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# Book Review [California Condominium Handbook]

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## BOOK REVIEW

CALIFORNIA CONDOMINIUM HANDBOOK. By John Paul Hanna. Bancroft-Whitney Co.: 1975. Pp. 391 with forms. Hardbound. \$37.50.

*Reviewed by* DENNIS W. DE CUIR\*

Just 15 years ago a New York Deputy Attorney General answered a letter asking about legislation on condominiums with the following:

Webster's New Collegiate Dictionary defines "condominium" as being a joint dominium or sovereignty. It is also defined as a country or region jointly governed by two or more powers, as the Anglo-Egyptian Sudan. Fortunately, [this jurisdiction] does not have to dispute its sovereignty with any other power. Therefore, we, not having the problem of Anglo-Egyptian Sudan, have no legislation and no need for legislation on this subject.<sup>1</sup>

While this error of definition would not be made today, the conundrums of condominium law still baffle many lawyers, probably because cases, statutes, regulations and ordinances in this area of law have proliferated so quickly. Today's problem is not too little information but too much. Help in solving the legal puzzle has been sorely needed. John Paul Hanna adds to his reputation as a legal scholar<sup>2</sup> with his generally well-written aid, *California Condominium Handbook*.

Condominiums are created by lawyers, not builders. Prudent developers recognize this, and before commencing even a medium size project, assemble their teams of engineers, architects, planners, and bankers under the guidance of a lawyer.

Mr. Hanna's book explains the steps critical to the establishment and maintenance of condominium developments. It also answers many of the liability<sup>3</sup> and tax<sup>4</sup> questions peculiar

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1. P. ROHAN & M. RESKIN, CONDOMINIUM LAW AND PRACTICE § 1.01[1], at 1 n.1 (1974).

2. J. HANNA, THE COMPLETE LAYMAN'S GUIDE TO THE LAW (1974); Hanna, *Subdivisions: Conditions Imposed by Local Government* 6 SANTA CLARA LAW. 172 (1966).

3. J. HANNA, CALIFORNIA CONDOMINIUM HANDBOOK §§ 138-43 (1975) [hereinafter cited as HANNA]. In *Friendly Village Community Ass'n., Inc., No. IV v. Silva & Hill Construction Co.*, 31 Cal. App. 2d 220, 265, 107 Cal. Rptr. 123, 126 (1973), the court held that a nonprofit unit owner's corporation had no standing to sue a developer for

to ongoing, homeowner-operated condominium projects, and provides helpful checklists and suggestions. Since the number of condominiums in the United States has increased 15-fold since 1970,<sup>5</sup> general practitioners can expect to see condominium-related problems with increasing frequency. An attorney equipped with this book can provide skillful guidance to both developer and purchaser.

The strengths of this volume are its style and organization. There are separate, succinct chapters on local ordinances,<sup>6</sup> condominium sale requirements,<sup>7</sup> homeowner associations,<sup>8</sup> project management,<sup>9</sup> conversions,<sup>10</sup> securities laws,<sup>11</sup> environmental law<sup>12</sup> and coastal zone conservation.<sup>13</sup> Other useful topics include resort developments, with a discussion of interval ownership;<sup>14</sup> phased projects;<sup>15</sup> and a helpful explanation of how best to combine commercial and residential condominiums and planned unit developments.<sup>16</sup> The forms contained in the second half of the book are also well done, particularly the sample condominium declaration,<sup>17</sup> the articles of incorporation,<sup>18</sup> and the condominium owners' association bylaws.<sup>19</sup>

Mr. Hanna also offers ideas for those who counsel condominium purchasers.<sup>20</sup> For example, he suggests that since most

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failing to properly prepare soil which settled after construction, causing tension cracks in the common areas of the project. The court ruled that because the condominium owners must bear repair costs, they are the ones with standing to sue.

4. HANNA, *supra* note 3, §§ 196-209. See Comment, *Federal Income Tax Consequences for Condominium Homeowners: A Request for Equitable Tax Treatment*, 15 SANTA CLARA LAW. 384 (1975).

5. U.S. DEP'T. OF HOUSING & URBAN DEVELOPMENT, NEWSLETTER No. 36, CONDOMINIUM REPORT (1975). According to Secretary Hills, the number of condominiums in the United States is 15 times greater than in 1970. In California the number of state-registered condominiums has increased since 1970 from 5.5 percent to 34.8 percent of new housing held open for sale. U.S. DEP'T. OF HOUSING & URBAN DEVELOPMENT, CONDOMINIUM & COOPERATIVE HOUSING STUDY (1975).

6. HANNA, *supra* note 3, at §§ 47-61.

7. *Id.* §§ 62-79.

8. *Id.* §§ 100-06.

9. *Id.* §§ 107-37.

10. *Id.* §§ 145-50.

11. *Id.* §§ 162-81.

12. *Id.* §§ 210-25.

13. *Id.* §§ 226-47.

