

February 1, 1963.

Senate File 117

Passed on File.

By SCHROEDER, NOLAN and O'MALLEY.

*Inclusing #, 2/4; Res per O'Malley amendment 2-14*

Passed Senate, Date *2-20-63*.....

Passed House, Date *2-23-63*.....

Vote: Ayes.....*48*..... Nays.....*0*.....

Vote: Ayes.....*92*..... Nays.....*0*.....

Approved.....*3-15-63*.....

*Note: - House Amendment  
aye 48 nays 0 3/12/63*

*Substitute to H. 7. 2.21  
2/28*

# A BILL FOR

An Act relating to the ownership of individual apartment units.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. Short Title: This Act shall be known as the  
2 "Horizontal Property Act".

1 Sec. 2. Definition: Unless it is plainly evident from the  
2 context that a different meaning is intended, as used herein:

3 (a) "Apartment" means one or more rooms occupying all or a  
4 part of a floor or floors in a building of one or more floors or  
5 stories, but not the entire building, and notwithstanding whether  
6 the apartment be intended for use or used as a residence, office,  
7 for the operation of any industry or business or for any other  
8 use not prohibited by law.

9 (b) "Co-owner" means a person, corporation, partnership or  
10 other legal entity capable of holding or owning any interest in  
11 real property who owns all or an interest in an apartment within  
12 the building.

13 (c) "Council of co-owners" means all the co-owners of the  
14 building.

15 (d) "General common elements" means and includes:

16 (1) The land on which the building is erected.

17 (2) The foundations, basements, floors, exterior

18 walls of each apartment and of the building, ceilings and roofs,

19 halls, lobbies, stairways, and entrances and exits or communication

20 ways, elevators, garbage incinerators and in general all devices  
21 or installations existing for common use.

22 (3) Compartments or installations of central services  
23 for public utilities, common heating and refrigeration units,  
24 reservoirs, water tanks and pumps servicing other than one  
25 apartment.

26 (4) Premises for lodging of service personnel en-  
27 gaged in performing services other than services within a single  
28 apartment.

29 (e) "Limited common elements" means and includes those  
30 common elements which are agreed upon by all the co-owners to be  
31 reserved for the use of a certain number of apartments to the  
32 exclusion of the other apartments, such as special corridors,  
33 stairways and elevators, sanitary services common to the apart-  
34 ments of a particular floor, and the like.

35 (f) "Majority of co-owners" or "per cent of co-owners"  
36 means the owners of more than one-half or owners of that percent  
37 of interest in the building irrespective of the total number of  
38 co-owners.

39 (g) "Property" includes the land whether committed to the  
40 horizontal property regime in fee or as a leasehold interest,  
41 the building, all other improvements located thereon, and all  
42 easements, rights and appurtenances belonging thereto.

43 (h) All pronouns used herein include the male, female and  
44 neuter genders and include the singular or plural numbers, as  
45 the case may be.

1 Sec. 3. Recording of Declaration to Submit Property to  
2 Regime: When the sole owner or all of the owners, or the sole  
3 lessee or all of the lessees of a lease desire to submit a parcel

4 of real property upon which is located a building to the horizontal  
5 property regime established by this chapter, a declaration to  
6 that effect shall be executed and acknowledged by the sole owner  
7 or lessee or all of such owners or lessees and shall be recorded  
8 in the office of the county recorder of the county in which such  
9 property lies.

1 Sec. 4. Contents of Declaration: The declaration provided  
2 for in Sec. three (3) shall contain:

3 (a) A description of the land.

4 (b) A description of the building, stating the number of  
5 stories and basements, the number of apartments and the principal  
6 materials of which it is or is to be constructed.

7 (c) The apartment number of each apartment, and a statement  
8 of its location, approximate area, number of rooms, an immediate  
9 common area to which it has access, and any other data necessary  
10 for its proper identification.

11 (d) A description of the common areas and facilities.

