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Board of Managers' Authority to Borrow Money

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BOARD OF MANAGERS' AUTHORITY TO BORROW MONEY

Unforeseen events affecting common elements can expose condominium unit owners to significant financial burdens with little notice.[1] Borrowing by the board of managers of the condominium association[2] is one method by which unplanned expenses can be borne without subjecting unit owners to the financial hardship posed by sudden special assessments made by the association. Moreover, borrowing represents a potential means of financing alterations and capital improvements to the common elements. Borrowing may offer an attractive means of financing common expenses. The threshold question is: does the board of managers possess the authority to borrow without approval of the condominium unit owners?

The need for a board of managers to consider borrowing would most likely apply to circumstances where comparatively large sums of money must be generated within a short span of time. The more urgent the circumstances creating the unanticipated common expenses, the more appealing borrowing becomes. The necessity for prompt response to a sudden expense suggests the need for board power to bypass unit owners when considering the unplanned outlay. Defects in heat-

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1 Either by statutory command or inclusion in project documents, the owners' association bears the responsibility for administering and maintaining the common elements of the condominium and may assess unit owners to meet expenses. 4A R. POWELL, THE LAW OF REAL PROPERTY ¶ 633.24, at 857-59 (rev. ed. 1972) [hereinafter cited as POWELL]. *See* ARIZ. REV. STAT. ANN. § 33-56A (Supp. 1973) ("The council of co-owners shall be required to make provisions for maintenance of common elements . . . ."); CAL. CIV. CODE § 1355(b) (West Supp. 1974); N.J. STAT. ANN. § 46:8B-14 (Supp. 1973).

Where responsibility for maintenance of the common elements is not set forth explicitly, the association's role can be inferred from the statutory requirements that the management group keep accurate administrative records and that the bylaws provide for the maintenance, management and repair of the common elements. For examples of this latter form of legislation, see CONN. GEN. STAT. ANN. § 47-80(b)(6) (Supp. 1973); HAWAII REV. STAT. §§ 514-19, 20 (1968); N.Y. REAL PROP. LAW § 339-v (McKinney 1968); P.R. LAWS ANN. tit. 31, § 1293a (1967).

2 Setting the level of expenditures for the common elements is a task usually performed by the board of managers of the association. This duty is delegated to the board in condominium bylaws containing language similar to the following: "The Board of Managers shall from time to time, and at least annually, prepare a budget for the Condominium . . . ." Bylaws, St. Tropez Condominium (New York, N.Y. Jan. 14, 1965), *reprinted in* P. ROHAN & M. RESKIN, 1A CONDOMINIUM LAW & PRACTICE app. 99 (1965) [hereinafter cited as ROHAN & RESKIN]. *See also id.* at app. 149, 375.

The recurring nature of many expenses, coupled with their ascertainable costs, produces a high degree of certainty in the budgeting process. Assessments against individual units are normally determined on an annual basis. Payment by the unit owner is typically required to be made monthly or semi-annually. Thus, the contribution of the individual unit toward the common expenses is set in advance with some precision. *See generally* 1 ROHAN & RESKIN § 6.04(1), at 6-24.

ing,[3] air conditioning, electrical, water and sanitary sewage systems may necessitate borrowing, as repairs to these elements by their nature are costly and must be made immediately. However, expenditures for recurring common costs, such as routine maintenance, should be provided for in the condominium budget. Similarly, the existence of a condominium reserve fund[4] containing resources sufficient to cover unpredicted expenses or the availability of insurance indemnification[5] would eliminate or reduce the necessity of borrowing.

Should the board of managers attempt to defray the cost of unforeseen repairs to common elements by immediate increase in assessments, two considerations become important. Although condominium bylaws frequently contain some form of special assessment procedure whereby new assessments are either set by the board of managers or approved by a majority of the association, the process is time consuming. In the case of a special assessment by the board of managers, bylaws often stipulate that thirty days notice must be provided before it can be levied. Where the assessment is to be made pursuant to the vote of the unit owners' association, both an initial delay in conducting the vote, and a further delay of ten to thirty days before the special assessment is payable, are inevitable.[6] A special assessment is

[3] It is possible to obtain insurance on a building's boiler. Procuring such insurance is more judicious than relying upon the condominium to self-finance or borrow in order to repair a damaged heating plant. For a discussion of insurance in the context of the condominium see note 5 *infra*.

