTS UNDER ILLINOIS LAW

Establishing a condominium in Illinois depends upon the fulfillment of several statutory requirements. This article deals with these requirements — particularly the ones concerning the vertical condominium survey required as one of the primary documents necessary to establish a condominium.

THE CONDOMINIUM AS A LEGAL CONCEPT

Though the term is often used as a synonym for a building or a single unit within the building, "condominium" in its legal sense is a unique form of real property ownership. It consists of the ownership of one or more units, usually an apartment or an office, within a multi-unit structure, and additionally includes an undivided interest in the "common elements" of the building² as well as in the parcel of land on which the building is located. One of its distinctive features, as opposed to traditional forms of ownership, is that the building is divided vertically as well as horizontally into separate units capable of individual ownership.

Thus, a 20 unit, five-story condominium building would have the outward appearance of a five-story apartment building. Legally, however, the condominium building would consist of 20 individually owned units with various "common elements" shared by all unit owners. By setting up such a building legally as a condominium, each of the apartments become legally capable of separate ownership and conveyance, and each is separately taxed and mortgageable.³

² Such as the land, foundation, main walls, roof, halls, lobbies, plumbing, central heating and air conditioning systems, hallways, stairways, underground parking, and in general all parts of the property in common use by the owner.

³ A similar form of ownership utilized in Illinois and other states is the cooperative. Here, however, the individual owner does *not* secure legal title to his apartment, but, rather, the legal owner is a not-for-profit corporation in which the individual secures a certain number of shares of stock and corresponding voting rights. The individual apartment owner then obtains a long term or perpetual lease on his individual apartment. The building is generally taxed and mortgaged as a whole, which quite expectedly creates problems. For instance, assume a 20-unit cooperative apartment building is valued at \$600,000 or approximately \$30,000 for each apartment. The building as a whole could possibly obtain a 70% first mortgage of \$420,000. Each cooperative apartment owner then would have an interest in the mortgage corresponding to his shares in the building. If each unit had the same price of \$30,000, each unit would secure a 1/20th interest in the mortgage, or a \$21,000 mortgage on each apartment. The difficulty here arises, however, upon an attempted resale of an apartment. Assume that with inflation over a ten year period, the building value and proportionate apartment values increase 50% to \$900,000. The mortgage of \$420,000 would be partially paid off over the ten year period leaving a

ESTABLISHING THE CONDOMINIUM

The Illinois Condominium Property Act⁴ delineates the requirements for the establishment of an Illinois condominium. The Act provides that where the owners of property desire to establish a condominium, they may do so by recording a "declaration."⁵ The declaration must contain three elements: 1) a legal description of the parcel or lots to be submitted to the provisions of the Act; 2) the legal description of each unit, which may consist of an identifying number or symbol as shown on a plat of survey; and 3) the percentage of ownership interest in the common elements allocated to each unit. Additionally, the declaration may include such other provisions as the owner deems desirable to promote and preserve the cooperative aspect of property ownership and to facilitate its proper administration.⁶

A plat of survey,⁷ customarily referred to as a "vertical survey," must be recorded simultaneously with the recording of the condominium declaration and must include a survey of both the property and all units in the building constructed on that property. The survey is generally attached to the condominium declaration as an exhibit to the declaration and under the Illinois law, may consist of a three-dimensional, horizontal and vertical delineation of all the units in the property.⁸

balance of perhaps \$300,000. Each individual apartment would have a theoretical value of \$45,000, but with a share in the mortgage of only \$15,000. Because of the reluctance of banks to grant a mortgage to an individual cooperative apartment purchaser, a prospective purchaser of an apartment might then have to make a 60% down payment of \$30,000. Thus, until lenders see their way clear to mortgage individual units for cooperatives, the apartment owner will be confronted with a very real obstacle to resale.

Taxwise, the cooperative is also at a disadvantage in that the building is frequently taxed as a commercial structure, and is therefore subject to almost double the assessment and taxes for a comparable condominium building or a single family home. For instance, in Cook County, commercial structures are frequently assessed at 40% of market value, whereas, a single family home might be assessed at only 22-25% of market value.

