Recently in an attempt to circumvent The Condominium Act and The Co-operative Corporations Act, 1973, a few developers have begun marketing a new form of "home ownership" in Ontario. In a condominium a purchaser buys a unit and a share in the common property. In a co-operative a purchaser buys shares in a company and with those shares he gets a right to occupy a unit for as long as he owns those shares. The new scheme being sold is different in that purchasers buy a share of the property itself and receive a lease to a unit for 21 years less a day. This form of ownership combines elements of both condominium and co-operative ownership in that the purchaser owns only a proportionate interest in the whole of the property, he only has a renewable lease on his unit, and he shares in the taxes and mortgage payments covering the entire property. There is no legislative protection either to ensure that the building meets municipal standards, as would a condominium conversion before it is sold or to assist purchasers in enforcing their rights against other owners.

Neither the province nor the municipalities can approve such projects under either The Condominium Act or The Co-operative Corporations Act, 1973 and some form of disclosure is necessary for protection of purchasers.

Recommendation No. 105:
The Ontario Securities Commission treat the sale of interests in property, where the attempt is to circumvent condominium or co-operative legislation, as a security interest; and require the developer to issue a prospectus.

It is interesting to note that the Ministry of Consumer and Commercial Relations has a Foreign Land Sales section in the Real Estate and Business Brokers branch which approves the sale in Ontario of all non-Canadian properties. Members of this branch not only visit the developments but also review the documentation relating to the property before a foreign developer is permitted to advertise his property for sale in Ontario.

One particular condominium development in Florida has not been permitted to advertise or sell units in Ontario because it has an escalating lease for recreational facilities which each purchaser is bound by. We have no objection to the branch's refusal to license the developer for sales but we should point out that recreational leases, while not in use in Ontario, are not prohibited by Ontario law. We are of the opinion that the Foreign Land Sales section has greater authority to disallow sales of foreign property to Ontario consumers than the Ontario government has over a sale of Ontario property to Ontario consumers.

The Condominium Act was amended in 1975 to require that a developer provide to a purchaser copies of the declaration, description, by-laws, rules and regulations, statement of recreational amenities, budget statement, insurance trust agreement and management agreement. This has not proven to be effective as a means of making purchasers aware of the condominium concept. This is because the developer fails to supply the documents, or the purchaser fails to read the information when supplied, or the purchaser fails to see an independent solicitor before executing the agreement of purchase and sale.

In the chapter on Approval Process, recommendations have been made to reduce the time period now required to register a condominium.

As part of the new process, a Registrar's office could approve documents prior to a developer obtaining draft approval from the municipal government to ensure greater consistency and clarity in condominium documentation. Too often, purchasers buy their condominium units without an understanding of what a condominium is, how it operates and what the rules are.

Concept of full disclosure
Inherent in a Registrar's function of document approval is the principle of "full disclosure". By requiring full disclosure in developers' documents, the Registrar could attempt to ensure that purchasers are informed of what they are buying and that there is no misrepresentation or fraud on the part of the developer. A procedure such as this would not impede developers who deal honestly and fairly with the public, but would only adversely affect unscrupulous developers, a result which companies in the former category would not object to because it is the latter category of developers that can give condominiums a bad name.

In examining full disclosure, it is helpful to look at the experience of other jurisdictions where this approach has been successful. One example of the full disclosure approach to condominium sales is in the New York State legislation. As noted earlier, condominium units are deemed to be "cooperative interests in realty" and therefore fall under the New York General Business Law. Under this law, it is illegal to sell "cooperative interests in realty" unless and until an offering statement or prospectus is filed with the Attorney-General's office, which ensures that the required documentation is included in the application and issues a letter indicating "deficiencies" which must be answered before the developer's plan will be approved. However, if the documentation is in order and the information required to be in the prospectus is present, the Attorney-General must file the prospectus. The statute gives the Attorney-General very narrow grounds to reject the offering plan, and any offering plan that is approved must contain the following statement on the outside cover in bold type: "The Attorney-General Of The State Of New York Does Not Pass On The Merits Of This Offering". The

courts in New York State have also concluded that the purpose of the legislation is to provide full disclosure to potential purchasers, rather than have the government "pass on the merits" of the offering statement.

The assumption that full disclosure is an adequate means of protecting consumers has been followed in the Florida and Virginia acts as well. However, Virginia does move a step beyond mere full disclosure in that it gives the following power to its Real Estate Commission:

"Whenever the Commission finds that the significance to purchasers of certain information requires that it be disclosed more conspicuously than by regular presentation in the summary of important considerations, it may provide, by order, that a summary statement of the information shall be underscored, italicized and/or printed in larger or heavier or different colour type than the remainder of the public offering statement."

Such a summary statement helps combat one of the problems of relying on full disclosure. That is, as the terms and conditions of sales become more complex, the transactions may exceed the understanding of the average purchaser and of lawyers unfamiliar with the nature of condominiums, thus causing full disclosure to lose its effectiveness.

Michigan seems to be part way between a full disclosure position and a regulatory position. The Michigan Horizontal Real Property Act forbids the sale of condominium units by a developer prior to the issuance by the Michigan Corporation and Securities Commission of a permit to sell. The Act sets out the following approach that the Commission must take for each application:

"Upon receipt of the application for a permit to sell apartments in any condominium project the commission shall promptly investigate, and if satisfied that the proposal to sell is consistent with the master deed as approved and recorded for the project and clearly and fairly represents the property offered for sale and *will not tend to work a fraud or imposition on purchasers or the public,* shall issue its permit to sell."

