

Condominium Boundaries

— The Surveyor's Responsibility

BY E. S. SMITH, O.L.S.

Legal and Survey Standards Branch

Proposed amendments to the regulations under The Condominium Act will require that the surveyor assume more responsibility for the written unit boundary definition. The new regulation will provide that this definition shall be in a schedule to the declaration, (as is now the practice) and that it shall be signed by the surveyor (new).

The new provision results from a recognition that the surveyor is in a better position to describe the unit boundaries, having first-hand knowledge of how the buildings were constructed. During the course of the survey he inspects the buildings on the site and also examines the structural plans to ensure that they represent "as built" conditions. Furthermore, this provision will ensure consistency between the written definition and the illustrations appearing on the plan which together comprise the description of the unit boundary.

At this juncture it was felt that a review of the basic principles and the methods used in the preparation of the condominium unit boundary description would be of beneficial interest to the surveyor.

The Condominium Act does not impose restrictions as to where the unit boundaries are to be positioned and although the surveyor is the better qualified to describe the unit boundary the decision as to the position of the boundary ultimately rests with the developer. This decision may be influenced by a consideration of the insurance and maintenance obligations of the unit owner and condominium corporation or may even be arrived at by a consideration of the boundary as a selling feature. As an illustration of a relationship between the unit boundary and the maintenance obligations, the solicitor may provide in the declaration that the unit owner maintains his unit and the condominium corporation the common elements. Obviously, in this situation the unit boundary conveniently separates the maintenance obligations. Ideally then, in practice, the surveyor would describe the unit boundary in accordance with guidelines as to position arrived at through consultation with the solicitor, who must consider the maintenance implications, and the developer.

With respect to the maintenance and repair obligations, which as we have

seen, may dictate the position of the unit boundary, there are some generally held principles which should be understood. In order to preserve the general appearance of the buildings through uniform maintenance standards the exterior surfaces are usually made a corporation responsibility. Structural elements and service distribution systems are made a corporation responsibility to ensure that repairs are carried out expeditiously, thereby protecting the physical interdependency of the units. There is also economy in having the corporation responsible for some items. For example it may be in the collective interests of the unit owners to have the corporation responsible for the roof in a town-house development where repairs may involve more than one unit. On the other hand the finishing installations of the unit which are subject to maintenance standards and wear and tear that vary with the individual are usually made a unit owner responsibility. This approach to maintenance obligations is demonstrated by the adoption of the drywall or plaster of the exterior walls and ceiling as the unit boundary in a large percentage of the condominiums registered to date.

In the preparation of the unit boundary description it is essential that the draftsman have an appreciation of the general principles respecting the unit boundary and the monumentation. Where the boundary is located within the building it is defined in relation to the immediate structure; for example, "the lower line and face of the 2" x 8" ceiling joists at the top floor, the exterior unfinished surface of the metal siding of the first or second floors, the centre line of the concrete block wall between units. The monument that controls the position of the boundary is the immediate structure. Consequently there is not a precise location survey since the original position of the structure controls the unit boundary, the unit dimensions being of secondary importance. If the structure moves after registration, by operation of Section 8 of The Condominium Act, the unit owner has an easement to occupy any portion of his dwelling that was formerly within the unit.

Therefore in describing a unit boundary it is necessary to indicate what the monument is, e.g. "lower face of 2" x 8" ceiling joists", and where the boundary is located in the building, e.g. "at the top floor ceiling". The terms used should not be ambiguous; for example, a unit boundary defined as "the

