

CONDOMINIUMS AND THE OLDER PURCHASER

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BEFORE THE
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CONTENTS

Opening statement by Senator Lawton Chiles-----	Page 1
---	-----------

CHRONOLOGICAL LIST OF WITNESSES

Ackerman, Anne, Point East Condominium Association, North Miami Beach, Fla-----	5
Nerzig, Sid, president, Condominium Co-op Executives Council of Florida, Inc., Fort Lauderdale, Fla-----	10
Samelsberger, Joseph A., vice president, Condominium Co-op Executives Council of Florida, Inc., Fort Lauderdale, Fla-----	16
Samuels, Ernest, president, Condominium & Co-op Officers Organization, Miami, Fla-----	17
Stone, Hon. Richard, a U.S. Senator from the State of Florida, presented by Luida Brickman, district representative in the south Florida area-----	30
Rosen, Robert, Miami, Fla., president, south Florida chapter, Community Associations Institute-----	36
Schoninger, Sam, Miami, Fla., president, Builders Association of South Florida-----	39
Burrus, Ray C., Hallandale, Fla-----	49
Linz, Paul, Tamarac, Fla-----	51
Chaimowitz, Frances, Hollywood, Fla-----	53
Coslow, Leo J., president, Association of Meadowbrook, Hallandale, Fla-----	53
Heller, Aaron, council president pro tem, city of Lauderhill, Fla-----	54
Stevens, Gerard, Fort Lauderdale, Fla-----	56
Rosenberg, Arthur J., Hallandale, Fla-----	59
Engel, Fred, Lauderdale Lakes, Fla-----	60
Ross, Joseph H., Hallandale, Fla-----	61
Goldstein, Edwin, social service coordinator, Lauderhill, Fla-----	62

APPENDIXES

Appendix 1. Material submitted by witnesses:	
Item 1. Pamphlet excerpts submitted by Robert Rosen, Miami, Fla., president, south Florida chapter, Community Associations Institute-----	65
Item 2. Court decision submitted by Paul Linz, Tamarac, Fla-----	67
Item 3. Letter from Fred Engel, Lauderdale Lakes, Fla., to Senator Lawton Chiles, dated January 2, 1979-----	68
Item 4. Letter from Joseph H. Ross, Hallandale, Fla., to Senator Lawton Chiles, dated December 21, 1978-----	69
Appendix 2. Material from individuals and organizations:	
Item 1. Letter from Samuel Silberberg, Hollywood, Fla., to Senator Lawton Chiles, dated December 1, 1978-----	70
Item 2. Letter from Maudie E. Blondin, secretary, Hibiscus House Condominium Association, Inc., Pompano Beach, Fla., to Senator Lawton Chiles, dated December 4, 1978-----	70
Item 3. Resolution adopted by the City Council of Lauderdale Lakes, Fla., November 28, 1978-----	71
Appendix 3. Statements submitted by the hearing audience:	
Kordel, L. E., Detroit, Mich-----	72
McArthur, E. D., Boynton Beach, Fla-----	72
Projansky, Mrs. Harry, North Miami Beach, Fla-----	72
Reszel, Helen M., North Miami Beach, Fla-----	72

CONDOMINIUMS AND THE OLDER PURCHASER

TUESDAY, NOVEMBER 28, 1978

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Hallandale, Fla.

The committee met, pursuant to notice, at 9:45 a.m., in the commission chambers, Hallandale City Hall, Hallandale, Fla., Hon. Lawton Chiles presiding.

Present: Senator Chiles.

Also present: William E. Oriol, staff director; Letitia Chambers, minority staff director; Philip S. Corwin, professional staff member; Richard Farrell, legislative assistant to Senator Chiles; Marjorie J. Finney, operations assistant; and Kaye English, information assistant.

Mr. SPEIGEL. Good morning, Senator Chiles, ladies and gentlemen.

I see that some of us are still early risers but the old people are a little slower getting up and they will be here. I know they are coming. A lot of the condominium owners are looking forward to listening to our Senator who is going to help us because they are all concerned with condominiums and have been for years. I have been interested since 1966 and I am looking forward to the Senator pushing through some legislation in Washington and helping us.

Senator CHILES, it is a pleasure to welcome you to our city. There are others interested in this matter and we will bring them up to Palm Beach tomorrow to see you then.

Senator CHILES. Thank you very much. I thank the commissioners for allowing us to use the facilities here. The city and the county have been very cooperative in helping us, and we appreciate that.

Mr. SPEIGEL. Thank you, Senator. The facilities are at your beck and call at anytime you want them.

Senator CHILES. We are delighted to have Representative Dyer here who is going to sit with us this morning. He has been playing a leading role in condominiums and their owners' plight in the State legislature.

Do you have an opening statement that you would like to make today?

Mr. DYER. Thank you very much. I am here to listen and see if we can identify some of the problems and determine some of the solutions to those problems.

OPENING STATEMENT BY SENATOR LAWTON CHILES

Senator CHILES. Thank you. Today's hearing on "Condominiums and the Older Purchaser" is undertaken in the belief that condomini-

ums and other new forms of residence ownership will be chosen increasingly by the growing ranks of older Americans. Despite the problems which characterized the early years of Florida's condominium industry, the 1975 HUD condominium-cooperative study found that 96 percent of south Florida unit owners were either satisfied or very satisfied with the condominium lifestyle and that more than 70 percent would again purchase a condominium if they could choose again. Clearly, condominium living can offer good housing, recreational opportunities, and a potential for community self-government and social interaction which is attractive to retirees and well within the means of many people.

If so many older residents are so satisfied, then why are these hearings being held, and why in Florida? I believe that the Florida condominium experience has much to teach us about the pros and cons of condominium living for the elderly and whether there is a need for minimum national standards to protect older purchasers no matter which State they settle in. Florida has been in the forefront of condominium construction and is unique in the percentage of retirees occupying those units. Florida now has one of the Nation's exemplary condominium laws—our State law. However, this body of law was not developed to forestall difficulties, but came as a result of abusive practices carried out by a destructive minority within the development industry, and at one point threatening not only the savings and well-being of purchasers but the entire condominium industry.

BILL PROVIDES FOR CONSUMER PROTECTION

In April of this year I cosponsored, with Senator Stone on the Senate side at its introduction, the Condominium Act of 1978. That has been introduced on the House side and Congressman Lehman is the person over there. This bill, drafted by a task force headed by the Department of Housing and Urban Development, would set minimum national standards for consumer protection and disclosure in both new construction and conversion condominiums. It would encourage the individual States to enact strong condominium laws. It would hold redtape and costly regulations for developers to an absolute minimum, while at the same time recognizing that asking this industry to meet basic consumer protection standards is not a large price to pay in exchange for the legitimacy and stability which Federal and State laws have conferred upon the industry.

It should be realized that enactment of this Federal law would not have a major effect upon Florida's condominium statutes, which now offer sufficient protections to be certified in compliance with the proposed minimum national standards. However, in one specific area, the Condominium Act of 1978 would offer substantial relief to tens of thousands of older Floridians who have been unduly victimized. This is in regard to the abusive practice of escalating 99-year leases for recreation facilities, for the bill would authorize the Federal courts to grant the relief which Florida's judiciary has not seen fit to confer.

These contractual arrangements are intolerable.

Purchasers were unaware of them and had no power to negotiate and modify them at the time they were put in the contracts.

They extend far beyond the useful life of these recreational facilities and reimburse developers many times over for their costs.

And, due to escalation clauses tied to the Consumer Price Index, they threaten to rob elderly residents of their dignity and their life savings and even to destroy the fiscal stability of the condominiums they occupy.

I will tell you frankly that enactment of this law will not be easy, afflicted purchasers should not expect immediate relief upon its passage. Neither congressional committee having responsibility for housing held hearings on this bill during 1978 but prospects for action may be better this next year. In addition, condominium activity is limited primarily to a few States, most of which have enacted good "second generation" protection statutes. The Condominium Act may therefore lack the national constituency required for congressional support. Finally, if it is passed, it will probably be tested by several years of litigation—certainly the points dealing with the recreational leases.

ACTION NEEDED TO CURE ABUSES

However, I pledge today that I will take the evidence gathered at these hearings today and tomorrow to tell the Congress about the damage to purchasers and the honest majority of developers in the absence of strong minimum standards to forestall abusive and deceptive practices. The Special Committee on Aging does not have the right to offer legislation itself but we can use the prestige of that committee to try and build a fire under the other committees, in this instance the Banking and Housing Committee, to try to see that we get some action this year out of those committees and that is what we are going to try to do.

Today's hearing has a wider purpose beyond an examination of the need and specific form of Federal condominium legislation. We want to consider such questions as:

How are retirees coping with the self-management responsibilities, often of enormous proportions, in multimillion-dollar projects? How are they doing?

What effect is inflation having upon older residents who have retired on fixed incomes and anticipated relatively stable residential expenses as one of the chief benefits of condominium living?

And, with the conversion of rental units to condominiums on the rise both in Florida and nationwide, is enough being done to protect the interest of both long-term renters and new purchasers?

Finally, we will inquire into whether sufficient thought and planning is being directed to meeting the present and future needs of aging condominium populations.

In our 2 days of hearings we will hear from Floridians who are expert in these matters. We will hear from condominium association leaders, from representatives of developers and management, from attorneys, from State officials, and from those who provide social services to older persons.

We will also hear from the real experts, from the condominium residents themselves, during special town meetings at the conclusion of our scheduled witnesses.

Before calling our first panel I would like to submit into the record a statement from Congressman Bill Lehman. Mr. Lehman is unfortunately unable to be here today and he wanted me to express his regret for the severe emergency that prevents his participation. But there is no doubt about the role that Congressman Lehman has played in this problem and in the general problems of our older citizens over all the period of time that he has been in the Congress.

[The statement of Representative Lehman follows:]

STATEMENT OF HON. WILLIAM LEHMAN, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF FLORIDA

During the 95th Congress, I introduced in the House, as Senator Chiles did in the Senate, the Condominium Act of 1978 in a new effort to end unconscionable recreation leases.

Condominiums are the lifestyle of the future. More than 300,000 residential units have been built in Florida. In my 13th Congressional District there are more than 100 condominium developments housing over 80,000 people. In the past few years condominium construction throughout the Nation has exceeded that of the previous 20 years.

However, condominium living has also brought many complaints. There are exorbitant charges for maintenance and ground leases, poor management and inadequate control by unit owners, shoddy construction and lengthy, complicated purchase contracts which can confound the best of lawyers.

The most serious abuse is the practice of placing long-term leaseholds on the common areas or facilities which serve the unit owners. The majority of these 99-year lease recreation leases are tied to the Consumer Price Index. Ernie Samuels, who will testify today, once gave the example that a \$100,000 recreation payment—relatively modest in today's marketplace—in 99 years would net the developer \$200 million if the CPI escalated at 5 percent per annum. Yet during the past 5 years the CPI has not risen by 5 percent but at the rate of 47.1 percent—or 8 percent per annum.

INFLATION DWINDLING RETIREMENT CHECKS

When condominium buyers moved from the North to Florida they were enticed by beautiful apartments at modest prices with extras such as well landscaped grounds and recreation facilities. People were swept away to the Sunshine State believing they could retire on their fixed incomes and live comfortably for the remainder of their lives. Instead, inflation has dwindled those retirement checks and the comfortable life has become difficult for some and desperate for others. Now they ask questions such as, "Will there be enough money to pay for food, electricity, telephone?"

Naturally, other extraneous considerations were frequently ignored prior to buying a condominium unit. After all, most people moving southward are reasonably healthy at the time, probably own a car, and think items such as public transportation are not problems. However, the recent referendum on rapid transit in Dade County reflected the fact that many elderly residents of condominiums, especially in North Dade, were frustrated with the public transportation system and voted not so much for the rejection of a rapid transit system but against its failure to service them.

The Condominium Act cannot resolve all of the problems, but it does address four major areas of importance to south Florida condominium unit owners.

First, the problem of 99-year recreation leases is specifically addressed by declaring that by a two-thirds vote of the unit owners a court case could be brought to have the lease declared unconscionable.

Second, the bill would make future automatic recreation lease rent increases unenforceable.

Third, unit owners would be able to terminate long-term "sweetheart" maintenance contracts in 90 days, if two-thirds of the unit owners so voted.

Finally, the bill would void existing lease provisions that require unit owners to pay all attorneys' fees or judgments incurred by the developer in suits between the developer and the unit owners.

Although condominium construction is growing rapidly throughout the Nation, many of the abuses are limited to Florida. Michigan and New York are two States which quickly enacted laws banning recreation leases after learning from experiences in Florida.

Nevertheless, we have lined up support from Members in other States for the Condominium Act in the House. Representative Thomas Ashley, chairman of the Housing and Community Development Subcommittee, agreed to cosponsor the bill and has promised to hold hearings when the 96th Congress convenes.

I will continue to do all that I can to see that the House of Representatives considers this important piece of legislation which we hope will provide a remedy for present condominium recreation lease problems. The hearings today certainly mark the beginning of that process.

Senator CHILES. We will go to our first panel. In our first panel we have Sid Nerzig, Ernest Samuels, and Anne Ackerman. Sid Nerzig is president of the Condominium Co-op Executive Council and as such certainly has been a leader in this field, as have Ernie and Anne. Ernest Samuels is president of the Condominium and Cooperative Officers Association. Anne Ackerman is a leading light in the Point East Condominium Association and many other areas. I know their expertise goes beyond condominiums and into many areas of concern for the elderly. We are delighted to have each of you here.

Anne, I understand you have a time problem and, because of that, you would like to lead off. We will be glad to hear you.

STATEMENT OF ANNE ACKERMAN, POINT EAST CONDOMINIUM ASSOCIATION, NORTH MIAMI BEACH, FLA.

Mrs. ACKERMAN. I am probably described as a citizen activist. I say amen to everything in your statement and everything in Congressman Lehman's statement because, frankly, it sounds exactly like my statement; therefore, I will do it very, very quickly.

I consider it a privilege to testify before this committee on an issue that affects the physical, mental, and social well-being of mature Americans. In order to fully understand the need for good housing within the financial means of middle class older Americans, it is necessary to understand the radical change in lifestyle that has taken place during the past 20 years. Prior to that time and prior to the intense mobility of our society, families were rooted in particular localities and were close knit, caring for their elders and each other. The romance of the old homestead, where families gathered and where the feeling of belonging was strong, made for stability and responsibility. That condition was the norm, sociologically.

"HARD LOOK" AT HOUSING NEEDS

The radical change that has taken place in this generation—due to many factors, including governmental social programs, the affluence in the society, and longevity—makes it essential that we take a hard look at the housing needs of our older Americans.

The advent of the "condominium concept"—cluster housing—that has provided peer group living, home ownership with shared responsibility, recreational and social activities within the framework of these communities, is an answer to these needs.

The State of Florida, particularly south Florida, became the area where this kind of housing developed rapidly. An abundance of retirement communities were created. The response was overwhelming. From every area of the Northeast, Midwest, and other areas of this country, people flocked to this area and purchased condominium homes—apartments. They created a lifestyle to suit their needs. Since the greater number of the people had uprooted themselves from their homes and communities where they had spent a lifetime, their immediate needs were social contacts. Group living provided the answer.

Social, educational, cultural, and recreational needs could be developed very quickly. Friendships could easily be made. Common interest and common problems brought people together. Leaders emerged in every area, since these people spent a lifetime developing a myriad of skills which they were happy to bring into play. Their lives were enriched because they used their skills for the benefit of the community as a whole. People felt wanted and needed and organizations of every kind were formed. These developments were very beneficial. In essence, the "extended family" developed where neighbors manifested a real concern for each other. In this respect the condominium has been very beneficial to older people.

Then came reality. The contracts people had signed for the purchase of their condominiums were filled with clauses that had not been brought to the attention of the buyers. These included, but were not limited to, the following: Management contracts that the developers had made with themselves that tied the purchasers to 25-year management contracts; maintenance costs that were skyrocketing because of these contracts; 99-year leases on the recreational facilities with escalation clauses tied to the rise in the cost of living, which included the cost of food; the cost of complete maintenance was to be borne by the purchasers; the purchasers had to pay all taxes; the purchasers also had the responsibility of reconstructing and putting into proper working order apartment building facilities where the developers originally permitted poor construction, et cetera.

BASIC SERVICES UNAVAILABLE

Because of the rapid growth of these areas, basic governmental services such as adequate water, sewage, roads, good transportation, streets, and lighting were unavailable. Government services could not keep up with the rapid growth of the condominium communities.

Since the whole concept of condominiums was new, there was no body of law to protect the buyers. As a result, condominium owners banded together in various organizations—you will hear more about this from the experts in this field—and learned to seek aid from their local and State governments. In fact, because of these glaring ripoffs, the people involved became citizen activists. They grew to know their legislators—local, State, and national—and they became concerned voters.

Senator Chiles, we have become an effective voting block and I think every legislator—national, State, and local—knows this at the present time. This development is well known to all levels of government. Condominium leaders emerged to carry on the battle to protect the condominium owners' rights as citizens.

The body of condominium laws created in Florida is extensive and much of it is excellent. Management contracts have been outlawed, full disclosure is now mandatory, and future 99-year leases, as well as escalation clauses, have been outlawed. I urge you, as you have already done from your statement, to study all aspects of Florida's condominium laws. The people who bought before the passage of these laws are in no way aided by them; they carried the battle and those that come after them will benefit, but we don't. Only Federal law can help us.

The pending Federal condominium bill can and must incorporate all that is good in the Florida law and must incorporate provisions for the abolishment of the abominable escalation clauses in the contracts to which we are tied. You already mentioned the Americans on fixed incomes—incomes that mean either pensions or social security, or maybe the kind of income that you might get from dividends. Since these people are tied into this kind of living standard, the escalation clause and the 99-year lease can eventually mean the wiping out, not only of their homes, but of their financial condition. More than that, since this will be the form of future housing throughout America for the great middle class, it is imperative that there be Federal guidelines to protect both buyers and builders. A national standard for condominium housing is imperative.

Purchasers of condominiums, whether young or old, cannot always understand all that is entailed in this form of living. Responsibilities and restrictions come with shared ownership. Self-management must be taught. Again, you are going to hear from several management experts in the field. Volunteers must make themselves available for a myriad of tasks. This is a learning experience and it will enrich the lives of the participants.

FEDERAL GUIDELINES NEEDED

Senator, it is my humble opinion that there is no question that most of the future housing will be some form of condominium housing throughout the United States and, therefore, Federal guidelines are absolutely essential. There is no way that the buyer or the builder can understand totally the kind of housing that they are getting into unless they do have Federal guidelines that will cover all Americans. We in Florida have been the guinea pigs. We have been more than willing to be the guinea pigs—we have learned so much through this effort. Nevertheless, we feel that we need protection and that all Americans need protection.

In the letter that you addressed to me you asked if the fact that there is a concentration of older Americans in any one area makes for more social problems or social programs. Yes, there is a problem. We have solved so many of them. On the national level, through the Older Americans Act, so many remarkable programs for older Americans have been implemented—meals on wheels, senior citizen centers, dial-a-ride transportation—I can name a myriad of them. The difficulty is that although they are adopted on the national level and funded on the national level, by the time they are funneled through to the local level so many of these marvelous programs that are geared to the mature American in cluster housing communities is lost.

There is something else I am very hepped-up on, Senator. The middle-class American is forgotten in all major social programs. Almost all the programs are geared to poor America. I don't blame the program for being geared to poor Americans, but it is middle-class America that built this country and have been the productive citizens throughout their lifetimes. We feel that something of these social program should be available to middle-class America, too.

Now I am going to conclude with the most important glaring problem for the older middle-class American. South Florida again is a perfect example for we have a tremendous number of older Americans here. We are concerned because for the most part we thought that we had provided for ourselves for our golden years. Most of us live on fixed incomes—social security, pensions, investments, et cetera. Our incomes have not kept pace with the horrendous inflationary pressures, yet we have managed.

CONCERN ABOUT CATASTROPHIC ILLNESS

Now we are faced with a specter and a fear prevalent in every older middle-class American. We are faced with the specter of lingering, catastrophic illness. Medicare in no way covers custodial care for prolonged home health services or custodial nursing home care. Medicare pays for the poor who qualify, and the rich are not concerned, but the older middle-class American can be wiped out by this kind of illness. Perhaps you are saying, "What has this to do with condominiums?" The answer is that the lifestyle of the older American is seriously affected by social programs, and one of the programs we need desperately is to be able to maintain our dignity in our lifestyle.

Right now we are scared out of our wits of being wiped out because of the kind of catastrophic, lingering illness that might befall all of us. We may lose our homes, we may lose our apartments, we may lose everything that we have built, if the Federal Government does not address itself to this particular problem.

I will not take up more of your time on it. I have written you a six-page report on this particular aspect of the problems that we are faced with socially, but there is no question, Senator Chiles, that addressing yourself to condominiums and to the lifestyle and to the needs for Federal legislation to protect the buyer are essential, for this will be the lifestyle for all Americans for the next generation, not only for Florida.

Thank you.

Senator CHILES. Thank you very much for your statement.

You speak of the lifestyle of the America to come and I think that is very interesting, it rings a bell with me. I am now a double-condominium owner—I have a condominium in Florida and I have a condominium in Virginia now, so my lifestyle hinges very much on the condominium concept.

Mrs. ACKERMAN. Senator Chiles, may I point out to you that the condominium concept that started with the retirement communities for older Americans is now the answer to middle-year people raising families? There are even condominiums today for the single people.

Senator CHILES. Very much so.

Mrs. ACKERMAN. The reason for it is that the cost of single-family housing has become completely out of the reach of most people, and second, because of a breakdown of family structure, every group in America is seeking peer group living and that is why you are going to have it.

SMALL COMMUNITY CONCEPT

Senator CHILES. On that particular area your statement describes condominium living as in effect creating a new kind of extended family; in other words, the condominium owners may come to care about their neighbors in the same way that residents of small communities so often cared about their particular neighbors. We have seen that community effort over the years, whether there was a barn raising or whether it was taking care of the sick. What we grew up with and saw operating in small communities all across this country has been one of the strengths of the country.

Do you see the possibilities for group action like that in the condominiums? In other words, can neighbors be trained or encouraged to help the homebound with their problems and expect similar help if and when they became homebound?