14. *Id.* §§ 157-61.

15. *Id.* §§ 188-95.

16. *Id.* §§ 182-87.

17. *Id.* § 248.

18. *Id.* § 252.

19. *Id.* § 253.

20. *Id.* §§ 80-99.

developers want to have some leeway as to the completion date of a new condominium project, a purchaser may benefit from a provision in the deposit receipt and purchase contract requiring the developer to pay motel, food and storage expenses in the event the unit is not ready for occupancy on the predicted date.<sup>21</sup> Aside from its application to condominium projects, this is good advice for many residential real estate transactions.

For some time now, attorneys representing developers have argued with government attorneys and planners over the meaning of Section 66427 of the Government Code.<sup>22</sup> This section of the Subdivision Map Act contains an artless contradiction that induces many developers to file tentative maps which only show the outline of the parcel upon which the condominium project will be built.

Section 66427 provides that a condominium map need not show the buildings or the manner in which the buildings or airspace above the property are to be divided. This section further provides that a city or county does not have the right to refuse approval of a map because of the design or location of buildings if there are no violations of local ordinances. Nor can refusal be predicated on the manner in which the property's airspace is divided. But in apparent contradiction, section 66427 goes on to state that nothing therein shall be deemed to limit the power of a legislative body to regulate the design or location of buildings in such a project by or pursuant to local ordinances.

Mr. Hanna suggests that a developer should determine if local ordinances require that condominium buildings be shown on the map. If not, he suggests that the developer may rely on Section 66427 and submit what is called a single lot subdivision map, showing only the perimeter boundaries of the whole project.<sup>23</sup> I believe this advice is legally correct, but it encourages developers to forego their option of submitting maps of the buildings and airspace, and it does not serve the public's interest in good land use planning.

By definition, land includes the airspace enclosed in a condominium unit.<sup>24</sup> The division of airspace into residential, re-

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21. *Id.* § 82.

22. Formerly CAL. BUS. & PROF. CODE (West Supp. 1965). See *Hearings on S.B. 430, Condominiums and Condominium Conversions Before the Senate Local Government Committee*, Cal. State Legislature, at 19-20 (Nov. 12, 1973).

23. HANNA, *supra* note 3, § 51.

24. CAL. CIV. CODE § 659 (West Supp. 1975).

sort, commercial or industrial condominiums, like any other division of land, is a matter which should be reviewed by local government for consistency with local general or specific plans and for compliance with locally adopted design and improvement standards.<sup>25</sup> Since condominium walls divide the airspace and indicate the boundaries of the separate interests of condominium owners, the walls constitute the equivalent of the lot lines required for all other subdivision maps. In my opinion, the public is better served when the location of condominium buildings is shown on the map, particularly in relation to street alignment, traffic access, grading, utilities, drainage and other improvements which may have an impact on the unit owners or the surrounding neighborhood.<sup>26</sup> All these elements traditionally are subjects of local subdivision approval.<sup>27</sup>

Further, the practicalities of processing developments through local government make it wiser to view the map requirements as a marketing opportunity. Planning commissions, city councils and boards of supervisors do not like to approve blank maps. Understandably, they feel accountable for the design of their communities, even when ordinances which might impose that responsibility are lacking. Thus, many experienced developers use the subdivision map to market a condominium project to local government, for they realize that a graphic demonstration that the project will be a well-planned addition to the community is worth presenting to the planners, councilmembers, or boards. Given knowledge of where the buildings will be situated in relation to other improvements, local officials are more likely to approve a tentative map quickly. Of course, one risks being asked to make design changes, but that is usually a tolerable hazard when compared to the risk of having the project denied for any one of the many reasons set out in the Subdivision Map Act.

A third reason for not quibbling over whether a single lot map should be filed is the statutory requirement that a diagrammatic floor plan showing each condominium unit, its location and approximate dimensions must be recorded.<sup>28</sup> While one might not be convinced that a subdivision map is a market-

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25. *Woodland Hills Residents Ass'n v. City Council*, 44 Cal. App. 3d 825, 118 Cal. Rptr. 856 (1975).

26. CAL. GOV'T CODE §§ 66418-19 (West Supp. 1975).

27. See, e.g., CAL. GOV'T CODE §§ 66473, 66473.5, 66474, 66474.6 (West Supp. 1975).

28. CAL. CIV. CODE § 1351 (West Supp. 1975).

ing opportunity, a detailed map must be prepared anyway in order to create a condominium project pursuant to statute, and a developer may as well submit it to local authorities.

Mr. Hanna suggests that developers consider combining the diagrammatic floor plan and the subdivision map.<sup>29</sup> This combination may save time and money, and certainly saves paper. However, Mr. Hanna should urge this course more forcefully, for failure to combine the plan and map is an opportunity lost to the developer and a benefit denied to the public.