[4] *See* text accompanying notes 25-26 *infra* for a discussion of reserve funds.

[5] Ordinarily the owners' association will obtain a master policy to insure against casualty loss. Unit owners are generally free to procure casualty insurance for their own units despite the existence of a master policy. *See* 1 ROHAN & RESKIN § 11.03(1), at 11-14. Given the general availability of master policy coverage, and the ability to factor the cost of the policy premium into unit assessments, the need for post-casualty borrowing would only occur in the event the master policy was inadequate. Foresight, as manifested by a close examination of the policy, as well as periodic review of the level of coverage, would prevent the existence or development of gaps in a policy which could cause a post-casualty shortfall in coverage. *See generally* 1 ROHAN & RESKIN § 11.02(2), at 11-7; Ellman, *Fundamentals of Condominiums and Some Insurance Problems*, 1963 INS. L.J. 733 (1963); Rohan, *Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain*, 65 COLUM. L. REV. 593 (1965); Rohan, *Disruption of the Condominium Venture: The Problems of Casualty Loss and Insurance*, 64 COLUM. L. REV. 1045 (1965).

The Illinois condominium act directs the board of managers to obtain insurance for the "full insurable replacement cost of the common elements and the units." ILL. ANN. STAT. ch. 30, § 312 (Smith-Hurd Supp. 1973). Missouri has similar legislation. *See* MO. ANN. STAT. § 448.120 (Vernon Supp. 1974). For a general discussion of insurance and the condominium see Note, *Condominium Casualty and Liability Insurance, supra*.

[6] Invocation of special assessment power, by either method, may be conditioned in the bylaws by a prerequisite that existing regular assessments be insufficient to provide the resources to pay for the unplanned common expense, though the bylaws need contain no such condition. It is therefore conceivable that extraordinary assessments could be voted at any time by the owners' association or the board of managers. *See* 4A POWELL ¶ 633.36, at 923. In practice, it appears that the association is the body empowered to levy special assessments.

likely to work a special hardship upon the less financially secure unit owners; conceivably, some would be unable to meet the new assessment.[7]

Borrowing in order to meet sudden common expenses would allow the board of managers to obtain funds without the delay associated with a special assessment. Nor would unit owners find themselves required to respond to an assessment on comparatively short notice. Having secured the necessary financing through a loan, the condominium board of managers could be flexible in establishing an assessment payment schedule since the object would be to retire a loan rather than raise a fixed sum in a short period of time.

The question remains as to whether the board of managers, even in limited circumstances, has the authority to borrow money without the explicit consent of at least a majority of the unit owners' association. This issue has neither been addressed by case law nor by condominium literature.[7a] An examination of the two methods of managing the condominium, the association and the corporation, offers a framework within which the question of the board's authority can be analyzed.

THE ASSOCIATION

The association's concern for common expenses stems from its responsibility to maintain the common elements.[8] This duty is delegated inasmuch as the association has no property interest in the common elements.[9] As a consequence, the association and its board of managers function in the capacity of agents of the individual unit owners. This principal-agent relationship presents a major impediment to any effort by the board of managers to secure a loan.

At the outset, a board of managers attempting to borrow without unit owner approval is confronted with the common law doctrine that the general power of an agent to act on behalf of his principal does

[7] Delinquency among unit owners, especially on a large scale, would severely handicap efforts to meet the burden of extraordinary common expenses. Under condominium enabling legislation, a delinquent unit can be subjected to a lien for nonpayment of the common charges. Acting on behalf of the unit owners, the board of managers may bring an action to foreclose such a lien. *See, e.g.*, N.Y. REAL PROP. LAW §§ 339-z, -aa (McKinney 1968). Like the special assessment, the lien foreclosure procedure is time consuming.

[7a] For a discussion of board's authority to borrow money in New York, see *Condominium Workshop, supra* at pp. 684-85.

[8] *See* note 1 *supra*.