What I am getting at is that there is no way that we are going to be able to provide State or Federal paid care for every person who is going to need it. An awful lot of this needs to come from within, from somebody caring about someone and taking care of him. Are there ways in which we can encourage that?

Mrs. ACKERMAN. Senator Chiles, this has already been done. For example, we have two excellent representatives of leadership in condominiums right here on this panel. Let me point out a specific example.

I live in Point East and we have some, 2,200 people. I don't think any of the people knew each other before they came to take up their lifestyle. I think we are more concerned for each other than any families can possibly be. We are in such close contact with our neighbors that we note immediately if there is a concern on the part of our neighbors. There is no question that we care for each other.

There are some forms of health care that you are going to have to come up with and I will give you one example—custodial nursing home care which is not covered either by private insurance or through medicare. It has wiped out financially three or four families in our own condominium within the last year because there was no place where they could turn.

"DIVORCE"—A DEMEANING RESPONSE

May I say to you that the most demeaning thing that can happen to an individual is to have a social service person say to them, "Divorce your husband," or "Divorce your wife and then we can help you." You are talking to people who have been married 45 years, 50 years, 55 years, and you will find this kind of demeaning response. All I am saying to you is that there must come a time when we will address ourselves to the health care for middle-class America who are faced with a long-term, lingering, custodial-care type of illness.

There is no question that the extended family exists in the condominium. We do care for our neighbors. We have organized every conceivable kind of organization. No one who lives alone is ever without a contact daily. These are the things that we have found we can do for ourselves and for our neighbors.

Senator CHILES. Thank you.

I notice that during the boom years of 1970 to 1973 that some 70 percent of Florida purchasers of condominiums paid for their units in cash. How large a percentage of life savings would you estimate that that took from the average family coming down and buying that unit for cash?

Mrs. ACKERMAN. I don't think we are buying for cash today; I do think many people bought for cash, say, 10 or 11 years ago and it took a good portion of their savings. I am not in any way talking about the fact that middle-class America is pauperized; it is not.

Senator CHILES. I understand that.

Mrs. ACKERMAN. Most of the people came down and bought, whether they bought with mortgages or whether they bought with cash outlays. I assume that they had taken care of themselves for their golden years, but you know the pressures of the society in the last 10 years, Senator, and you know the escalation and inflation that has taken place, especially in the health field, and this is the most frightening thing that we face today.

Senator CHILES. Thank you very, very much. I know your time is short so we are going to excuse you at any time that you have to leave.

Sid, do you have a statement that you want to start off with?

STATEMENT OF SID NERZIG, PRESIDENT, CONDOMINIUM CO-OP EXECUTIVES COUNCIL OF FLORIDA, INC., FORT LAUDERDALE, FLA.

Mr. NERZIG. Yes, Senator. First I want to thank you for inviting me to take part in this hearing this morning; it is a great pleasure for me to do so.

For the record, my name is Sid Nerzig and I reside in Pompano Beach, Fla.

I am the president of the Condominium Co-op Executives Council of Florida, Inc., located in Fort Lauderdale, Fla. This is an organization consisting of many hundreds of condominium cooperative associations throughout the State of Florida. I should like to point out, in passing, that we are strictly a volunteer organization and none of us are paid for our services.

We are respectfully urging legislation on a Federal, nationwide level to meet some terribly distressing problems affecting the aged in the United States, especially insofar as they relate to housing and shelter. Particularly I address myself to planned unit developments, including condominiums, encumbered by 99-year recreational leases. This has become a terrible abuse running rampant throughout various areas of the United States where retirees have been settling, especially in Florida.

Federal legislation is required because standards and degrees of protection for condominium purchasers, as well as the potential for abuse and exploitation, vary amongst the various States. For instance, New York State does not allow these now infamous and notorious recreational leases, with their even more notorious escapation clauses, while in a number of Sun belt retirement areas like Florida such arrangements are still legally permitted.

MANY UNABLE TO USE FACILITIES

I shall primarily address this pervasive lease problem, especially insofar as it applies to vast numbers of uninitiated and untutored fixed-income retirees with marginal means and attainments and with very limited bargaining power. We are dealing with hundreds of thousands of purchasers in their so-called golden years, and often physically disabled as well, who have unwittingly become subject to these 99-year leases for recreational facilities that they can never use, such as tennis courts, or which they don't need or want. Among these purchasers, too, are thousands of disabled American veterans who similarly are unable to use such facilities.

This committee should know something about these 99-year leases that are usually executed by the developers with themselves. They wholly own and control the developer corporation, which is the landlord, and also the condo association which is the tenant. The leases are invariably entered into before the project is even started up and before there is even a single-unit owner in existence. Upon subsequent purchase of an apartment, the unit owner automatically becomes a member of the condo association and automatically becomes bound by the 99-year lease.

Invariably the lease requires the condo association—that is, the unit owners—to pay all operational costs and expenses of the leased facilities such as taxes, insurance, and maintenance, including repairs and wages, and so forth. In other words, the fixed rental is on a net basis to the developer.

NO JUSTIFICATION FOR RENTAL ESCALATION

The developer is thus completely unaffected by any increased costs. All costs and expenses, including increases, are borne solely and exclusively by the unit owners and their condo association. Nevertheless, the leases provide for regular rental escalations based upon increases in the Consumers Price Index. But, under the circumstances described, there is absolutely no justification or morality for the unit owners to be saddled with any such rental escalations or, conversely, for the developer-landlord to keep getting escalated rentals based upon cost increases which he does not pay, but which are paid solely and exclusively by the unit owners.

These vicious escalations, over the 99-year term of the lease, are like illegal or usurious rates of interest compounded each year which will mount astronomically and which these elderly, or disabled, fixed-income retirees will be utterly unable to pay, especially during these inflated periods. Moreover, under the contracts, the unpaid lease rentals constitute a foreclosable lien upon the apartment so that thousands

upon thousands of these exploited unit owners will lose their homes and hard-earned investments.

Senator, this is all that I am presenting now. I noticed that the record is open until the 15th. I have further information for the committee and for the Senators that I will forward to you.

Senator CHILES. We would be delighted to receive that.

[Subsequent to the hearing, the following statement was received from Mr. Nerzig:]

SUPPLEMENTAL STATEMENT OF SIDNEY P. NERZIG

Superimposed upon all of the physical limitations and debilities suffered by our aging population during the past several years are the financial difficulties caused by inflation. Inflation has increased the costs of all of the essentials in the life of our elderly population.

The significant way in which the problems of the aging differ from those of our citizenry generally is that the assets and income of the aging does not increase as the cost of essentials increase in cost.

In almost all of the inflated costs to the aged, as to all of our citizens, a cogent reason for the increase in costs is the fact that the supplier of the essential needs suffers from inflated costs in the production, supply, and service of these essential items. Increased cost of production necessarily results in increased cost of the item.

The upward rise of prices caused directly or indirectly by the upward rise in cost of production and distribution, although detrimental to the aging, can be understood as a natural phenomenon—an understandable cause and effect—a justifiable result following upon unavoidable stimuli.

AGED TARGET OF UNCONSCIONABLE DEVELOPERS

However, one facet of the inflationary increase in the cost of the essentials of the aging is the very sizable increase in the cost of shelter. This increase is not based upon inflated costs of production and distribution. This inflationary increase in the cost of shelter of hundreds of thousands of the aged is brought about by the unconscionable manipulation by developers of housing for the aged constructed during these past several years. This unconscionable greed of housing developers was aimed at the aging—aimed at people who were retired from income-producing employment or who were about to retire. At a time in their lives where they believed they could spend their last few years in peace in places where they could relax reasonably free from the turmoil of their working years and reasonably free from overbearing financial burdens, retirees found themselves enmeshed in the escalated rentals of condominium recreation facilities.

One may brush aside, as innocuous, the discussion of a rental for a recreational facility—that is, until the bitter facts are made known.

The investigators of your committee may be able to learn how many elderly purchased apartments or little homes for their retirement—particularly, here in Florida. They will learn:

(1) That for several years one could not purchase such an apartment or home or even a mobile home without the encumbrance of a lease for so-called recreational facilities;

(2) That men and women in their 70's and 80's, who did not have the desire or the physical capacity to participate in any of the so-called recreational facilities, found that they could not purchase a housing unit free from that facility. Tennis courts and saunas may seem desirable, but not for octogenarians, nor for the elderly with limited capacities;

(3) That almost all of these unit purchasers were not represented by counsel at the time of contract and purchase or were conducted by mail between the purchasers in one State and developers in another State;

(4) That those who did have counsel were told by the developers that the deal was "take it as written or don't buy";

(5) That the documentation of these condominiums would consist of well over 100 closely written pages, providing little or no opportunity for reading or understanding the legalese in which they were written;

(6) That an 8½ x 11 printed sheet may have 60 lines of little print on each of its 100 pages of documentation;

(7) That the length of these leases—99 years—was obscured in the lengthy document;

(8) That the fact that the rental would be increased periodically was also buried in some lengthy paragraph in the middle of the document, or near its end, when even an astute student would be groggy; and

(9) That all, or almost all, of the purchasers were not aware of such provisions.

That is not all that your investigators will find, Senator. They will find that there is no provision for decrease in rent, even though prices were to drop to dizzying lows.

Senator, shocking as all these facts may be, two facts stand out and cry for action!

UNIT OWNERS BEAR ALL COSTS

First, all of the cost of maintenance of the recreation facility—all of the cost of insurance and taxes—all of the cost of repair are to be borne by the unit owners. All of the cost of collection of the ever-increasing rental—even the cost of litigation—is to be borne by the unit owners. Moreover, after 99 years, the facility is to be returned to the developer or his great-grandchildren in the condition it was in 99 years before. Your investigators will find that inability to pay the escalated rentals by the impoverished elderly may result in foreclosure of liens imposed by the developers.

Second, one would ask: "Who, in his right mind, would enter into such an arrangement?" The answer is that the developer entered into so shocking a lease with a corporate or trustee alter ego acting solely upon behalf of the developer and in the interest of the developer.

The investigators will find that these leases were entered into long before a single unit or single apartment had been sold.

No unit owner signed such a lease. It was hung around the unit owner's throat by operation of the documentation prepared by the developer's attorneys. Your investigators will find, Senator, that in many, many instances the documentation was not made available until the very time of closing of title or even after that time.

We speak for the several hundreds of thousands of elderly citizens and their families who are now saddled, or who may in the future be saddled, with so-called recreational leases, which burden their apartments and their homes—and they need and request your help.

We implore you to initiate and enact legislation (1) to freeze rentals on recreational facilities of condominium cooperatives, homeowner associations, and mobile homeowner cooperatives; and (2) to declare unconscionable and unenforceable all such leases of recreational facilities which:

(a) Were made in connection with a condominium, homeowners, or mobile homeowners associations;

(b) Were entered into before termination of developer control of the condominium, homeowners, or mobile homeowners associations;

(c) The acceptance or ratification by purchasers (or through the owners associations) was a condition of purchase of a unit in a condominium, or other planned unit project;

(d) They are for a period of more than 21 years; and

(e) Contain provision requiring the lessees to assume all or substantially all obligations and liabilities associated with maintenance and use of the leased property.

We respectfully submit that the following changes be made in the 1988 bill for filing in 1979:

(1) (Section 210)—Inclusion of all planned unit developments which are saddled with long-term leases of recreational facilities, including individual homeowners associations and mobile homeowners cooperatives. They too need the relief proposed in the 1978 bill and their inclusion will assure support of a great many persons.

(2) (Section 213)—Making clear that an action pursuant to section 210 may be brought in a Federal district court.

(3) (Section 223)—Making the effective date for section 210 the date of enactment or, at most, 60 days after enactment.

The recreation facility rents increase periodically. In this inflationary period, a delay of a year may mean a 10 percent additional increase.

Thank you for your concern over these serious problems faced by the aging. We have confidence that this congress will provide the relief required.

Senator CHILES. I would like to mention to the members of the audience that the record will be open and if there are other exhibits or statements that people wish to make, we would be happy to have those for the record.

Mr. NERZIG. Senator, may I say something else, please?

Senator CHILES. Yes.

Mr. NERZIG. I don't know if the Senator is aware or if, Congressman Lehman is aware of the number of retired veterans that are now living in the State of Florida. There are better than 1¼ million retired veterans in the State of Florida and in Broward County alone—if I am correct, I believe there is something like 25,000 to 30,000 disabled American veterans. Practically one out of every three unit owners are veterans, and many of them are living on just the pension that Uncle Sam is giving them for their disability and whatever social security money they may happen to gather. We know that with the way things are going now they are going to be amongst the first who will be hit unless inflation stops spiraling the way it is.

Senator CHILES. Absolutely. I know that is true. Also, it has been called to our attention this morning that Sid Polly of the Plantation chapter presented a resolution to the State Disabled American Veterans organization which was passed on this subject, and I think Joe Samelsberger has brought us a copy of that resolution this morning.

Mr. NERZIG. That is right, he did.

Senator CHILES. Joe, we are delighted to have that resolution. We will make that a part of the record.

[The resolution follows:]

RESOLUTION ADOPTED AT THE ANNUAL CONVENTION OF THE DISABLED AMERICAN VETERANS, DEPARTMENT OF FLORIDA, AT MIAMI, FLA., JUNE 10, 1978

Whereas it has been called to the attention of the annual convention of the Department of Florida, Disabled American Veterans, assembled in annual convention at Miami, Florida, the plight of many thousands of our fellow disabled veterans who have purchased condominium with unconscionable so called "recreation leases" and,

Whereas many of these leases have cost-of-living escalation clauses which slowly but surely are eroding the annual cost of living increases awarded the service connected disabled veterans by the Congress and,

Whereas all veterans who have purchased apartments with these unconscionable clauses are encountering great financial difficulty in keeping up their apartment lease payments out of their compensation, pension or Social Security benefits, with the help of the annual increases given them by the Congress and,

Whereas the cancerous growth of the Florida type of condominium purchase with a recreation lease tied into the contract of purchase is now in danger of seriously spreading to other States, as evidenced by the recent action of the National Conference of Commissioners on Uniform State Laws and,

Whereas, in order to eliminate the abuse attendant on this type of homeownership, there has been introduced in the Congress two companion bills, H.R. 12124 in the House of Representatives and S. 2919 in the Senate, which are designed to: "encourage broader utilization of the condominium form of home ownership, to provide minimum national standards for disclosure and consumer protection for condominium purchasers and owners and tenants in condominium conversions, to encourage States to establish similar standards, to correct abusive use of long-term leasing of recreation and other condominium-related facilities, and for other purposes."

Whereas the factual analysis of the seriousness of this problem is set forth in the Condo Co-op Mobile Courier (vol. 3, No. 4, May 1978) beginning on page 1 thereof and is attached hereto as "Exhibit A" and,

Whereas the Congress is even now in the process of increasing compensation, pension, and social security benefits which will be in substantial part benefit these rapacious holders of escalating recreation leases in case wherein the veteran or disabled veteran, many of whom are permanently and totally disabled, have bought one of these condominium apartment homes, with an unconscionable recreation lease "tied in" to the purchase and,

Now, therefore, be it resolved By the department of Florida, disabled American Veterans, that by these present we do endorse the just relief afforded our disabled comrades and other of our citizenry in the provisions of the two aforementioned bills (S. 2919 and H.R. 12124) and that we mandate our DAV/legislative representatives in Tallahassee and in Washington to lend their good offices to the end that these measures be enacted into law and,

Be it further resolved, That copies hereof be sent to the national, state, and the Honorable Richard Stone and Lawton Chiles, as well as the entire Florida delegation in the U.S. House of Representatives commending them on their action in this matter to date and urging their continued effort to enact passage of this legislation.

Be it further resolved, That copies hereof be sent to the national, state, and local press, TV and radio chains, and local stations and other media.

Done at Miami Beach, Fla. this 10th day of June 1978.

[Attachment]

[From the Condo Co-Op Mobile Courier, May 1978]

**LONG AWAITED FED CONDO LAW UNVEILED—BILL AIMED AT UNCONSCIONABLE
REC LEASE AND OTHER ABUSES**

After waiting since President Carter's election for Federal action to protect condominium owners from the unconscionable leases made by the developer and his own controlled owners' association, a bill entitled "Condominium Act of 1978" was introduced in both houses of Congress last month.

This proposed bill is the result of President Carter's campaign promise to aid suffering condo owners made while campaigning in Florida. At the insistence of the Condominium Co-op Executive Council headed by its president, Sid Nerzig, and after many CCEC visits to the White House and Federal agencies, a bill modelled after our Florida Condo Law finally emerged.

State Representative John Adams, long a proponent of State legislation to aid condo owners, has been in the forefront in the battle to have Federal Government protection for the harried condo owners. He accompanied Nerzig and other CCEC leaders during their trips to Washington.

The bill has been introduced in the Senate by both Florida Senators, Lawton Chiles and Richard Stone, and in the House of Representatives by Congressmen William Lehman, Paul Rogers, and Dante Fascell.

It, essentially, is designed to eliminate abuses associated with sale and ownership of condominium, including the onerous escalation clauses and "sweetheart" management contracts.

It would establish national standards for consumer protection and has been hailed by CCEC President Nerzig as "the greatest achievement we have accomplished in our fight to protect condoowners against this rip-off imposed upon unit purchasers."

Planned to complement the Florida condominium law, chapter 718, Florida statutes, the bill provides that long-term leases containing automatic rent increases (escalation) clauses tied to the Department of Labor cost-of-living index that require the lessees (unit owners) to assume all liability for the operation and maintenance of the leased facilities, entered into by the developer while in control of the owners' association and which had to be accepted by the purchasers as a condition of purchase, may be found unconscionable in a court action brought by a two-third vote of the unit owners.

Similar to our State law the bill provides certain standards for the court to consider in making a decision as to "unconscionability." In such cases the court, using its equity powers could grant relief such as rescission or reformation of all or the offending portions of the lease to achieve a fair result.

The court could declare future escalation clauses unenforceable where the automatic rent increase clause is tied to a cost-of-living index which has no relationship to the developer's obligations under the lease. Thus, where the developer receives a net rental and does not pay out any moneys toward the maintenance of the recreational facilities the cost of living index has no relationship to his obligation the escalation clause is an abusive practice.

Where long-term management contracts are entered into by the developer with himself or an affiliate while in control of the owners association, on a two-third vote of the unit owners such management contract can be terminated after the owners assume control of the association.

This proposed legislation would supersede the local State laws in those States whose condominium laws do not provide substantially equivalent or greater consumer protection.

Court action could be brought either in Federal or State courts and investigations could be conducted as to violations by either Federal or State agencies.

During a discussion on the bill with Condo Co-op Executive Council officials, Senator Stone said that "This bill is designed to boost faith in condominium ownership to the benefit of unit owners and developers alike, by putting an end to the most common abuses.

"Recreation lease problems in Florida are long standing," Stone continued. "This bill, if enacted, would provide immediate relief from some major problems, such as future automatic increases in recreation lease charges, and set up remedies for other serious abuses."

In addition to the new Federal proposals and the strong Florida Condominium Act the National Conference of Commissioners on Uniform State Laws has adopted a proposed Uniform Condominium Act for submission to all the State legislatures.

Senator CHILES. Any statement that you want to give us about that resolution we would be delighted to receive from you this morning.

**STATEMENT OF JOSEPH A. SAMELSBERGER, VICE PRESIDENT,
CONDOMINIUM CO-OP EXECUTIVES COUNCIL OF FLORIDA, INC.,
FORT LAUDERDALE, FLA.**

Mr. SAMELSBERGER. Senator, there is not too much beyond the basic resolution—it speaks eloquently for the position of the veteran. Beyond the resolution itself and just to speak in ordinary language without the whereases and the wherefores, we are sure that when the Congress gave these recent increases for cost of living to the veterans that the Congress didn't expect that they would have to turn a good portion of this over to rapacious leaseholders.

Senator CHILES. That is right.

Mr. SAMELSBERGER. Rapacious is the word, too, because they are really after the escalated lease money and this has hurt as our esteemed president of the Condominium Co-op organization has pointed out. This is hurting a third of the veteran population on the increase which the Congress so graciously awarded us. We are grateful for what the Congress did, we appreciate it, but when it starts to filter through in the form of a Government check and it goes in a little checking account and then they find they have to double up on their rent, this is a horrible situation.

Senator CHILES. I am sure it is.

Mr. SAMELSBERGER. As one of my comrades pointed out, these fellows don't play tennis; a lot of them are 100 percent disabled. Maybe they will use the swimming pool, sometimes they go to a recreation room, but the benefits that they have received from these alleged

recreation facilities is so minuscule that they don't have any bearing with the dollar charge.

Senator CHILES. I am sure that is correct.

While I won't read the whereases, I do want to read the resolved clause of the resolution. The resolution in whole will be put in the record. It does say :

Now, therefore, be it resolved by the Department of Florida, Disabled American Veterans, that by these presents we do endorse the just relief afforded our disabled comrades and other of our citizenry in the provisions of the two aforementioned bills (S. 2919 and H.R. 12124) and that we mandate our DAV/ legislative representatives in Tallahassee and in Washington to lend their good offices to the end that these measures be enacted into law and,

Be it further resolved that we communicate this action to our U.S. Senators, the Honorable Richard Stone and Lawton Chiles, as well as the entire Florida delegation in the U.S. House of Representatives, commending them on their action in this matter to date and urging their continued efforts to enact passage of this legislation.

We certainly accept that resolution and we certainly will try to see in every way that we can that we get those bills passed.

Mr. SAMELSBERGER. Thank you very much, Senator.

Senator CHILES. Ernie, have you got a statement? Then I will question you and Sid together.

STATEMENT OF ERNEST SAMUELS, PRESIDENT, CONDOMINIUM AND CO-OP OFFICERS ORGANIZATION, INC., MIAMI, FLA.

Mr. SAMUELS. Thank you, Senator. My name is Ernest Samuels. I live in North Miami Beach, Fla. I am the president of the Point East Condominium Owners Association in North Miami Beach, a condominium of 1,266 apartments. I am also the president of the Condominium and Co-op Officers Organization which organization has 150 member associations having approximately 50,000 condominium units.

I, too, have presented a statement but I will not read it.

Senator CHILES. Your statement in full will be in the record.

[The prepared statement of Mr. Samuels follows:]

PREPARED STATEMENT OF ERNEST SAMUELS

My name is Ernest Samuels. I reside in North Miami Beach, Fla. I am the president of the Point East Condominium Owners Association in North Miami Beach, a condominium of 1,266 apartments. I am also the president of the Condominium and Co-op Officers Organization, which organization has 150 member associations, having approximately 50,000 condominium units.