12 (e) A description of the limited common areas and facilities,  
13 if any, stating to which apartments their use is reserved.

14 (f) The fractional or percentage interest which each apart-  
15 ment bears to the entire horizontal property regime. The sum of  
16 such shall be one if expressed in fractions and one hundred if  
17 expressed in percentage.

18 (g) The provision as to the percentage of votes by the  
19 apartment owners which shall be determinative of whether to re-  
20 build, repair, restore, or sell the property in the event of  
21 damage or destruction of all or part of the property.

22 (h) Any further details in connection with the property  
23 which the person executing the declaration may deem desirable to

24 set forth consistent with this Act.

25 (i) The method by which the declaration may be amended,  
26 consistent with the provisions of this Act.

1 Sec. 5. Contents of Deeds of Apartments: Deeds of apart-  
2 ments shall include the following particulars.

3 (a) Description of the land as provided in section four (4)  
4 of this Act, including the book, page and date of recording of  
5 the declaration.

6 (b) The apartment number of the apartment in the declaration  
7 and any other data necessary for its proper identification.

8 (c) The percentage of undivided interest appertaining to  
9 the apartment in the common areas and facilities.

10 (d) Any further details which the grantor and grantee may  
11 deem available to set forth consistent with the declaration and  
12 this Act.

1 Sec. 6. Copy of the Floor Plans to be Filed: There shall  
2 be attached to the declaration, at the time it is filed, a full  
3 and an exact copy of the plans of the building, which copy of the  
4 plans shall be entered of record along with the declaration.  
5 Said plans shall show graphically all particulars of the building  
6 including, but not limited to, the dimensions, area and location  
7 of common elements affording access to each apartment. Other  
8 common elements, both limited and general, shall be shown  
9 graphically in so far as possible and shall be certified to by an  
10 engineer or architect authorized and licensed to practice his  
11 profession in this state.

1 Sec. 7. Interest in Common Elements; Reference to Them in  
2 Instrument:

3 (a) The fractional or percentage interest in the general

4 common elements and the fractional or percentage interest in the  
5 limited common elements where such exist are hereby declared to be  
6 appurtenant to each of the separate apartments.

7 (b) Any conveyance, encumbrance, lien, alienation or devise  
8 of an apartment under a horizontal property regime by any instru-  
9 ment which describes the land and apartment as set forth in sec-  
10 tion four (4) shall also convey, encumber, alienate, devise or be  
11 a lien upon the fractional or percentage interest appurtenant to  
12 each such apartment under section four (4), paragraph (f), to the  
13 general common elements, and the respective share or percentage  
14 interest to limited common elements where applicable, whether  
15 such general common elements or limited common elements are  
16 described as in section four (4), paragraphs (d) and (e), by  
17 general reference only, or not at all.

1 Sec. 8. Removal from Provisions of This Act:

2 (a) All of the apartment owners may remove a property from  
3 the provisions of this Act by an instrument to that effect, duly  
4 recorded, provided that the holders of all liens affecting any of  
5 the apartments consent thereto or agree, in either case by in-  
6 struments duly recorded, that their liens be transferred to the  
7 percentage of the undivided interest of the apartment owner in  
8 the property as hereinafter provided.

9 (b) Upon removal of the property from the provisions of  
10 this Act, the property shall be deemed to be owned in common by  
11 the apartment owners. The undivided interest in the property  
12 owned in common which shall appertain to each apartment owner  
13 shall be the percentage of undivided interest previously owned  
14 by such owner in the common area and facilities.

1 Sec. 9. Removal No Bar to Subsequent Resubmission: The

2 removal provided for in the preceding section shall in no way  
3 bar the subsequent resubmission of the property to the provisions  
4 of this Act.