[9] Even in the absence of statutory delegation to the association or board of responsibility for maintaining common elements, such a duty may be readily assigned in the bylaws; under common law the management of a cotenancy may be delegated. *See* 4A POWELL ¶ 633.24, at 858-59; 2 AMERICAN LAW OF PROPERTY § 6.18, at 77 (A. Casner ed. 1952); Comment, *Community Apartments: Condominium or Stock Cooperative?*, 50 CALIF. L. REV. 299, 308 n.1 (1962).

not confer upon the former authority to borrow money.[10] Occasionally courts will find that implied authority to borrow exists, but only where such a power is necessarily inferred from the scope and nature of the authority delegated to the agent.[11] Condominium project documents do not, as a general practice, contain explicit authority for the association or board to borrow in order to meet common expenses. Lacking such authority in the declaration or bylaws, were a board of managers to seek a loan without unit owner approval it would be functioning without the express consent of its principals, thus exceeding the bounds of the board's common law defined authority. Nor can it be successfully maintained that implied authority exists for such a practice. Assessment of the unit owners is the method typically outlined in bylaws to finance common expenses.[12] Unplanned needs are to be met, according to common bylaw provisions, through special assessments.[13] In light of the detail usually devoted to financing in bylaws, it would be difficult to sustain the argument that in discharging the task of maintaining the common areas the board of managers enjoys implied borrowing authority.[14] The very presence of specific revenue raising procedures in the condominium statutes and project bylaws would

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10 This proposition and its rationale were set forth in Williams v. Dugan, 217 Mass. 526, 105 N.E. 615 (1914), where the court observed: "The power to borrow money or to execute and deliver promissory notes is one of the most important which a principal can confer upon an agent. It is fraught with great possibilities of financial calamity. It is not lightly to be implied." *Id.* at —, 105 N.E. at 615. *See* Levin v. Commissioner, 355 F.2d 987, 990 (5th Cir. 1966); Lamb v. General Associates, Inc., 60 Wash. 2d 623, 374 P.2d 677 (1962); Bank of America v. Horowytz, 104 N.J. Super. 35, 248 A.2d 446 (Bergen County Ct. 1968).

11 *See* Williams v. Dugan, 217 Mass. 526, 105 N.E. 615 (1914) (the agent's authority to borrow "either must be granted by express terms or flow as a necessary and inevitable consequence from the nature of the agency actually created.") Similarly, the *Restatement* focuses upon the authority expressly conferred by a principal in evaluating the question of his agent's implied borrowing power: "Unless otherwise agreed, an agent is not authorized to borrow unless such borrowing is usually incident to the performance of acts which he is authorized to perform for the principal." RESTATEMENT (SECOND) OF AGENCY § 74 (1957).

12 *See* note 2 *supra.*

13 *See* note 7 and accompanying text *supra.*

14 Beyond the problem posed by agency case law, the common law distinction between commercial and non-profit associations could complicate any effort to borrow. As enunciated in McCabe v. Goodfellow, 133 N.Y. 89, 30 N.E. 728 (1892), members of non-profit associations are not personally bound by debts incurred by the organization's officers or executive committee members, unless the expenditures are necessary to maintain the organization. *See* Martin v. Curran, 303 N.Y. 276, 101 N.E.2d 683 (1951). In the case of an association organized for profit, the members are said to be partners. There is authority to the effect that members of a condominium association are subject to a partnership-type liability, unless the association has exceeded its authority. *See* Berger, *Condominium: Shelter on a Statutory Foundation*, 63 COLUM. L. REV. 987, 1007 n.112 (1963). It should be observed that Professor Berger views this partnership form of liability as unwarranted in light of the non-profit aspects of the association. *Id.*

seem to preclude the contention that borrowing is a permissible manner in which to pay for common expenses.

THE INCORPORATION ALTERNATIVE

Incorporation seemingly presents the board of managers with a significant opportunity to avoid the case law disabilities facing a board functioning within the framework of an owners' association. However it is achieved,[14a] incorporation produces a separate legal entity; the agency-derived restraints upon association and board behavior are avoided by the corporation. As director of the affairs of the corporation, the board of managers enjoys considerable latitude in the power it may exercise to benefit the corporation.[15] In light of the diminished impact of the ultra vires doctrine and the existence of liberal incorporation legislation, this view of broad board power appears all the more plausible. Accordingly, simply by virtue of incorporation the condominium board of managers would be in a position to contend that it impliedly possesses authority to obtain loans as a reasonable and customary corporate power, as well as a means to accomplish its duty to care for the common elements.[16]

[14a] For a discussion of some of the problems which must be dealt with if the incorporation method is to be utilized, see *Condominium Workshop, supra* at p. 730.