For the past 10 years, I have been actively involved in the problems of condominium ownership and have testified before congressional and State legislative committees in connection with proposed legislation toward alleviating some of the major abuses prevalent in the development and sales of condominiums.

It is generally recognized that condominiums are the most desirable forms of housing developments. The cost of individual homes is way out of the reach of the average buyer. Property values have skyrocketed to the point where a private one-family home is only available to the wealthy.

There is much to be said in favor of condominium living. Firstly, a good percentage of retirees coming into Florida are of the medium and fixed income class. They put a major portion of their life savings to a retirement home in anticipation of living there for the remaining years of their lives in a secured atmosphere. They anticipate no increase in the cost of operating their newly acquired home. They assume no problems of maintenance, operation of the building, or the

repair of any of its facilities. Living in close proximity with their neighbors of the same age group and more or less of the same interest makes for a more desirable atmosphere, as well as a greater sense of security in their new surroundings.

There are many other reasons why condominium living is desirable to the retirees. They may, if they wish, join many organizations and clubs right in their own surroundings and thereby enjoy community life; make use of the common facilities, such as cardrooms, saunas, swimming pools, club house, etc.; attend social functions and, in some larger condominiums, regular weekly shows right in their premises at extremely reasonable charges; all of this without any of the responsibilities connected with private homeownership.

CONDOMINIUM MARKET EXPANDING RAPIDLY

There are over 600,000 condominium units in the State of Florida and the present market is expanding at a rapid pace. Without question, condominiums are the future of the housing industry because of the rapidly rising cost of land values and the fast disappearing land for individual home construction. This type of ownership probably accounts for 60 to 70 percent of the total housing market.

Back in the years of 1965 to 1974, during the initial stages of the development of condominiums, many abuses have occurred both in the development and in the sales areas. Let me list some of the outstanding problems encountered in those years.

Management.—Developers initially entered into management agreements with the associations controlled by them prior to the sale of the apartments. Some of these management agreements were 25 years or longer at fees out of proportion of the normal management fees charged by others. Some developers had absolutely no experience in managing the complex affairs of a condominium or the knowledge of dealing with people. This resulted in dissatisfaction and resulted in costly litigations. Some developers neither had the time nor the patience to devote themselves to the management of the property and have delegated their duties to incompetent, inexperienced managers—again causing much dissatisfaction and litigation.

Shoddy workmanship, in many instances, resulted in additional litigations. No warranties were given to the buyers and the developers disappeared immediately after the delivery of the last unit sold, leaving the unit owners with the complex problems of restoring the buildings into usable condition.

One of the greatest abuses perpetrated upon unsuspecting buyers was a 99-year lease, also entered into prior to the sale of a single apartment by the developer with himself, on common recreational facilities. Most buyers believed that these common areas were part of their purchase and that they owned an undivided interest therein. These leases provided for the lessee unit owners to pay all taxes, maintenance, replacement, repair, while the rental paid to the developer on a net basis without any offsets. In addition, they contained a clause whereby the rental escalated with the Government's recognized cost-of-living index of all commodities, including food. To secure the payment of this obligation, a lien was placed on each apartment, subordinate only to the banks first mortgage.

INDIVIDUAL BUYER CANNOT UNDERSTAND COMPLEX DOCUMENTS

These, and other covenants, were contained in a document of 100 pages or more. These complex documents could never be understood by the average individual buyer and even a lawyer could not immediately determine their meaning or the results that may flow from them. Let me illustrate the result of a lease in our complex.

Our initial annual rental in 1967 was \$221,000. In 1975, with the escalation clause, this was increased to \$357,000. It is calculated that the next increase, which comes into being in 1980, will bring the rental to \$475,000. You can imagine what this will mean in another 5 or 10 years, not alone for 99 years. Surely this homestead will be confiscated for nonpayment of this exorbitant rental. Furthermore, how can anyone imagine a swimming pool, a sauna, or, for that matter, the entire recreation building itself to stand for 99 years and the use of which to be conditioned upon the sale of a home to an unsuspecting retiree 70 years of age or older. Anyone can see that a person on a fixed income will lose his home in a few more years, for it will not be economically feasible for him to carry it at this escalated rental. For the past 10 years, we have worked with our State legis-

lators and called their attention to these and many other abuses. Many laws have been passed each and every year correcting some of them. Finally in 1975, the Florida condominium law, chapter 718, was passed which addresses itself to most of the problems, other than these leases.

- (1) No more long-term management agreements are allowed.
- (2) There is a full disclosure law requiring that all conditions of the sale must be clearly spelled out.
- (3) There are warranty provisions in the law.
- (4) Leases are permitted, but escalation clauses in the leases are no longer permitted.
- (5) Specific provisions and guidelines are laid down for the unit owners to assume control of their own associations.

The above are but a few of the more important laws. The department of business regulations is charged with the enforcement of the condominium law. The developers are required to file their documents with the department prior to the sale of a single unit in the condominium. The documents must conform to the requirements of State statute 718.

It is generally recognized both by the legislators, as well as the developers and condominium buyers, that the present Florida statutes fairly adequately protect future buyers of condominiums and that the State's regulatory agency can enforce the laws. Presently, unit owners contribute 50 cents annually toward funding this State agency.

The problem is for the more than 400,000 people who purchased their apartments prior to these protective laws. These are mostly retirees on fixed incomes and on social security and they are locked into this 99-year recreational lease with its onerous escalation clause. They are the victims who have not been helped, either by the courts, where hundreds of suits are pending for the cancellation or modification of these leases, or by the State legislature. The courts refuse to cancel or modify them while the legislatures' attempt to retroactively modify or cancel them was declared by the courts to be unconstitutional. The one avenue open to these owners is litigation on the question of unconscionability.

NEW LAW WOULD PROHIBIT ESCALATION CLAUSES

Senate bill (S. 2919) is a very comprehensive bill which, if passed, will certainly set up adequate minimum national standards for the protection of condominium buyers. Most of the provisions contained in the bill are on the statutes in the State of Florida. It is noteworthy, however, that section 209 of S. 2919 lays down the conditions under which a lease on a recreational facility is deemed unconscionable and gives the condominium association the right to ask a Federal court for either the cancellation or modification of the terms of the lease. Section 210 of S. 2919 outlaws future escalation clauses in leases and specifically prohibits these escalations in any lease regardless of when it was entered into. Obviously this section is retroactive to all leases.

There are two problems which I see with this law. One, that the law will not be effective until 1 year after it's passage. This may mean 2 or 3 years' delay and more escalation. And while litigation on unconscionability is permitted, unfortunately it might take perhaps 10 years before the constitutionality of this law is tested in the Federal courts. People living in condominiums who will be affected by this bill are mostly retirees who were probably 65 years old or older in 1967 to 1974, during which years they purchased their apartments. Accordingly, most of them are now well past their 70's. Unfortunately they, or most of them, will not be around to test this law or get any benefit from it unless something can be done to expedite the resolution of this serious outstanding problem.

As a possible solution, I respectfully submit the following:

(1) The law, if passed, should become effective either immediately or 90 days after passage. Certainly not 1 year after, which is too long a period of time.

(2) Some provision should be made whereby, after the constitutionality of the law is tested in court, the case may be submitted from the trial court directly to the Supreme Court of the United States for determination. Perhaps in this way years of litigation might be saved.

(3) Add to section 210 the following: "No lease on common recreational facilities in a residential condominium may be entered into for a longer period than 21 years. It is the express intent of Congress that this provision shall apply to all future, as well as existing, leases regardless of their execution date. This provision applies to leases which contain the same characteristics as outlined in

section 210, paragraphs F 1, 2, and 3, and with the same exceptions as contained in paragraphs G 1 and 2."

MORE REASONABLE LEASING ARRANGEMENT?

I feel that to make this law effective and really helpful to condominium owners with their 99-year recreational leases, we must limit their term. No building or facility will ever endure for 99 years. It is totally unrealistic for a contract to require the return of the leased facilities in the same condition as when received. How can a court of law expect the return of these facilities in 99 years? This kind of contract is made on land, but never on buildings. It is totally unrealistic. A 21-year term will bring about a more reasonable leasing arrangement. Land has always been leased in the past for long periods, but swimming pools, saunas, cardrooms or bowling alleys—never. They will not last even as long as 21 years. Much of it will have to be rebuilt to be usable.

I liken this kind of contract to the inconceivable supposition that all car manufacturers could offer their cars for sale, retaining title and leasing the transmission of the car for 25 years at \$100 per year, with an escalating clause, and with the proviso that buyers return the transmission in its original condition to the seller after the expiration of the term of the lease.

Would such a contract be permitted by law?

Should not such contract, even if legal, be not reformed to the lifespan of the car of say 5 years?

Would such contract be deemed reasonable and stand the test of fairness?

Only Congress can right this wrong.

As a further suggestion, the law should provide that the purchase price after the 21 years shall be the appraised value of the property by the county for tax purposes at the time of the construction of the facilities. Nothing less than some reasonable guideline for the rescission or modification of the 99-year lease can solve this problem.

It is the hope of the thousands of condominium owners that Congress will correct these abuses of the past, free these senior citizen retirees from the onerous agreements and bring about a just and honorable resolution to the problem—otherwise they face the eventual loss of their homes. They have been crying out for justice for 10 years. Now is the time to help them—before it is too late.

Mr. SAMUELS. I would like to address myself to some of the points at issue which you have raised to me. The first will be the one that you are asking me: Why was an organization needed in the State of Florida consisting of condominium owners and what did they do initially when they were organized? Well, I moved into the State 11 years ago and quite frankly I recognize that I didn't even know the meaning of the word "condominium" when I first moved in, and neither did some of my people who moved into the same condominium with me. We had a 110-page document submitted to us after we had purchased and 90 percent of the people, I don't think, ever read any portion of it or, if they did read it, could not understand it.

Senator CHILES. I am a lawyer and I will have to tell you I have not read all of the documents of either one of the condominiums that I have purchased.

"TAKE IT OR LEAVE IT" OPTION

Mr. SAMUELS. Well, neither did I. I would say that there were any number of attorneys moving into our condominium who never looked at these and if they did look at it, it would not help any because either you took the apartment exactly the way it was with these documents or you didn't take it at all and that was the choice.

Senator CHILES. Confucius had a saying that a lawyer who represents himself has a fool for a client.

Mr. SAMUELS. Right.

We recognized early in our residency in this condominium that there were many pitfalls; then we started to read the documents and begin to discuss it among ourselves to understand what we were in for. Of course one of them, as has already been pointed out to you by the previous speakers, was the management agreement, and the second one was the 99-year lease which tied us for 99 years to a recreational facility—whether or not we used it—at a very seriously high level, escalating with the cost-of-living index. Now we didn't know what that meant and certainly didn't know the results that would flow from that kind of escalation clause.

We started to organize, and after we organized we recognized that even the management agreement was so basically unfair and unconscionable that we determined that that was one of the agreements that we must break first. The developer was getting about \$80,000 a year for managing, with the understanding that he can hire help to his own choosing. He did hire a manager for \$21,000 to \$25,000 annually, put him in there, and all he did was peer around the outside, coming once a week to sign the checks for the employees. We realized that that put us out to about \$100,000 annually between the management.

The second thing was that we have been given a medical building which they said was for the benefit of the condominium owners. The doctors who were in the medical building were paid for by us with a salary of \$24,000 each, annually. We were all retired people and we didn't have to contribute to a doctor because most of them, or at least, I would say, 95 percent of them, were on medicare. Nevertheless, this medical building costs in the area of \$75,000 to \$100,000 annually because we also paid for the doctors' nurses, and there were three of them plus other employees.

SADDLED WITH UNFAIR CONTRACTS

So you see, we had determined that we have to do something and this is what caused the organization to be formed because we recognized, having discussed this with other condominium executives and leaders, that many of them were saddled with similar agreements. Maybe not all of them were this kind of management agreement, but most of them were saddled with many of these unfair and unconscionable contracts.

We litigated through the courts for 10 years. The only thing that we have been able to gain is a settlement agreement because in the Federal court prior to trial the developer stepped out of the management after we had paid him at least \$1 million for the prior years for managing or not managing.

In 1970, we took over management and I have undertaken to manage the condominium myself without any extra help for management services. I have had some experiences in that area. We were fortunate enough to save not only the \$100,000 which we had paid out for management services and resident manager but also with our careful purchases and cutting down on costs generally.

In addition to that, since we are a large organization of 1,266 apartments, we have been able to institute our own maintenance program and in some way or another we have been able to do our own work for the maintenance of the total complex without having to hire any outside

contractors for doing any kind of work whatsoever. We do our own electrical work, our own plumbing, our own painting. We paint our own buildings. We purchased equipment for roofing.

In other words, the key to our setup was no outside contractor to the extent that we can afford to do it with our own help. We have a substantial number of help so that we have been able to use our force so that in 8 years of management, Senator, we have not had one single increase in the maintenance.

Senator CHILES. My understanding is that Point East is negotiating a fairly good management agreement with the present manager now. What are they paying the present manager?

Mr. SAMUELS. The present manager gets zero salary. I think the price is right there.

Senator CHILES. I think by congressional edict today I am going to double that salary. As of now, Ernie, we will double that to two zeros rather than one.

Mr. SAMUELS. Yes.

Additionally, my policy was that anybody who wants to help out in the office in any area of the organization also is without any salary or any compensation whatsoever. We do have a policy that no condominium owner will do any actual work for condominium unit owners. We don't allow that. We strictly are doing it by paid employees. Anybody who is a paid employee is the only one who can do any work in the condominium.

Senator CHILES. Do you have an arrangement like the hunting camp cook where, if you don't like the food, you get to be cook? If somebody does not like the way you are managing, they can take over under the same zero salary.

Mr. SAMUELS. That is right.

PEOPLE CONCERNED ABOUT EACH OTHER

Now we are able to handle our affairs very successfully in this way. We have many service and general organizations. We have 32 clubs in our condominium, Senator. Of course, as Anne so well brought out, the people are concerned about each other and they are trying to help each other when the need arises. In addition to that, we are very charitable. We have five or six charitable drives and we have been able to help all the charities locally and others very substantially in the past.

Now addressing myself to the organization itself and the reason for which it was formed, I can readily understand that everybody knows now why an organization of that kind was needed when the legislators had to be told exactly what the problems in condominiums were and they had to be told how to try to correct them. For the last 10 years we have been discussing these things with our legislators jointly and severally and we have been able, Senator, I believe, to pass laws and to pass laws right up to last year which substantially protect the condominium owners.

I believe that the Florida condominium law can be really an outstanding contribution to the whole country as a model of condominium law which is protecting the buyer in all of the areas that we felt needed protection, such as the management agreement, and even in the area of the recreational lease. Now of course we recognized that the

State supreme court said that once you enter into a contract it becomes a contract and there is nothing that we can do to change it. Last year the supreme court denied any litigation which would try to alter an existing recreational lease. All they have permitted was that the legislature having passed the law that no more escalation clauses will be permitted—they will not be permitted on the future leases, but are on the past leases.

The Senate bill which you are trying to put into law is excellent insofar as cutting both escalation clauses on leases, no matter when entered into. It is an excellent law and I am sure it will benefit many condominium owners, excepting those who have already been into these leases for the last 10 years and who have suffered already with the many escalation clauses.

Senator CHILES. Ernie, I think we have to continue to make it very clear to people that this is a bill which we hope would give the Federal courts jurisdiction in this area, but it still would have to be tested and we could not guarantee by the passage of this act that it would cut off all these future leases.

Mr. SAMUELS. That is the area which I am a little bit worried about.

COURTS MUST EXAMINE LEASES

Senator CHILES. I just want to make sure that people fully understand that the day that law is passed that does not mean all these things are gone, it means the beginning of another series of tests in the courts to see if we can get the courts to determine that these are unconscionable leases, that they should not be continued. We feel like the court would grant some relief there, but it is a future thing; it is not something that the law itself says.

Mr. SAMUELS. Of course not. You don't decide whether the law will be held constitutional or otherwise; that is for future generations to find out and that is what I am afraid of. I think that this generation will never come to the end of the litigation which might follow this law, if and when it is passed into being. In my paper I have suggested to you that you include in this law, since you are including the cutting off of the escalation as of the date of the enactment of the bill, that perhaps that could be changed to maybe 90 days thereafter, if it is possible to change it. Of course a year is, again, adding another year to the already lengthy litigations that have been in the hopper and will follow.

I would also suggest, if that can be added, that you limit any lease to 21 years instead of 99, and you say that no lease may be entered into for more than 21 years. Even if a lease was entered into, the limitation of the lease should be 21 years on past leases.

Now if you can pass a law cutting off the escalation, I think you can also pass a law making a limit on the lease 21 years. The reason I make that statement is because we all recognize, Senator, that a swimming pool or a sauna bath or anything that is built, such as even a building, can never last 99 years, and these leases call for the return of the facilities at the end of the 99-year period to the developer in the same condition as when he received them. Now, of course, nobody will be there to return it in the same condition except one or two people whom I am looking at here.

Mr. SPEIGEL. I'll be there.

Mr. SAMUELS. Of course you will.

It is a condition in my opinion which is unconscionable, to say the least. I cannot understand how anybody can lease somebody a swimming pool for 99 years and say to him: "You will return that swimming pool in the same condition to me as when you leased it and, in the meantime, you will be paying a rental on it." That is where the pool would have to be rebuilt 7 or 10 times in the 99 years. The fact is that the recreation building or any building that you put up will never be there in 99 years.

BUILDING HAS EXISTING PROBLEMS

We have a problem now in the 20 buildings that we have where the plumbing is rusting out, and the plumbing runs under the buildings in the center of the six-story structure. Now how are you going to repair those things? So far what we have been doing is, we were digging and tunneling under the buildings to fix some of the leaks that you can hear. If you listen to it with a stethoscope, you can hear the water running.

Now what is going to happen—not in 21 years, Senator, but in 3 or 4 more years? I think that all these buildings will have to be replumbed. So how can you expect a recreational facility to last for 99 years and the use of which you can condition upon the sale of a home to a buyer that is 70 years old already? I think the whole thing is a ridiculous thing and I don't think that the law should permit it, or should have permitted it to begin with. Unfortunately, that is what it is. I mean, the law is the law and the Supreme Court of Florida already said that that is all you can do. If you enter into this lease, you better live up to it.

Now I know that the unconscionability area which you are addressing yourself to also is an excellent one, provided of course, that these leases are really unconscionable. It has not been tested in the State of Florida yet. I know that Florida does have this law also. You know the Florida Legislature addressed itself to this area and said that the lease is unconscionable if it contains all the clauses that these leases do contain. Every one of them does contain a clause that the unit owners will pay all taxes and maintenance and everything. That kind of contract is unconscionable. Well, of course it is, but I hope that the courts will also hold it to be unconscionable and that they will try to reform some of it, at least to the point where these people can live with it.

I mean we are paying from an initial \$221,000, next year \$500,000 a year for our recreation facility and unless something is done, I think the best thing that any condominium owner can do will be to try to buy these contracts and not permit them to run for 99 years, but try to negotiate a reasonable purchase.

Senator CHILES. That is what many of the associations are doing.

COURT CASES COULD LAST FOR YEARS

Mr. SAMUELS. Many of the associations are doing that, and quite frankly we are doing it. I know that if we finalize our proposed

purchase we are going to be paying about four or five times the original cost of the facility in addition to the moneys that we have already paid for the use of the facilities. I know that many condominiums are doing it in anticipation that no law will actually affect existing contracts and I agree with you 100 percent, Senator, that there will be test cases on this for years to come which will probably end up in the Supreme Court of the United States for a decision. The final decision probably will be in the U.S. Supreme Court maybe 10 years hence. Now where these poor condominium owners will be by then I don't know. I know where I will be.

Senator CHILES. Thank you, sir.

Mr. SAMUELS. Thank you.

Senator CHILES. Both of the organizations that you represent include cooperatives as well as condominiums. Do co-op unit owners have similar concerns?

Mr. SAMUELS. Yes; they do have the same exact conditions that exist in condominiums. In many co-ops, unfortunately, the ground was leased to them only, you see—all the ground, even under the buildings. Of course, ground leases are a little worse to overcome than leases on recreational facilities which are built, because the ground leases have been made for hundreds of years or probably thousands of years—for 99 years or longer. Some of these co-ops have actually the ground under their buildings leased to them.

Senator CHILES. That is a good point. Senator Stone and I are looking at the possibility, and the chances are we are probably going to offer an amendment to the legislation to try to include co-ops.

Mr. SAMUELS. I think the Florida condominium law does include condominiums and co-ops under one heading. They do address the co-op.

WHAT IS HAPPENING NATIONALLY?

Senator CHILES. Sid, as I understand, the Condominium Co-op Executive Council has to exchange information between association executives on matters of common concern. In terms of the national scene, do you believe there is enough information exchange on condominium issues throughout the United States in spite of the fairly recent and welcome surveys by the U.S. Department of Housing in condominiums? Do we really know what is happening in this fast changing part of our housing scene across the country?

Mr. NERZIG. The only thing that we do work through is the CAI. You have Bob Rosen as your witness here today who gathers most of the information throughout the country and disseminates it through its organization to all of us, but we, ourselves, are in touch with a few of the State organizations and we exchange information.

Coming back to a few things that Ernie said here, there is one other thing that I think, Senator, we have to look at in that national piece of legislation, and that is where we have the single-family dweller, the single-family homeowner who is also living in a condominium concept where there are some portions of common ground, common elements, common payments. The bill does not address itself to that and we have to cover that also as we go along with it.

We also wanted to take the opportunity, of course, to thank the Senate for incorporating into it some of our State legislation in our

unconscionability bill—of taking five points from that and forming that into the Federal bill which, of course, you know we have been up there with you trying to move it along and get it going. With all of that, Senator, there is something else, too, that nobody has mentioned. I don't think many people have given thought that sometime in the future, and not too many years from now, we are going to hit a zero base as far as birthrate is concerned.

We have been dropping in our birthrate year after year which poses for the future a smaller working force of people than we have today. Those people will be the ones who will have to carry the brunt of the cost of maintaining whatever programs are then set up for the aging, and that is going to be a very difficult problem because, if we just take a look at England and the debt that England is in, she can never pull herself out of that because she has been on a zero base for quite a number of years. The work force is too small to be bale to produce enough products for sales throughout the world in order to help herself along. I think that we should look a bit to the future along these lines, too, so that we don't find ourselves falling into a trap in the future where any policies that we try to put out today are just going to fall apart and collapse.