⁴ Note 1 *supra*.

⁵ ILL. REV. STAT. ch. 30, § 302(a) (1972) provides:

"Declaration" means the instrument by which the property is submitted to the provisions of this Act, as hereinafter provided, and such declaration as from time to time amended.

⁶ ILL. REV. STAT. ch. 30, § 304 (1972).

⁷ ILL. REV. STAT. ch. 30, § 302(i) (1972).

⁸ ILL. REV. STAT. ch. 30, § 305 (1972) provides:

Simultaneously with the recording of the declaration there shall be recorded a plat as defined in Section 2, which plat shall be made by a Registered Illinois Land Surveyor and shall set forth (1) all angular and linear data along the exterior boundaries of the parcel; (2) the linear measurements and location, with reference to said exterior boundaries, of the building or buildings located on said parcel; and (3) the elevations at, above, or below official datum of the finished or unfinished interior surfaces of the floors and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and lateral extensions thereof, of every unit in the building, and the

Upon recording the declaration and the plat of survey, the property becomes subject to the Act, and all units are capable of ownership in fee simple, and may be conveyed, leased, mortgaged, or otherwise dealt with in the same manner as other real property. Each unit owner, whose interest amounts to fee simple absolute, is additionally entitled to a specified percentage of ownership in the common elements as must be set forth in the declaration.⁹ A condominium building is thus divided by the declaration and survey into a specified number of condominium units with the balance of the property being the common elements.

SURVEY PROBLEMS

The Act provides that the administration of condominium property is to be governed by bylaws which must be appended to and recorded with the declaration,¹⁰ and which must provide for such restrictions on the use and maintenance of the condominium units and the common elements as are necessary to prevent unreasonable interference with the use of the respective units and the common elements.¹¹ One typical provision found in the bylaws is a requirement that any change in the common elements, including any survey changes in the common element boundaries, requires unanimous consent in writing, and that the instrument must be recorded, signed, and acknowledged by the Board of Managers of the property and all of the owners and mortgagees of the units.

Because of the above legal requirements with respect to the condominium survey, it is absolutely essential to have an accurate survey of the property which correctly defines the limits of each unit as well as the limits of the common elements shared and maintained in common by all unit owners.

Survey errors frequently arise with the recorded survey causing the attorney and the developer great difficulties. For example, in the case of one large 300 unit building in Cook County, the developer decided to "subdivide" the building into two 150 unit condominiums, and directed the surveyor to divide the building at its approximate center along the line of a first floor entry. The division of the building into two legally distinct condominiums initially appeared to be a good solution to a financing problem: the lender had tentatively agreed to mortgage individual condominium units to the prospective purchasers,

locations of such wall surfaces with respect to the exterior boundaries of the parcel projected vertically upward. Every such unit shall be identified on the plat by a distinguishing number or other symbol.

⁹ ILL. REV. STAT. ch. 30, § 306 (1972).

¹⁰ ILL. REV. STAT. ch. 30, § 317 (1972).

¹¹ ILL. REV. STAT. ch. 30, § 318 (1972).

but would not give a firm commitment nor permit a closing until sales contracts had been executed on more than half of the units in the building. With a division of the building into two legal condominium regimes, the developer was able to start closing his sales and taking in income much earlier, since he would need fewer executed contracts.

The surveyor was under pressure to complete his survey before all units were completed, and based his survey upon the apparent limits of the units as determined by the location of the wall studding and floor plates. Unfortunately, he did not check his survey against the construction plans for each floor. The attorney submitted his condominium declaration and the completed survey to the developer for his approval, but in a rush to record the documents to meet scheduled closings, neither the attorney nor the developer caught an error in the subdivision line of the building into two condominiums. The documents were recorded and the developer proceeded to close his sales as the units were finished.

Six months later the attorney and the surveyor proceeded with the documentation for the second condominium. An inspection of the survey and a comparison to the architectural plans revealed that the chosen subdividing line was satisfactory for the first floor of the building, but on the other five floors, the line had cut through the middle of a unit. Thus, one half of each of the five units was legally described in the survey as a part of the hallways or common elements of the building.