[15] The general view of the broad power of the board of directors of a corporation was expressed in Manson v. Curtis, 223 N.Y. 313, 119 N.E. 559 (1918):

> All powers directly conferred by statute, or impliedly granted, of necessity, must be exercised by the directors who are constituted by the law as the agency for the doing of corporate acts. In the management of the affairs of the corporation, they are dependent solely upon their own knowledge of its business and their own judgment as to what its interests require. . . . They hold such office charged with the duty to act for the corporation according to their best judgment, and in so doing they cannot be controlled in the reasonable exercise and performance of such duty.

Id. at 322-23, 119 N.E. at 562. *See* N.Y. BUS. CORP. LAW § 717 (McKinney 1968).

[16] Suggestions for the incorporation of the condominium have been prompted in large measure because of the liability of unit owners for the negligent construction or operation of the common elements. *See* Knight, *Incorporation of Condominium Common Areas? An Alternative*, 50 N.C.L. REV. 1, 8 (1971); Note, *Condominiums: Incorporation of the Common Elements — A Proposal*, 23 VAND. L. REV. 321, 329 (1970). *See generally* 4A POWELL ¶ 633.36.

One recent proposal for incorporation involves placing both the operation and ownership of the common elements in a corporation. Each unit owner would own shares in the corporation in proportion to what, absent the existence of the corporation, would be the unit's undivided interest in the common elements. The unit owner would have the same privilege of enjoyment of the common areas as his counterpart in an unincorporated condominium. The project documents would stipulate that the corporation stock could only be conveyed when it was accompanied by title to a unit. *See* Note, *Condominiums: Incorporation of the Common Elements — A Proposal*, 23 VAND. L. REV. 321, 329 (1970).

The potential for collateral afforded by placing ownership of the common elements in the management corporation is clearly a positive feature of this proposal. With title to the common elements in the corporation, the board would be in a more advantageous

While incorporation apparently provides the board of managers with independent authority to borrow, the peculiar statutory environment of condominium financing is hostile to such an interpretation. Enabling legislation provides, either expressly or by necessary implication, for the raising of revenue by the association for the operation of the common elements. The association, and its board of managers, may be specifically empowered to finance the common expenses in one of two fashions. The unit owner may be directed by statute to pay his proportionate share of the common expenses,[17] or the association may be required by law to include in its bylaws the procedure for determining and collecting assessments for the common expenses.[18] Whichever approach is selected, it is clear that legislatures intend the financing of common expenses to be by way of unit owner assessments. Had legislatures contemplated financing common expenses through lending institutions, they would have so provided in their condominium enabling legislation. A fortiori, where legislation establishes the process for collection to meet common expenses, the absence of specific authorization to borrow is a strong indication that the lawmakers did not view the board of managers as possessing the power to borrow.[19]

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position to secure a loan by mortgaging the common areas. For a discussion of the problem of offering security for a loan see text accompanying note 20 *infra*. Otherwise this plan is unworkable because it fails to deal effectively with the nonpartition provisions of condominium acts. For example, the Pennsylvania condominium law stipulates that:

> The undivided interest in the common elements may not be separated from the unit to which such interest pertains and shall be deemed to be conveyed, leased or encumbered with the unit even though such interest is not expressly referred to or described in the deed, lease, mortgage or other instrument. The common elements shall remain undivided . . . .

PA. STAT. ANN. tit. 68, § 700.202 (1965). *See, e.g.*, ALA. CODE tit. 47, § 289 (Cum. Supp. 1971); ARIZ. REV. STAT. ANN. § 33-560 (Supp. 1973); CONN. GEN. STAT. REV. § 47-74 (1973); FLA. STAT. ANN. § 711.05 (1969).

A second, less complex proposal, is based upon the formation of a corporation to manage the common elements. The condominium common areas would be leased to the corporation. At the same time, every unit owner would be issued shares of stock in the corporation on the basis of the unit's undivided interest in the common elements. Lease payments would be made to unit owners by the corporation. In turn, the corporation would charge unit owners for the maintenance services it provided for the common areas. *See* Knight, *Incorporation of the Common Areas? An Alternative*, 50 N.C.L. REV. 1, 11 (1971). Mr. Knight contends that the proposal will provide a ready vehicle for financing improvements to the common elements. *Id.* Inasmuch as the management corporation could not mortgage the common elements, this claim seems dubious.

17 *See, e.g.*, MO. ANN. STAT. § 448.080 (Vernon Supp. 1974).