MISMANAGEMENT ADVERSELY AFFECTS PROJECTS

Senator CHILES. That is a good point.

In 1975 the HUD condominium study forecast that mismanagement was one of the greatest long-run threats to condominiums. Ernie, it looks like Point East is very fortunate because of your experience and background and the team that you have brought together there, but it does not appear that that is the picture everywhere. Are you aware of cases in which faulty management has already adversely affected projects?

Mr. NERZIG. Well, faulty management has been mainly amongst those who have hired outside management firms who have not fully performed what they had contracted for and then they say, well, the owners of the association offices had to break their contracts and get rid of them—some of them at great cost, some at litigation, others just managed to take the money and then fold up and disappear. That was one reason why, I think it was last year, that we passed that piece of legislation where, on appliance services, they had to be licensed and bonded in order to protect our people.

There were firms going around getting up-front money, and then within a few months closing up. We protected them along those lines and we look again to other areas that we can get into also.

Another thing that we, the organization—when I say “we,” I mean the CCCE—is working on right now is a mass insurance program for the condominium owners' meaning on their association buildings and properties, casualty and liability, so that instead of going in and getting a price on a piece of property of \$2 or \$3 million, we are going in asking for prices on one-half a billion. We will also be able to cut out the agents' commissions which, in turn, is also going to serve and save all our members quite a bit of money. We believe that we have got something very good that we have to put to use, and that is mass pur-

chasing. As long as we stay in the organizations that we are in, we can utilize that to the benefit of all our members.

SPECIAL CORPS OF ADMINISTRATORS

Senator CHILES. Well, again one of the points that I am seeking here is that Point East was very fortunate in having some skill there on the part of their retired people who can perform that management role. That is probably not going to happen in every case, and for some it might be that the worst thing they could do is to take over themselves without the skills and ultimately run it into the ground. Have you ever thought of being in touch with the Small Business Administration, for example, to discuss whether some special corps of administrators could offer advice or help to get some skilled people that could provide some of the help that Point East seems to have, and that all of the associations would need?

Mr. SAMUELS. Let me tell you, Senator, what one of the major problems is when the association tries to take over the management of a condominium. Unfortunately what happens is, maybe 15 or 20 people are directors in the association, and each one of them would like to manage. You and I know, Senator, that no big business can be managed by 20 people when each 1 of the 20 thinks that he knows more than the next one and that he would do better if he was given an opportunity to really do the job.

In my meetings with many of these condominium associations, I try to explain to them that either they have to get one single person who really knows what he has to do and have him manage like a big business is managed, by someone at the top who then delegates to the various areas authority to do things—he is the one who has to be the final judge and the final jury as to what is being done and what is not going to be done. Unless that, in some way, can be brought to the attention of these people, the problems that arise are inner fights, inner battles between the directors themselves and between the so-called volunteers who are trying to do a job that they are not capable of doing or not trained to do; each one trying to outdo the other.

Now in those instances perhaps one single manager would be the solution. Slowly as they learn, I think, they come to the realization as to just what is best for them or how best they can manage. I think eventually they will handle themselves. Of course they slowly come to really know; they teach the others and they try to help themselves properly.

ALTERNATIVES TO INSTITUTIONAL CARE

Senator CHILES. As the population of elderly residents of condominiums continue to rise—of course many of them down here enter condominium life as retirees—there is going to be a growing demand for in-home services as disabilities arise. I have been concerned about this and the Special Committee on Aging has been holding hearings on what are called alternatives to institutional care—home health care, homemakers, day care, and similar services. Do you see any special difficulties or advantages in providing home services in condominiums? I address that to both of you.

Mr. SAMUELS. Are you saying for the Government to provide these in-home services?

Senator CHILES. These would be services to help persons avoid being institutionalized in a hospital or nursing home situation. I am trying to determine what you see as the alternative.

Mr. NERZIG. If something like that could be worked out, I believe that that would be a tremendous boon to us citizens of today who are going to be a lot older in years to come.

Senator CHILES. Right now, as you know, those services are not covered by medicare.

Mr. NERZIG. We know that.

Senator CHILES. But if you institutionalize the person, then it is covered for a period of days.

Mr. NERZIG. Yes.

Senator CHILES. So would we be better off having in-home services as an alternative?

Mr. SAMUELS. Much better.

Mr. NERZIG. We would be much better off because, as we understand from possibly dealing with some members of our own families, that they would much prefer to remain in their own home, regardless of what the problem is with them. How to handle them and how we can attack it is the big problem. That would help.

EFFICIENT MANAGEMENT COMPANY

Also coming back to what you said about management before, Lauderdale West started working with the management company that performed all services for them so that they did not have anybody on their own payroll. They had no payroll taxes to pay, no deductions to have to make, no bookkeeping of their own, and it wound up giving them less problems on management and it was all professionally done. These people even gave the unit owner the service—if he needed a light bulb changed and it was too much for him to climb up there to do it, they did it; if they needed a washer changed in their sink, which is supposedly their problem, they took care of it for them. That was a 100-percent fully management company and with something like that they had no problems.

Before, when Ernie was talking about having 15 and 20 different people with 15 or 20 different thoughts, that is one thing that you usually do run into. We try to start off with our new members by trying to educate them a bit in the respect that they came down here to buy their condominium and to live here, they not only bought what they had behind those doors of their unit, but they had also bought a number of partners that they had to learn to live with and to work with and the sooner they realized that and started to work together, the better off they all were. It is a matter of educating the people.

Mr. SPEIGEL. Senator, may I comment on this management question? The question you raise is very important and is near and dear to my heart. Senator, let me tell you that my good friend Ernie talks about management. They have 1,200 units. We have 100 in our co-op. We cannot afford management; the cost would be prohibitive. We can manage while they cannot. They have 30 board members and we have

5. Each organization will take care of their own problems as far as management is concerned.

Senator, I came down here in 1966. In the co-op I live in I was shocked a few weeks ago when I was told that we had 29 percent widows. These are women who live alone. They came down here with their husbands and, because of the span of life, they lose their mates and they are left alone. This prevails in many, many buildings where I have made inquiries. The percentage of widows we have today is anywhere from 25 to 30 percent. These women are lonesome; they don't know what to do with themselves. They are looking for company and they are looking for assistance when they are not well enough to get out and around. That happens to a person, particularly as we get along in these twilight years.

HEALTH CARE CENTERS

Now we need the health care centers. That is the thing that is most important, Senator, because I just had the experience. The choice was either to stay home for another week or spend \$1,500 or \$3,000 for the week at the hospital. Because I am not on medicare, they say, "Don't worry about it; the Government pays for it." I said no, I would rather be home. My doctor suggested this home health service that he sent in and they came there the first day after I got home and said, "We will come." Two days later they said it was not necessary. The nurse came in and it was wonderful. The Government saved thousands of dollars, and I was much happier because I was at home.

That is an important point, Senator, in-home health care service and social service. I know we have it for Hutchinson and that group, but they cannot cover enough of it. Maybe it is your fault. When I say "your fault," I mean the U.S. Congress, when they don't provide enough money. Maybe it is Jimmy Carter's fault he cuts the money in the wrong places.

We need bus transportation. I have been appointed by the Governor to serve on the NPO. We worked with that and, thanks to you people, the money is there, but that takes a long, long time.

You said nursing care. We don't want to go to nursing homes; we want to remain at home. This home health care would be the greatest, Senator. If you would lend your efforts—and I am sure you think well enough of it to lend your efforts to see if that can be continued or improved upon—we would all owe you a vote of thanks.

Senator CHILES. Thank you, Jack.

Home health care and home health care legislation and catastrophic health insurance are going to be major issues in the 96th Congress. While the cost of national health insurance for all of our citizens may be prohibitively expensive, amendments are needed to medicare and medicaid that would offer protection against the high cost of care for those with the long-term catastrophic illnesses. I hope that is something that the 96th Congress is going to be able to address itself to.

Our next witness is Linda Brickman, who is going to present a statement from Senator Stone. As I mentioned at the outset, Senator Stone is a cosponsor of the legislation that we are talking about, and certainly one of his major interests has been in the condominium

problem. We are delighted to have Linda here today presenting his statement.

STATEMENT OF HON. RICHARD STONE, A U.S. SENATOR FROM THE STATE OF FLORIDA, PRESENTED BY LINDA BRICKMAN, DISTRICT REPRESENTATIVE IN THE SOUTH FLORIDA AREA

Miss BRICKMAN. Good morning, Senator Chiles, Representative Dyer, Commissioner Speigel.

My name is Linda Brickman and I am Senator Stone's district representative in the Miami and south Florida area. Senator Stone's district office is located in Miami.

Senator Chiles, thank you very much for allowing me to appear at these hearings in order to present Senator Stone's testimony on condominiums and other forms of common residences for older Americans. Senator Stone regrets that he is unable to be here in person this morning and he has asked me to convey to you his deep appreciation for conducting these important hearings. As you know, Senator Stone shares your interest and concern about the quality of older Americans' lives. He intends to join with you and the other members of the Senate Special Committee on Aging in efforts aimed at relieving the problems that trouble many older Florida residents.

I shall now read Senator Stone's statement.

Senator Chiles and members of the Senate Special Committee on Aging, I appreciate this opportunity to present testimony about housing alternatives for older people and specifically about the community living arrangements that are so popular here in Florida—condominiums, cooperatives, homeowner associations—and their impact on the lives of older people who live in them.

Florida offers a wonderful warm climate for retired people which can be enjoyed the year round. This atmosphere is appealing to active individuals who want plenty of outdoor recreation and also to persons who may need a temperate climate for their health.

ATTRACTIVE LIVING ARRANGEMENTS

All Floridians want to live in comfort and have a sense of economic security. Many people purchase a condominium in order to avoid having to pay increasing monthly rents. In addition to the economic advantages of owning a home, including tax benefits and the opportunity for equity appreciation, most Florida condominiums provide amenities such as swimming pools, tennis courts, and other recreation facilities which individual buyers otherwise would be unable to afford. Also the condominium unit owner has fewer maintenance responsibilities than the owner of a conventional home. These factors all contribute to making condominium living extremely attractive for retirees in Florida.

Unfortunately, in their eagerness to settle in this wonderful environment, many people were victims of unfair sales practices. The Federal Trade Commission has received thousands of letters complaining about shoddy condominium construction and the developer's failure to honor the warranty. Public concern about such abuses was

significant enough for Congress to mandate a study by the Department of Housing and Urban Development on condominiums and cooperatives. The study identified the major problems associated with condominiums:

One: Construction was often of poor quality and purchasers were not protected by adequate warranties on their units and the common elements.

Two: Purchasers were unwittingly committed by some developers to long-term recreation leases with extremely high escalation clauses tied to cost-of-living indexes.

Three: Developers failed to pay common expense assessments on their units.

Four: Purchasers' deposits were not escrowed and were often lost if the developer went into bankruptcy.

Five: Condominium documents were too complicated and difficult for the average purchaser to understand.

Six: Tenants were displaced without sufficient notice when the rental units were converted to condominiums.

Seven: Unit owners' associations had major problems because they were not prepared to operate condominium projects.

CONDOMINIUM ACT INTRODUCED

In 1977, in response to the concerns expressed by thousands of Florida condominium owners, President Carter asked the Department of Housing and Urban Development—HUD—to prepare national legislation which would eliminate the most abusive practices associated with the sale and ownership of condominiums. In the course of drafting the bill, HUD consulted with State regulators and condominium associations and developers in order to provide a proper balance. After carefully reviewing the legislation and recommending several necessary changes, the bill, which has been called the Condominium Act, was introduced in the Senate by you, Senator Chiles, and me on April 13, 1978.

I would like to highlight some of the features of the bill.

First, the bill provides for private action in Federal courts. But because we would prefer the States to regulate condominiums, there is a mechanism created that allows the Federal Government to certify State laws which guarantee equivalent or greater protection for condominium buyers. States like Florida, which have strong condominium statutes, would be certified immediately.

The bill would require full disclosure to the purchaser of all documentation and information necessary to make an informed and prudent buying decision. This information includes descriptions of the condominium, statements concerning what the developer is obligated to build, completion schedules, and purchasers' rights. Estimated budget figures for the owners' association would also be disclosed.

While disclosure of important information can help prevent consumer ripoffs, the effect of disclosure depends on the buyer's ability to understand the information and to use it.

In order to insure that buyers have time to review all the information, the bill provides a 15-day right to rescind after the purchaser

signs the sales contract or receives the disclosure information, whichever occurs later. Antifraud provisions would protect purchasers from misstatements in the disclosure, advertising, or promotional material.

The legislation would require the developer to warrant common elements of a condominium for at least 3 years and to give each purchaser a 1-year warranty on the unit. Special provisions would apply to warranties of converted condominiums. Similar disclosure and warranty requirements already are in effect in Florida and the Florida statute served largely as a model for the national legislation.

In order to provide unit owners with an opportunity to gain experience in the operation of the condominium association, the unit owners would elect a minority of directors of the association prior to the transfer of control.

PROTECTION AGAINST "SWEETHEART" CONTRACTS

To protect against past abuses that have arisen through the use of long-term management agreements and leases, the proposed law also provides that the association can terminate certain "sweetheart" contracts and leases which are critical to the operation of the condominium and to the unit owners' full enjoyment of their rights of ownership.

The bill also contains some retroactive changes. While the U.S. Constitution explicitly prohibits States from abridging previous contractual rights, there is no such prohibition on the Federal Government. The U.S. Department of Justice reviewed the Condominium Act before it was introduced and concluded that the bill "has no serious constitutional impediments * * *." I request that the letter from the Justice Department be printed after my statement in the hearings record.

Long-term contracts that provide for the operation, maintenance, or management of the association or property serving the unit owners, which are made between the developer, or an affiliate of the developer, and the owners' association, while the developer still controls the association, may be detrimental to the interest of the unit owners. The unit owners could terminate these self-dealing contracts without penalty by two-thirds vote of the association after they assume control of the project.

Recreation leases are the most controversial aspect of condominium ownership in Florida. Long-term recreation leases between the developer and the unit owners are not always bad. Leases often are a reasonable way to provide expensive amenities. But, in some cases, a developer may have retained the ownership of the recreational facilities and leased them to the unit owners—on a noncancelable basis—for periods as long as 99 years. The unit owners are required to pay all, or substantially all, of the operating and maintenance costs of the facilities.

The proposed legislation would make some automatic rent increases unenforceable in the future. When there is a net-net lease, and it is tied to a cost-of-living index which has no relationship to the developer's obligation under the lease, future increases would be void. These leases had to be accepted or ratified by the purchasers as a condition of purchase.

In addition, the unit owners can agree, by two-thirds vote, to seek a judicial determination that such a lease is unconscionable. The bill lists certain characteristics that the lease must have in order to bring this action, such as the fact that it had to be accepted by the purchaser as a condition of purchase. It also sets forth several standards for the court to consider in making a determination of unconscionability. These include any gross disparity between the obligations incurred and the value of the benefit derived.

STATE LAW CHALLENGED

The unconscionability criteria are similar to those provided in the Florida statutes. They are intended to serve as a backup in the event that the State law which is currently being challenged is ruled unconstitutional.

These provisions would apply to a lease in existence at the time the bill is enacted, but any action must be brought within 3 years of enactment.

Senator CHILES, since April when we introduced the Condominium Act, I have received thousands of letters from Floridians expressing strong support for the measure and imploring Congress to act quickly, particularly to ease the burdens of prospective recreation lease-fee increases. I have also received many constructive proposals, as I am sure you have, suggesting ways in which the bill can be improved. I am carefully considering all of these suggestions and would certainly welcome others. For example, in response to requests, I have prepared an amendment which would provide similar protections for purchasers of cooperative units. Prior to the beginning of the 96th Congress in January, I hope to sit down with you and review the Condominium Act in light of these hearings and the suggestions we have received and to make whatever changes are necessary before reintroducing the legislation.

Thank you again for this opportunity. I look forward to continuing to work with you on solutions to housing problems facing the elderly living in Florida condominiums and throughout the United States.

Senator CHILES. Without objection, the letter from the Department of Justice that was referred to will be included in the record.

[The letter follows:]

DEPARTMENT OF JUSTICE,
Washington, D.C., November 18, 1977.

HON. JAMES T. MCINTYRE, JR.,
Acting Director, Office of Management and Budget, Washington, D.C.

DEAR MR. MCINTYRE: This is in response to your request for the views of the Department of Justice on a draft bill prepared by HUD entitled the "Condominium Consumer Protection Act."

The proposed legislation would provide for comprehensive Federal regulation of the condominium industry. The statutory scheme would create certain legal rights in the condominium unit purchaser, regardless of whether the purchase date was before or after the passage of the act. (These rights are enumerated in the "explanation and justification" accompanying the draft bill.) Additionally the bill will alter substantially the nature of the contractual relationships between condominium developers and unit purchasers and will also establish both civil and criminal enforcement powers to assure compliance with the bill's requirements. Because the bill touches upon an area not heretofore subjected to Federal regulation, and because it will affect in many cases important pre-existing contractual relationships, we anticipate that its provisions will receive

close scrutiny and that questions will be raised about its constitutionality. For the reasons stated below, it is the Department's judgment that the bill has no serious constitutional impediments and that, with the modifications suggested here, the bill is desirable and should be supported.

Several constitutional questions have been addressed in the course of drafting the bill. The first question is whether Congress has the constitutional power under the commerce clause to deal with the bill's subject matter. On this question we entertain little doubt that Congress does have the requisite power to legislate. The Supreme Court has consistently accorded broad latitude to Congress' power to legislate where the subject of legislation either involves alleged misuse of the channels of interstate commerce or concerns a subject which has some discernible effect or impact upon interstate commerce. See, e.g., *Atlanta Motel v. United States*, 379 U.S. 241, 258 (1964); *Katzenbach v. McClung*, 379 U.S. 294 (1964). For example, in *Perez v. United States*, 402 U.S. 146 (1971), the Court sustained the exercise of Federal power to prohibit (by criminal statute) extortionate credit transactions even though those transactions appeared to be entirely local in character. The Court pointed to congressional findings that such credit transactions had an impact on interstate commerce because they supported the operations of organized crime. *Id.* at 154-156.

In order to assure that a proper foundation for Congressional action is demonstrated it would, of course, be advisable to adduce during the hearings and deliberations on this proposed legislation evidence of the impact of condominiums on interstate commerce. To that end the Department's Lands and Natural Resources Division has suggested that:

"* * * it could be noted that advertisements for condominiums often appear in newspapers in States other than the State in which the property is located. The number of sales to persons outside of the States in which the property is located would be an additional indicia of interstate commerce. The financial arrangements for the conversion of a rental unit to a condominium form of ownership can also be explored."

Further, HUD can present evidence on the highly mobile nature of our society and how interstate travel is often critically affected by housing. We are of the opinion that congressional findings of this sort would amply support the exercise of Federal power in this area in light of the foregoing authority supporting Congress' power under the commerce clause.

A second constitutional question may arise due to the fact that several of the bill's provisions will have a retroactive effect upon existing contracts between unit purchasers and condominium developers. For example, the bill would void existing lease provisions that require unit purchasers to pay all attorneys' fees or judgments incurred by the developer in suits between that developer and the unit purchasers—section 203 (b). Similarly, the bill will allow unit purchasers to set aside existing long-term contracts in which the developer has agreed to provide management or maintenance services at a time when the developer still controlled the project—section 209.¹

The argument is frequently made that congressional action having an effect on existing contractual relations is violative of the Constitution. Where, however, Congress is legislating in an area within its appropriate functions, the Supreme Court has repeatedly upheld laws which have had retrospective consequences. The point has been articulated, in a passage from *Fleming v. Rhodes*, 331 U.S. 100, 107 (1945) which has often been cited, as follows:

"Federal regulation of future action based upon rights previously acquired by the person regulated is not prohibited by the Constitution. So long as the Constitution authorizes the subsequently enacted legislation, the fact that its provisions limit or interfere with previously acquired rights does not condemn it. Immunity from Federal regulation is not gained through forehanded contracts."

See also *FHA v. The Darlington, Inc.*, 358 U.S. 84 (1958). Very recently the Supreme Court has reaffirmed the general proposition that "legislative readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectation." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16 (1976). In addition to making the retroactivity argument, opponents of the legislation can be expected to make the related argument that the legislation is violative of the fifth amendment's due process clause because it interferes with the activities of condominium developers in an arbitrary manner. There is at least some indication in the Supreme Court opinions that the standards for withstanding such a

¹ See also section 210 (f) and (g).

challenge may be more demanding where the legislative action has retroactive consequences, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. at 17.

On the basis of the information set forth in the "explanation and justification" preceding the draft bill, and based upon our discussions of the bill with its drafters at HUD, it appears quite unlikely that a Court would conclude that any of the measures in this bill lack a rational basis. Of course, as with other possible attacks upon the constitutionality of congressional action, the likelihood of a successful defense against such an attack is heightened by a recorded legislative history which demonstrates the extent of the problems tackled by Congress and which makes plain the reasons why these particular means of resolving those problems have been selected.

We think it is also conceivable that some question might be raised about section 210(c) which states that certain condominium leases will be "presumed" to be unconscionable absent a "clear and convincing" demonstration to the contrary. Where it might be contended that the establishment of such presumptions and evidentiary rules are matters which are to be left to the judiciary, the Supreme Court has repeatedly held both that it is within the province of Congress to promulgate evidentiary rules and legislative presumptions and that those actions will only be overturned by a court if they are found to be "purely arbitrary." See, e.g., *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. at 30, 31-34; *Mobile, J. & K. C. R. Co. v. Turnipseed*, 219 U.S. 35, 43 (1910). As with the preceding contentions, we have little doubt that Congress' judgment can withstand constitutional challenge.²

In addition to the constitutional arguments there is one matter which the Department of Justice feels must be carefully reconsidered. Section 208(a) allows the Secretary of HUD to bring actions in Federal court to enjoin any activities in violation of the Condominium Act. Similarly, section 208(d) would authorize the Secretary to bring an action to enforce subpoenas issued under the act. The Department of Justice feels that it is unwise to vest independent litigating authority in HUD. As you know, the Department serves as the litigating arm of the executive branch in all but a very limited number of circumstances. As you also know the President has directed that further consideration be given to the question of the centralization of litigating authority in the Department of Justice. It is my understanding that the preliminary conclusions of that study support the Department's strongly held view that litigation must be focused in the Department.