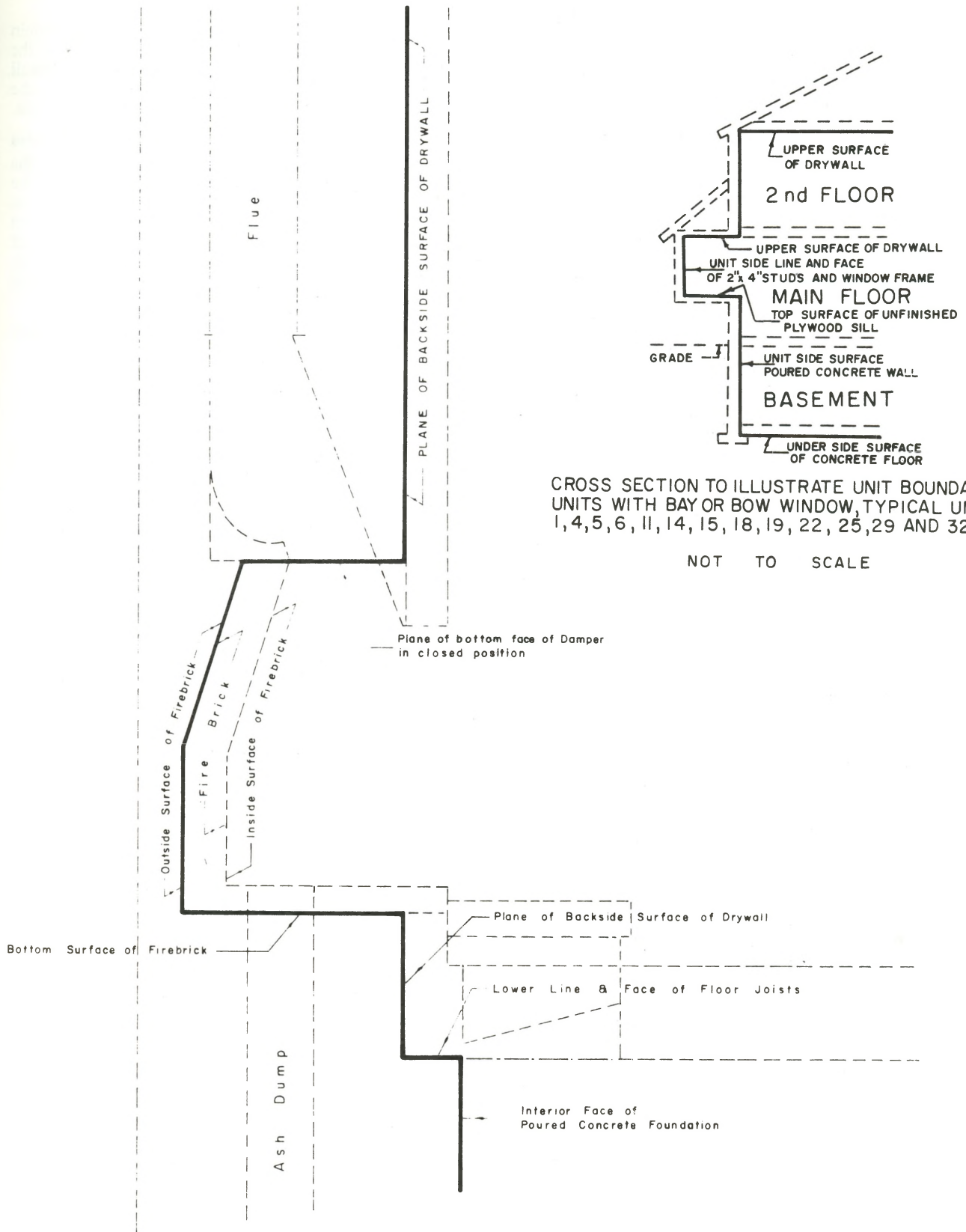
inside surface of the drywall" could be interpreted to mean both the unit side surface or the unexposed surface depending on your orientation with the structure. Another common inaccuracy is to describe a boundary which is defined in relation to or along a physical surface as a plane. A plane, in geometric terms, exists in theory only and cannot be created in material form.

In the conventional unit boundary description where the structural elements are excluded from the unit the boundary specifications cover, for example, recessed entry-ways, windows, doors, frames, bay windows, overhangs and other protrusions. An incomplete or vague boundary description could be a potential source of dispute among the unit owners and the condominium corporation particularly with respect to maintenance, repairs and insurance. Bearing this in mind the draftsman will have to carefully examine the architectural plans of the building to determine unique design features and the materials used in construction. In addition some field verification of the construction details should be carried out because the building plans do not always correspond to "as built" conditions. Changes may be made during the progress of construction and the surveyor may not be provided with up-to-date plans.

