

MEMORANDUM

TO: UCIOA DRAFTING COMMITTEE, Our ABA advisor and participating observers

FROM: BILL BREETZ

DATE: NOVEMBER 24, 2020

RE: SUB-COMMITTEES FOR NEXT UCIOA MEETING; POSSIBLE RE-STRUCTURING OF OUR MEETING SCHEDULES

I have prepared this memorandum after consultation with both Jim Smith and Carl Lisman.

A. SUB-COMMITTEES My own conclusion is that we made considerable progress during our ZOOM meeting earlier this month, but that a considerable number of significant issues remain to be resolved. To address those issues, you may recall that I indicated during our last meeting that I would ask three sub-committees to address three of the subject matters.

Thinking further on the subject, since we will likely have only one more drafting committee meeting before the annual meeting, I propose creation of a total of five sub-committees, as described below. As you will see, I have specified several of you, both commissioners and observers, based on your participation in the discussion during our last meeting, as proposed members of these sub-committees.

However, I encourage any other members of the drafting committee or the observers who participated in the meeting, to let me know if they would like to be added as members of any – or all – of these subcommittees.

Here are the sub-committees:

1. THE LIMITED COMMON ELEMENT ALLOCATION ISSUE (SECTION 2-108)

The Reporter and I believe that we did not reach a consensus on changes to this section during the meeting, other than an apparent consensus on deleting the 50 square foot limit.

We did discuss eliminating the "inaccessible" and "of no practical use" limitations, but neither Jim nor I felt we had complete agreement on these topics. We also discussed various notice and unit owner approval matters, again without clear agreement. And, finally, we discussed whether the section should be limited to common elements inside a building or whether it might also extend to exterior common elements, such as decks and patios, though there was discussion of allocating portions of the grassy areas to units. To the best of my recollection, there was no suggestion that this section should be applied to common elements that were not adjacent to the unit in question.

I have asked Jim to prepare a discussion draft of the outstanding issues for the subcommittee's consideration. The draft will contain all of the alternatives we discussed with each of them in brackets, so that the subcommittee will find it easy to treat each one separately.

As to the notice/unit owner vote, Jim may add text to the effect that - upon receiving a unit owner request that met the standards for board approval without a full unit owner vote for selling common elements – the board should send the proposal to all unit owners and give the owners a [bracketed] number of days to object to the proposed allocation. If there is any objection, then the board would have to put the matter to a unit owner vote [query whether a meeting must be held or whether a ballot would suffice]. In either case, the proposed text would allow the board to approve the allocation unless [67] [51] [33 1/3] percent of the owners who vote – whether or not a quorum is present - say 'no'.

I propose that this sub-committee consist of Jim Smith, Howard Swibel, Dave Ramsey, Don Mielke and me, together with any other interested Commissioner or observer.

2. PARTIAL TERMINATION (SECTION 2-118).

There was no resolution as to (i) whether we ought to include a partial termination provision to our UCIOA termination section and (ii) if so, whether it should look like what's in the present draft. Members wanted more information about the Florida provision that serves as the basis for the present draft. Barry Nekritz suggested reaching out to the many ACREL members from Florida who may have experience and advice.

Jim Smith is a member of ACREL and has offered to reach out to the Florida members for their insight. I will notify the Drafting Committee of what Jim learns. Since I do not recall any vigorous expressions on this subject pro or con, I seek volunteers for a sub-committee to meet with Jim and me at that time.

3. MASTER ASSOCIATIONS (SECTION 2-120).

We had extended discussion of David Ramsey's concerns with the last subsection of § 2-120 dealing with election of members of the board of the master association. There seemed to be consensus that changes were needed to protect unit owners, but we had no agreement on what those changes might be. I propose a sub-committee consisting of Dave Ramsey, Steve Prunty, Jim, and me to consider this matter, together with any other interested Commissioner or observer.

4. ISSUES WITH SPECIAL DECLARANT RIGHTS (SECTIONS 3-104, -104A, -104B)

Given the decisions that were made at our meeting regarding this substantially rewritten section, I think the remaining matters pose more of a drafting matter than a policy issue. I propose that Carl Lisman, Jim and me serve on this subcommittee, together with any other interested Commissioner or observer.

5. ISSUES RELATED TO:

(a) WHO PAYS FOR COMMON EXPENSES THAT ‘BENEFIT FEWER THAN ALL’ OWNERS (SECTION 3-115 (d))

(b) CHARGING UNIT OWNERS FOR EXPENSES RELATED TO THEIR OWN BEHAVIOR (SECTION 3-115(g))

We had a long exchange with opposing viewpoints expressed on the first issue, with no resolution. Open questions include the scope of the ‘benefits fewer than all’ provision [Section 3- 115(d)] and whether disclosure of the details should appear in the Declaration.

Regarding the second issue, there was extended debate – most significantly, Commissioner Hawkins’ long critique recited in your draft – on whether the Connecticut solution [or some other text] was preferable.

I propose that the sub-committee consist of Jim, Howard Swibel, Barry Hawkins, Barry Nekritz and me, together with any other interested Commissioner or observer.

B. POSSIBLE RE-STRUCTURING OF OUR MEETING SCHEDULE I see that Chicago has just this morning circulated a survey of possible meeting dates; we also seek your preferences regarding how we might structure our meeting times.

To date, we have met by ZOOM in the ULC tradition of week-end meetings of drafting committees, two full days: Friday and Saturday.

Perhaps it’s simply my age, but I have found our back to back six hour sessions with an hour off for lunch [thus a total of 12 meeting hours] to be exhausting. One of the few advantages of ZOOM meetings, in addition to saving two travel days, is that if we wish we are able to change our schedules. Among our choices are these:

- * Continue two full day meetings of six hours each, on consecutive days: Friday/Saturday, Saturday/Sunday – or any other similar combination.

- * Have two full day meetings of six hours each, but NOT on consecutive days – for example, two Fridays, or two Saturdays, separated by a week or other period of days.

- * Have three days of meetings, each for four hours, with [or without] an hour lunch break, and again, separated by a week or other period of days.

- * Have four separate meeting days, with three hours each day, no lunch break, and again, separated [or not] by a week or other period of days. By example only:

- * we might meet 3 hours on a Friday, 3 hours the next day, and then repeat that pattern the following week-end.

You are encouraged to respond to the survey; I would also be happy to hear from any of you, individually.