Persons who market and finance condominiums should note that this book does not mention the Real Estate Settlement Procedures Act of 1974 (RESPA), which became effective two months after Mr. Hanna wrote his preface.<sup>30</sup> Congress intended this act to provide advance disclosure of closing costs; to eliminate kickbacks or referral fees from the costs of certain closing services; and to reduce the amounts buyers are required to place in escrow accounts to insure the payment of real estate taxes and insurance.<sup>31</sup>

Among other things, RESPA requires that at least 10 days prior to closing, a lender provide the prospective buyer and seller with an itemized disclosure of each closing charge involving a federally-related loan.<sup>32</sup> The date and purchase price of the last arm's-length transfer must be disclosed to a prospective buyer where the present seller has not owned the property for at least two years prior to the date of the loan application and has not used the property as a place of residence.<sup>33</sup> In addition, lenders must distribute to prospective purchasers of residential real estate a booklet published by the federal government describing closing, escrow accounts, and unfair practices and charges related to closing.<sup>34</sup> These requirements became effective for loan applications received on or after June 20, 1975.<sup>35</sup> Since a failure to observe them may result in damages, attorney's fees and costs,<sup>36</sup> and penalties and fines,<sup>37</sup> Mr.

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29. HANNA, *supra* note 3, §§ 35-39.

30. 12 U.S.C.A. §§ 2601-16 (West Supp. 1974). 24 C.F.R. Part 82 (1975) contains the regulations issued by the Secretary of H.U.D. pursuant to RESPA. 40 Fed. Reg. 22449 (1975).

31. 12 U.S.C.A. § 2601 (West Supp. 1974).

32. *Id.* § 2605.

33. *Id.* § 2606(a)(3).

34. *Id.* § 2604.

35. *Id.* § 2601; *see* 24 C.F.R. § 82.4(c)(1), (2) (1975).

36. 12 U.S.C.A. §§ 2605, 2608 (West Supp. 1974).

37. *Id.* §§ 2606(e), 2607(d), 2608.

Hanna should discuss RESPA in his edition. On the other hand, RESPA's complexity has provoked an avalanche of complaints; its repeal is possible, perhaps even likely. In that event Mr. Hanna's omission will have been prophetic.

The majority of this book's mistakes are minor errors which a careful editor should have corrected. For example, the discussion of recent legislation makes it appear that state law treats San Francisco condominium conversions uniquely. In 1974 the California Legislature moved the Subdivision Map Act<sup>38</sup> from the Business and Professions Code to the Government Code, effective March 1, 1975.<sup>39</sup> In addition to making a number of insubstantial changes, the bill went to the Governor with special sections which would have applied only to San Francisco.<sup>40</sup> These sections were intended to legitimize the denial of the conversion of a 1,000 unit apartment project to condominiums and to provide tenants with option and lease termination rights. The editors overlooked the fact that these provisions were "double-joined," which means they would not become operative unless other bills were passed and enacted.<sup>41</sup> Since the legislature did not pass the measures upon which the San Francisco conversion sections were dependent,<sup>42</sup> the reader is left with the incorrect impression that a state law exists which is uniquely applicable to San Francisco.<sup>43</sup>

Other minor annoyances, which I would blame again on the book's editors, are the failure to mention in the text the excellent California Continuing Education of the Bar publications treating the intricacies of condominium law, the Subdivision Map Act and the Subdivided Lands Act,<sup>44</sup> and the inclusion in the Appendix of provisions from the Subdivision Map Act as they appeared before their revision and removal to the Government Code.<sup>45</sup>

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38. CAL. GOV'T. CODE §§ 66410-99.37 (West Supp. 1975).

39. CAL. STATS. (1974), ch. 1536, § 10, at 4376.

40. *Id.* §§ 4.3, 4.33, 4.37, 4.4.

41. *Id.* §§ 4.3, 4.33, 4.37, and 4.4 would have become operative if S.B. 1847 and S.B. 1868 were chartered and became effective. See also *id.* p §§ 10.3, 10.4.

42. CAL. GOV'T. CODE §§ 66427.1-4 (West Supp. 1975).

43. HANNA, *supra* note 3, § 151, at 131.

44. R. MERRITT, JR., GUIDE TO CALIFORNIA SUBDIVISION SALES LAW (1974); California Continuing Education of the Bar, Practice Under the New Subdivision Map Act, Program Material, April-May 1975; *id.*, Subdivision and Condominium Practice Manual, Program Material, November-December 1974. While the text is silent, the form declaration mentions Merritt's book. HANNA, *supra* note 3, § 248, at 248.

45. HANNA, *supra* note 3, app. A, at 336-37, citing, CAL. BUS. & PROF. CODE §§

In view of the complexity of the subject and the lack of many definitive works on which to rely, Mr. Hanna has done an admirable job of putting the many pieces of condominium law together. Most of the problems with this book are minor; I recommend it.

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11535.1, 11546 (West Supp. 1965), *presently* CAL. Gov'T CODE §§ 66427, 66477 (West Supp. 1975).