With respect to this particular legislative proposal, it should be noted that the Department has already developed considerable expertise in handling litigation arising under the related provisions of the Interstate Land Sales Registration Act, 15 U.S.C. section 1701 *et seq.*

Finally, our Land and Natural Resources Division has also recommended incorporating a provision into the draft bill which would authorize the Secretary of HUD to impose civil penalties after notice and an opportunity for a hearing on the record. Noting the limited nature of injunctive relief, and the severity of criminal sanctions, the Lands Division suggests that this provision for civil penalties could be a useful enforcement tool. This suggestion merits HUD's serious consideration.

Sincerely,

RAYMOND S. CALAMARO,
Acting Assistant Attorney General.

Senator CHILES. Thank you very much, Linda.

Tom Skulac is here representing Senator Pepper. Everybody knows that Senator Pepper has had a long and continuing interest in this area of legislation and today he is holding hearings in Washington on medi-gap, one of the great problems we have of people trying to fleece some of our elderly citizens by selling them inadequate and inap-

² Included in the packet of materials presented by HUD to the Department are a series of optional provisions which HUD indicates might be considered for inclusion at a later time. The third option—one which would allow renters to force the conversion of rental property to a condominium format—raises additional constitutional questions which we have discussed preliminarily with HUD but which we have not undertaken to study in detail. We have been informed that HUD does not presently intend to recommend this provision and that if the provision is to be considered the Department will, at that time, be asked to render an opinion on those constitutional questions.

appropriate insurance policies. Tom, we are delighted to have you here representing Senator Pepper.

We will excuse you all. Thank you very much for your testimony and your interest in this area. If there is anything further that you have to present to us, as we said, the record will be open. We are delighted to have you here.

Mr. NERZIG. Thank you, Senator.

Mr. SAMUELS. Thank you.

Senator CHILES. I would also like to recognize Garson Meyer in our audience today who has served as a consultant to this committee. He has held many national positions in the field of aging, including the Presidential task force chairmanship. He is on the New York State Advisory Commission, and former president of the National Association of the National Council on Aging. I understand he is a winter resident in Bal Harbour. We are delighted to have him here today and we would like him to stand up so we can recognize him.

Thank you, sir. We hope you will change that winter residence to a permanent residence here in the near future.

Mr. MEYER. Under the condominium law.

Senator CHILES. Well, now that we have shown New York how to start theirs off, we will have to do that for you.

Also, Nan Hutchinson is here. She is the head of the Broward County Area Agency on Aging. She is going to be testifying at our hearing tomorrow. We are delighted to have you present here.

We will ask our next two witnesses to come up together. Bob Rosen, president, South Florida Chapter of the Community Associations Institute; and Sam Schoninger, president, Builders Association of South Florida.

STATEMENT OF ROBERT ROSEN, MIAMI, FLA., PRESIDENT, SOUTH FLORIDA CHAPTER, COMMUNITY ASSOCIATIONS INSTITUTE

Mr. ROSEN. Thank you, Mr. Chairman.

My name is Robert Rosen, president of the South Florida Chapter of Community Associations Institute, located at Dadeland Towers, Miami, Fla. I am also president of Camino Circle Condominium, and serve as secretary-treasurer of Kings Creek Village Association, Inc., a 1,610-unit planned unit development—or PUD as it is called—which is also located in the southwest section of Miami and comprised of two different condominium associations, one being 95 units and the other being 70 units; a townhouse section comprised of 234 units; a single-family home section comprised of 68 units; and 1,067 rental apartment units together with a shopping center. I also operate a management consulting firm, Rosen Management Service, Inc., which specializes in condominium and homeowner association management.

One of the biggest problems facing the purchaser of a condominium or community-type home is an understanding of what it is he is purchasing. The concept of shared amenities found in community associations is the way of our future. No longer can the vast majority of Americans, older or younger, afford to purchase a single-family home together with the upkeep and amenities desired. The only answer is housing that takes into account the conservation of resources of shared

land. Unfortunately, many purchasers have not fully realized that with the condominium and community association concept, there is also an inherent obligation for governing the shared areas. Certain covenants and deed restrictions provide for mandatory rules, regulations, and assessments for the upkeep of these common facilities. Decisionmaking is vested into an elected representative body for the care of the property and the lifestyle of its residents.

UNIQUE ASSOCIATION

As a practitioner, unit owner, association leader, and management agent, I found the educational information, publications, and conferences of CAI—the Community Associations Institute—most helpful. In your letter you asked that I explain about the CAI. The CAI group, based out of Washington, D.C., is unique in that it is the only group in the country to represent all the segments of the condominium, co-op, and homeowner association industry, with membership comprised of community association leaders, builders and developers, association managers and management agents, public officials and association colleagues, including accountants, C.P.A.'s, attorneys, realtors, and other professionals.

Community Associations Institute was organized in 1973 by individuals interested in providing education and communication for those involved in community associations. Assistance was provided by the Urban Land Institute and National Association of Homebuilders with funding support from the U.S. League of Savings Associations, the Veterans' Administration, and the U.S. Department of Housing and Urban Development. Through research and education, CAI assists all automatic membership community associations in condominium and planned developments serve their purpose: To preserve the quality of life and protect property values by maintaining the common elements, operating shared facilities, and delivering community services.

CAI does not represent any one profession or interest group. Rather, it represents the process of creating and operating successful, viable community associations. The board of directors of national CAI, as well as the south Florida chapter, is divided equally among all five membership categories. This helps insure that the institute maintains a broad perspective, encourages communication and cooperation between the different groups, and receives diverse input of information on all aspects of association operation, a problem we talked about in your other panel this morning.

LACK OF UNDERSTANDING AND EXPERTISE

The main problem I have experienced in working with community-type associations during the past 6 years is the lack of understanding and expertise necessary in operating condominium and homeowner associations. Oftentimes the retiree who has come to Florida to relax and enjoy his later years gets elected to the board and finds himself embroiled in the day-to-day operations of a multimillion-dollar corporation. The gentleman you heard from previously and Ernie Samuels are to be congratulated in that respect. Everybody wants to put their 2 cents in, and decisions often are made as a result of who speaks the

loudest and endures the longest. Consumer education and association management operation are both necessary for the owners and operators of a condominium.

Two information booklets that would be of great help to the older American condominium purchaser or unit owner are provided at modest cost through the Washington, D.C., office of Community Associations Institute. These booklets entitled "The Homebuyer and the Community Association" and "The Homeowner and the Community Association" discuss the purchase and responsibilities of living in a condominium or planned unit development. Additional material would be helpful if either the local States or Federal Government would provide resource material easily accessible by each association.

I would like to add some additional remarks that are not in the prepared statement. Senator, as an example of you, yourself, living in two separate condominium associations, we find that America is experiencing an explosive growth in residential common interest subdivisions, condominiums, and cluster-housing communities. The extent of this growth and the suddenness with which it has occurred has been remarkable.

GROWTH OF CLUSTER HOUSING TO CONTINUE

In 1962 there were only 500 to 600 cluster communities nationwide involving property owners' associations, and there were relatively few condominium communities at all. Today—just 16 years later—there are over 24,000 such communities housing more than 7.2 million people with annual budgets exceeding over \$2 billion. This growth in condominium and cluster housing going to continue to be a major force in the residential housing market in America today. In fact, the U.S. Department of Housing and Urban Development projects that by the mid-1980's 50 percent of all new residential housing will be of this type. The growth of this form of housing has already reached over the 50-percent level in many larger metropolitan areas, and it seems to be speeding up.

Much of the attention today, however, has focused on addressing immediate needs and solving current problems. There has been little attention to the need for long-range research and analysis that would lead to new substantive directions. The state of the art has not kept up with the growth and the use of the condominium associations. There has been little effort to analytically review the experience today or to evaluate what approaches work better or could work better.

There is a pressing need for research and analysis and more careful consideration of basic association-related issues. This need must be met to assure the continued improvement in growth and techniques, and strategies for making the associations truly serve the needs of their owners and residents.

I wish to thank the members of the U.S. Senate Special Committee on Aging and those who were involved in setting up this hearing on "Condominiums and the Older Purchaser." I would be glad to answer any questions and share with you any of the material that is presently available to assist those in the condominium field.

Thank you.

Senator CHILES. Thank you.

Sam, do you have a statement that you would like to make?

**STATEMENT OF SAM SCHONINGER, MIAMI, FLA., PRESIDENT,
BUILDERS ASSOCIATION OF SOUTH FLORIDA**

Mr. SCHONINGER. Yes, Senator. I have some formal remarks. Initially I had some written remarks but I was not pleased with them and I have not submitted them. In giving a lot of thought to this subject in today's discussion, it seemed to me that we are really concerned with what can be done for the senior citizens in the condominiums. We are agreed upon a number of things. Condominiums are the wave of the future and they are going to increase; they are a new field.

Senator CHILES. Just before you start, let me mention that we had billed, as a part of this meeting, that we were going to have a town hall segment and that would take place as soon as this panel of witnesses is over—for some of you who are wondering about the time.

Excuse me for interrupting.

Mr. SCHONINGER. I said initially I had prepared a statement but I was not pleased with it, so I destroyed it. I have come here today, and I think there are many areas of agreement. I think we are in agreement with the fact that condominiums are the wave of the future. I think this is necessitated by the fact that we are looking to conserve on maintenance. I think we are seeing more working couples today and I think this is the major factor there. I think economics is a major factor, so I think that this is the way we are heading.

I think the issue is really what can we do for the senior citizen? What can we do for the citizens of the country as well? I think the answer to that is that we can lower costs, and I think costs really fall into two categories. I think the one category is the initial purchase costs, and I think the second category is the cost of maintenance and these recreational leases that we have heard so much about today.

If we analyze the initial cost—as the president of the Builders Association, I can maybe share with you some of the thoughts that a builder goes through and that I have gone through on condominiums that I have built. There is really no secret to it. You sit down with pencil and paper and you break it down into categories: No. 1, your cost of land; No. 2, cost of building, or sticks and stones; and No. 3, the soft costs.

Now with respect to land, what can we do to lower the price of land? Well, one of the things we can do to lower the price of land is to try to stem inflation, because inflation causes the prices of land to go up.

INCREDIBLE GOVERNMENTAL REGULATION

Another area that causes prices of land to go up is incredible governmental regulation. Today, before a developer can anticipate a final product, he is maybe looking at 1 year to 2 years of various processing that he must go through with different governmental agencies and there is no way of evaluating what the market may be in 2 years. So this is something that could be done. A lot of these regulations which are on the surface really sound and seem as if we are doing a lot of

good and a lot of justice but really are disastrous because they really do increase land costs.

Another area is sticks and stones. Well, again, I don't know any way of controlling the cost of sticks and stones except by eliminating inflation, and this is a word that continually pops up. It popped up this morning frequently and we are aware of it several times a day.

The other area is the soft costs. The soft costs include such items as points to a lender, interest rates, and when you are looking at interest rates, again, that word "inflation" creeps up. When you talk about points, again the word "inflation" creeps up because these are factors which cause interest rates to go up and cause points for discounts on mortgages to go up.

Another item is legal fees. Now I have been through the Florida condominium statute prior to the last amendment. I did this for a condominium that I personally was developing and therefore deeply involved in and I could tell you that the cost of creating these instruments that you don't read is horrendous. You are looking at weeks and weeks and weeks of time if you do it legitimately, and when I say "legitimately," I mean not copying somebody else's papers but sitting down and analyzing what the problems are that are unique to this particular project and working on the papers and trying to eliminate problems that you may really have no way of predicting. They may be problems that may be 2 or 3 years down the pike. One of the ways that soft costs can be helped and lessened is by decreasing regulations instead of increasing regulations.

"SOFT COSTS" MUST BE FIGURED

Another area that a developer today has to figure in his soft costs—and this is a very, very sad statement—are the costs of defending a lawsuit because there is virtually not a condominium built today that a developer does not end up in litigation. Several years ago I visited my condominium and the building inspector was there and he didn't know who I was. He said, "You know, I have not seen a building built like this in about 20 years; they just don't build this sort of thing." I thanked him but didn't say very much.

This condominium that I was involved with, as well built as it was and as well received as it was, we are involved in two different lawsuits. Now this is a cost factor in construction today and this is one of the reasons why condominium units sell for so much more per unit than a comparable apartment house because this is a factor of doing business. It really is sad.

You have to say I want to do the right thing. I want to be legitimate. I want to do the best job I can, supply the best materials. I have to figure in \$500 a unit for defending a lawsuit. It really is just a sad state of affairs.

Another real problem is the paperwork. After you have gotten past the attorneys and past all the papers that are required to establish a condominium, the paperwork that you have to be involved with to satisfy the State of Florida and to satisfy your buyers and your lenders, it is just astronomical.

So these are major cost areas that things can be done with, hopefully.

In the second area of cost, once the buyer has purchased the unit—I heard a lot this morning about leases and acceleration clauses, cost-of-living clauses on leases. Well, Senator, I am here to tell you today that for the past couple of years leases are a dead issue. The buyers of today are sophisticated to the point where they will not buy new buildings with leases on them. I don't know what the statistics are, but it might be very, very interesting to find out just how many condominiums within the past 2 years have had leases on them. I think you would find that the percentage is very, very low.

Another interesting point is the cost of living. Well, we are all concerned about how much money this developer is going to make as prices accelerate because inflation is going up, but the real villain today, the villain that we are really not addressing ourselves to, is the villain of inflation. If we did not have the inflation that we have today, we would not have these problems with accelerating costs and accelerating ground leases and accelerating costs of maintenance. We would not have these problems that are facing people on fixed incomes.

INFLATION: NATION'S NO. 1 PROBLEM

The big problem today, in my opinion, is really inflation, and I hold Government responsible for inflation. I think if Government were to harness themselves and say, gentlemen, we are going to take a legitimate way of looking at things, we are going to look at things knowing that we are only going to spend what we take in and we have all the money for past Federal debt and we will come up with a program to pay it off, I think a lot of problems today would be eliminated and the hearings today would not be necessary if the Government would come to grips with that one problem.

As far as protection, I just would like to give two little examples of personal situations that I have been involved with. I believe, and in some instances I read it, that the proposed Federal bill contains a provision for escrowing the deposits. The Florida statute contains a provision for escrowing deposits. Now you have all heard of the developers that went broke, that took the deposits and disappeared. I can assure you it is a horrible situation to be in when you have given a substantial amount of your worth to somebody to build a building for them and they have gone. But let's not overreact; let's analyze what the problem is.

For example, let me just take my condominium. The condominium that I was involved in had, let's say, an average sales price of \$30,000 a unit. At that time we were collecting a 10-percent deposit to build the unit. At that time construction financing was pushing 15 percent, but let's say construction financing is 10 percent, which we all know it is not today with the prime at 11.5 percent. Let's say an average high rise condominium takes a year and a half to build, which is not an unreasonable period of time for a high rise condominium to be built in.

If you take that \$3,000 that the developer is holding as a deposit and multiply by 10 percent interest, you get \$300 a year, and for 1½ years you get \$450. Let's just round that out to \$500 since we have come down on several other items. What this type of legislation re-

quires is that anybody who wants to protect their \$3,000 deposit, using the low figure, is forced to buy a building in which the developer in essence has to go out and spend another \$500 per unit to build. That \$500 might be the difference between somebody being able to afford a unit and not being able to afford a unit.

Now, I am a believer that if you want something you should have the right to buy it, but unfortunately, a lot of this legislation does not allow that. I would like people to say: "Yes; I want my \$3,000 held in an escrow account. I will pay \$500 more for my unit." That gives the people a choice.

Now, let's just analyze from an overall point of view. If we can say that more than one out of six deposits were lost, because I am working on a ratio of \$500 to \$3,000—if more than one out of six deposits were lost or will be lost, then it is a great insurance, but if less than one out of six deposits will be lost and if the consumer is forced to pay an extra \$500 a year, then I suggest to you maybe it is not such a good law. That is one thing I want you to think about.

NEED FOR LEGAL CONSULTATION

Another area I heard a lot about, you yourself said you were guilty about not reading your condominium instruments. Because I spent most of my time practicing law primarily in this type of area, I have had people come into my office and say, "I am considering buying a condominium and I have not signed the contract yet," which is really great because most people unfortunately will sign contracts before they consult with an attorney. I have had people come in and say: "Here is the contract. I am considering signing this contract. Here are all the instruments; I would like you to go through them." I say, "Fine; I will have it for you in a week."

They come back in a week and we would have a conference and I would tell them: "There is a problem here. In the event the building burns down, you may still be on a lease. There is a problem. If this happens, you may lose all your money." I might go down a list of maybe 12 major problems that could occur. Generally, the response to that is, "Well, you know, a lot of my friends are living there and I realize that I have all these problems, but I really want to live with my friends." This is a story that I have heard over and over again.

Now, let me just give you a little background on leases. A lot of people have come in and condemned recreational leases and leases in general. The way leasing got started was really a very interesting type of situation. This is the way I understand it. One of the original builders of the condominium said, "What I want to do is, I want to provide great living quarters for my buyers." That is as competitive a price as I can afford to build it and sell it for, and I am going to take all my profit out by leasing the land.

What happened was the condominium was built and the unit actually sold for several thousand dollars below what it would have sold for had the land not been leased, so in that sense the original concept of the lease was actually advantageous to the buyer because the buyer, instead of buying, say, a \$30,000 unit, would only have to buy a \$27,000 unit and was able to finance that \$3,000 over 99 years. In a commercial

condominium it makes a tremendous amount of sense because in a commercial development the rent that you pay on the land lease is deductible and the rest of the year it is depreciable, but we are not here today on that.

One other thing. There is another reason why land leases are sort of dead today. There is a very serious attack on land leases by IRS which took the position that what this original fellow is trying to do was really capitalizing income that he should have picked up in the first year. As a result of that it has become a real hardship on the developer today to be involved in the project with the lease because he may be faced with paying profit, he may be faced with paying taxes on a profit that he has never received. For that reason I think that we are kicking around an old horse. I would suggest that the greatest thing that could come out of this committee would be a program which would really benefit the older citizens and that would be to eliminate the escalation problem by eliminating inflation.

Senator CHILES. Thank you.

If I could wave my magic wand and do that, I would be happy to do that.

HUD SPECIAL TASK FORCE APPOINTED

I want to mention several things with regard to your statement. One, I am tremendously concerned, as you are, with the escalating cost of housing. In that connection I serve on the Budget Committee and I held some hearings in regard to escalation of housing costs several years ago. As a result of those hearings, HUD appointed a special task force to look into reasons that housing costs were increasing, and they have recently made their report. For a bureaucratic task force report, it is very innovative and addresses some very gut issues.

As a result of that I recently held a hearing in Tampa, as you may know, to get input from all of the people concerned with supplying housing in Florida as well as buyers or consumers, concerning that report and the recommendations that were made. In addition to that, in this year's HUD authorization bill, I cosponsored, with others, several provisions which became law, one requiring the same set of application forms to be used for HUD, Farmers Home, and VA where there have been duplicatory forms in the past.

In addition, I have had an amendment, which was watered down, but even in the watered down version requires that HUD set the agenda at the beginning of the year of the regulations that they are thinking of proposing during that year and that agenda be made public so that the public will have a chance to comment on those proposed regulations. The President has now taken that proposal and put it into his overall inflation plan for all the agencies to require that annual agenda.

I certainly concur with you that there are many regulations that are duplicative because State, local, and the Federal governments are doing the same thing, and while their purpose is good, by the time the bureaucracy gets through with drawing that regulation, they are creating vast amounts of paperwork. I also have as one of my areas of jurisdiction that of paperwork, and the Paperwork Commission, so I am well involved and concerned with the reams of paperwork that are a

result of Government regulations and are a result of there being more Government activity.

While it is easy to say that if we could solve inflation, we could solve these problems and no one would be here today, I think we have to realize that that is not something we are going to do overnight. I think we also have to be realistic. I am the first to say that I think that Government is one of the great causes for inflation, and Government should live within its means. I have sponsored legislation on the tax bill—the Nunn-Chiles amendment—that would have provided for a cut in the amount of the gross national product that is represented by Federal spending, cutting that down from 22.5 percent to 19 percent within a period of 5 years. We got that adopted finally as a position of national policy but not as law, and there is a great difference there.

MANY FACTORS CONTRIBUTE TO INFLATION

Recognizing that and hoping that we are going to be able to balance the budget within the next 3 years, which I think is possible, it is important to remember that the Government is not the only offender in inflation. When you get international oil prices that are controlled by a cartel, that is inflationary. When we have food prices that continue to escalate, that is inflationary. So there are many other factors in addition to the Government that affect inflation.

When the demand for housing goes beyond the supply of materials, as we now see in insulation costs, for example, until the industry can gear up and produce sufficient insulation, that is inflationary. There are many other areas that we can say this, because if you have a shortage of labor supply at the time that you decide you want to build your house, and when the cost of money goes up because of the shortage, all of this is not the Government's fault but much of it is demand fault. There are many other factors that we can point out as being inflationary.

The other matter that I would like to cover with regard to your statement—I agree that much of the additional cost that is going on in building today, and especially, in condominiums, is too bad. But, in some instances, if it were not for the very greedy developers who decided they were going to make unconscionable leases to start with, who were going to take such advantages, there wouldn't be a need for so much litigation.

You get that kind of law because there are some bad eggs. You have a completely free situation, as it was when they first started building condominiums, and you have abuses, and that causes the law to be passed.

Regarding the legislation we are talking about, there are several things I want to point out. First, with regard to paperwork for Florida—I don't see this as causing any additional paperwork for Florida because Florida can be certified under this bill because of our condominium laws being what they are. They certainly cover the minimum that we are talking about in this bill, so there is not going to be additional paperwork for Florida.

Now, in regard to other States, maybe you can say that there will be some paperwork, but it seems to me you could encourage States to adopt a uniform law—and there is now uniform law floating around.

I see this as being a situation where many times we see that a proposed uniform law is very good, but it takes 50 years before all the States adopt it. I see this is a way of stopping some of this litigation because I think if some people get the feeling that they are protected, they won't be suing. I see you nodding your head. That is a judgment question.

Mr. SCHONINGER. There has been a new industry created.