By this time the sale of approximately 100 apartment units in the first condominium had been closed and were owned by 100 individual owners with 100 separate mortgages. Under the legal concept of condominium, each of the 100 purchasers owned an undivided interest in the common elements of the building including the portion of the five units of the second condominium erroneously surveyed as part of the hallways of the first.

The attorney quickly reviewed the condominium declaration and confirmed the presence of the usual provision. The terms of the declaration required unanimous consent of all owners and mortgagees of the first condominium to any change in the common elements. To secure the necessary 100 consents was a monumental task, fortunately accomplished without any personal vindictiveness on the part of the owners. At this point, any one of the unit owners in the first condominium could have halted the proceedings merely by refusing to consent to this change.

One way to minimize problems of incorrect surveys

and incorrect conveyances is to ensure that the surveyor retained to make the survey is adequately advised, preferably in writing of the legal ramifications of condominium surveys. A suggested form of instructions for the preparation and review of the condominium survey follows.

ATTORNEY'S LETTER TO SURVEYOR

January 11, 1973

Mr. John Surveyor
33 North LaSalle Street
Chicago, Illinois

Re: Condominium Survey

Dear Mr. Surveyor:

Confirming our discussion, you are hereby authorized on behalf of the Developer to proceed in accordance with your proposal with work on a condominium survey of Condominium Building No. 1, a 98 unit building now under construction on Sublot A of Lot 3 in the XYZ Subdivision in Cook County.

I must have the completed vertical survey of all Units in the building by March 5th to allow sufficient lead time for review (by myself, the Title Company and the Developer's Architectural Coordinator) and correction of the survey before recording.

The Developer has made commitments for initial closings of Condominium Units on the second and third floor of the building commencing on May 1st. Accordingly, you must supply me with the *final corrected copies* of the survey no later than about April 5th to allow the Title Company sufficient lead time after recording to issue a clear title report on the condominium units.

Projected Surveys

As you know, construction of the building will not be completed by the time of your survey; however, to comply with the Illinois Condominium Act, a survey of the parcel and of all Units in the building must be recorded simultaneously with the Condominium Declaration.

Since wall studding for many of the Units has not been completed we will need a "projected" survey based on the architectural plans in all such cases. Where a sheet of your survey contains such projected surveys, you should include the legend, "All dimensions for Units _____ to _____, both inclusive, are projected from the architectural plans." Subsequently, when the

interior walls of the Units are located, we will file amended surveys showing the revised dimensions. Our proposed Condominium Declaration permits us to file amended surveys when the "structural components constituting the boundaries of the various units are in place."

Survey Guidelines

Because of the serious legal consequences of any errors in the survey, please follow the following guidelines for providing the condominium survey. If you have any questions on these, or for some reason consider a particular guideline inapplicable, please check with me.

A. The Illinois Law

For your reference, the Illinois Condominium Property Act, Chapter 30, Section 305, provides as follows with regard to the survey:

305. Plat to be recorded. Simultaneously with the recording of the declaration there shall be recorded a plat as defined in Section 2, which plat shall be made by a Registered Illinois Land Surveyor and shall set forth (1) all angular and linear data along the exterior boundaries of the parcel; (2) the linear measurements and location, with reference to said exterior boundaries, of the building or buildings located on said parcel; and (3) the elevations at, above, or below official datum of the finished or unfinished interior surfaces of the floor and ceilings and the linear measurements of the finished or unfinished interior surfaces of the perimeter walls, and lateral extensions thereof, of every unit in the building, and the locations of such wall surfaces with respect to the exterior boundaries of the parcel projected vertically upward. Every such unit shall be identified on the plat by a distinguishing number or other symbol.

Please follow this section of the law exactly in making your survey.