With respect to the plan of survey, the identification of the unit boundaries in vertical sections on the surveyor's plan lends clarification to the more comprehensive written unit definition. Vertical sections are desirable because both vertical and horizontal boundaries can be illustrated. Depending on the complexity of the design, more than one section may be required to adequately illustrate the boundaries of one type of dwelling. It should be emphasized that each section appearing on the plan should be representative of the cutting of the building by a single plane only, otherwise the sections may be difficult to relate to the actual structure being depicted.

Finally, in view of clause r of Section 1 of The Condominium Act which in defining the unit states in part, "(the unit) comprises the space enclosed by its boundaries and all the material parts of the land within this space....", the exemption from the unit of material elements, where the scale allows, should be reflected by the unit boundary configuration on the plan. For example, the heavy line representing the unit boundary should outline concrete columns and walls, thereby indicating that they are part of the common elements.

To assist the practitioner in the preparation of the written unit definition which appears in the declaration, a compilation of past definitions covering



CROSS SECTION TO ILLUSTRATE UNIT BOUNDARIES FOR
 UNITS WITH BAY OR BOW WINDOW, TYPICAL UNITS
 1, 4, 5, 6, 11, 14, 15, 18, 19, 22, 25, 29 AND 32.

NOT TO SCALE

CROSS SECTION OF FIREPLACE (Units 1 to 12 inclusive)
 Scale 1" = 1'-0"

townhouse and highrise residential accommodation are reproduced here.

1. TOWNHOUSE CONDOMINIUM WHERE THE UNIT BOUNDARY IS THE INTERIOR SURFACE OF THE STRUCTURAL WALLS

(Alternatives are shown in brackets)

Vertical Boundaries

- a. The backside (unit side, unexposed) surface of the drywall, (the unit side line and face of the 2" x 4" studs) of the exterior walls of the first or second floor.
- b. The unfinished inside or interior surface of the exterior concrete, concrete block or masonry walls in the basement, the garage, and the walls dividing the units from other units at the first or second floor.
- c. The unit side line and face of the 2" x 4" wood studs of the exterior walls of any bridge - bedroom.
- d. The unfinished interior surface of all exterior doors and door frames, window frames and the interior face of all glass panels located therein. (The above boundaries (a) are produced across openings for windows and doors).

Horizontal Boundaries

- a. The lower boundary in the basement is the upper (lower) surface of the poured concrete floor slab.
- b. The upper boundary of the unit at the top floor is the upper (lower) surface of the ceiling drywall, (the lower line and face of the 2" x 8" ceiling joists).
- c. The lower boundary of the unit immediately above the recessed entry is the upper line and face of the 2" x 8" floor joists and the upper unit boundary immediately below the recessed entry is the lower surface of the pre-cast concrete step.
- d. The lower boundary of the unit in the vicinity of second floor protrusions (overhangs, cantilever projections) is the under surface of the wood sub-floor, (upper line and face of the 2" x 8" floor joists).
- e. The upper boundary of the unit where the first floor extends beyond the upper floor is the upper surface of the ceiling drywall.
- f. In the attached garage where the garage extends beyond the floor above the upper unit boundary is the lower line and face of the 2" x 4" roof joists and the lower unit boundary is the upper surface of the concrete floor slab.

- g. In the bridge - bedroom of certain units the upper unit boundary is the upper surface of the ceiling drywall and the lower unit boundary is the under surface of the wood sub-floor.