Senator CHILES. Well, you may be right. You and I have been aware of that industry as lawyers, but regardless of that, I think that industry happened because so many people felt and heard that they were not protected. I think conversely if they could get the feeling that they are covered, then they would rely on that more and not be relying on litigating each of the situations. I think once this law is tested or once the uniform law was tested, then the courts are going to be much quicker in the way they handle those lawsuits. Those are just some of the kinds of comments that I have.

I do have some questions I would like to ask all of you.

IMPROVING CONDOMINIUM DESIGN

As a builder, do you have any suggestions as to how we would make condominium design more compatible with the needs of older persons? I am not speaking about such items as grip bars in the bathroom, but the general livability of the condominium units.

Mr. SCHONINGER. Yes; I think that if some committee would want to work with some builder committee and work up some marketing input—builders really are in the position, or anybody else; there is a market. They are very happy to get involved in it. If there were some kind of commitment or some kind of input to a specific market, I don't think there would be any problem getting units built.

Senator CHILES. I noticed in 1976 in the Senate hearings, the HUD Secretary at that time, Hills, testified that the lack of uniform national standards were costing developers \$333 per unit in extra filing charges and legal fees to market condominiums out of State. Wouldn't a Federal bill be deflationary in this aspect if you had a requirement of that kind?

Mr. SCHONINGER. The real problem there is you are in another area, which is securities. If you could have a uniform Federal securities law that would usurp all the State securities laws, that would be a great accomplishment, but I don't think that is very likely.

One other thing I would just like to throw out, Senator, and that is you as a lawyer know the real estate law really varies from State to State and it really is a problem to enact Federal law involved in an area of real estate. California does not even have mortgages; they have deeds of trust. We have States that are title States and States that are lein States. This is another reason, talking as a lawyer rather than a builder, that I would suggest that you give some serious consideration to maybe not enacting this legislation.

Senator CHILES. Again, that is why we don't try to spell out in this legislation exactly what the standards would be but to require the certification of meeting minimum requirements so that you would be able to fit into those States. Virginia also has the deed of trust as opposed to mortgages.

Mr. ROSEN. Senator, there is one section of the Condominium Act that you started discussing a moment ago that would be a great benefit to a State like Florida, even though it has and meets many of the provisions of part of the act. There is a section in the Uniform Condominium Act, as I understand, that we provide for 6 months' work of maintenance fee payments to be coming before the first mortgage holder arrives.

What we mean by this is that in the event of a foreclosure, which would seem more and more today, normally the association loses the amount of money that the person has not paid on their maintenance payment to their homeowner association. Under the Condominium Act the rights of the first 6 months' worth of maintenance payments would be retained by the association before the first mortgage holder is paid off. In doing that, we would probably find that most of the mortgage companies—whether they be savings and loans, banks, or other mortgage companies—that would be servicing the accounts for the actual condominium unit would probably be the same as their escrow taxes and the same as they escrow some sort of insurance, in some cases.

What this will do, this will end up providing an opportunity for the association's collection of their maintenance fee payments in an easier manner. It would also provide an opportunity for the association not to lose any of the amounts of money on any of the foreclosed units that seems to be the case so much now. This would be in a Uniform Condominium Act rather than on the national association that you talk about.

FORECLOSURES INCREASING

Senator CHILES. Why are we seeing more and more foreclosures of condominiums today?

Mr. ROSEN. We are finding in some cases that the purchaser who wants to purchase a condominium or purchase a home is almost trying to get in way over his head. There are certain requirements pertaining to the mortgage requirements on approval of the financing, but we are finding more and more, it appears, as you said before, the escalation—the different costs that are involved in homeownership are just skyrocketing. It is even more than the actual tentative inflation in the other areas.

We are finding some families, especially the older American families who are living on fixed incomes, can no longer afford the increased maintenance fees together with the other costs of what we are doing. It should be avoided at all costs. But we are finding more and more in the associations that we do consulting in or the associations that we are serving in management capacities—the board seemed to be more and more faced with those who are late in the maintenance fee and having to go to legal action and tacking on those additional costs of collection for the collection of maintenance fee tenants.

Senator CHILES. Your work with the Community Association Institute leads me to ask whether you think that municipal, State, and county planners are as alert as they should be to the condominium impact. I emphasize that I don't equate condominium retirees with illnesses necessarily. Many persons, I am sure, are living longer lives and having more fun in Florida because they retired down here. And,

because of living in condominiums, they have fewer owner worries than they might have as homeowners, but there is no question that if they stay in that unit very long—and we are seeing more and more who bought their units 8 years ago, 10 years ago—that higher rates of disability are going to occur. Do you think that municipal, State, and local governments are paying the kind of attention they should as planners for that impact?

Mr. ROSEN. Increasingly they are learning what a condominium means and they are learning a lot more what the community association type is to be. This has been a long way in coming. At first I don't think anybody realized that, any of the city planners. We are finding more and more proof of CAI involvement in many of their conferences and so on. We are finding, especially in West Palm Beach where your hearings will be tomorrow, that city is very ill-prepared for the Century Village coming in.

I am sure tomorrow much of your testimony will relate to how a city copes with municipal services, with county services, in fact the State of Florida and statewide services—the impact of a whole community coming in and having to provide these community-related services. One of the members of our board and perhaps two members will be testifying before you tomorrow but one is the regulatory official of the State of Florida.

STATE SERVICES EXPANDING

I don't think that they had any realization on what the problems were and what they would need to be able to function and service the condominiums throughout the State. I think it has only been under the fine leadership of Jeff Anders who will be testifying tomorrow that the State is finally getting into trying to provide certain services to the condominium leaders and the associations of the State.

The department of real estate in California, for example, has a staff of 284 people servicing the needs of each association there. It has only been in the past year, really, that the State of Florida has doubled from their staff of 6 to a staff of 12 to service condominiums here. We have a tremendously long way to go.

In California, for example, each condominium association that is built—every developer must submit, as part of their prospectus before they are permitted to sell a unit, a detailed budget along with certain other documents which the department of real estate in California has to approve before they will even permit that project to be sold. They submit the various documents to the State which the State retains in our file, and it does not necessarily have to give approval of those particular documents.

The budgets in those cases, for example, have to be within 3 percentage points of the California published data of the condominium association. There is really a tremendous amount that could be done on a uniform basis around the country. It would certainly make for ease in understanding what minimum protections are available.

Senator CHILES. Addressing the question of concern for qualified management, what technical assistance does CAI extend to assisting

in this, and what State standards exist for policing the qualification of professional managers?

BOOKLETS AVAILABLE ON CONDOMINIUMS

Mr. ROSEN. At the present time since 1973 CAI on a national basis has really been formed to help operate and provide assistance to those people that are involved in management of condominiums. They publish a number of booklets and I have included some of those brochures¹ in the material. There are other booklets that are provided. This has now gone to 3,000 associations around the country, called *Managing a Successful Community Association*, with tips on how to properly run your condominium, how to handle it. It also includes in there the different alternatives of management; that is, in the case of Point East, where Ernie mentioned early today, a self-management with a board of directors is completely responsible for the operation of the association. It also spells out the opportunities of hiring either a manager which would be a paid employee or a management agent which would be a firm that could be retained to operate the association.

Another booklet that has come out that has been very valuable is "The Financial Management of Condominiums." In fact, this was authored by one of the people in Virginia who operates many of the condominiums in the Washington, D.C., area. It is an opportunity to assist the condominiums in setting up their budgeting techniques and planning for many of the items of financial affairs.

CAI, Senator, as you are probably aware, has led the way for the congressional passing of the Tax Reform Act of 1976, the section as it pertains to condominium homeowner taxes. We are very grateful to you and Senator Stone for all the fine work done to create section 528 of the IRS Tax Code.

Basically that section 528 realized the problems where the IRS was taxing condominium and homeowner associations in a double taxation bracket; that is, the fees that they collected for maintenance fees, up until 1976 in fact, then had to be taxed on a corporate rate on those amounts that they did not expend during the course of the year. Because of that, many associations were afraid to garner up the required reserves that would be needed for the repairing and the fixing of the associations. Since 1976—and that provision was retroactive to 1973—we have had the opportunity in trying to assist condominium associations so that they do provide the additional dollars for providing for future repairs and replacements.

It will be interesting to find out—and I have not seen anything in writing yet about the bill the President signed this past month pertaining to tax relief—whether or not and how that would affect condominium associations. I am of the opinion that on that section that the President signed 4 weeks ago, if that did away with the surtax exemption rate, the amount of tax that the homeowners and condominium owners have to pay if they do not take advantage of section 528, it may be decreased.

It would be important, I think, for the condominium associations to understand if, in fact, that particular bill did cut out the additional

¹ See appendix 1, item 1, p. 65.

taxes that they had to pay on the reserves that they maintain, they would not choose to file under the 1128H form. This would certainly be a boon to the homeowner associations and the condominium associations in the State of Florida, as well as nationally, to understand those consequences.

Senator CHILES. Thank you.

Sam, as a developer, what steps do you take to assure a smooth operation of the condominium after you relinquish management control?

HOMEOWNER CONTROL OF ASSOCIATIONS

Mr. SCHONINGER. Well, one of the things we are most anxious to do is turn over control of the association to the homeowners, and generally they have their own ideas about who they want writing their insurance and who they want servicing the lawns and things like that. We don't get heavily involved in that. I have never been involved personally in a big, several-hundred-complex situation where I think you really get more into that problem of having to undertake long-term management.

Senator CHILES. I want to thank you both for appearing here today and giving us the benefit of your testimony. We appreciate your appearance.

Mr. SCHONINGER. Thank you.

Senator CHILES. We are now going to go into our town hall meeting, and I want to hear from any of you here who have statements. Before I start that, let me just say that tomorrow we will continue our hearings in West Palm Beach. We will be at the Federal building and courthouse, and we will continue to explore the problems of condominium living, and we will also take testimony on the particular bill we have been dealing with. We are also going to take testimony on the problems and potential rewards of an increasing proportion of elderly persons who live in condominiums in Palm Beach County.

One of our questions will be how the service delivery needs of this population are now being met, and how they will be met in the future when the demand is going to be even greater. Home services for people who need practical help to maintain independent living in their own quarters is also going to receive special attention.

I want to thank all of you who have made this morning's session helpful and informative, and certainly express my thanks to the city for its assistance in giving us these quarters.

We will be delighted to hear from you.

Would you come up, please?

STATEMENT OF RAY C. BURRUS, HALLANDALE, FLA.

Mr. BURRUS. Senator, gentlemen, my name is Ray C. Burrus. I am the president of a condominium association in Hallandale, Fla. Ours is one of the oldest civic associations in the city. Our association is an association of buildings, not of people individually, and therefore we figure that we represent at least a third of the population of the city of Hallandale.

The problems that have been outlined this morning have been very interesting. As I have listened to some of these people talk, I didn't

realize how bad off I've been. Fortunately or unfortunately, I have never lived in a detached house; I have always lived in an apartment, and I find it a very nice place to live and I enjoy it.

Now, some of these problems with boards of directors and internal management are amusing. I remember here a number of years ago I was president of a co-op association and a new director was elected. At the first meeting he wanted to know what my credentials were.

That leads me to another situation, Senator, that has not been touched on here this morning. Government at various levels spends a great deal of time and money to educate us through grammar school, high school, and college—to learn to live, to be useful citizens, to occupy a business, and that sort of thing. But there is no way in which people are educated to become retired. Retiring in itself is a very traumatic experience, and some of these problems that have been introduced to you today go back to the fact that people suffer from this traumatic change in their life. All of a sudden they no longer push a timeclock. They sit around a pool, they gossip, and they become involved in things that are social, without any preparation for it.

RETIREMENT PLANS DESIRABLE

Now, fortunately there are, in this country, a number of large corporations who have taken the steps to prepare their employees for retirement, and I am sure you are familiar with some of them. Some of those organizations will call in Joe Doaks when he turns 60, maybe 55, and say: "Joe, you are going to retire in 5 or 10 years. Do you have a retirement plan?" No; they do not have a retirement plan, so they are asked to come back 5 years later.

Now, with these retirement plans, many of these sociological and financial problems that have been outlined here today very likely could be avoided. I am suggesting that we do not need social legislation to do these things, but I am suggesting that there is a possibility at the Federal level that the large corporations—and the large labor unions, as a matter of fact—should be encouraged to help their individual members prepare for this very, very traumatic experience from the day they quit punching the timeclock until they come to Florida or California or Arizona to spend the rest of their lives. It need not be that situation.

I am reminded of the fact that Nan Hutchinson, who was introduced here earlier, some 7 or 8 years ago, I think, was the first one to receive a Federal grant to do something about the aging. One of the first things she discovered was, in this country alone, there were 54 private and public organizations having something to do with the process of aging. That is a terrible waste of time and money—no organization. That can be done at the professional level and help very greatly. I would suggest to you that if you can do this without trying to shove legislation down people's throat—you can do this through the labor unions and business establishments—encourage them to be concerned about educating their employees for that other phase of life, retirement, that many of these problems may not be facing them today.

From a practical point of view, as an officer in the largest apartment house organization in this city, it seems that you legislators are using

the word "condominium" in a generic sense. As Harold Dyer will tell you, we have found here in Florida that after legislation is passed referring to condominiums, we have to urge them to go back and use the word "cooperatives," because in our association of some 70 buildings, approximately probably half of them are condominiums and half of them co-ops.

Senator CHILES. We have been finding that out.

Mr. BURRUS. That is right. So it is all right to us the word "condominium" in its generic sense, but you must realize that it includes the co-ops.

Senator CHILES. Yes.

Mr. BURRUS. Maybe something else would be a better term.

The other thing I would suggest to your committee is to dig out of the files a very interesting report prepared by HUD in 1975 or 1976 entitled "The Cost of Sprawl," which will answer a lot of the questions about the cost of housing. For example, in that report it points out that the cost imposed on Government by reason of housing people—the cost to the Government decreases as the density goes up.

Now in this community here, from the standpoint of people, you have a high-density situation. We have about 48,000 people in 4¼ square miles—over 10,000 people per square mile. There is nothing wrong with that, not a thing. We do know that the cost that Government imposes on housing result in increasing costs by not taking advantage of information that is already available to the Congress in the form of these HUD studies that show exactly the impact of housing on the community. I will suggest that your staff dig out those two little volumes and a bigger volume and see if you can't find ways and means of applying lessons there to the problem that you face.

Those are the things that I would like to mention. I appreciate your courtesy. Thank you very much.

Senator CHILES. Thank you for your appearance here.

STATEMENT OF PAUL LINZ, TAMARAC, FLA.

Mr. LINZ. My name is Paul Linz and I live in the city of Tamarac, Fla. I am a member of the board of directors of the Condominium Co-op Executive Council and past president of the Woodlands Home Owners Association, a member of its board of directors, and a member of the board of the president's council in the city of Tamarac, which represents the 35,000 people who reside there. I am on the citizens advisory committee of the areawide agency on aging, which is Nan Hutchinson's group.

I have a bit of familiarity with the problems that are being addressed here today. Mr. Nerzig made reference to the fact that the single family housing has not been included in this. Single family housing, as outlined by the gentleman from the CAI, is a type of single family housing that could be considered a horizontal condominium, whereas in Tamarac we own our own homes in fee simple.

There was no declaration of condominium. I own nothing in common with anyone, there is no common element. There is simply a deed restriction on my property imposed by the developer that requires me to pay initially \$20 a month rent, then \$25.66 and, as of January 1,

1979, it will go to \$39.80 a month. This is for 50 years and then renewable on a 10-year basis. The same things apply as to replacing or returning the property in the same condition that we got it—certainly not by those of us who are living there because none of us will be alive.

LEASES OUTLIVE PROPERTY

An engineering study has shown that none of the buildings for which we pay rent will be in existence in 40 years because they will have deteriorated beyond repair and will have to be replaced. There is a gross inequity, and although we are not the tail of the dog, we are possibly a flea on the tail of the dog and we certainly don't intend to wag the dog. But we do think that we should be included and we were included in the Florida FTC Act as amended on July 3, 1977, I believe it was, which defined housing units. That is with respect to recreational leases wherever they might be found.

This is true also in mobile homes; that issue has not been addressed at all. People who seek relief from recreational leases with escalation clauses are people who live in condominiums, co-ops, and single-family homes with deed restrictions and also people living in mobile homes who are forced to pay recreational leases which they should not be paying.

There is a wealth of material on the effect of the continuing costs of living, the effect it is having on the citizens of Tamarac. I worked on inputs in determining the people who needed public assistance in the form of meals through the areawide agency on aging. I would not attempt nor am I privy to exact figures, but that information I am sure will be elicited from Dr. Hutchinson tomorrow in Palm Beach. I think that it will open your eyes very wide to know that more than 10 percent of the people in the city of Tamarac came down here and spent their last dollar to buy a house thinking that they would have a roof over their heads for life, but they are not able to maintain it. It is a serious social problem and one that is very saddening to those of us who are concerned with those people.

There is a great deal more that could be added. I don't want to take up any more time of this committee. I thank you for the opportunity to make this known to you. I would suggest that the definition part of both the House and Senate bill be rewritten, perhaps to include the definitions as in the Florida FTC Act and that might in itself correct this unbalance in that everyone who is being abused by rapacious landlords could get relief.

Thank you very much for your time.

Senator CHILES. Thank you for raising that problem. We will certainly look into it. I will just tell you that we will have to look at the legislation and see what that change affected. We also will have to see what effect that will have. We don't have a tremendous constituency for it now and we really only have a few States that have thought enough of condominiums to pass some comprehensive legislation, but I am glad you brought it to our attention.

Mr. LINZ. Recently in Kentucky, the Kentucky FTC Act was invoked and in a situation somewhat similar to that in Tamarac the people prevailed and the Supreme Court of the State of Kentucky did issue a cease and desist order.

Senator CHILES. Please send that information¹ to our committee.
 Mr. LINZ. Yes; I will.
 Senator CHILES. Yes, ma'am.

STATEMENT OF FRANCES CHAIMOWITZ, HOLLYWOOD, FLA.

Ms. CHAIMOWITZ. Thank you, Senator. My name is Frances Chaimowitz. Today I came to listen, but I have been encouraged to speak.

Aging has so many problems. Basically my job is awareness, telling the people who are aging, who are senior citizens, what it is that they can have that our country provides and, basically, if we cannot provide it for them, then perhaps we can refer them to some service that can. Physical therapy, speech therapy—things like that. Some of us do have some things that we can help deal with sometimes.

Senator CHILES. Tell me something. Is your service a profitmaking service?

Ms. CHAIMOWITZ. No; it is a nonprofit service.

Senator CHILES. Who is the sponsor of it? How is it sponsored?

Ms. CHAIMOWITZ. Would you be a little more specific?

Senator CHILES. Well, what brought it together? What is the ruling for the sponsorship of it?

Ms. CHAIMOWITZ. We have an advisory board.

Senator CHILES. It is a nonprofit corporation.

Ms. CHAIMOWITZ. Nonprofit corporation, yes, to serve the elderly. We have a homemaker service. We have a CETA grant where we provide homemakers at no cost to them. We have hospice, and hospice is to help people and their families get through their dying.

Where we cannot help people, we do our very best to utilize all available agencies so that we can get some help and just to give them something to do. There is one man who comes in to do filing, cards, and things like that. I am really glad to take just a couple of minutes because we do believe in that what you are doing and we are going to get on the mailing list and maybe we can benefit from what you are doing.

Senator CHILES. Thank you.

Yes, sir.

STATEMENT OF LEO J. COSLOW, PRESIDENT, ASSOCIATION OF MEADOWBROOK, HALLANDALE, FLA.

Mr. COSLOW. Senator Chiles, Representative Dyer, Commissioner Speigel, my name is Leo Coslow. I am the president of the Association of Meadowbrook, a complex of 22 buildings in the city of Hallandale, with 1,200 units. We were very fortunate that in June of this year we completed the purchase of a 99-year lease, so I am not here really to speak on just that alone; however, our sympathies are with the people who are still being ripped off by 99-year unconscionable leases.

Senator CHILES. What did you pay for your lease?

Mr. COSLOW. We paid 10 times the preescalated amount. Now 12 of our 22 buildings were escalated, and we worked out a deal where

¹ See app. 1, item 2, p. 67.

we not only got the deal, as I said, but we also got them their money back. We got all the escalation money back. This shows you that if you can get the proper people, the proper board of directors to work with the developers and sit down and talk to them in a reasonable manner, something can be worked out. It did in our case. I just want to encourage the others that there is the chance to buy out leases if you can only sit down with management. Unfortunately, some of the management don't want to sit down and talk to the people.

Senator CHILES. Do you think it encourages management at all that there is a possibility that maybe the Federal act is going to pass?

INFLATION IS MAJOR CONCERN

Mr. COSLOW. There is a possibility of that. Now what I am concerned about and what our people are concerned about is this. We bought out our lease and we are satisfied with that. We have a 30-year payout at a reasonable interest rate and we are paying less money for the purchase than we were paying before on a maintenance lease. The biggest problem that the people tell me—and I know, I am retired living on a fixed income. The biggest problem that is facing us is inflation, and the biggest problem of inflation is the cost of food and the cost of health care—the cost of hospital care and the cost of drugs. That is the biggest item that we are faced with. That is all they talk about, really, every day—the high cost of these items and the fact that very few doctors will accept the medicare assignments.

Now you know and I know—I have read it in the papers—that studies were made and doctors in the State of Florida, and perhaps throughout the United States, but certainly in the State of Florida, are amongst the highest income people in the State. Yet they will definitely refuse to take medicare assignments which means that most of our people who are short of funds have to make those payments. Then you know as well as I that we do not receive from medicare fast payments, or do we get the amount that we really have paid to the doctors. I feel that if you can see some relief in that way before we get a nationalized health law, which may take 10 years from now and, as Ernie said, he does not even know how long we are going to live to see whether any of it is going to be resolved. But the health care problem is really one of the most important things that is hurting the senior citizens.

Thank you very much.

Senator CHILES. Thank you.

I notice that we have Aaron Heller, the council president pro tem of the city of Lauderhill, who has asked to speak. We would be delighted to hear from Councilman Heller.

STATEMENT OF AARON HELLER, COUNCIL PRESIDENT PRO TEM, CITY OF LAUDERHILL, FLA.

Mr. HELLER. Senator Chiles, thank you very much for the opportunity to speak. Many others came forward; apparently their hands rose a little higher than mine. I was waiting my turn.