Of all jurisdictions treating condominium units as securities, the system which is the most "regulatory" is that found in California. California's Subdivided Lands Act deems a condominium to be a "subdivision" and requires that a prospective developer file certain documents with a Real Estate Commission before offering the units for sale. No person can offer any parcels of a subdivision for sale until a "public report" is issued by the Commission, and a copy of the Commission's report must be given to a prospective purchaser prior to the execution of a binding contract. The Act sets out grounds upon which a Commission may refuse to issue a public report:

"(a) Failure to comply with any of the provisions in this chapter (The Subdivided Lands Act) or the regulations of the commissioners pertaining thereto;

(b) The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees;

(c) Inability to deliver title or other interest contracted for;

(d) Inability to demonstrate that adequate financial arrangements have been made for all offsite improvements included in the offering;

(e) Inability to demonstrate that adequate financial arrangements have been made for any community, recreational or other facilities included in the offering;

(f) Failure to make a showing that the parcels can be used for the purpose for which they are offered;

(g) Failure to provide in the contract or other writing the use or uses for which the parcels are offered, together with any covenants or conditions relative thereto;

(h) Agreements or bylaws to provide for management or other services pertaining to common facilities in the offering, which fail to comply with the regulations of the commissioner;

(i) Failure to demonstrate that adequate financial arrangements have been made for any guaranty or warranty included in the offering."

Thus, under the California system, the sale of a condominium is regulated by what can best be described as a form of a "feasibility and fairness" test. Such a system provides not only that a purchaser must receive full disclosure of what he is getting into, but the purchaser is also assured that what he is buying has been investigated by a Commission and found to be reasonable, fair and feasible.

Lack of standard provisions in documents

Much of the documentation currently governing Ontario's projects is ambiguous and misleading. Some examples of document deficiencies are — the provision for elevator maintenance as a common expense in a low-rise project; lack of clarity as to the responsibility for repair between the corporation and unit owners; and provisions regarding leasing, animals and use of premises which may be in violation of The Condominium Act.

Another major problem lies in the fact that although certain forms of documents are commonly used, such as those of the Urban Development Institute and more recently those of the Canadian Bar Association, there is no standard condominium declaration or by-law.

Because of the variations in the wording used in condominium documents, each corporation is required to seek interpretations of their documents on an individual basis. This leads to confusion, as can be seen in the recent cases brought before the courts on document interpretations, such as *York Condominium Corporation No. 42 vs. Melanson* involving a pet by-law. Standard provisions, where possible, coupled with an approval process for documents, as outlined earlier, will eliminate provisions in the documents which are inconsistent with the Act or inappropriate for the project (for example, elevator and balcony maintenance in a townhouse development). This will be of great assistance to corporations in simplifying the administration of their affairs.

Some examples of items which could be dealt with in a standard declaration are items (a) to (d) inclusive of Section 3 (1) (see chapter on Condominium Corporation section on voting majorities). The use of this approach would require developers' solicitors, for example, to complete the blanks with respect to ownership interests and contribution to common expenses in the declaration. The standard declaration and by-law would still allow room for additional provisions, providing they were only necessary to accommodate the individual features of the project.

Since members of boards of directors are often inexperienced in interpreting these legal documents, it becomes a matter of trial and error for many. Most people reading the documents assume that since a provision is included and the project has been approved and registered in a Land Registry Office, it must be valid. The truth is that, at present, no government office reviews the documentation for validity.

Recommendation No. 106:
The Condominium Act be amended to prescribe certain sections of declarations and by-laws.

For the standard documents to be effective, they must be coupled with a document approval process within government.

Establishment of a central office is perhaps the most significant and far-reaching recommendation in this report. Unlike any existing provincial government body, such an office would provide central services and information or direction to those in the condominium field, thus enabling it to properly deal with consumer and industry inquiries that are currently being directed through various ministries at various levels.

Recommendation No. 107:
The Condominium Act be amended to establish a central organization called The Office of the Registrar of Condominiums.

Recommendation No. 108:
The Registrar of Condominiums approve all condominium documents which a developer is required to provide to a purchaser under Section 24b.

Review procedure
This review process would involve two elements. The first would be a review of the documentation to ensure fair and accurate disclosure; the second would be to ensure that the summary statement of those elements of the project which make it different from other condominiums is provided to purchasers.

The Registrar's review of the first element of disclosure statements would check the following items from the developer to ensure full disclosure, removal of inconsistencies, and obtaining of statements from the developer and professionals he employs that the documents presented to the Registrar represent full and accurate disclosure of those matters which will affect the purchasers in that project: declaration, description, by-laws, rules and regulations, budget statement, recreational amenities statements, maintenance schedule, life span table of capital equipment, insurance trust agreement, management agreement, and agreement of purchase and sale.

Some of this review may involve questions of feasibility. As an example, there is the question of the occasional use of different percentages applicable to a unit for common expense contributions and common element interests. Section 9(17) provides that a judgment against the corporation is a judgment against each owner at the time the cause of action arose in the same proportions as specified in the declaration for sharing common expenses.

However, under section 9(18) a judgement in favour of the corporation is an asset and by section 9(16) is shared in the same proportions as the common interests. Where common interest and common expense allocations to a unit differ, an owner would be liable for a different proportion than he would benefit from.

A similar problem exists with regard to the provision in section 7(9) of the Act. There a unit owner may discharge his unit from an encumbrance which attaches to all the units by paying his share as determined by his proportionate share of the common expenses. As he is really benefiting his share of the property, it should be his share of the common interests.

Thus the Registrar may require proof that there is an overriding interest when the developer proposes to use different percentages on each schedule.

The Registrar will not bear responsibility for the accuracy of the material.

Recommendation No. 109:
The Condominium Act be amended to provide for:

A. A fine of $50,000 for misrepresentation in material provided the Registrar.

B. A specific right to unit owners and the condominium corporation to sue the developer for misrepresentation.

The second element of the Registrar's disclosure statement review would be to ensure that the developer prepares a summary disclosure statement outlining those matters which distinguish this corporation from others.

For example, is there a sales quota in the mortgagee's commitment?
Are pets allowed?
Are the recreational facilities a unit, part of the common elements or shared?
Is the superintendent's suite a unit or part of the common elements?
Who has the right to assign parking spaces?
Are parking spaces units, exclusive use common elements or common elements?
Is the purchaser required to occupy the unit?
Is the builder registered with the HUDAC New Home Warranty Program?
Are the boundaries of the units and common elements fixed or will they require amendment because custom work is being done?

The fine for failure to notify the condominium corporation of the renting of a unit is a maximum of $2,000 for an individual and $25,000 for a corporation.