B. Applications of the Law to the Survey

1. The survey will consist of a cover sheet showing the exterior dimensions of the parcel and of the building on the parcel with respect to the parcel boundaries, and one additional sheet for each floor of the building. Identify each sheet as "X Y Z Condominium No. 1, Exhibit A, Sheet 1, 2, 3 etc. of 6."
2. The parcel on which the building is located should provide approximately a five foot border about the building as recommended by the Title Company, to avoid encroachment problems. Show all the dimensions and angles of each of the boundaries of the parcel.
3. On each sheet of the survey locate the exterior boundaries of the building with respect to the exterior boundaries of

the parcel. Show all dimensions of the exterior walls. Show the distance of each of the walls from the exterior boundaries of the parcel. Show the distance and location of each of the building corners from the parcel corners as "Building corner is 5.00 (feet) northeasterly and 5.00 (feet) northwesterly from parcel corner."

4. Show the dimension of any inward or outward juts on exterior projections of the building.
5. Sign the Surveyor's Certification on each sheet of the survey and attach your surveyor's seal to each sheet.
6. Show the inside floor and ceiling elevation of each condominium unit in the following manner:

<i>Unit</i>	<i>Floor Elevation</i>	<i>Ceiling Elevation</i>
102	702.99	711.16
103	702.93	711.07

7. In a Surveyor's Note on each page, reference these floors and ceiling elevations to an official datum plane such as "all elevations are referenced to a bench mark on the South East head bolt . . . and is based on USGS Datum. Elevation of said head bolt is 702.08."
8. Identify the exact interior surface of the floor and ceiling surfaces measured in a Surveyor's Note on each page. For instance: "Floor and Ceiling Boundaries of Units depicted hereon are the horizontal planes formed by the top of the sub-flooring and the bottom of the structural joists."
9. Identify the exact vertical surfaces used as the interior boundaries of the Units in a Surveyor's Note on each floor. For instance: "Lateral boundaries of Units depicted hereon are the vertical planes formed by the interior masonry or concrete walls or metal studding. The 0.67" walls are of masonry or concrete; the 0.30" walls are metal studding."
10. I have asked the Developer to send you a copy of the architectural plans for the building. Please review it before starting your survey and identify the Units as shown on the plans. For instance: Units on the third floor should be identified as Unit 301, 302 etc.
11. When you have completed the survey, compare it floor by floor and Unit by Unit to the plans to ensure there are no mistakes. If you cannot explain an apparent deviation from the plans, call me and I will determine the reason.

Summarizing, I need copies of your survey by no later than March 5th. When I have reviewed them with the Developer and

the Title Company, we will need additional copies of the approved survey for recordation. Feel free to call me if you have any questions whatsoever or if I can help you in any way.

Sincerely,
Melburn Laundry
Attorney at Law

While the above letter may appear to focus unnecessarily on mundane details, one must recognize that condominium law is permeated with technicalities. As has been illustrated, even the smallest error of commission or omission may have a devastating effect. The suggested letter cannot prevent all difficulties. At the very least, however, it will aid to obviate such problems by thoroughly advising the surveyor of precisely what is required of him.

PART II

CONFORMING WITH THE FULL DISCLOSURE PROVISIONS OF THE ILLINOIS CONDOMINIUM ACT

A form of consumer protection has surfaced in Illinois condominium law. Effective October 31, 1972, the Condominium Property Act¹² was amended to require a seller to make a full disclosure to a buyer of specified budget and other information regarding the project. Now more than a year later it appears most condominium developers are still not making the full disclosures required by the law.¹³ They thus face the statutory penalty of the buyer's right of rescission prior to the closing, and more importantly, may face the charge of fraud long after the closing in an action for rescission or damages for failure to disclose material facts regarding the condominium.

WHY FULL DISCLOSURE?

The appeal and rapid sales growth of condominiums in Illinois and other states have been the source of many problems for the unknowledgeable or unwary purchaser. While promoting the ease of maintenance of the condominium, developers have understandably not emphasized the possibility of later high maintenance expense. Perhaps the purchaser did not fully consider the total expense of condominium ownership; perhaps the salesman underestimated the probable charges for mainte-

¹² Note 1 *supra*.