There is something we have lost sight of completely. Did we forget that there are rentals, that 50 percent of our population have rents to

confront, and have a problem with paying rents? Our city recently enacted legislation asking for stabilization of rent control, but unfortunately, it was turned down by the higher courts. The State law indicates that rent stabilization can apply when the area is affected by tornado or emergency. If we don't have any more housing, then we may have controls. This is what is implied in the State law.

My reason for coming to you is to ask that there be some Federal guidelines with regard to the fact that there are people on fixed incomes who not only own condominiums, but rent. Are these the lost population? We must seek some guideline at the Federal level to have rent stabilization where the renters and the individuals who are actually developers can speak of stabilization of rents. Our city has seen fit to pass this law and will now seek to have it amended on the State level. But we hope we get guidance from the Federal Government as to how to protect people who are renters and who are also affected by inflation.

I will get to another problem. I am generalizing. I happen to be a past president of the civic group, and I have presented papers on the medicare abuses before legislative hearings. I am a member of the Broward County Health Council. I am actually involved in the community in the health field as a consumer activist. I would like to convey and repeat most emphatically a thought that was expressed previously, and that is the question of acceptance of medicare assignments.

"THIRD PARTY" PAYMENTS

It may interest you to know that over 60 percent—I think it is between 50 and 60 percent—of medicare payments are third-party payments. It has come to my attention that there is no way where the consumer can actually protect the interests of himself, as well as the Government, from charges because there is no way in which he can check the medicare payments. I presented this point to Blue Cross and also at various consumer hearings.

The medicare form that is used and which the consumer gets back from Blue Cross indicates a number. There is no way in which this number can be identified as the procedure that has in fact been done. The consumer does not know what that number represents. If you want to protect the program, at least make certain that this information is readily available to the public so that you will know exactly what the procedure number is so that they can check it themselves.

I have another point of view with regards to the question of health care, and that is, I believe there are millions that have been expended by the Federal Government to make possible health facilities and programs for hospitals. It would appear to me that unless the Federal Government takes cognizance of the fact that the Federal Government is subsidizing private hospitals as well as public hospitals, then these institutions must also recognize its obligation to the public to provide that hospitals should accept medicare assignments and in return have their medical practitioners required to accept acceptable medicare payments.

The privilege of working in the medicare assistance program should be given to those who will accept medicare's "reasonable and acceptable

fee." This is not being done. Private practice, at the present time, has gone far afield in being able to charge fees which the average person cannot afford. So I say if he wants to be in the medicare program, then he should be obligated to accept the medicare fees. If he wants to practice as a private practitioner, then let him choose his patients from the free open sector, outside of the hospital, outside of the medicare program.

The Government should act so that those practitioners who practice in the medicare program will be the only ones permitted as long as they accept the medicare assignments. This is a strong feeling, which I subscribe to.

My last thought, if I may—there is a question of an absence of consumer participation in PSRO's. There is an absence of consumers in these committees. If you want to be able to protect the consumer's point of view, make certain that the peer review groups have consumers and make certain it is done by law and not by voluntary arrangement.

CONSUMER REPRESENTATIVES NEEDED

At the present time, even though the Broward County health planning councils are asking for consumer participation in the PSRO committees, none have consumer representatives. This should be done by Federal guidelines. Federal guidelines require a health planning council to consist of 51 percent consumers and 49 percent providers; yet, the peer review panels have no single representation of consumer as watchdogs. I think this is important. If these things are considered, I think you will find that the health costs will be reduced.

I will repeat, we have lost sight of the people who rent. We have instances in our city where 30 and 40 percent increases have been enacted. Every few months, increases are added. These people are lost sheep; nobody can help them, they do not have the luxury of owning their apartment. Can't we find some place where we can actually help them? I appeal to you for some sort of Federal guidelines on rent stabilization. Also, there are retirees in our particular area that can't afford the luxury of a home.

I hope I have not taken too much of your time. Thank you.

Senator CHILES. Thank you.

Our hearings today did address themselves primarily to the Condominium Act, and we are going into other acts tomorrow.

Mr. HELLER. I have followed the lead of others who went off on a tangent on health problems, and I thought I might as well make it known because I don't have the luxury of running around to all the committee hearings.

Senator CHILES. Thank you.

Yes, sir.

STATEMENT OF GERARD STEVENS, FORT LAUDERDALE, FLA.

Mr. STEVENS. Thank you, Senator Chiles.

My name is Gerry Stevens, and today I am representing a small condominium located in Fort Lauderdale.

I want to get back to the specifics of the tremendous problem that is being faced today by hundreds of thousands of condominium owners

that are living in some of these complexes. I have a written statement that I will be happy to leave with you.

Senator CHILES. We will put your statement in the record.

Mr. STEVENS. I just wanted to make one or two observations. It is true—and I am sure the Senator recognizes that we made tremendous strides within the last 4 years, particularly in the State of Florida, which has outlined some corrective and protective legislation—as many of the people talking here pointed out, there is a tremendous financial hardship placed upon senior citizens living in these complexes today who are living on fixed incomes.

To give you some specifics, we have a condominium of 107 units where initially the people coming down paid an average of \$45,000 for their unit. But when we look realistically on the type of an agreement which they entered into, knowingly or unknowingly, they are now obligated because they are burdened with the 99-year recreation lease, of paying over \$1.5 million. That is, each unit owner is responsible for a payment of \$1.5 million if this escalated lease continues. They had agreed to pay the \$45,000 initially, and many of them either paid cash or took out a mortgage.

Senator CHILES. Now, that \$1.5 million, is that a jointly and severally held liability that they have? I am trying to understand the figure.

UNREASONABLE FINANCIAL OBLIGATION

Mr. STEVENS. \$1.5 million per unit. In fact, I figured it out for my condominium. Assuming only a 5-percent cost-of-living increase, each unit owner must pay over \$1.5 million. The breakdown is \$1,524,429 per unit. This is their financial obligation. However, there is no way in the world that any of these people in the next few years can live up to this tremendous financial obligation.

I want to make another point here. During the entire term of the lease, the lessor, in this case one developer, will make a net profit of over \$163 million on a facility that is right now assessed at \$46,000. In fact, when we received our last tax bill for that facility, the condominium association paid a tax of \$912 on that facility. As you are well aware, the developer is not obligated to pay any taxes, any maintenance, or to make any improvements on the recreation facility. In other words, it is a net-net lease. The recreation facility includes one small swimming pool and a shuffleboard court.

I think the observation I am making today, as a few people alluded to, is that the Federal Government will be spending thousands and millions of dollars to give to people in terms of social security or supplemental assistance. Now, one thing that we have to recognize is that every time you sit up there in Washington and you say, "Yes; let's help these people; give them an 8-percent social security increase," and you send it down to thousands of people in condominiums like these, where will the money be going? The only thing that is going to happen is that they will have to dig down into their pockets once they cash their checks and turn it over to 100 people down here, a handful of developers. So in a way the people and the Government have been duped and will not be living responsibly.

There is a need for representative government. The American system is one that believes in fairplay. Therefore, I think that a strong

effort must be made to put a law into effect that will be in the best interests of all the people concerned. The passage of Senate bill 2929 would be a good step in solving many of the problems. However, it is needed now.

I want you to recognize one other important thing that was not mentioned here today. The Federal Government does have a police power where it feels that moneys are not being properly spent in the best interests of the people. I think that we should put a halt to these kinds of operations. I want to commend Senator Chiles and his colleagues for looking into this very serious problem.

I don't think that we should hesitate to pass Senate bill 2929, since there is a tremendous need. Later, it may be challenged constitutionally, but I think that the Federal Government has this responsibility. I think the wording of the bill is of utmost importance. The wording should include a matter of public policy or a matter of police action on the part of the Federal Government. The passage of this legislation is imperative; otherwise, all our efforts may have been in vain because every time you give our friends on social security an 8-percent increase, it is just going to go into the pockets of the 100 people or so that I mentioned.

I want to thank you and tell you at this time I will be happy to answer any questions. I do have a prepared statement which I will submit to your committee.

Senator CHILES. We will include the statement in full in the record. [The statement follows:]

PREPARED STATEMENT OF GERARD STEVENS

UNCONSCIONABLE RECREATION LEASES—BAYSHORE TOWERS, FORT LAUDERDALE, FLA.

Hundreds of thousands of people living in condominiums today are still burdened with long-term, 99-year leases which are unconscionable. Since more than 50 percent of the American people may be living in condominiums in the next 40 years, the Federal Government should view this as a major national problem.

Many recreation lease contracts are overreaching and provide windfall profits to lessor at the expense of the unit owner. (See Bayshore Towers, Chart, "Incredible Recreation Lease Payments")

These contracts are so unfair and onesided that ultimately unit owners will lose their homes. Many unit owners who cannot afford to make the recreation lease payments are already applying for welfare and food stamps.

A unit owner never has absolute ownership of his unit since it is encumbered by a 99-year lease and all of its implications. Unit owners who fail to make lease payments are subject to a lien and foreclosure of their unit. Unit owners who prepay their lease obligation do not receive any ownership of title to the leased property. The 99-year lease is a net-net lease; unit owners pay all expenses including taxes, insurance, and maintenance on the leased area.

The sale of the condominium apartments were tied in with the recreation lease which violates the Sherman-Clay antitrust laws. These tie-in sales, in many cases, were effectuated through deceptive sales practices, concealments and voluminous documents incapable of fair disclosure to our unit owners. Why doesn't the Federal Government enforce its own laws?

At the beginning, Bayshore Towers Condominium Association was obligated to pay \$89,964 base rental every year for the use of a small swimming pool and one shuffleboard court.

Since the lease payment escalates every 5 years, on May 1, 1975, it escalated to \$124,037. It will escalate again on May 1, 1980.

The developer has already collected close to \$800,000 in lease payments which is approximately 10 times the cost of the leased property, or a 1,000 percent return on his investment. In 1978, the assessed valuation for taxes for the leasehold area was \$46,000 and Bayshore Towers paid the tax bill of \$912.

The annual lease payment exceeds the total operating budget required to maintain and operate the entire condominium. Vital operating machinery and utility service lines such as water supply, booster pumps, fire pumps, emergency generator, and heating boiler are all located on the leased property.

Governmental action is needed now since these leases have escalation clauses and with inflation cause hardships beyond the economic means of fixed-income people. Hundreds of thousands of senior citizens may soon lose their homes to lien foreclosures caused by these unconscionable leases and contracts.

Protective and corrective Federal legislation is needed now. S. 2919 and H.R. 12124 may be a beginning; however, this legislation should be reviewed carefully by experts to make certain it will provide the needed relief to hundreds of thousands of condominium owners who are still burdened with long-term, 99-year recreation leases.

We trust that you will take immediate and appropriate action.

[Enclosure]

BAYSHORE TOWERS, FORT LAUDERDALE, FLA.—INCREDIBLE RECREATION LEASE PAYMENTS

(107 units)

Date	Annual rent	Total paid to date	Average unit annual rent	Average unit total rent
July 1, 1971	\$89,964		\$841	
May 1, 1975	124,037	\$344,862	1,159	\$3,223
May 1, 1980	155,046	965,047	1,449	9,019
May 1, 1985	193,807	1,740,277	1,811	16,264
May 1, 1990	242,259	2,709,312	2,264	25,320
May 1, 1995	302,824	3,920,607	2,830	36,641
May 1, 2000	378,530	5,434,727	3,538	50,792
May 1, 2005	473,162	7,327,377	4,422	68,480
May 1, 2010	591,453	9,693,187	5,528	90,590
May 1, 2015	739,316	12,650,452	6,909	118,228
May 1, 2020	924,145	16,347,032	8,640	152,776
May 1, 2065	6,885,407	135,572,312	64,350	1,267,030
May 1, 2069		163,113,740		1,524,429

NOTES

The 1978 assessed valuation for taxes for the leasehold area was \$46,000 (includes 1 small swimming pool and 1 shuffleboard court).

The starting lease payment per unit averaged \$69 per month. The total annual rent for 107 units was \$89,964. By May 1, 2000, the lease payment per unit would escalate to \$295 per month. By May 1, 2020, a unit owner would be obligated to pay \$720 per month. In the last 5 years of the lease, the lease payment per unit would escalate to \$536 per month. During the entire term of the lease (99 years), a unit owner must pay over \$1,500,000 (\$1,524,429). During the entire term of the lease, the lessor(s) will make a net profit of over \$163,000,000 (\$163,113,940).

The above moneys are exclusively recreation lease payments and do not include maintenance moneys needed to operate the condominium.

The above figures reflect a cost-of-living escalation of only 5 percent each year.

The above data should substantiate the "unconscionability" of this lease. The facts clearly indicate that this recreation-lease agreement is completely one sided and can never be fulfilled by the condominium association or the unit owners.

STATEMENT OF ARTHUR J. ROSENBERG, HALLANDALE, FLA.

Mr. ROSENBERG. Welcome to Hallandale, Senator.

I am Arthur J. Rosenberg. I am also chairman of the Broward County Council.

Senator CHILES. We thank you for letting us use the hall today.

Mr. ROSENBERG. We are happy to have you here because we realize the importance of your committee.

You are basically speaking of the older citizen in the condominium. I would like to speak about the older citizen outside the condominium. We are putting older citizens in an area which does not have the amenities for the older citizen. I think the Federal Government can be very helpful in planning grants and other grants on roadways so that we can improve the situation of the older residents in these cities of Hallandale and the other areas of south Florida.

We have tremendous road problems and we have to improve them. Once again, the planning of a community in an older condominium area is different than the planning of communities in regular areas. We need more recreational space; we need Federal grants for that, and we hope the Government will be responsible.

One gentleman spoke about rentals. Even though it is not on your program, we have had many fine people move out of the city of Hallandale because they could no longer afford to live here. The public officials, such as myself and Commissioner Speigel—there is really nothing we can do about it. If the Federal Government can do anything which will give us some teeth, or even the State government, we would appreciate it because the people are just faced with these problems. They came down here and they thought they would spend the rest of their lives in these apartments, and they are really at a loss. If there is anything you can do, we would appreciate it.

Thanks once again for coming.

Senator CHILES. Thank you, sir.

Yes, sir.

STATEMENT OF FRED ENGEL, LAUDERDALE LAKES, FLA.

Mr. ENGEL. Thank you, Senator Chiles.

There is a lot to be said about everything but there are just a couple points I want to bring out. I don't come representing any organization. I am just a plain layman, a sucker who was sucked in who wanted to buy in one of these condominiums.

My name is Fred Engel. I am a retired electrical worker. I have spent my years in the building industry and I have a pretty good background as far as building is concerned. Now I am giving that type of ability over to help our condominium out.

We have recognized three-quarters of a million dollars in building violations, but I just give that as background. There is one problem we are faced with there and that is that our developer sold our rec lease to a realty concern before we even moved into our place and we were not aware of it. Now we have already had our rec lease escalated three different times. We pay almost 75 percent more now than when we first moved in.

There is another thing I would like to bring out here. The committee is aware of this new tax district plan that people are setting up now whereby the city has a tax district set up and bonds itself and then after a certain number of years these bonds are paid off. The thing I am trying to avoid now is asking the committee to keep the condominium people, those owners—keep them from going from the frying pan into the fire. We feel this thing is a detriment and we would like to have the committee make everyone aware of that, if you please.

Thank you very much.

Senator CHILES. Thank you, sir. I think maybe that problem may be more in the State area where they have set up the authorizing legislation which allows the tax bonds, I believe, Harold. Even though that has gone under the Internal Revenue Act, I think it is the State enabling act.

Mr. DYER. Yes. Hallendale has looked at it. Sunrise is presently proposing one. It seems to be an area that has a solution depending on

the district, the size and so on, but it is a device well worth looking into.

STATEMENT OF JOSEPH H. ROSS, HALLANDALE, FLA.

Mr. Ross. I want to talk on the subject of recreation leases.

My name is Joseph Ross, I live at the Hemisphere in Hallandale.

When the people became aware that when they bought out the recreation lease they would then become a park district. It was bandied about whether it would become a public park, where everyone could utilize your facilities. Let's call it shuffleboard talk. What happens? Well, you have a board of directors that worked on this thing, we will say, for 1½ years and when people asked for answers, they didn't have them. They went to the Hallandale Council and they postponed any kind of voting on this particular thing because nobody had the answer.

When you become a park district we believe that does allow anybody to come in and use your recreation facilities because you would become a part of the city government. Does that allow anybody to come on to your recreation area and use the facilities? We have had no answer. They are still working on it. The board of directors did not come up with an alternative plan.

What rankles me is that if I buy out this recreation lease you will not have to pay the cost-of-living index increase which is due next year. The last increase was about 33½ percent. This increase can be over the past 5 years. Whatever the cost-of-living index is today with all the inflation, who knows—30, 40, 50 percent?

I happen to pay \$55 a month for recreation, plus my maintenance fees. There are 1,300 apartments there. What the deal was—and I want to know whether it is a deal or is it a ransom—\$5 million if you want us—the recreation lease owners—to eliminate the cost-of-living index increase. Remember, the people that own this lease pay no taxes, no maintenance, no nothing.

Now from a national level, is there going to be some protection or some kind of a way of when you start to dicker around for these things when you want to make a deal? Is there something? Put some people in there—put some retired judges, put some retired lawyers. Put some people in there that you can come before and present your opinion; \$5 million ransom to eliminate this thing that is coming up next year. It is held over your heads.

IMMEDIATE ASSISTANCE NEEDED

Just one last thing and that is all of the legislation that has been passed so far has done no-good. Now on the national level we will pass another law that has to go 1, 2, 3, 4, 5 years to go through the Supreme Court. There will be no people left here; they are all in their seventies. By attrition alone you are making a law that is for the next generation and I don't know whether they will love condominiums.

Thank you.

Senator CHILES. Thank you.

Mr. SPEIGEL. Senator, I would like to clear up the record on one point that the gentleman made because I am very familiar with it when he talked about the taxing district. There is a special taxing district set up for the people who requested it by the legislature. The city authorized them to hold an election.

Now I want the record to show that the board of directors does not have the final say. There will be a regular scheduled election set up by the county board of election commissioners and the people who live in this complex will have to vote whether they want to buy out the lease or not. The power of the board of directors ceases from the day of the election. Incidentally, sir, they have received a request from the board yesterday that they want a new election date set which I put on the agenda. So you come here and express your desires and then from there on it will go back to you people who live there and you will decide whether or not you want it.

Mr. ROSS. Thank you, Mr. Speigel. Will you answer as a commissioner?

Mr. SPEIGEL. This is not a national thing.

Mr. ROSS. Will the people have a thing where the public or anybody who wants to can come on to the park facility? You can't answer it.

Mr. SPEIGEL. We don't intend to. That is up to the people in the building.

Mr. ROSS. That has to come from the city.

Mr. SPEIGEL. That does not come from the city.

Mr. ROSS. Is it legal?

Nobody answers. You want to pay \$5 million without having an answer?

Mr. DYER. I think public access. There are some legal opinions that should be available to you, I am sure.

Mr. ROSS. There is no legal opinion that says yes or no.

Mr. DYER. I think the city attorney should have a copy of one.

Mr. ROSS. Yes; if you will provide the city attorney with an answer at that meeting one way or the other.

Mr. SPEIGEL. I am sorry, Senator. We are wasting your time.

That will be duly presented at the public hearing where all you people might come and see and get everything you want. The city commissioners only meet following the request of the people at the Hemispheres. If you want to vote against it, you come to a public hearing and we will take that into consideration.

Mr. ROSS. I was just asking for an answer, Commissioner.

Mr. SPEIGEL. You will get the answer at the public hearing.

Mr. ROSS. Thank you.

Senator CHILES. Yes, sir.

STATEMENT OF EDWIN GOLDSTEIN, SOCIAL SERVICE COORDINATOR, LAUDERHILL, FLA.

Mr. GOLDSTEIN. Senator Chiles, my name is Edwin Goldstein and I am a social service coordinator for the city of Lauderhill. There are people in the various other cities that hold a similar position to mine in Broward County. Now, as a social service coordinator, the city of Lauderhill has seen fit to purchase a bus and has employed four people, one of whom is paid by the city. The bus itself is paid for by city taxes and it furnishes transportation for all residents of Lauderhill, whether they be elderly or under the age of 60 or any age whatever. We provide them with the following services.

My point is that the service that we provide in Lauderhill for the residents of Lauderhill can be provided for all the residents in the

various other cities of Broward County and the services that we provide are these.

We have a service whereby all residents of Lauderhill are taken shopping on Monday, Wednesday, and Friday in the various places where shopping is necessary for these particular people.

We also provide a service whereby people are taken on Tuesday, Wednesday, and Thursday to doctors and dentists. There is no charge for any of the services that the city of Lauderhill provides for the residents of the city of Lauderhill.

We have a service whereby we take Jewish people to services on Friday night. We take gentile people to services at their request on a Saturday afternoon—that was the time that they requested. We take them every week with the bus to the particular denomination that they belong to.

We have provided all these services for the residents of the city of Lauderhill. Now as I say, I cannot understand why the other cities and the various towns in Broward County cannot provide this very same service to their residents, and it is provided not as an alternative to the areawide agency on aging, but as an assistance to the areawide agency on aging.

Now I am a former employee of the areawide agency on aging prior to becoming a social service coordinator in the city of Lauderhill and I discovered when working for areawide that they do not have the facilities that are necessary to provide these services to the many people that need them. When you call areawide and you ask for a doctor's appointment or you ask to go shopping, there is a delay of a week or two—they just don't have the facilities.

UNIQUE SERVICES CITED

Therefore, the various cities employing the same type of service that is employed in Lauderhill can provide a service for all their residents through the city, taxing the people and purchasing a bus and providing drivers and other facilities for these people. Now to my knowledge, Lauderhill is the only city that provides this complete unique service to the residents.

Now I am not trying to take credit for it, but when I was with areawide I saw the need for this type of service and I saw that each city would have to provide it in some way because, with all the Federal moneys that are available, it is still not possible for areawide agency on aging to provide this service in the depth which is required. Therefore, I suggested this to the city and it was picked up, fortunately, by the council and the mayor.