Although the initial approval of documentation will be at an early stage in the process, amendments to the documents may be required during the course of a project's construction. Any amendments to the documents filed with the Registrar will require the Registrar's approval. If the Registrar, in his discretion decides that the amendment is substantial, he may refuse to allow the change, or he may require the developer to notify all those with whom he has entered into agreements of the change and advise them that they have the right to terminate their agreements. If the Registrar decides that the change is not substantial, it will be processed with notice to the owners. A refusal by the Registrar to approve documents is subject to appeal to the tribunal.

Prior to the issuance of the building permit, the developer will only be able to enter into a non-binding reservation agreement with a purchaser, which the purchaser can terminate at any time up to 10 days after he receives his copy of the filed documents. After the documents are approved by the Registrar, the municipality can issue the building permit (see chapter on Purchasing a Condominium.)

Recommendation No. 110:
The Condominium Act be amended:

A. To prohibit a developer from entering into a binding agreement of purchase and sale or any agreement in which he is entitled to retain a prospective purchaser's deposit, until the Registrar's approval has been issued.

B. To require the developer to notify purchasers that they have the right to terminate their agreements with the developer if the developer's documents do not receive approval.

Recommendation No. 111:
The Condominium Act be amended to provide that a developer who fails to comply with the Act be subject to a fine.

When the developer has the building permit he will be in a position to build. Upon completion, to the satisfaction of the Ministry of Consumer and Commercial Relations and the municipality, registration can take place. It should be noted that the municipality's final approval must be made in accordance with the site plan agreement. By having the developer disclose his intention and enter into a site plan agreement, the municipality will be required to issue final approval on the basis of the developer having first met the terms of the site plan agreement (see chapter on Approval Process). The actual registration of the condominium will be effected by filing the declaration and description in the local Land Registry Office and with the Registrar of Condominiums office.

Information role
To provide a central organization which will be able to monitor and assist those in the condominium field, the Office of the Registrar of Condominiums should be charged with numerous responsibilities, including maintaining the following information: all condominium corporations in Ontario, type of development, number of units in each development, members of the boards of directors, municipal address of each corporation, address of service, if different, of each corporation.

It is difficult and time consuming at present to locate the several hundred condominium projects now in existence in Ontario. The Study Group had to combine searches in the local land registry offices with searches of the municipal assessment rolls in an attempt to notify the corporations of the public hearings in the various areas. Even at this time, there is no complete address list of all of Ontario's condominium corporations and their locations.

The Registrar would supervise an annual filing by all condominium corporations, including a list of directors and their addresses and any changes in the address for service. The Registrar will also have the right to request proof that audited statements have been provided by the corporations in accordance with the Act.

The Registrar would have the role of information-gathering and dissemination for various reasons: so that condominium owners could communicate with other condominium corporations; so that those doing business with condominium corporations could gain some knowledge of the project; so that those involved in the condominium field could have access to general condominium information; so that the Registrar might better deal with matters in which there may be a need to contact a member of a particular condominium corporation; and most importantly so that government could communicate any changes in laws and regulations governing condominiums.

Recommendation No. 112:
The Condominium Act be amended to provide that a condominium corporation's failure to file information with the Registrar will make it subject to a penalty up to a maximum of $2,000.

Those working within the office would be responsible for communication with owners, developers, property managers, lending institutions and others involved in condominiums, both within and outside Ontario. It should improve the condominium environment through various forms of education and, where applicable, by suggesting policy changes and legislative amendments. The Registrar's office should also include a central resource centre.

Effective public relations forms an integral part of the administration of the Acts and programmes, including such duties as:

1. communicating any changes resulting from the Study Group's recommendations
2. establishing productive relationships with industry associations
3. informing the general public and condominium community members via the media, pamphlets, speeches, and educational materials of all important aspects of condominium living.

Transition
In light of the recommendations made in this report, The Condominium Act of Ontario should undergo major revisions; a new statute may be necessary. The Office of the Registrar of Condominiums will have a significant function during the transition period.

In the chapter on Condominium Corporations, there is a recommendation that many of the provisions which are currently included in condominium documents be either prescribed in standard documents in the regulations of The Condominium Act or included in the legislation itself. Acceptance of this recommendation will require major revision to the documents of the condominium corporations already in existence, because new statutory or prescribed provisions will result in conflicts.

Revisions in the legislation will only benefit existing condominium corporations if they have the ability to amend their declarations and by-laws to conform also to the standards forms proposed by the Act. When enacted into legislation, these recommendations will greatly assist Ontario's condominium owners in the day-to-day problems with which they are confronted.

A period of grace of two years should be established within which those condominiums created before the date of the new amendments would have an opportunity to amend their declarations with a more than 70 per cent vote of owners present or by proxy, so that they can adopt the new standardized documentation. Those corporations in existence, however, would not be entitled to remove provisions in their declaration dealing with ownership of the common elements.

Recommendation No. 113:
The Condominium Act be amended to provide that for the purpose of changing the provisions of an existing declaration to the standard provisions in the Act a special vote of 70 per cent of the owners be allowed, and for the by-laws 50 per cent of the owners be allowed.

Once approved by the Registrar, existing condominiums will automatically be governed by the new Condominium Act. Corporations unwilling to make these changes will remain governed by their old documents, and will only benefit from the new provisions of the Act where compulsory.

Recommendation No. 114:
The Condominium Act be amended to provide that the Registrar must approve these amendments to declarations and by-laws.

Dispute resolution
At present where a dispute arises between a unit owner and the corporation or between two unit owners, arising out of the act, declaration, by-laws or rules and regulations, the parties are required to resort to the courts for a resolution under Section 23 of The Condominium Act.

A review of Ontario's condominium case law shows that private individuals are not availing themselves of the relief available. This is the case because the individual owner simply cannot afford the costs of having the courts decide the matter, nor the delays that going to the courts entail.

Condominium owners feel a great need for a non-adversial dispute resolution mechanism. The benefit of such a system would be a forum to which the parties can come for assistance without the need for lawyers, legal documents, an adversary approach, lengthy delays and high costs.