¹³ ILL. REV. STAT. ch. 30, § 322 (1972). This recent change to the Illinois Condominium Property Act is designated the "Full Disclosure Before Sale" section.

nance or taxes; or perhaps it is the managing agent who is at fault for failing to take various items into account and later finding the actual expenses of building maintenance doubling or tripling, as they have reportedly done in some high rise condominiums.

The purchaser who has assumed that the quoted maintenance expense of perhaps \$40.00 per month will remain constant, finds that he has failed to include real estate taxes in his estimates and then discovers his monthly assessment has doubled or more to over \$80.00 per month. The advantages of condominium living may be worth the expense, but this is not what the purchaser bargained for nor perhaps what he can afford.

WHAT MUST BE DISCLOSED?

The condominium act requires the seller in making an initial sale of any condominium unit to make a full disclosure and provide copies to the condominium buyer of the following information relative to the project:

1. the condominium declaration;
2. the bylaws of the association;
3. a projected operating budget for the condominium unit to be sold to the prospective buyer, including full details concerning the estimated monthly payments for the condominium unit, estimated monthly charges for maintenance or management of the condominium property, and monthly charges for the use of recreational facilities; and
4. a floor plan of the apartment to be purchased by the prospective buyer and the street address of the condominium unit.¹⁴

The Act further provides:

All of the information required by this section which is available at the time shall be furnished to the prospective buyer before execution of the contract for sale. Thereafter, no changes or amendments may be made in any of the items furnished to the prospective buyer which would materially affect the rights of the buyer or the value of the unit without obtaining the approval of at least 75% of the buyers then owning interest in the condominium. If all of the information is not available at the time of execution of the contract for sale, then the contract shall be voidable at option of the buyer at any time up until 5 days after the last item of required information is furnished to the prospective buyer, or until the closing of the sale, whichever is earlier. Failure on the part of the seller to make full disclosure as required by this Section shall entitle the buyer to rescind the contract for sale at any time before the closing of the contract and to receive a refund of all deposit moneys paid with interest thereon at the rate then in effect for interest on judgments.¹⁵

¹⁴ *Id.*

¹⁵ *Id.*

Thus, the extent of the statutory remedy is limited to rescission prior to closing the sale.

WHAT ARE THE CONSEQUENCES OF NONDISCLOSURE?

The question might be raised at this point, "Is the Developer opening a Pandora's Box by making such a detailed disclosure?" Would he be better off not to make such a detailed disclosure since the cut-off date for statutory rescission of the contract is the closing date of the sale? Accordingly, the developer who is faced with problem items such as excessively high taxes or maintenance expenses may be seriously tempted not to make a full disclosure and take a chance on closing the sale as soon as possible.

There is a real danger in this nondisclosure attitude, however, and that danger is the possibility of a subsequent non-statutory charge by a purchaser of fraudulent nondisclosure of material facts required by statute to be disclosed. While the Act provides only for rescission prior to the time of closing, Illinois courts might be inclined to find that failure to disclose an item whose disclosure is required by the Condominium Act constitutes fraud* and a legal basis for rescission after closing or for damages where the omission of such item "materially affect[s] the rights of the buyer or the value of the unit."¹⁶ This is especially so in view of the mandatory language of the law: ". . . the Seller must make full disclosure of, and provide copies to the prospective buyer . . ."¹⁷

HOW CAN THE SELLER PROTECT HIMSELF?

In the past and to a great extent at the present time condominium developers have made copies of the condominium declaration available for viewing at the sales office, but may not have given them to the purchaser unless specifically required to do so by the purchaser's attorney. In view of the current requirements of the Illinois law, the declaration and bylaws

* *Editor's Note:* It is fully established that a breach of a statute may give rise to tort liability. In fact, it has been stated that "[w]hen a statute is passed the courts generally tend to associate it with the type of common law liability most closely related to the statute." *Dart v. Pure Oil Co.*, 223 Minn. 526, 27 N.W.2d 555 (1941). Such is the case in this state, for under Illinois rules of construction, a statute which embraces an area formerly covered by the common law should be construed as adopting the common law unless there is clear and specific language showing that a change in the common law was intended by the legislature. *Proud v. W. S. Bills & Sons, Inc.*, 119 Ill. App. 2d 33 (1970). The Illinois Condominium Property Act does not specifically purport to change the common law. Thus, the remedy provided in the Act cannot be construed as a bar to the commencement of a common law action nor a restriction on the remedies available.