1 Sec. 10. Individual Apartments and Interest in Common  
2 Elements are Alienable: When real property containing a build-  
3 ing is committed to a horizontal property regime, each individual  
4 apartment located therein and the interests in the general common  
5 elements and limited common elements if any, appurtenant thereto,  
6 shall be vested as, and shall be as completely and freely alien-  
7 able as any separate parcel of real property is or may be under  
8 the laws of this state, except as limited by the provisions of  
9 this Act.

1 Sec. 11. Real Property Tax and Special Assessments; Levy  
2 on Each Apartment:

3 (a) All real property taxes and special assessments shall  
4 be levied on each apartment and its respective appurtenant  
5 fractional share or percentage of the land, general common  
6 elements and limited common elements where applicable as such  
7 apartments and appurtenances are separately owned, and not on  
8 the entire horizontal property regime.

9 (b) Any exemption from taxes that may exist on real prop-  
10 erty or the ownership thereof shall not be denied by virtue of  
11 the registration of the property under the provisions of this Act.

1 Sec. 12. Liens Against Apartments; Removal from Lien;  
2 Effect of Part Payment:

3 (a) Subsequent to recording the declaration provided for  
4 in section three (3), and while the property remains enrolled in  
5 a horizontal property regime, no lien shall thereafter arise or  
6 be effective against the property. During such period liens or

7 encumbrances shall arise or be created only against the individ-  
8 ual apartment and the general common elements and limited common  
9 elements where applicable, appurtenant to such apartment, in the  
10 same manner and under the same conditions in every respect as  
11 liens or encumbrances may arise or be created upon or against  
12 any other separate parcel of real property subject to individual  
13 ownership.

14 (b) In the event a lien against two or more apartments be-  
15 comes effective, the owners of the separate apartments may re-  
16 move their apartment and the general common elements and limited  
17 common elements where applicable appurtenant to such apartment  
18 from the lien by payment of the fractional or proportional  
19 amounts attributable to each of the apartments affected. Such  
20 individual payments shall be computed by reference to the frac-  
21 tions or percentages appearing on the declaration provided for  
22 in section four (4), paragraph (f). Subsequent to any such pay-  
23 ment, discharge or other satisfaction the individual apartment  
24 and the general common elements and limited common elements  
25 applicable appurtenant thereto shall thereafter be free and  
26 clear of the lien so paid, satisfied or discharged. Such par-  
27 tial payment, satisfaction or discharge shall not prevent the  
28 lienor from proceeding to enforce his rights against any apart-  
29 ment and the general common elements, limited common elements  
30 where applicable appurtenant thereto not so paid, satisfied or  
31 discharged.

1 Sec. 13. Limitation upon Availability of Partition; Excep-  
2 tion as to Limitation of Partition by Joint Ownership:

3 (a) The provisions of chapter 651, Code 1962, relating to  
4 partition of real property shall not be available to any owner

5 of any interest in real property included within a regime estab-  
6 lished under this Act as against any other owner or owners of any  
7 interest or interests in the same regime, so as to terminate the  
8 regime.

9 (b) Nothing contained in the Act shall be construed as a  
10 limitation on partition by joint owners of one or more apartments  
11 in a regime as to individual ownership of such apartment or  
12 apartments without terminating the regime, or as to ownership of  
13 such apartment or apartments and lands outside the limits of the  
14 regime.

1 Sec. 14. Bylaws: The administration of every property  
2 shall be governed by bylaws, a true copy of which shall be an-  
3 nexed to the declaration and made a part thereof. No modifica-  
4 tion of or amendment to the bylaws shall be valid unless set  
5 forth in an amendment to the declaration and such amendment is  
6 duly recorded.

1 Sec. 15. Contents of Bylaws: The bylaws must provide for  
2 at least the following:

3 (a) The form of administration, indicating whether this  
4 shall be in charge of an administrator or of a board of adminis-  
5 tration, or otherwise, and specifying the powers, manner of re-  
6 moval, and, where proper, the compensation thereof.