It is obvious that dispute resolution through the courts is neither practical nor satisfactory for Ontario's condominium owners. Since condominium living is communal in nature, the requirement that owners and boards meet each other in a courtroom to settle their differences creates unnecessary tension and hostility between people who must continue living together.

The Ontario and Federal governments have encouraged Ontario residents to buy condominium homes. Most of these purchasers bought condominiums without understanding that they were part of a unique community, and that if differences arose which could not be settled amicably they were going to have to face a court battle. Because condominium units are usually built with high densities and require close social interaction, problems which might cause some discomfort between neighbours in single family or semi-detached homes become magnified in the condominium environment.

Most purchasers of condominium units fit into two categories, those who believe that their home is "their castle" to do with as they please and those who think everything will be looked after by their landlord. It takes compromise and adjustments before both groups come to the realization that condominium ownership is a balance between these two extremes.

Unfortunately, some purchasers never reach this stage and for the other members of the community, life can be intolerable.

The close proximity of condominium dwellers who are not "getting along" necessitates arriving at a speedy resolution of disputes. Unlike a rental where a noisy neighbour can be evicted, there is no such remedy in a condominium. An owner who fences off part of the common elements and thereby restricts the access of the other owners to those common elements, will create antagonism and must be dealt with speedily. These types of incidents are minor examples of the day to day problems facing the typical condominium owner.

Dispute resolution in other jurisdictions

Many other jurisdictions have dispute resolution systems for condominiums. The most extensive are those in British Columbia, Florida, and New South Wales. Several American jurisdictions are examining the mechanisms for resolving disputes with even greater intensity as it appears to be the most complicated problem facing condominium communities.

In Canada, British Columbia is the only jurisdiction which has any form of dispute settlement. B.C. allows condominium corporations the power to fix and collect fines for the contravention of the by-laws or regulations, and provides that where a dispute arises between an owner and a corporation or between two or more unit owners in respect of any matter relating to the corporation, the corporation or any owner may refer the matter to arbitration. There are four kinds of disputes which can be referred to arbitration: 1) failure to contribute to common expenses; 2) levying fines for breach of the by-laws or rules and regulations; 3) liability for damage to the common elements or other assets of the corporation; 4) decisions of the corporation.

The hearing held by the arbitrator is informal and evidence which is otherwise not acceptable in a court of law may be admissible at the hearing. Each party is given adequate opportunity to present evidence and rebut the other party's evidence. The hearing itself is open to members of the corporation.

The arbitrators may make whatever award they consider just and equitable, including an order in the nature of a mandatory or prohibitive injunction, or for payment of damages. The arbitrators also make an order in respect of the contribution of each of the parties to the costs of the arbitration and remuneration of the arbitrators.

The Florida Condominium Act created an advisory board, the purpose of which is to assist and advise in residential condominium problems and to arbitrate controversies between unit owners and their corporations.

One of the most detailed administrative procedures for resolving condominium disputes is the scheme that exists under the New South Wales Strata Titles Act. There are three levels involved: a hearing officer, an appeal tribunal and the courts.

A hearing officer has the power to prohibit someone from doing a specified act, and to make orders for the settlement of a dispute or the rectification of a complaint. The hearing officer may refer the application directly to a tribunal for any of the following reasons: (1) the application raises matters of legal complexity; (2) the importance of the subject-matter of the application or the possibility of the frequent recurrence of like applications warrants a reference to a tribunal; (3) any other reason which convinces the Commissioner that the application should go to the tribunal. The hearing officer has a wide power of investigation and can enter the property of the corporation involved for the purpose of carrying out any investigation. The decision of the hearing officer is based on the written submissions he receives and the investigations he

makes. The hearing officer's decision may be appealed to the tribunal. The tribunal is required to make a thorough investigation, but need not hold a hearing prior to deciding. The decision of the tribunal may be appealed to the Supreme Court of New South Wales on a question of law. Any person who contravenes an order of a hearing officer or a tribunal shall be fined $100 and a further $10 a day, up to a maximum fine of $500. An applicant who uses the courts rather than the dispute resolution system must pay the defendant's court costs.

To assist the Ontario condominium owner in dealing with disputes, a tribunal should be created. Such a body would be non-adversarial and informal in nature, and those coming before the tribunal could do so without legal assistance and be assured that rules of evidence and formal procedure would not govern the hearing.

Recommendation No. 115:
A. The Condominium Act be amended to provide a system of dispute resolution structured as a two-tiered system composed of local hearing officers and a tribunal.

B. The administrative responsibility for the system should rest with the Registrar of Condominiums. (The Registrar should be responsible for processing the applications for hearing and keeping accurate records of the decisions made.)

Since there are condominium corporations in almost every medium to large-sized city in Ontario, there will be a need for personnel in four or five major centres to deal with the disputes on either a local or where necessary regional basis. Since many areas do not have a need for full-time personnel we recommend that these personnel be utilized on a part-time basis. These Hearing Officers must be fully conversant with the principles underlying condominium living and must have a thorough knowledge of The Condominium Act, declarations, by-laws, rules and regulations. They could hear matters in person or make decisions based on written applications and responses by the parties. Local hearing officers are the key to successful condominium dispute resolution.

The Tribunal would consist of three persons, with at least one being a lawyer and all knowledgeable in the condominium field. The Tribunal would be the body of highest authority in any condominium dispute, those involved must first appeal to it before going to the courts.

C. The jurisdiction of the Hearing Officers and the Tribunal encompass the right to make decisions with respect to the collection of common expenses, the enforcement of the Act, declaration, by-laws and rules and regulations, damage to the common elements, and the right to award costs.

A Hearing Officer should have the right to refer matters directly to the Tribunal, where the matters involve legal complexities or where the settlement of the matter by the Tribunal would prevent the same issue arising before several Hearing Officers or where the Hearing Officer feels the matter would be better handled by the Tribunal's expertise.

Any application for a hearing be submitted to the Registrar together with a fee of at least $25.00.

D. Decisions of the Hearing Officers and the Tribunal be enforceable in the same manner as a decision of the courts.

A dispute resolution system will assist condominium owners and boards of directors with issues which are currently insoluble. A properly functioning, well-staffed, two-tiered mechanism is the most appropriate body for dispute resolution.

