

## MEMORANDUM

DATE: May 28, 2007

TO: Tennessee Bar Association  
Board of Governors

FROM: Condominium Law Revision Subcommittee  
of the TBA Real Estate Committee

RE: Proposed Legislation Creating the "Tennessee Condominium Act"

---

Ladies and Gentlemen:

Submitted herewith for your consideration is proposed legislation creating the "Tennessee Condominium Act." This legislation is intended to rewrite and to replace in its entirety the Tennessee Horizontal Property Act, TENN. CODE ANN. §§ 66-27-101 *et seq.* (the "THPA") which has governed the creation and administration of condominiums in the State of Tennessee since its adoption in 1963, at a time when condominiums were just beginning to appear in Tennessee and its neighboring states.

Since that time, the number of condominiums being built, and the types of residential and commercial projects which are being submitted to the condominium form of ownership, is exploding. This growth has led to a growing realization of the inadequacies of the THPA in today's real estate development environment.

Prior to 2005, these inadequacies became a recurring theme at meetings of the TBA's Real Estate Committee and its Executive Council.

### The TBA Response

In 2005 Courtney Hollins, president of the TBA's Real Estate Committee, appointed a committee to study the feasibility of revising the THPA. The committee is comprised of the following:

Steve Baker Waller Lansden Dortch & Davis, LLP

Ann Cargile Boulton, Cummings, Connors, & Berry, PLC

Lee Corbett Corbett Crockett & Leckrone

John Gupton Baker, Donelson, Bearman, Caldwell & Berkowitz,  
PC

Jim Haley     Miller & Martin PLLC

Mike Peek     Bass Berry & Sims PLC

John Roe     Sherrard & Roe, PLC

This committee was charged with proposing revisions to our condominium laws to bring them into line with the developing economic and social viability of condominium living as a desirable lifestyle.

### The Process

Since its formation in 2005, the committee has met virtually every other week in an effort to create a statute that would protect the interests of (i) developers, (ii) lenders, (iii) purchasers, (iv) management companies, and (v) tenants in conversion projects, without creating unduly burdensome compliance issues.

The committee began its work using the Uniform Condominium Act ("UCA"), promulgated by the National Conference of Commissioners on Uniform State Laws in 1980, as its template. It discarded the Uniform Common Interest Ownership Act, promulgated in 1994, as a template after deciding that the new legislation should apply only to condominiums and not to other common interest communities. It also decided against beginning with the statute of another state, after other experts consulted by the committee (principally Wayne Hyatt of Atlanta) suggested that beginning with the UCA would provide more flexibility in addressing issues which might be unique to Tennessee.

As its work progressed, the committee found it appropriate to make significant changes to the provisions of the UCA, and therefore has referred to the proposed legislation as the "Tennessee Condominium Act" rather than the "Tennessee Uniform Condominium Act."

### Summary of Proposed Legislation

The proposed legislation contains four articles:

1. General Provisions
2. Creation, Alteration, and Termination of Condominiums
3. Management of the Condominium
4. Protection of Condominium Purchasers

The UCA contains one additional article, titled Administration and Registration of Condominiums, which establishes an administrative agency to supervise the activities of developers. The committee decided early on not to create such an agency or to require

the registration of condominiums, feeling that it placed too great a burden on developers without a commensurate benefit. This fifth article was therefore discarded.

Article 1 of the proposed legislation contains definitions and general provisions applicable throughout the act. It deals with matters such as applicability (prospective only, although some of the definitions and principles may be used to interpret prior law with respect to matters which take place after adoption of the act), which provisions can be varied by agreement, applicability of other statutes, enforcement, and other general matters. This Article, among other things, introduces the concept of "development rights" and "special declarant rights" which govern certain rights which may be reserved by a developer in the documents creating the condominium.

Article 2 of the proposed legislation provides for the creation, alteration, and termination of condominiums. The committee has attempted in this article, as does the UCA, to provide considerable flexibility to developers to meet the needs of today's real estate market, while imposing reasonable restrictions on developers' practices which have the potential to harm unit purchasers and prospective purchasers.

Article 3 of the proposed legislation governs the administration of the unit owners association. It gives the Association broad ranging powers to administer the condominium's affairs, and places time restrictions on when the developer's control over the Association must end and the unit owners be given some say in the association's affairs.

Article 4 of the proposed legislation deals with the protection of purchasers of residential condominium units. Here the committee departed significantly from the provisions of the UCA, which would require very substantial disclosure by developers prior to the conveyance of a unit, and would further require all owners of units in residential condominiums to provide resale certificates to subsequent purchasers, regardless of when the condominium was created. The committee felt these provisions were overly burdensome, both on developers and on selling unit owners, and opted instead to require the condominium association (or its management company) to provide all relevant information upon request of a prospective purchaser or its lender. Penalties for noncompliance with these requirements are also provided.

The committee respectfully requests that the submission of this proposed legislation to the legislature, with such changes therein as the committee may approve after further study, be approved.

Thank you for your consideration.