¹⁶ ILL. REV. STAT. ch. 30, § 322 (1972). See note 15 *supra* and accompanying text for the context in which this is used.

¹⁷ *Id.*

should be supplied to prospective purchasers at or prior to contract signing.

To avoid the possibility of the purchaser subsequently alleging that he never received the documents, the seller should also secure a signed acknowledgement of receipt for the declaration as well as all other information required to be provided. This receipt could take the following form:

FORM # 1

RECEIPT FOR DOCUMENTS

_____ CONDOMINIUM NO. _____

CONDOMINIUM UNIT: _____

ADDRESS: _____

The undersigned Applicant for purchase of the above condominium unit acknowledges receipt of the following information as called for under ILL. REV. STAT. ch. 30, § 322 (1972):

- A. The Condominium Declaration (containing the By-laws).
- B. The Declaration for the Homeowners Association.
- C. Estimate of the Current Projected Operating Budget for the Condominium Unit to be purchased (Form # 2).
- D. Estimate of the Current Projected Operating Budget for the Condominium Building (Form # 3).
- E. Floor plan of the Condominium Unit to be purchased.

PURCHASER:

Dated: _____

It will be noted that one document receipted for in Form # 1 is the "Declaration for the Homeowners Association." While the law does not *specifically* call for this document, it is clear that information contained therein must be disclosed. A Homeowners Association is commonly established in planned unit developments as a not-for-profit corporation for the administration of areas which are common to more than one condominium building, such as recreational facilities and landscaping. This usually involves an assessment to the condominium owner which is specifically referred to in the condominium declaration but may not be included in the condominium assess-

ment. Since the purpose of the law is to make a "full" disclosure for the enlightenment of purchasers, it appears that a copy of the Homeowners Declaration should be provided at this time. The approximate monthly assessment for the Homeowners Association should also be included in the operating budget for the specific condominium unit, thus satisfying the requirement of the law for information as to the monthly charges for the use of recreational facilities.

The Condominium Unit Operating Budget

The disclosure law requires a "projected operating budget for the condominium unit to be sold . . . including full details concerning the estimated monthly payments for the condominium unit, estimated monthly charges for maintenance or management of the condominium property, and monthly charges for the use of recreational facilities . . ." ¹⁸ While "full details" is not further defined, the purpose of the law appears to be to give each prospective purchaser a complete, detailed breakdown of the monthly expenses so that he is not later unpleasantly surprised by unexpected expenses.

Form # 2 which follows is suggested to *summarize*¹⁹ the various expenses and to elaborate on what is and is not included in the budget. Where the developer is subsidizing the project for a certain initial period, as is frequently the case, this should also be disclosed.

FORM # 2

ESTIMATE

OF THE

CURRENT PROJECTED OPERATING BUDGET

FOR CONDOMINIUM UNIT _____

_____ CONDOMINIUM NO. ____

ADDRESS: _____

PURCHASE PRICE \$ _____

PERCENT OWNERSHIP INTEREST
OF UNIT IN COMMON ELEMENTS:

_____ %

The following projected operating budget for the above unit to be purchased, together with the supporting detailed budget

¹⁸ *Id.*

¹⁹ See Form # 3 *infra* which provides a detailed breakdown of the budget.

(see Form # 3) for the condominium building, is the Developer's best estimate of the anticipated monthly expenses. The monthly assessments are based upon estimated annual budgets prepared on or before December 1st of the prior year. It should be understood that this is an estimate and the actual expenses may vary. When the actual expenses are known at the end of the year, the assessment for the unit will be adjusted in accordance with the provisions of the Condominium and Homeowners Declaration.