18 *See, e.g.*, ALA. CODE tit. 47, § 304 (Cum. Supp. 1971); CONN. GEN. STAT. REV. § 47-80 (1973); OHIO REV. CODE ANN. § 5311.08 (Baldwin 1971); PA. STAT. ANN. tit. 68, § 700.303 (Purdon 1965).

19 A number of jurisdictions have non-profit incorporation statutes. A corporation designed to manage the affairs of the common elements could organize under such legislation, as well as under general incorporation laws. *See, e.g.*, CAL. CORP. CODE § 9200

On a more practical plane, the board of managers faces equally serious problems. Realistically, the board is likely to find financial institutions it has dealt with on a continuing basis fairly receptive to loan requests involving modest amounts.[20] The complexion of matters changes dramatically, however, where the board attempts to obtain a substantial loan. Such a loan would most frequently be used for improvement or renovation of the common elements and not merely for sudden repairs. In such a situation the board would find itself severely handicapped as a result of its inability to offer adequate security for a major loan, since it could not mortgage the common elements.

Although Alabama and New Jersey have condominium blanket mortgage statutes,[21] enabling legislation in other jurisdictions proscribes the imposition of a lien upon condominium property without the consent of the unit owners. Typical of such laws is the New York prohibition of liens against common areas:

> Subsequent to recording the declaration and while the property remains subject to this article, no lien of any nature shall thereafter arise or be created against the common elements except with the unanimous consent of the unit owners. During such period,

(West 1955); IOWA CODE ANN. § 504A.4 (Supp. 1973); MICH. COMP. LAWS ANN. § 450.117 (1973). Contained within the Illinois condominium act is specific authorization to incorporate under that state's not-for-profit corporation statute. *See* ILL. ANN. STAT. ch. 30, § 318.1 (Smith-Hurd 1969).

Nonprofit incorporation statutes may introduce a new dimension to the question of the power of a board of managers to borrow without unit owner permission. For example, the California nonprofit corporation law specifically grants a nonprofit corporation authority to borrow money. *See* CAL. CORP. CODE § 9501 (West 1955). It must be noted, however, that legislation regarding nonprofit corporations was enacted without considering its impact upon condominium laws. In fact, many nonprofit incorporation laws were enacted prior to the passage of condominium legislation.

Until recently New York condominiums could only organize as associations. However, an amendment to N.Y. REAL PROP. LAW § 339-v(1)(a) (McKinney 1968), provides that nothing contained in the New York condominium law

> shall bar the incorporation of the board of managers under applicable statutes of this state; such incorporation must be consistent with the other provisions of this article and the nature of the condominium purpose.

N.Y. SESS. LAWS [1974], ch. 1056, § 6 (McKinney). It should be observed that this legislation does not specify the method by which the board of managers may incorporate. Presumably, therefore, incorporation could be accomplished pursuant to N.Y. NOT-FOR-PROFIT CORP. LAW § 401 *et seq.* (McKinney 1970), as well as under New York's general incorporation legislation, N.Y. BUS. CORP. LAW § 401 *et seq.* (McKinney 1963).

20 Current practice seems to support this view. In the event a condominium needs a small loan, a representative of the board or association will contact the institution where the assessments are deposited following collection. Apparently a loan will be forthcoming if the condominium can provide assurances that its counsel finds no objection to this practice.

21 The Alabama blanket condominium mortgage statute is part of chapter 1059 of the Alabama Laws of 1973, *reprinted in part in* CONDOMINIUM REP., Jan., 1974, at 5; N.J. REV. STAT. § 46:88-23 (1969).

> liens may arise or be created only against the several units and their respective common interests.[22]

The unanimous approval requirement of such legislation[23] in effect operates to defeat the securing of a sizeable loan by the use of a unitary mortgage. Furthermore, this virtual prohibition also denies the board of managers the option of raising capital for major improvements by refinancing an existing mortgage.[24]

RESERVE FUNDS

The most appropriate response to the need to generate large sums to meet common element expenses is to adequately anticipate substantial capital expenditures. For example, obsolescence predictably will occur in portions of the common elements.[25] As a result, modifications or renovation will eventually be necessary. Through proper planning a construction fund can be established. Thereafter, regular assessments can reflect the funding level required to accomplish planned renovations or improvements.[26] In view of the reserve fund alternative, there is no need to enact legislation permitting the imposition of mortgages upon the condominium property solely as a consequence of a determination by the board of managers that major financing is needed. A decision to impose a blanket mortgage, with its inevitable diminishing of unit owner independence, more appropriately should include unit owner participation. Accordingly, any statutory change in this area must reasonably include a requirement that, as a condition precedent to obtaining a loan and unitary mortgage, a board of managers secure the consent of a substantial majority of the unit owners.

