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ZARELLA, J., dissenting. I respectfully dissent from the majority opinion. The majority concludes that the Oaks condominium complex (Oaks) was a legally created condominium pursuant to the Condominium Act of 1976 (act), General Statutes § 47-68a et seq. More specifically, the majority concludes that, although the ''act is not a model of clarity,'' hybrid condominiums, such as the condominium at issue in the present case, in which the purchaser is granted a fee simple interest in the building unit and a leasehold interest in the underlying land and common areas, are not inconsistent with the provisions of the act.

I disagree with the majority's analysis through which the majority seeks to determine whether a hybrid form of ownership is prohibited rather than authorized under the act. The act, however, ''clearly makes compliance with its requirements a condition precedent to attaining condominium legal status . . . .'' *Hall Manor Owner's Assn.* v. *West Haven*, 212 Conn. 147, 153, 561 A.2d 1373 (1989). The condominium form of ownership is a creature of statute, and, therefore, ''the law mandates strict compliance with the authorizing statute.'' *William Beazley Co.* v. *Business Park Associates, Inc.*, 34 Conn. App. 801, 803, 643 A.2d 1298 (1994). Thus, the test to be applied in determining whether a declaration complies with the act is not whether it is *inconsistent* with the act but, rather, whether it is *authorized* by the act. While I disagree with much of the majority's analysis,[1] I believe that the issue of whether the declaration in the present case complied with the act can be resolved by applying the foregoing principle of law with regard to the type of condominium ownership created by the declaration.

The term ''property'' is defined in § 47-68a (*l*) as ''the land, all buildings, all improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which have been or are intended to be submitted to the provisions of [the act].'' Therefore, the definition of property encompasses both land and buildings.

''Leasehold condominium'' is defined in § 47-68a (cc). In substituting the definition of property, i.e., land and buildings, for the term ''property'' where it appears in the definition of ''leasehold condominium,'' we derive the following definition: '' 'Leasehold condominium' means [*the land and all buildings*] submitted to the provisions of th[e] [act] by the fee owner, whereby unit leases are issued for a period not less than fifty years and provided, in a residential leasehold condominium, such lease provides that the lessee shall have the option to purchase the fee simple title to the demised [*land and buildings*] during the term of the lease at a price

stated or by a method stated for subsequent determination of the total price.'' (Emphasis added.) General Statutes § 47-68a (cc). This definition, I submit, clearly does not authorize the type of hybrid condominium at issue in the present case for at least two reasons.

First, the definition of ''leasehold condominium'' requires that ''unit'' leases be issued for a period of not less than fifty years. In the present case, the units[2] are owned in fee simple rather than leased. The definition of ''leasehold condominium,'' however, requires, at a minimum, that the *unit* is leased.

Second, the definition of ''leasehold condominium'' requires that the lease contain an ''option to purchase the fee simple title to the demised [*land and buildings*] . . . .'' (Emphasis added.) General Statutes § 47-68a (cc). That provision, if not dispositive, strongly suggests that the land and buildings both must be subject to a leasehold. The lease at issue in the present case, however, provides an option to purchase the land only. Therefore, if we apply the principle that the form of ownership established by the declaration must be authorized by statute, as we should, then I conclude that the present form of ownership, under which the purchaser acquires a fee simple interest in the unit but a leasehold interest in the underlying land, does not fall within the purview of the definition of ''leasehold condominium'' contained in the act. Consequently, such form of ownership is not authorized by the act.

I also would conclude that the lease itself does not comply with the statutory requirements for establishing a leasehold condominium. The lease provides for the exercise of an option to purchase the land during the eleventh year of the lease. It is my view that this provision conflicts with the provision of General Statutes § 47-68a (cc) that requires ''that the lessee shall have the option to purchase the fee simple title to the demised property *during* the term of the lease at a price stated or by a method stated for subsequent determination of the total price.'' (Emphasis added.) Webster's Third New International Dictionary defines the term ''during'' as ''throughout the continuance or course of'' and ''at some point in the course of . . . .'' The application of those two meanings would lead to different results and, therefore, the term ''during'' in § 47-68a (cc) is ambiguous.

On the basis of this ambiguity, I would look to the statutory scheme to determine whether there is support for one meaning of the term ''during'' rather than the other, apply any applicable rules of statutory construction and review the legislative history. I also would apply common sense. I can find no statutory provision or legislative history that would provide support for either meaning. If ''during,'' as used in § 47-68a (cc), means a single point in time, however, the failure to exercise the option to purchase would mean that no

subsequent lessee would have an option to purchase the demised property as required by the act.[3] I thus would conclude that ''during,'' as used in § 47-68a (cc), means ''throughout the course of.''

I also believe that the statutory requirement of an option to purchase during the term of the lease highlights the implausibility of the claim made by the plaintiff lessors that hybrid condominiums are authorized under the act. The plaintiffs claim that they can convey a leasehold interest in the land and the common elements while conveying fee simple title to the individual units. The plaintiffs further claim that the lease complies with the act as long as the lease: (1) offers the lessee an option to purchase *at a single point in time* during the course of the lease; and (2) has a minimum term of fifty years. If the lessee declines to exercise the purchase option for any reason, however, title to the unit and the land forever must remain divided, thereby making the property unmarketable—at least toward the end of the lease—and most certainly devaluing the owner's interest. This is an untenable proposition.