APPROXIMATE MONTHLY BUDGET *FOR UNIT _____

1. Condominium Association Assessment** \$ _____
2. Homeowners Association Assessment*** \$ _____

TOTAL ESTIMATED MONTHLY BUDGET \$ _____

* The monthly budget does not include principal and interest payments on the mortgage or estimated real estate taxes which have already been given, nor the estimated cost of utilities metered to the individual units which will vary according to individual usage.

** The Condominium Association Assessment pays for the management and maintenance of the condominium building as more fully detailed in the Condominium Declaration and includes such services as building maintenance, complete custodial care, elevator maintenance, water, electricity and other utilities for the common elements of the building, fire and extended coverage insurance for the building, and public liability insurance for the common elements of the building.

*** The Homeowners Association Assessment pays for maintenance and administration of the Common Areas including recreational facilities such as the swimming pool and tennis courts. It also covers lawn and landscaping care, snow removal and other Common Area maintenance, including utility bills for the operation of the recreational and other facilities. A more detailed explanation of the services included in this assessment may be found in the Homeowners Declaration.

The reader should note that the monthly budget of Form # 2 does not include mortgage payments nor estimated real estate taxes since these items are commonly supplied on a separate information sheet. If these items are not supplied elsewhere, this information could be included on Form # 2 as items 3 and 4.

Developer Subsidies

At the initial stages of a large condominium project before

all the units are occupied or before the development becomes self-supporting, the developer commonly subsidizes certain expenses over and above his normal financial obligation. To avoid a major protest when this support is discontinued, the nature and amount of the subsidy should be spelled out and a notice given as to when this subsidy will end. This could take the form of an additional statement on Form # 2 as follows:

The Developer is providing additional financial support to the operation of the clubhouse and pool, over and above its normal financial obligation, to the extent of a \$12.50 contribution per occupied Condominium Unit per month, because the Developer is using the recreational facility as a sales and marketing tool. This support will continue until the Developer determines that the recreational facility will have to be self-supporting.

What Are Full Details of the Budget?

Since the full disclosure provisions of the law call for full details of the projected budget for the condominium building, it appears desirable to give a complete detailed breakdown of this budget as indicated on Form # 3 below. While the developer might object that this is excessively detailed, it has the advantage of serving as a check for the developer or the management firm to ensure that all expenses are included.

FORM # 3

ESTIMATE OF THE
CURRENT PROJECTED ANNUAL OPERATING BUDGET
FOR _____ CONDOMINIUM NO. _____
ADDRESS: _____

1. Utilities
 - A. Electricity for lighting, cooling and heating of common elements of building \$ _____
 - B. Water for common elements and condominium units \$ _____
2. Payroll for Janitor for maintenance of common elements including unemployment taxes \$ _____
3. Elevator maintenance \$ _____
4. Rubbish removal \$ _____
5. Reserve for redecorating, refurnishing, repairing and replacement of common elements \$ _____
6. Building repairs and maintenance \$ _____
7. Professional management charge by managing agent \$ _____
8. Telephone company lobby intercom system \$ _____
9. Preparation of year end financial reports \$ _____

10. Insurance including fire and extended coverage
for building structure and liability insurance
for common elements \$ _____
11. Miscellaneous and contingent expenses \$ _____

SUMMARY

- A. Total of above estimated annual expenses \$ _____
- B. Estimated monthly condominium assess-
ment for Unit No. _____ at its percentage
ownership of _____% \$ _____
- C. Less Developer's contribution \$ _____
- D. Net monthly condominium assessment for
Unit No. _____ \$ _____

CONCLUSION

The developer who fails to follow the full disclosure provisions of the Illinois Condominium Property Act is operating in a danger area. While the statutory relief provided only covers rescission prior to closing, the courts are unlikely to take such a restricted view of a situation where the nondisclosed items materially affect the value of the condominium unit or the buyer's rights. Thus, where the annual assessments are increased substantially in one year over the prior year or even where the taxes are substantially more than anticipated, the developer faces the prospect of a suit for damages on the basis of fraudulent nondisclosure by all or many of the condominium unit owners. The developer's best course of action appears to be to provide a detailed disclosure as outlined above.