RENT CONTROLS QUESTIONED

You heard Mr. Heller speak here today. To digress for a moment as far as the rentals are concerned, I am a renter and the amount of raises that these landlords are asking for, \$40 and \$60 a month, are really unconscionable for people who are living on a fixed income. The decision by the judge in the particular case at the State level was that rent control does not belong in the United States, it belongs in Russia, even there only when people are living out on the street. It is hardly

the decision that a judge in this country should render. That was the decision that was rendered and the 5-percent increase that we attempted to get in Lauderhill was negated.

Now I am open to any questions. I would suggest to the Senator that it would be a good idea to contact all the social service coordinators in the various cities in Broward County and we would certainly get an excellent input into the immediate problems that are presented to the elderly people in the various cities of Broward County, including those who live in the condominiums. Every day, I would venture to say, there are 150 calls to my office alone, and yet with an office staff of four, we service approximately 2,000 people a month.

Senator CHILES. Your office does coordinate and does dovetail in with the areawide agency?

Mr. GOLDSTEIN. I was an outreach worker for a period of 3 months, and then the Federal funding ended and my job ended.

Senator CHILES. But now, as the social coordinator for the city, you still coordinate the city services with the services that are offered by the area?

Mr. GOLDSTEIN. Yes; in any instance that I cannot provide the particular service in the city, then I do not contact areawide, providing the party is over 60 years of age. Under 60, I have to look other places.

Senator CHILES. Those funds are pure city funds; they are not a grant?

Mr. GOLDSTEIN. No, I am a federally granted employee, and my assistance is—

Senator CHILES. Where does your funding come from?

Mr. GOLDSTEIN. Federally funded.

Senator CHILES. Is it CETA?

Mr. GOLDSTEIN. Yes; CETA. My assistant is CETA and the driver is CETA, but the bus and drivers' insurance and everything is paid entirely by the city of Lauderhill.

Senator CHILES. I see. Thank you very much. I appreciate your testimony.

Mr. GOLDSTEIN. You are quite welcome.

Senator CHILES. Are there other witnesses?

Then I think that we will recess our hearing. I certainly want to thank again Mayor Winkel, City Manager Aaron, and Commissioner Jack. Thank you very much for the use of the services and my thanks to the city of Hallandale. We appreciate very much the opportunity to hold our hearing here.

We will recess our hearings until tomorrow morning at 9 when we will be in the Federal Courthouse in West Palm Beach.

Mr. SPEIGEL. Senator, thank you for coming. We were glad to have you, and come again. This is your home base if you want to make it so. You are really a representative of Florida.

[Whereupon, at 1 p.m., the hearing recessed.]

APPENDIXES

APPENDIX 1

MATERIAL SUBMITTED BY WITNESSES

ITEM 1. PAMPHLET EXCERPTS SUBMITTED BY ROBERT ROSEN,¹ MIAMI, FLA., PRESIDENT, SOUTH FLORIDA CHAPTER, COMMUNITY ASSOCIATIONS INSTITUTE

WHAT IS CAI?

CAI was organized in 1973 by the Urban Land Institute and the National Association of Home Builders, with funding support from the United States League of Savings Associations, the Veterans Administration, and the U.S. Department of Housing and Urban Development.

Through research and education, CAI assists all automatic-membership community associations in condominium and planned developments serve their purpose: To preserve the quality of life and protect property values by maintaining the common elements, operating shared facilities, and delivering community services.

CAI's organizers realized that due to the tremendous growth and newness of PUI and condominium housing, there was an urgent need for a balanced, non-profit, national organization to:

- Serve as a clearinghouse and research center for collecting, testing, and developing new and better techniques of community association organization, operation, and financial management.
- Provide a national forum for discussing the key issues in the association field and exploring new approaches to association problems.
- Focus national attention on the needs and concerns of individuals and professionals involved with community associations, and on the importance and the potential of condominium and PUD forms of home ownership to the future of housing.

CAI does not represent any one profession or interest group. Rather, it represents the process of creating and operating successful, viable community associations.

Because CAI's membership is made up of all the different interest groups in the community association field, the institution maintains a broad perspective, encourages communication and cooperation between the different groups, and receives diverse input of information on all aspects of the association operation.

The explosive proliferation of community associations—more than 24,000 at last count—reflects the economic benefits of clustered association developments in a time of rising construction and energy costs, and the suitability of such developments as an alternative to urban sprawl.

Clearly, the community association is a dimension of home ownership that is going to be around for a long time. CAI is the organization that is helping to make sure community associations today and in the future are successful.

Address: Community Associations Institute, 1832 M Street, NW., Washington, D.C. 20036.

PAMPHLET: MANAGING A SUCCESSFUL COMMUNITY ASSOCIATION: THE ROLE OF THE BOARD

Management of the association is vested in a board of directors, usually composed of five to nine members. The bylaws of the association generally provide the

¹ See statement, p. 36.

board with an opportunity to tailor the operations of the association to meet changing needs as the community grows. The degree of responsibility that must be assumed by the board of directors in a community association is much greater than that required of most volunteer workers. Basically, activities of the board of directors include the following:

- (1) Providing effective physical maintenance of common areas and facilities;
- (2) Establishing sound financial policy and keeping proper records;
- (3) Proposing budgets and assessment rates;
- (4) Approving legal action against owners who fail to pay assessments, and all other necessary legal action;
- (5) Establishing, publicizing, and enforcing community rules and penalties;
- (6) Selecting an auditor and, when necessary, an attorney;
- (7) Employing a management agent, independent contractors or employees, and prescribing and supervising their duties;
- (8) Enforcing architectural control;
- (9) Appointing committees and cooperating with them in their work;
- (10) Overseeing the development of recreational, social, cultural, and educational programs to meet the needs and interests of members;
- (11) Procuring adequate hazard and liability insurance for common properties;
- (12) Sending adequate notice of assessments and meetings requiring votes of members to all members;
- (13) Bonding all officers or employees with fiscal responsibilities; and
- (14) Adopting policy resolutions.
- (15) Dealing with the developer on common area warranty or post-development period disputes between the developer and the association.

The size of the membership of an association will influence organizational structure. In associations with less than 50 members, the board of directors will usually handle the work of the association directly. Responsibilities for architectural control, maintenance, finance, and recreation are assigned to individual board members. The board member may involve other association members as he needs them, but he will rarely establish standing committees.

In larger associations, the development of a strong standing committee structure is essential. Each board member should be assigned the job of liaison with one or more committees. He can help the committee see its work in perspective of the total association, and he can support the committee's recommendations when they come before the board.

A system for responding to complaints is vital. Some boards require that all complaints be made in writing. This requirement decreases the frequency of complaints and increases their validity. The hearing of complaints in open board meetings has a certain therapeutic value, but the real key is prompt action.

Most boards request association members to address complaints directly to the responsible standing committee. Since the liaison board member and the committee report regularly to the board, the board will know whether prompt action is being taken.

The board must recognize problems that are within its province and reject those that are not. The board should make it clear that problems concerning inadequacy of construction or service in the individual homes are matters to be handled between the developer and the individual homeowner.

In one association, in recognition of the exceptional contributions made by the board of directors, each retiring board member is awarded a plaque by a committee within the CA. In several associations, a dinner is held for the retiring and new board members. The board of directors in one large association holds a dinner for all retiring and new committees at which time awards are made to residents who have made significant contributions of time and professional skill. These expressions of appreciation help develop a strong community spirit.

Although it is not possible in the initial organization of the board of directors, most boards soon provide a staggering of board members' terms of office to provide some continuing expertise from year to year. Members of CA boards which have not had staggered terms of office believe that valuable time and energy were lost since the entire new board went through the learning process without the benefit of the experience of at least two or three members.

A newly elected board's first action is to define the responsibilities of its officers and elect members to the office for which they best qualify. The responsibilities of the officers will vary in different community associations.

ITEM 2. COURT DECISION SUBMITTED BY PAUL LINZ,² TAMARAC, FLA.

[¶ 61.652] Commonwealth of Kentucky ex rel. Robert F. Stephens, attorney General v. Plainview Farms Development Corp.

State of Kentucky, Jefferson Circuit Court, Division 1. No. 234010. Dated September 6, 1977.

KENTUCKY ANTITRUST LAW

Tying arrangements—real estate development—recreational facilities—consent decree.—A Kentucky real estate developer was enjoined by a consent decree from conditioning the purchase of a residential unit, condominium or similar property upon the use of a recreational facility provided by any particular person. Use of recreational facilities as part of the common elements of a condominium project was not barred by the decree.

For plaintiff: Robert F. Stephens, attorney general, and W. Patrick Stallard, assistant attorney general, Frankfort, Ky. For defendant: Mark B. Davis, Jr., of Brown, Todd & Heyburn, Louisville, Ky.

CONSENT DECREE

McDonald, J.: The complaint having been filed herein on September 2, 1977, the plaintiff and the defendant, by their respective attorneys, having consented to the entry of this consent decree, without trial or adjudication of any issue of fact or law herein and without this consent decree constituting evidence of or an admission by any party hereto with respect to any issue of fact or law herein:

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ordered, adjudged, and decreed as follows:

I. Jurisdiction

This court has jurisdiction of the subject matter of this action and of the parties consenting hereto.

II. Definitions

As used in this consent decree:

(a) "Plainview subdivision" shall mean the property originally owned and subsequently developed by Plainview Farms Development Corporation described in three deeds which are recorded in the Jefferson County, Kentucky County Court Clerk's office on December 23, 1971, in Deed Book 4482, at pages 58, 79 and 102.

(b) "Residential unit" shall mean any single family residential lot, condominium apartment or similar property.

(c) "Person" shall mean any individual, corporation, partnership, association, firm or other legal entity.

(d) "Recreational facility" shall mean any organization, club or business offering tennis or swimming facilities.

III. Applicability

The provisions of this consent decree shall apply to the defendant, its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with the defendant who shall have received actual notice of this consent decree by personal service or otherwise.

IV. Purchases

Upon the entry of this consent decree, the defendant is enjoined and restrained from:

(a) Conditioning, directly or indirectly, the purchase of a residential unit in Plainview subdivision upon any requirement, understanding or agreement to purchase the use of a recreational facility from any particular person, through assessment or otherwise.

² See statement, p. 51.

(b) Denying, directly or indirectly, sale of a residential unit in Plainview subdivision to any person by conditioning the sale upon acceptance of the use of a recreational facility provided by any particular person.

The provisions of this consent decree will not prevent the use of any real estate development methods authorized by law, including the use of recreational facilities as part of the common elements of a condominium project.

V. Notification

Within 30 days after entry of this consent decree, the defendant shall mail a copy of this consent decree to each person listed in the October 1978, Greater Louisville yellow pages under the headings "Swimming pools—Private" and "Tennis courts—Private" and shall mail to the Division of Consumer Protection a list of the persons to which a copy of this consent decree is sent.

VI.

(a) For the purpose of determining or securing compliance with this consent decree, and for no other purpose, any duly authorized representative of the department of law shall, upon written request of the attorney general, and on reasonable notice to the defendant, be permitted, subject to any legally recognized privilege:

(1) Access, during office hours of the defendant, to all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any matters contained in this consent decree; and

(2) Subject to the reasonable convenience of the defendant, and without restraint or interference from it, to interview officers, directors, agents, partners or employees of defendant, who may have counsel present regarding such matters.

(b) For the purpose of determining or securing compliance with this consent decree, and for no other purpose, upon written request of the attorney general, defendant shall submit such reports in writing with respect to any matters contained in this consent decree as the attorney general may, from time to time, request.

No information obtained by the means provided in this section VI shall be divulged by any representative of the department of law to any person except in the course of legal proceedings to enforce this decree and to which the Commonwealth of Kentucky is a party, or for the purpose of securing compliance with this consent decree, or any otherwise required by law, and no such information shall be used by the Commonwealth of Kentucky for any purpose except as provided in this section VI.

VII. Costs

Defendant shall pay the costs of this proceeding.

VIII. Public Interest

Entry of this consent decree is in the public interest.

ITEM 3.—LETTER FROM FRED ENGEL,³ LAUDERDALE LAKES, FLA., TO SENATOR LAWTON CHILES, DATED JANUARY 2, 1979

DEAR SENATOR CHILES: I wish to thank you and your committee for sending me a transcript of my statements during the hearings in Hallandale, Fla., on November 28, 1978. I also wish to thank you for allowing me to air my views and problems, as it affects me and so many others in my circumstances.

I am not one versed in public speaking and did not prepare to give any statements, but I became incensed at the statements of the person that spoke for the developers, when he suggested that there were no new laws needed to protect the buying public because, as he stated, "most developers were out to do the right thing." I felt that if I stated my own experiences, it might act as a rebuttal to his claims.

Due to my background and experience in the building field, I was asked by our association directors to join with two others of our condo owners, one, an

³ See statement, p. 60.

architect, and the other, a civil engineer (all retired and licensed in other States), to investigate the faults in the constructions of our buildings, and report to them our findings. We also engaged a professional engineer, licensed in the State of Florida, who confirmed most of our findings of poor workmanship and particularly definite violations of the south Florida building code. During the past year we have gone to considerable expense replacing burnt-out electrical feeders and plumbing lines that were installed improperly. This engineer placed a dollar value to correct these defects at almost \$1 million. Our suit against our developer is now in the courts for almost 2 years, with the attorneys for the developer using delaying tactics to prevent the case from coming to trial, hoping to wear us out, etc.

As to the "plan" of attempting to "rec lease" problems via the tax district idea: this, to my opinion, is just another legitimized scheme, brought about by certain investment brokerage firms, whose primary concern is to get their profits out of getting these bonds sold, and again leaving the condo owners stew in a different kind of mess, that of having to share their rec area, which they paid for and are paying for the upkeep of, to persons who have no vested or other expense in.

I am therefore sincerely asking this committee to thoroughly investigate this plan and, as soon as possible, publicize its findings.

Wishing you and your committee continued success, I am

Very truly yours,

FRED ENGEL.

ITEM 4. LETTER FROM JOSEPH H. ROSS,⁴ HALLANDALE, FLA., TO SENATOR
LAWTON CHILES, DATED DECEMBER 21, 1978

DEAR SIR: Thank you for the privilege of talking before your committee when you held your session at the Hallandale City Hall. After reading my testimony, I believe it is somewhat garbled so I will add these remarks to my previous testimony.

You will agree that a 99-year lease on recreational facilities, with a monthly fee which can be raised after every 5 years using the cost-of-living index as a barometer when the cost-of-living index has no bearing on the recreation facilities use because the owner of the recreation facilities does not spend one red cent on repair or maintenance or any labor charges at all, the above is unconscionable, a ploy used by the developers of the condominiums. Yes, the purchasers of the condominiums signed the documents when they bought the apartments, but never—and I repeat, never—was it explained to the purchaser. It will soon be 10 years that I purchased a condominium. After 5 years we received a 33 percent increase in the recreation fee. Now another 5 years have passed and another increase is due, tied in with cost-of-living index, which could be 50 percent. (1975 through 1979). What was \$42 per month became \$55, and is now anticipated to be \$80 per month.

I want to bring out the one point pertinent to my previous remarks—what happens to your senior citizen on a locked-in income? Should he live an additional 5 years, with inflation on all fronts, including food, health, clothing, and lodging. His lodging is a condominium, his maintenance rises, subject to labor and cooling, heating, light, and electric power. These are things we can see and hear and battle. These all are part of daily living, and our Government in action can and will help, but to add additional costs to the senior citizen with an unconscionable, obnoxious contract for 99 years is unfair. We simply ask our national elected officials to come to our aid. I am sorry to state our State of Florida has failed miserably.

Respectfully yours,

JOSEPH H. ROSS.

⁴ See statement, p. 61.

APPENDIX 2

MATERIAL FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER FROM SAMUEL SILBERBERG, HOLLYWOOD, FLA., TO SENATOR LAWTON CHILES, DATED DECEMBER 1, 1978

DEAR SENATOR CHILES: I have been reading, with considerable interest, about the hearings you have been conducting in our area, relative to the woes, particularly of senior citizens, as concerns the unconscionable 99-year recreation leases, which altogether too many of us are saddled with.

I appreciate the fact that you sympathize with the problem we have, but you indicate that the most reliable source of possible relief could come from the Federal courts. Our own condominium has filed suit in both State and Federal courts.

Our progress in State court has been minimal, and it has been indicated to us it may be several years before the Federal courts act on this matter. You are no doubt aware that many legal minds are of the opinion that the 99-year lease violates a clear-cut position of the Federal Trade Commission, that such leases constitute "tie-in" sales, and therefore are a violation of Federal law.

Why must it take years for the Federal courts to act on this most essential problem? It must be apparent to you and the Federal courts that senior citizens cannot wait years for possible relief. This is a most serious problem, affecting millions of hard-pressed citizens in our land, and the Federal courts should be made aware of this.

May I appeal to you to use your good offices to speed up consideration of this problem in the Federal courts before it is too late to help many of us?

Very respectfully yours,

SAMUEL SILBERBERG.

ITEM 2. LETTER FROM MAUDIE E. BLONDIN, SECRETARY, HIBISCUS HOUSE CONDOMINIUM ASSOCIATION, INC., POMPANO BEACH, FLA., TO SENATOR LAWTON CHILES, DATED DECEMBER 4, 1978

DEAR SENATOR CHILES: We have read with interest about your activities on the part of condominium owners, especially the elimination of recreation and land leases or the escalation clause.

Our 14-unit condominium on three floors has a land and/or recreation lease on approximately 6,000 square feet of land which includes the pool and parking area. In addition, a 10 x 12 foot meeting room is included. For this each apartment paid \$39 a month prior to January 1, 1977. Now we are paying \$55.16 due to the escalation clause. This is an approximately 42 percent increase. In 1982 we will be faced with another similar increase.

When the payment went up, we contacted the owner for a price to buy up the lease. He stuck to the contract price of \$9,928 (15 times the annual rental) per apartment if anyone wanted to buy it on an individual basis or \$8,500 each if all owners participated. Needless to say, we have not taken advantage of this offer.

In our judgment we have already paid more in the last six years than a realistic value for the leased property; however, it appears that we have no choice but to continue to pay. This is why we are calling on you to take whatever action is necessary to eliminate land and recreation leases or to force the lease owners to sell at a realistic value.

Respectfully submitted.

MAUDIE E. BLONDIN.

ITEM 3. RESOLUTION ADOPTED BY THE CITY COUNCIL OF LAUDERDALE LAKES,
FLA., NOVEMBER 28, 1978

RESOLUTION 562

A resolution authorizing the mayor to make application for a grant of Federal funds to be used for the acquisition of passive park lands; providing that a true copy hereof shall be delivered to the Honorable Lawton Chiles, U.S. Senator; providing an effective date.

Whereas, the city council has determined through investigation and inquiry the construction of a miniwarehouse complex immediately adjacent to condominium homes of Oakland Estates would be detrimental to the safety, welfare, and property values of homeowners, and

Whereas, the proposed construction of said warehouses has caused considerable concern on the part of residents throughout the city of Lauderdale Lakes, and

Whereas, construction of said warehouses is a matter of litigation between the owner of the property and the city, and

Whereas, there exists insufficient land in the city of Lauderdale Lakes for passive park and recreation area needs of the citizenry, and

Whereas, there is an opportunity to apply for Federal funding for the purchase of land for such passive park and recreation areas,

Now, therefore, be it resolved, by the city council of the city of Lauderdale Lakes as follows:

Section 1: The mayor is authorized to make such application and take all steps necessary and proper to apply for and obtain a grant of funding for the purchase and development of lands and facilities to be used for the establishment of a passive park, such property lying adjacent to the north-of-way line of the C-13 Canal and southerly of the Oakland Estates Condominiums.

Section 2: The city clerk is authorized and directed to provide true copies hereof to the Honorable Lawton Chiles, U.S. Senator.

Section 3: This resolution shall become effective immediately upon its passage.

Adopted by the City Council of the City of Lauderdale Lakes at its regular meeting held November 28, 1978.

HOWARD CRAFT, *Mayor*.

APPENDIX 3

STATEMENTS SUBMITTED BY THE HEARING AUDIENCE

During the course of the hearing, a form was made available by the committee to those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

Dear Senator Chiles: If there had been time for everyone to speak at the hearing on "Condominiums and the Older Purchaser" in Hallandale, Fla., on November 28, 1978, I would have said:

The following replies were received:

L. E. KÖRDEL, DETROIT, MICH.

Thank you for your interest in this sticky subject. We own a condo in Florida and are saddled by the infernal 99-year lease—which, hopefully, can be declared illegal and killed.

E. D. MCARTHUR, BOYNTON BEACH, FLA.

In your investigation of oppressive rentals and recreation leases in condominiums, please do not forget that thousands of us who live in single-family housing developments or PUD's, as they are known, suffer from these same unbearable lease contracts. My home in Leisureville, Boynton Beach, Fla., is typical, there will be 3,000 houses subject to the same lease escalation every 5 years. Most of us signed these contracts without every having seem them and not knowing what we were getting into.

We believe all escalation clauses, no matter how old, should be canceled.

MRS. HARRY PROJANSKY, NORTH MIAMI BEACH, FLA.

(1) Boards of directors of condominiums internally that rip-off condo owners and the inability of people to defend themselves. Misrepresentation, concealment of terms of contracts entered into.

(2) "Cronyism" building up an inner circle of individuals to assure control, and barring others not in accord.

(3) Manipulation of election procedures—Proxies.

(4) Being "assessment happy" for the glory of controlling large sums of money.

Senator Chiles, I had written to you many times, concerning the 99-year recreation lease and the escalation clause.

I am vice president of the Condominium Owners & Co-Op's Association Inc., North Miami Beach, Fla.

It seems that the senior citizens who have not bought their recreation leases as yet have nothing to look forward to regarding having the recreation lease abolished.

Please advise me. I, too, can secure many votes.

HELEN M. RESZEL, NORTH MIAMI BEACH, FLA.

Ninety-nine year leases have been in effect for businesses for many years; however, condominium residences are not businesses so why were developers

allowed to use a business lease for a residence which does not make a dime throughout the years of operation? For instance, a liquor lounge which makes millions of dollars selling booze each year can afford the escalation of rental property and, therefore, one can understand such lease is in effect for money-making businesses—but a residence? No way!

Why doesn't someone in Washington, D.C., explore this avenue and have 99-year leases abolished for condos on this technicality, especially where we pay all expenses on developer's property.

And, not only that, but the purchase of recreation lease property for \$3½ million from developers certainly can't be considered common expense but is a capital expenditure and should be divided equally between unit owners. Write that, too, into the law, will you please, Senator?

Thank you for this opportunity to write to you.