Boundaries in the Vicinity of Fireplaces

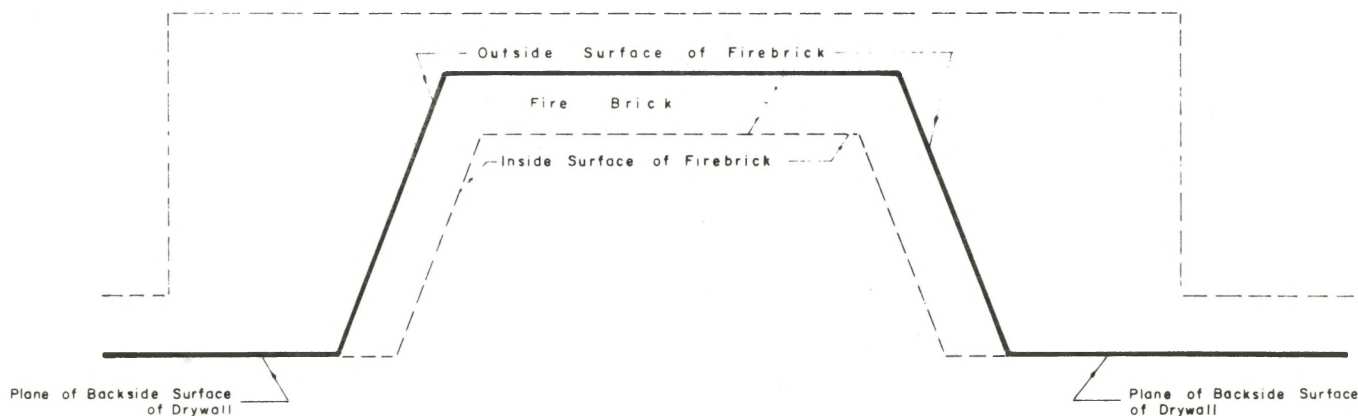
The vertical unit boundary is the unexposed surface of the firebrick in the fireplace. The horizontal boundary is the bottom surface of the firebrick in the fireplace and the bottom surface of the damper in a closed position and its extension to intersection with previously mentioned vertical boundaries.

Boundaries in the Vicinity of Bay Windows

In the vicinity of the bay window, the lower unit boundary is the upper surface of the wooden sub-floor of the projection (or upper surface of the plywood seat) and the upper unit boundary is the backside of the drywall of the projection; at the window portion, the unfinished interior surface of the frame and window pane.

2. TOWNHOUSE CONDOMINIUM WHERE THE UNIT BOUNDARY IS THE CENTERLINE OF THE STRUCTURAL WALLS

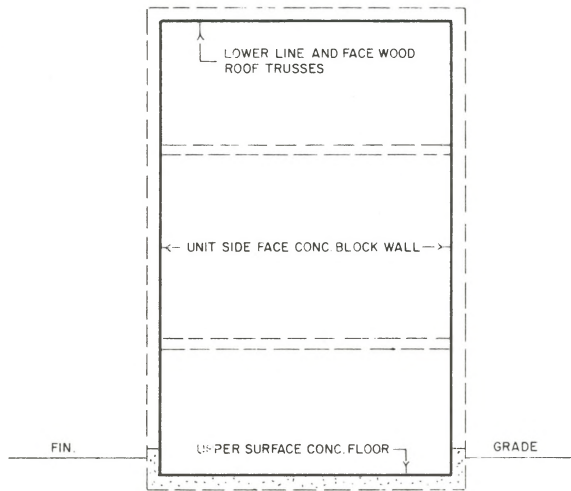
All units shall have for their vertical



PLAN SECTION OF FIREPLACE (Units 1 to 12 inclusive)

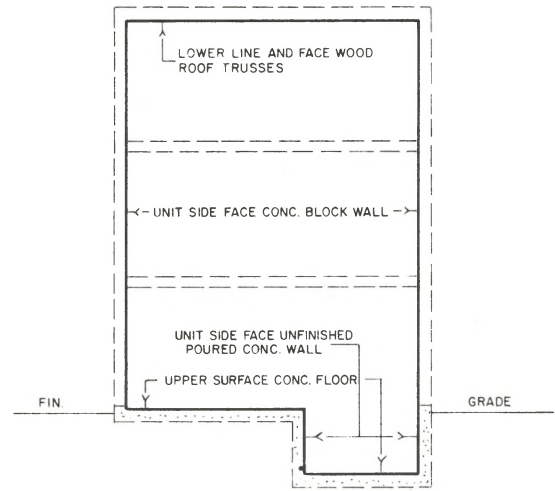
Scale 1" = 1' - 0"