According to the condominium ground lease in the present case, the leased property includes not only all of the land but ''all improvements lying upon or under the surface of the land and not contained in the [b]uilding, including without limitation sewers and sewer connections and paving lying upon the land . . . .'' When the leasehold expires, the land and all improvements revert to the declarant unencumbered by the obligations of the lease. Title to the buildings remains with the unit purchaser without the enjoyment of any of the rights under the lease. The lease in the present case, quite remarkably, does not explain or otherwise describe what happens upon its expiration, another fact that serves to confirm its unconscionability, as I discuss later in this opinion. Accordingly, if hybrid condominiums are authorized under the act, as the majority so concludes, then the term ''during'' in § 47-68a (cc) can only reasonably mean ''throughout the continuance or course of'' the lease.[4] The attribution of this meaning to the term ''during,'' in turn, would render the lease nonconforming with respect to the provisions of the act. If hybrid condominiums are not permitted under the act, however, then the declaration would contravene the provisions of the act. Either way, it appears that the plaintiffs should not prevail on appeal.

A determination that a hybrid condominium is not authorized under the act or that the lease contravenes the provisions of the act also implicates the issue of unconscionability. With respect to the trial court's conclusion that the lease was not unconscionable, I first note that that court properly recognized that the determination of whether a lease is unconscionable must be made with due consideration of common-law principles of unconscionability. Furthermore, this court long has

stated that the policy of this state is not to uphold restraints on the alienation of real property. E.g., *Peiter* v. *Degenring*, 136 Conn. 331, 336, 71 A.2d 87 (1949). ''It is undisputable that [i]t is the policy of the law not to uphold restrictions upon the free and unrestricted alienation of property unless they serve a legal and useful purpose. [Id.] It also is undisputable that this policy is strong and deeply rooted. J. Dukeminier & J. Krier, Property (3d Ed. 1993) p. 223 ([t]he rule against direct restraints on alienation is an old one, going back to the fifteenth century or perhaps even earlier). Moreover, it is undisputable that the right of property owners to rent their real estate is one of the bundle of rights that . . . constitute[s] the essence of ownership of property. See, e.g., id., p. 86 ([property] consists of a number of disparate rights, a bundle of them: the right to possess, the right to use, the right to exclude, the right to transfer). The question . . . therefore, is whether . . . the continued maintenance of [a restriction on the alienation of property] serves a legal and useful purpose.'' (Internal quotation marks omitted.) *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 151, 763 A.2d 1011 (2001). Because the termination of the leasehold in this case directly affects the unit owners' ability to possess and use the building, this fact certainly should be a consideration in determining the unconscionability of the lease.

Additionally, when the lease terminates without the exercise of the option to purchase the land, a question arises about whether the lack of terms in the lease regarding the relationship of the parties with respect to the use of the building would lead to economic waste. We also have recognized a public policy against such waste. E.g., id., 154.

Finally, I do not agree with the majority that § 47-68a (cc) authorizes the collective exercise by all of the unit owners of the option to purchase as the lease in the present case requires. Rather, I interpret the statute to require lessors to give each lessee a separate and individual right to exercise an option to purchase. I again would consider this factor in determining whether the lease is unconscionable.

I therefore would determine that hybrid leasehold condominiums are not authorized under the act and that the declaration at issue in the present case did not create a valid condominium. Furthermore, I would conclude that the purchase option in the lease, as written, is invalid because it fails to comply with the provision of § 47-68a (cc) that requires that the lessee's option to purchase be exercisable at all times during the term of the lease. Accordingly, I would reverse the judgment of the trial court and remand the case for a new trial on all unresolved issues, including the issue of the unconscionability of the lease. Furthermore, a determination of whether the lease is unconscionable

should be made with due consideration of the fact that hybrid condominiums are not authorized under the act, the fact that the lease does not conform to the dictates of § 47-68a (cc), and public policy considerations.

Accordingly, I respectfully dissent.

[1] For example, I find that a more reasonable reading of the statutory scheme requires that the declarant be the owner of the fee simple interest. See General Statutes § 47-70 (d); see also General Statutes § 47-71 (a) (''[t]he *owner* or *owners* of any property in the state may submit such property to the provisions of [the act]'' [emphasis added]); General Statutes § 47-72 (prohibiting declarant from conveying fee simple interest or leasehold interest to purchaser with any encumbrances other than those enumerated in § 47-70, which does not include ground leases, thereby implying that declarant must be owner of fee simple interest).

[2] The term ''unit'' is defined in General Statutes § 47-68a (b) as ''a part of the property including one or more rooms or designated spaces located on one or more floors or a part or parts thereof in a building, intended for any type of independent use, and with a direct exit to a public street or highway or to common elements leading to such street or highway.''

[3] Section 47-68a (cc) requires that the lease provide that ''the lessee'' shall have the option to purchase the fee simple title to the demised property during the term of the lease. If we assume that the option is not exercised by the original lessee and the original lessee sells his unit to a subsequent purchaser, the subsequent purchaser, also a lessee of the land, would not have an option to purchase the leased land as required by statute.

[4] This would, at a minimum, allow for unit owners to exercise the option to purchase the land as the end of the lease approaches.