Transitional office
In order to facilitate an orderly transition to a new condominium act and a new framework within which the condominium field will be operating, an administrative office should be established to prepare the way for the official office of the Registrar by:

1. compiling a list of all existing condominium corporations: the type of development and number of units, board of directors, municipal addresses, and addresses of service.

2. preparing information to be available to the condominium community on changes in legislation and policy emanating from this report.

3. developing a resource centre.

4. creating the administrative framework for the Condominium Tribunal and training its staff.

5. preparing standardized documents and improved forms for disclosure, including prescribed detailed budget statements, recreational and amenities statements, insurance forms, estoppel certificates, and other forms which may need improvement.

6. establishing and formulating any programs, administrative methods and procedures within the frame-work of the accepted recommendations, to carry out effectively the intent and purpose of the recommendations.

Recommendation No. 116:
Before the legislation creating the Office of the Registrar comes into effect, an administrative office be established that will eventually become the Registrar's office.

Location within the government
The Registrar's office requires adequate staff and funding to ensure that it effectively carries out those functions which this Report recommends it undertake. No purpose can be achieved by creating a Registrar's office which does not have the resources to perform properly.

Representations were made that the jurisdiction for condominiums should be in the Ministry of Housing. Since the Ministry of Housing, through the Ontario Housing Corporation and the Ontario Mortgage Corporation, is involved in building and financing condominium projects, there is an inherent conflict of interest. It is preferable that The Condominium Act be administered by the Ministry of Consumer and Commercial Relations. It has consumer experience in the area; it already has local offices in which condominiums are registered; and most importantly, it administers The Condominium Act, which is evolving into a consumer protection statute, rather than a registration statute.

The Office of the Registrar of Condominiums would be somewhat similar in its scope to the Ontario Securities Commission. Since the Ministry of Consumer and Commercial Relations has experience in the securities area and in business practices, it is the most appropriate location for the Office of the Registrar of Condominiums.

Recommendation No. 117:
The Registrar's Office be located in the Ministry of Consumer and Commercial Relations and that, in its establishment, the Ministry look to its other consumer protection bodies and the Ontario Securities Commission for guidelines and assistance.

Chapter 13
Termination

No condominium corporation in Ontario has yet been terminated. However, an exploration of the provisions in The Condominium Act indicates that termination under the current procedures would create a number of serious problems. Changes are thus required to prevent such future problems. For the purpose of clarity in this chapter, owners before registration of the notice of termination are referred to as "unit owners" and owners after termination will be referred to as "co-owners".

There are four provisions in The Condominium Act which would give rise to the termination of a condominium corporation:

a) Under Section 18, where there has been substantial damage to 25 per cent of the buildings and the required majority of owners do not vote for repair, the condominium corporation must register a notice of termination.

b) Under Section 19, where sale of the property has been authorized, registration of the deed terminates the condominium corporation.

c) Under Section 20, termination may be authorized by a vote of the required majority of owners (usually 80 per cent ownership of the common elements) and the consent of all the persons having registered claims against the property. A notice of termination is then required.

d) Under Section 21, the condominium corporation, any owner, or any person having an encumbrance against a unit may apply to the Supreme Court of Ontario for an order terminating the condominium.

Each of the four methods of termination has its own requirements and procedures.

Termination under Section 18
Notice of termination under Section 18 is signed by the duly authorized signing officers of the condominium corporation. It is required by the Act to be registered within 10 days of the expiry of the 60-day period in which the vote to repair was to have been held.

In practice, the only mechanism for forcing such a registration is Section 23 of the Act which allows, among others, any owner or any person having an encumbrance against a unit to apply to a county or district court for an order directing performance of a duty.

Upon termination, several situations arise:
1. The unit owners become tenants in common of the land in the same proportions as their common interests are determined in the condominium declaration. In essence, this means that each owner becomes a co-owner with a share of the ownership of the entire property.

This change of status might not present difficulties in a small condominium, but the disposal of the entire property would require the signature of each property owner on the deed. In a large project this would render the sale of the property impractical.

An owner could sell his share in the property to a purchaser, but it is unlikely that a market would exist given the related problems.

An interesting problem occurs if one of three highrise buildings in a condominium were destroyed and because of apathy or difficulty in organization, the owners fail to vote for repair and the condominium is terminated. The unit owners of the two undamaged buildings may find themselves no longer owners of their units, but merely co-owners of the entire property. The loss of unit ownership may prevent resales and cause other inconvenience, which probably would not be adequately compensated in conventional insurance coverage.

2. Claims against the land made before the registration of the condominium are as effective as if the condominium had not been registered.

"Claim" is defined as a right, title, interest, encumbrance, or demand of any kind affecting land. Presumably "claim" would include the construction mortgage where it had not been discharged and, perhaps, easements over the common elements that were created prior to the registration of the condominium.

If the construction mortgage is effective against the land, then:

a) the co-owner who had the right to pay his proportionate share of the encumbrance, i.e. to relieve himself of the liability when he was a unit owner, no longer has that right; and

b) the status of the co-owner is uncertain because Section 18 provides that the construction mortgage now attaches to all the land. The unit owner who paid cash for his unit or otherwise discharged the interest of the construction lender in a unit mortgage now finds the property subject to the construction mortgage.

It may be that the registration of a partial discharge of the construction mortgage of one unit would allow the courts to treat the remaining portion of the construction mortgage as if it had been created after registration of the condominium, but, such a solution is not apparent in the Act.

The co-owner who has paid off his mortgage may not have any document to register showing that he is exempt from foreclosure or sale by the lender.

Solicitors should be warned that in the provisions in many offers to purchase, the construction mortgage need not be discharged for a number of days after closing. This may allow some danger to a client who has paid off his unit mortgage.

3. Encumbrances such as unit mortgages or executions,[1] created after the registration of the condominium, are treated as claims against the interest of the co-owner and have the same priority as they had prior to the condominium's termination. Again, the prime obstacle for the claimant is the difficulty in disposing of his claim. Who would buy a mortgage as an investment if the asset was secured only by an interest that was difficult to dispose of?