7 (b) Method of calling or summoning the co-owners to assemble;  
8 what percentage, if other than a majority of apartment owners,  
9 shall constitute a quorum; who is to preside over the meeting and  
10 who will keep the minute book wherein the resolutions shall be  
11 recorded.

12 (c) Maintenance, repair and replacement of the common areas  
13 and facilities and payments therefor including the method of ap-

14 proving payment vouchers.

15 (d) Manner of collecting from the apartment owners their  
16 share of the common expenses.

17 (e) Designation and removal of personnel necessary for the  
18 maintenance, repair and replacement of the common areas and  
19 facilities.

20 (f) The percentage of votes required to amend the bylaws.

1 Sec. 16. Disposition of Property; Destruction or Damage:

2 If within thirty (30) days of the date of the damage or destruc-  
3 tion to all or part of the property, it is not determined by the  
4 Council of Co-owners to repair, reconstruct or rebuild, then and  
5 in that event:

6 (a) The property shall be deemed to be owned in common by  
7 the apartment owners;

8 (b) The undivided interest in the property owned in common  
9 which shall appertain to each apartment owner shall be the per-  
10 centage of undivided interest previously owned by such owner in  
11 the common areas and facilities;

12 (c) Any liens affecting any of the apartments shall be  
13 deemed to be transferred in accordance with the existing pri-  
14 orities to the percentage of the undivided interest of the  
15 apartment owner in the property as provided herein; and

16 (d) The property shall be subject to an action for par-  
17 titution at the suit of any apartment owner, in which event the  
18 net proceeds of sale, together with the net proceeds of the  
19 insurance on the property, if any, shall be considered as one  
20 fund and shall be divided among all the apartment owners in a  
21 percentage equal to the percentage of undivided interest owned  
22 by each owner in the property, after first paying out of the

23 respective shares of the apartment owners, to the extent suf-  
 24 ficient for the purpose, all liens on the undivided interest in  
 25 the property owned by each apartment owner.

1 Sec. 17. Severability: If any provision of this Act or any  
 2 section, sentence, clause, phrase or word, or the application  
 3 thereof in any circumstances is held invalid, the validity of the  
 4 remainder of the Act and of the application of any such provision,  
 5 section, sentence, clause, phrase or word in any other circum-  
 6 stances shall not be affected thereby.

1 Amend Senate File 117, section 4, line 9, by striking the  
 2 word "date" and inserting in lieu thereof the word "data".

Filed

February 7, 1963. - *adopted 2/20*

By O'MALLEY.

SENATE FILE 117

1 Amend Senate File 117 as follows:  
 2 1. By striking the word "Sec." in line 2 of section  
 3 4 and by inserting in lieu thereof the word "section".  
 4 2. By striking line 3 of section 13 and by inserting  
 5 in lieu thereof the following:  
 6 "(a) The provisions of chapter six hundred fifty-  
 7 one (651), Code 1962, relating to"

Filed and adopted  
 February 20, 1963.

By SCHROEDER.

HOUSE FILE 221

1 Amend House File 221 as follows:  
 2 1. Amend section four (4), line eleven (11) by striking the  
 3 words "common areas" and inserting in lieu thereof the words  
 4 "general common elements".  
 5 2. Amend section four (4), line twelve (12) by striking the  
 6 word "areas" and inserting in lieu thereof the word "elements".

Filed  
 February 19, 1963.

COMMITTEE ON JUDICIARY 1,  
 JOHN MOWRY, *Chairman.*

SENATE FILE 117

1 Amend Senate File 117 as follows:  
 2 1. Amend section four (4), line eleven (11)  
 3 by striking the words "common areas" and inserting  
 4 in lieu thereof the words "general common elements".  
 5 2. Amend section four (4), line twelve (12)  
 6 by striking the word "areas" and inserting in  
 7 lieu thereof the word "elements".

Filed and adopted  
 February 28, 1963. *Sen 3/20*

STANLEY of Muscatine.