

1978 WL 35251 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
December 1, 1978

*1 Mr. David E. Martin
Staff Attorney
South Carolina Real Estate Commission
2221 Devine Street—Suite 530
Columbia, South Carolina 29205

Dear Mr. Martin:

You have requested an opinion as to the meaning of the term ‘value’ as used to determine percentage of ownership in [§ 27-31-60\(2\), S.C. CODE](#), 1976, the State Horizontal Property Act. It is our opinion that the term ‘value’ must refer to a determination based on the fair market value of the individual unit in relation to the fair market value of all units in the condominium development.

The word ‘value’ has been defined as ‘the material or monetary worth of a thing.’ O.E.D. ‘value’ (1961 ed.) The clearest and most obvious determinant of the ‘material or monetary worth’ of an individual apartment would be its fair market value. Therefore, applying the plain meaning rule of statutory interpretation, 2A SUTHERLAND STATUTORY CONSTRUCTION, § 46.01 *et seq.*, the value of the individual apartment units must be determined by fair market value.

A question has been raised whether the determination of value may be based solely on the square footage of each individual apartment in relation to the total square footage of all apartment units. This interpretation of the statute would permit a computation based on something other than value, in that the ‘value’ of one square foot of apartment space actually varies based on the desirability of the apartment's location. Because of this obvious fact, it seems apparent that the legislature would not have used the word ‘value’ if it had intended that the determination be based on square footage.

This interpretation is reinforced by the fact that other states do permit determinations to be based on some factor other than value. See, e.g. § 718-104(f) and (g), Florida Stat.Anno., 1978. That statute is silent as to the basis for the subject determination. It, therefore, would permit the determination to be based on the percentage of square footage.

North Carolina, on the other hand, requires the percentage of ownership to be ‘. . . in the approximate relation that the fair market value of the unit at the date of the declaration bears to the then aggregate fair market value of all the units. . . .’ [§ 47A-6\(2\), Gen.Stats. N.C.](#)

For these reasons, it is our opinion that the word ‘value’, as used in the South Carolina Horizontal Property Act, should be interpreted as fair market value. Therefore, each individual owner of a condominium unit would own an interest in the common elements of the condominium property equivalent to the percentage representing the fair market value of the individual apartment in relation to the total fair market value of all condominium units in the development.

Sincerely yours,

David C. Eckstrom
Staff Attorney

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