4. Claims, other than claims securing the payment of money, created after the registration of the condomiium are extinguished. Such a claim might be a commercial lease of a portion of the common elements such as that held by a tuck shop.

Termination under Section 19
Section 19 terminates the condominium automatically upon registration of a deed of sale of the property executed by all the owners and having the release of all persons having registered claims against the property. The effects are similar to those in a termination under Section 18, except that claims against the property do not survive the sale.

Termination under Section 20
Section 20 allows a vote of those owners who own a minimum of 80 per cent of the common elements (or such greater percentage as specified in the declaration) to authorize termination, provided that the consent of all the persons who have registered claims against the property is obtained.

However, the notice of termination requires *all* the members of the corporation to sign, which negates the value of having a less than 100 per cent owner vote required for termination.

The notice of the termination must be registered by the condominium corporation, but no time limit is given. Upon registration the same consequences occur as under Section 18.

Termination under Section 21
Upon application to the Supreme Court of Ontario, it may make an order terminating the condominium if the court is of the opinion that the termination would be just and equitable. The court may include in the order any provisions that it considers appropriate in the circumstances, such as reconstitution of the corporation in a different form or a scheme to ensure that all creditors are paid. The court may include in its order the automatic consequences of termination occuring under Section 18 and 20, but is not obliged to do so.

Best to terminate under Section 21
If the condominium is terminated under Section 18, 19 or 20, the power of the court to make other provisions does not exist. The power to make other provisions is important, as that is the only method in the existing Act to allow for the provision of a trustee or liquidator to manage the property or its distribution.

[1] judgements of a court to be enforced by the sheriff

Any condominium corporation approaching termination would be best advised to apply under Section 21 for a court-ordered termination, rather than under either Sections 18 or 20. The corporation would cite as a reason for the application the circumstances permitting the termination under the other sections of the Act.

Termination provisions
Questions arise as to the efficacy of these various termination procedures regarding solvency, management and possession.

Solvency
Under The British North America Act, jurisdiction over bankruptcy and insolvency rests with the Federal Government. This severely circumscribes the authority of a court acting under the provisions of a provincial statute to make orders regarding the distribution of the condominium corporation's assets in the event there were insufficient funds to meet the demands of creditors.

Section 9(10) of The Condominium Act provides that the assets of the corporation on termination shall be used to pay corporation creditors. But, this is of no assistance if there are insufficient assets (a general discussion of the rights of creditors is found elsewhere in the report). There is no provision to distribute the assets after termination, even if the condominium corporation were solvent.

Recommendation No. 118:
The province request the federal government to clarify the situation with regard to the distribution of assets of an insolvent condominium corporation.

Management
As there is no body to enter into contracts for the management and maintenance of the property or to pay the common bills such as utilities, voluntary termination must, in most cases, be accompanied by a sale of the property to someone interested in using the property for rental purposes or for redevelopment.

If, as previously suggested, the situation exists where a substantial portion of the dwellings remain undamaged and the condominium is terminated involuntarily under Section 18, then some provision must be made to manage the property, at least until the entire property can be sold or final disposition made. One possible arrangement would be the reconstitution of the undamaged property as a new condominium corporation.

Possession
Unless the court makes an order under Section 21, there will be some difficulty with regard to the rights to possession of the units. Tenants leasing units from unit owners, presumably, have had their leases extinguished, but there exists no procedure for eviction. Mortgagees who would otherwise foreclose have no rights to possession of a defaulting unit owner's unit and so have lost much of their security.

Winding-up

The procedure for administering solvent properties that is closest to solving the problems of the condominium situation is found in Section 161 of The Co-operative Corporations Act. It is, in essence, the same as the scheme of The Business Corporations Act.

In a voluntary termination of a co-operative a general meeting of the corporation votes to terminate and appoints one or more persons — who may be directors, officers or employees — as liquidators of the estate and effects for the purpose of winding up its affairs and distributing its property. The liquidators may bring any action, carry on business, sell the property, sign all documents, raise money on the security of the corporation and do anything else necessary to wind up the corporation.

The procedure cannot be adopted without change because of important differences between condominiums and co-operatives:

1. the condominium is more likely to be the place of residence of the owner and therefore require more day-to-day administration and owner participation, whereas most co-operatives are places of business.

2. the real estate is owned by the condominium unit owners and not by the condominium corporation. The real estate is also more likely to be a large portion of the assets of the unit owner and therefore requires more expeditious administration.

Recommendation No. 119:
The Condominium Act be amended:

A. To repeal the provisions in the Act for automatic termination of the condominium corporation in the event of a failure to vote for repair after substantial damage.

B. To require the condominium corporation to repair unless there is a vote by 80 per cent of the owners to terminate the condominium corporation.

It makes sense to wind up before termination while there is still an organization, rather than after. The procedures for liquidation of the property can be imported from The Co-operative Act with those changes required because of the nature of a condominium corporation.

Recommendation No. 120:
The Condominium Act be amended to provide that upon a vote to terminate:

A. The board of directors be the liquidators of the condominium corporation.

B. The board as liquidators continue to be subject to the existing requirements for removal or election of directors.

C. The liquidators be empowered to cancel or renegotiate all existing contracts relating to the corporation or units, including leasing of units, paying all debts and entering into requisite arrangements with the municipality for the conversion of the property to a rental project or as necessary.

D. The liquidators be granted a power of attorney, on behalf of the unit owners and all persons with claims against units, to dispose of the unit owners' interests and to consent to substantial changes in the common assets of the corporation.

E. Notice of the liquidators' appointment be registered in the common elements index and property parcel register.

F. Other condominium corporations engaged in the use of joint recreation or other facilities, with the corporation being terminated where such facilities require a financial contribution from the condominium being terminated, be permitted to apply to the court for an order governing the disposal or other use of such facilities.

G. The condominium be terminated on registration of a notice that all creditors had been paid, obligations settled and all assets of the corporation had been disposed of.

Re-constitution

There may be difficulties in disposing of the property in a "winding-up" and it may be more prudent to reconstitute the condominium corporation after disposal of the damaged property or settlement of the problem, which created the failure of the original condominium corporation.