Borrowing of modest sums for unbudgeted common expenses not covered by a reserve fund could be facilitated by providing for a trust

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22 N.Y. REAL PROP. LAW § 339-1 (McKinney 1968). *See generally* Wisner, *Financing the Condominium in New York: The Conventional Mortgage*, 31 ALBANY L. REV. 32, 42 (1967); 8 VILL. L. REV. 538, 548 (1963).

23 Assuming the unanimous approval required under the New York law, the lien will be inferior to existing mortgages on the condominium units.

24 In the absence of authority to incur a blanket mortgage on condominium property, second mortgages on the individual units could offer a partial solution to the problem of providing security to a lender. A second mortgage generates its own problems. Quite possibly the institutional lender would not accept such an arrangement. Furthermore, individual unit owners might look askance at an encumbrance added to their existing unit mortgages.

25 For a discussion of the problems of obsolescence in condominiums, see Rohan, *Drafting Condominium Instruments: Provisions for Destruction, Obsolescence and Eminent Domain*, 65 COLUM. L. REV. 593, 603-13 (1965).

26 This method of self-financing may have limited applicability if the bylaws restrict the amount allocated to the reserve funds using a formula based upon the allocation of the previous year. For example, some bylaws limit the reserve fund level to 105% of the previous allocation.

fund to assure repayment to a lender, rather than attempting to use the traditional mortgage as the vehicle for securing a loan. Under this scheme, a short term loan could be obtained by the board of managers without unit owner approval. By statute, the assessments of the unit owners would be placed in a trust fund to be used for the benefit of the lender should repayment not be forthcoming within the time provided in the loan instrument.

Miscellaneous Considerations

Lending institutions in various states have been requiring counsel for the condominium board of managers to issue an opinion letter to the effect that the condominium's board does have authority to borrow money. In addition to the legal difficulties already mentioned, most condominium bylaws set a dollar limit on contracts that the board of managers can enter into without the approval of a majority (and in some cases, two-thirds) of the unit owners. Query whether a borrowing in excess of that specified dollar figure would be tantamount to doing indirectly what one cannot do directly. A loan taken out by the board of managers could also lead to marketable title problems, or constitute a trap for the unwary purchaser on resale of a unit, after the loan was in effect. The condominium statutes invariably stipulate that the incoming unit owner is released from all personal liability for past charges once the board of managers notifies the prospective purchaser on resale that all charges against the unit in question are paid-up through the date set for closing of title. Suppose the board were to mention in the letter that the unit owner (present and/or future) is also responsible indirectly for repayment of all or a specified fraction of the outstanding loan balance. Even if the board of managers issued a clean letter with respect to unpaid common charges, the board acted as agent for the unit owners with respect to the loan. Could the board absolve the outgoing unit owner of liability to the lender without the consent of the lender? Also, if the board did not mention the loan in its letter concerning paid-up common charges, would not the unit purchaser on resale be placed in jeopardy (as well as the mortgagee financing his purchase) since there would be no recorded loan document to alert the purchaser as to what he was getting into?

Conclusion

The authority of the board of managers to borrow to meet common expenses has not received the attention of legislatures or draftsmen of condominium documents. Predictably, however, condominiums

will be faced with circumstances suggesting the need for substantial loans, either because of unplanned operating costs, large scale improvements or renovation in response to obsolescence. Given these needs, it would be most appropriate if legislation were drafted which increased the funding flexibility of the board of managers by authorizing the acquiring of loans without unduly sacrificing the independence of individual unit owners. At a minimum, it would appear essential that the documentation of each condominium project be required to state whether the board of managers is authorized to borrow money, and, if so, under what terms and conditions. Where funds are actually borrowed, the statute should clarify the personal liability of constituent unit owners and their ability to be relieved of such liability on resale. Further, the board of managers should be required to inform a purchaser on resale of all outstanding loans and how they affect his personal liability and his unit in the event of nonpayment. Finally, the statutes should clarify the question whether the existence of such a loan constitutes an objection to title on resale where the contract between buyer and seller makes no specific mention of the matter.

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