Recommendation No. 121:
The Condominium Act be amended to provide that:

A. The liquidators appointed under the "winding-up" arrangements be empowered to apply to the court for an order permitting them to amend the declaration and by-laws so as to vary the number of units in the condominium and their appurtenant common interests.

B. The court may deem insurance money or money paid by the liquidators to unit owners as full satisfaction of any claims or rights of such unit owners.

Chapter 14
Housing choice and government programs

Condominium living was designed originally for those individuals who wanted to experience "maintenance-free, headache-free" home ownership; and, for those individuals who enjoyed the amenities and freedom associated with renting but who wished the equity in real property investment. The condominium concept was originally designed with private streets, private services, private recreational facilities, and its own board of directors to create somewhat of a country club atmosphere. In the late 1960's and very early 1970's, people purchased a unit in the full awareness that maintenance-free home ownership meant higher operating costs, and during these years few complaints were heard.

In 1973, the picture changed substantially. Housing costs had soared. The probability of ownership of single-family housing was dim for many people. As a result, the various levels of government initiated programs that either directly assisted individuals with the purchase of their first home, or gave incentive grants to municipalities to allow lower-cost housing within their jurisdictions. Some of these programs are briefly described:

High ratio mortgages
In the early 1970's, the Ontario Housing Corporation (OHC), through its former agency, Housing Corporation Limited (now independent of OHC and named Ontario Mortgage Corporation) provided high ratio mortgage financing for a large number of condominium units. High ratio financing provides a mortgage of up to 95 per cent of the selling price of a unit.

In many cases, only minimum construction standards were required, with consequent high maintenance costs for purchasers. Contributing to this situation was the fact that OHC limited prices at which the units could be sold by the builder. Also, OHC inspected only for the purpose of calculating the amount of mortgage money to be given to the builder and did not inspect particularly for quality.

As there was no limit on the maximum incomes of purchasers, some purchasers with minimum incomes were inconvenienced or were forced to sell their units because of common expense increases, but, the majority of purchasers were able to absorb increases and, in varying degrees of success, provided competent administration.

OHAP
In the middle 1970's the Ontario Housing Action Program (OHAP), offered the speeding up of government planning processes, per unit grants to municipalities that accepted moderate income housing, and mortgage financing through the Ontario Mortgage Corporation. OHAP is provincially sponsored but not related to OHC. The intention of OHAP was to induce builders to make a certain percentage of their housing units available to persons of moderate income.

Moderate income housing was designed for those families who could not qualify for assisted rental housing, but whose income was below that considered necessary to purchase on the open market. It was calculated that a great proportion of the population desiring housing fell within this category. The OHAP program was successful in certain areas around Metropolitan Toronto and Ottawa. Most moderate income housing built under this program was condominium.

AHOP
The federal government participated, through its Central Mortgage and Housing Corporation (CMHC), in financing condominiums in the province to a much lesser extent than did the Ontario Mortgage Corporation. But, CMHC's reliance on design standards similar to OHC's made apparent similar problems in their condominiums.

The most important federal initiative, however, has been the Assisted Home Ownership Program (AHOP) offered by CMHC.

Under AHOP, a purchaser who buys a previously qualified unit may receive a grant from CMHC, plus a loan to reduce the effective rate of mortgage interest, thus helping many lower income people to purchase a unit. There are price ceilings, which vary by area, on the units to qualify them for eligibility. For example, in Metropolitan Toronto, the 1974 ceiling was approximately $43,000 and in 1976 it was $47,000.

The federal and provincial governments have recently announced a piggy-back program which will further drive down the income requirements to purchase. The same criteria for the AHOP program will determine eligibility. The province will integrate an additional subsidy into the same program.

During its five year course, the subsidy diminishes annually. At the end of the five years, interest begins to run on the loan and the loan must be paid back in instalments. If a sale occurs, the balance of the loan becomes due.

The theory behind the program is that income levels will rise, enabling the purchaser to pay back the loan.

The disadvantages of the program for the condominium buyer are several:

The AHOP subsidy is not available to purchasers until after they receive title to their units, and many purchasers may be severely affected by the high occupancy rent they are required to pay until a deed is received.

AHOP piles up a rapid debt at a time when income levels are not rising rapidly in the income ranges being served. A person who was not able to pay a current mortgage rate at the time of purchase, was not only expected to pay that rate in five years but to pay back the loan as well.

AHOP encourages lower income persons to purchase condominium units meeting AHOP qualifications. Consequently, this put people with the least financial flexibility into condominium units.

AHOP ignores the common expense portion of the condominium purchaser's financial obligations. Therefore, the purchaser often winds up exceeding the conventional guideline of 30 per cent of gross income to carry the unit, a fault also shared by other lending institutions in their economic analysis of condominiums. A high risk of default may be the result.

There are also social disadvantages to the program. Both the provincial and federal governments have encouraged home ownership through the claim that equity appreciation is probable. The subsidy imposes unfair competition with owners of similar units not sponsored by government programs who wish to resell their units.

As well, by encouraging large numbers of low income purchasers who will be facing economic problems resulting from increasing common expenses and AHOP loan repayment, the program puts heavy financial pressure on the condominium corporations involved as they try to meet their bills with declining revenues. In the current market, even prior to repayment of the AHOP loans, there have been indications of purchasers surrendering deeds to mortgagees because the purchasers were unable to keep up mortgage and common expense payments.

The foregoing disadvantages of the current program need correcting.

Recommendation No. 122:
The AHOP program be amended:

A. So that the subsidies are available from the time of occupancy.

B. To include common expense payments in the eligibility requirement calculation.

FHAP
The Federal Housing Action Program (FHAP) is designed to provide grants to municipalities as an incentive to allow better residential densities at affordable prices. The AHOP price ceilings apply. Municipalities receive $1,000 for every eligible unit to offset the loss of municipal tax revenue on smaller units. To meet the density and price ceiling requirements, the most eligible forms of development are currently townhouse condominiums. It is expected that this trend will continue.

Municipal government attitudes
Since most of the programs just described imposed unit price ceilings, higher densities became a prerequisite. Although a number of municipalities in the early 1970's realized their responsibilities for providing affordable housing, many were not receptive to innovative housing development forms which would have required moving away from traditional planning and engineering standards to allow a more flexible approach.

Condominium appeared to be the answer to this dilemma since condominium proposals met the requirements of both the developer and the municipalities, in that high densities and lower service standards could be achieved without the municipality being responsible for maintenance cost. Consequently, condominium developments flourished in 1974, 1975, and 1976, providing home ownership to those who would not otherwise have been able to afford a home (see Chart 8).

Some people are now living in condominiums not because it is their choice but because it is the only home they can afford. To such people, a private road which must be maintained by them is not a status symbol, but an expensive headache.

Leasehold condominiums
In 1974, the province attempted to lower the land component of the cost of condominiums by removing the restriction in The Condominium Act that condominiums be built only on freehold land; the government also set up a procedure in Section 26 of the Act whereby a condominium could be registered on a lease-hold interest. It was hoped that a long-term lease would provide a method of spreading land costs over a long time period and thereby lower monthly costs.

The province then commissioned a study to determine exactly what legislative protection was needed to prevent abuse. The study, called The Leasehold Condominium: Problems and Prospects, found that even if abuses were prevented, the problems of financing and deterioration of the buildings near the end of the lease were sufficient to render impractical the concept of condominiums on leasehold land. No action has yet been taken on this report.

Recommendation No. 123:
The Condominium Act be amended to remove the section permitting condominiums on leased land.

Alternative forms of housing
A number of alternative housing forms other than condominiums are available to provide a realistic choice for those in the low and moderate income brackets. Some of these, such as zero lot line development, are not new and have proven to be very successful for both municipalities and owners.

Chart 8

Number of Condominium Corporations in Ontario by Year Registered

	LOW RISE		HIGH RISE	
YEAR OF REGISTRATION	PROJECTS	PERCENTAGE	PROJECTS	PERCENTAGE
Up to and including 1970	38	4.51%	13	1.54%
1971	39	4.63%	16	1.90%
1972	33	3.91%	30	3.56%
1973	55	6.52%	13	1.54%
1974	100	11.86%	34	4.03%
1975	131	15.54%	51	6.05%
1976	160	18.98%	60	7.12%
1977 (as of March 31, 1977)	53	6.29%	17	2.02%
	Total Low Rise		Total High Rise	
	609	72.24%	234	27.76%

Zero lot line developments provide individual homes fronting on public roads. The unit can be placed anywhere on the lot, even against the property line, allowing very economical use of the land and higher densities than in a standard subdivision.

Good co-operation between the developer and the municipality is essential to ensure sensitive and imaginative siting of buildings. Such developments can provide unique and architecturally interesting communities because they deviate from the standard 66-foot road allowances and do not have a uniform street scape, but, since each site is different, requiring individual attention, many municipalities have not been receptive. There appears to be security for municipalities in rigid standards and a distrust of precedent-setting.

Since the advent of condominium townhouses, a great deal of attention has been given to on-street townhouses which are not condominiums. Such on-street townhouses can be built on short-length streets with reduced road allowances to provide housing at similar densities and similar prices to condominium townhouses. The difference is that, like zero lot line housing, each homeowner receives title to both his land and his unit, and the unit fronts onto a public road. This has some definite advantages.

The first is that no formal community board of directors or organization is necessary. Those not interested in a high level of community involvement can enjoy their own home and maintain it as desired without relying on formalized cooperation.

Another paramount advantage is that the unit fronts onto a public road. Many of the problems raised in the hearings involved private roads. A private road means that certain services, normally provided by the municipality, are provided and paid for by the condominium corporation. These include road maintenance, garbage collection, snow removal and repairs and maintenance of underground services. For a purchaser who did not wish a private street to begin with, a condominium owner can find it difficult to understand why he must pay for these essential services.

The chapter on municipal services provides a more detailed discussion and recommendations relating to the provision of such services. A great number of submissions received by the Study Group emphasized that people would have preferred to pay more initially for a home on a public street rather than buy into a condominium with private streets.

Because of the concern over lack of municipal services, the Borough of Etobicoke has assumed the internal roads of a condominium project.

Some members of the development industry felt that on-street townhouses located on short streets (P-loops or cul-de-sacs) with an allowance of 45 to 50 feet, together with reduced front yard standards, could be placed on the market at from $2,000 to $3,000 per unit above the price of accepted condominium townhouses. The initial extra cost would far outweigh the inflationary spiral of maintenance fees which include property management, bookkeeping and maintenance costs for work that can be done by an individual property owner himself. Amortized over 25 years, this increased cost would be minimal on the mortgage carrying costs. Since 72 per cent of all Ontario registered condominiums are in the townhouse category, this appears to be a workable alternative.

Recommendation No. 124:
Federal and provincial programs, such as AHOP-HOME, be directed towards encouraging alternate forms of housing, such as zero lot line or on-street townhousing, and that municipalities be more receptive to innovative housing forms.

Prior to our public hearings, the Ministry of Housing published a report on "Urban Development Standards". This report clearly indicates that there are realistic means to cut down on per unit costs without cutting down on safety standards. The report also lends credibility to the argument that if municipalities are receptive to innovative forms of housing development, then methods exist to keep costs down. Affordable homes could thus be put on the market without the need for a large number of public assistance programs. It is unfortunate that greater support by municipalities has not been given to the conclusions of that report. Alternative housing forms within similar price ranges must be produced.

Recommendation No. 125:
Municipalities endorse the " Urban Development Standards" report published by the Ministry of Housing to assist in the reduction of housing costs, thereby increasing the scope of housing choice.

Adult accommodation
Aside from the assistance programs, another important aspect of housing choice involves adult-only accommodation. In a number of briefs submitted, concern was expressed that there was no legislative provision for all-adult buildings. A number of senior citizens, for example, wanted a choice of accommodation, and wanted to sell their homes and move into all-adult buildings.

Recommendation No. 126:
Legislation be enacted to provide a legislative basis for all-adult buildings.

The Condominium Study Group concluded from its hearings that the condominium concept is, in fact, a preferred choice of housing accommodation for many. But in order to keep it desirable, the unit must be purchased by choice, not necessity.