SECTIONS TO ILLUSTRATE UNIT BOUNDARIES



FRONT VIEW A-A

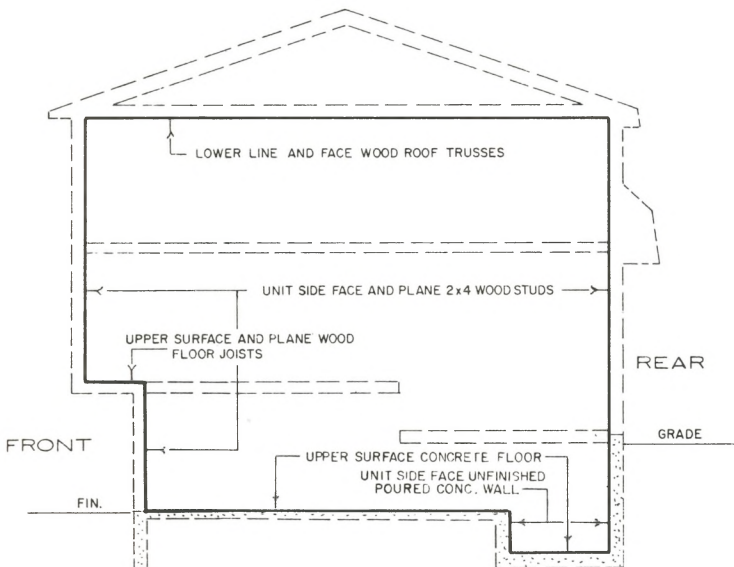
ABOVE TYPICAL FOR ALL UNITS



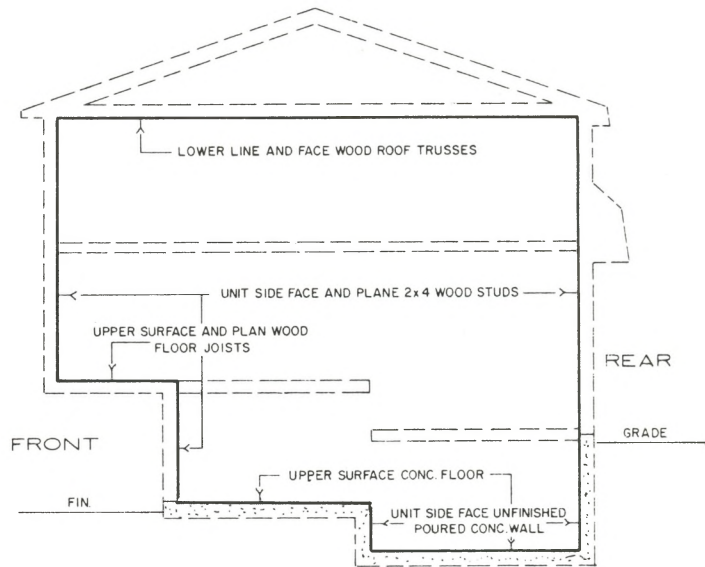
FRONT VIEW B-B

ABOVE TYPICAL TO UNITS
21 TO 35 INCL., 44 TO 54 INCL.
AND 76 TO 79 INCL.

FOR ALL OTHER UNITS, SECTION
THROUGH B-B WILL BE SAME AS
SECTION THROUGH A-A.



SIDE VIEW C-C



SIDE VIEW D-D

ABOVE TYPICAL TO UNITS
21 TO 35 INCL., 44 TO 54 INCL. AND 76 TO 79 INCL.

boundaries the centerline of the exterior structural walls and structural walls between units, and their vertical productions across openings for windows, doors, garage doors and recessed entrance ways. Where a jog occurs in the structural wall the transitional boundary shall be the centerline of the floor or ceiling joists and their production. Other than at the aforementioned transition the unit shall have no vertical limitation.

3. TOWNHOUSE CONDOMINIUM WHERE THE UNIT BOUNDARY IS THE EXTERIOR SURFACE OF THE STRUCTURE

The vertical boundaries are the exterior face of the brick veneer, aluminum siding, wood trim, bay window, eave-troughs, fascia, concrete or stucco wall of the unit or the center line of the concrete party walls separating such unit from other units, and the extension of the above boundaries across openings for doors leading out of such unit and windows.

The horizontal boundaries are the underside of the concrete slab of the basement and garage floor, the lower surface of plywood soffits, the exterior surfaces of chimneys and air vents, and the exterior face of the roof shingles.

4. HIGHRISE CONDOMINIUM WHERE THE UNIT BOUNDARY IS THE INTERIOR SURFACE OF THE STRUCTURAL WALLS

- a. Each unit is bounded vertically by:
 - (i) The upper surface of the concrete floor slab beneath the unit.
 - (ii) The upper surface of the plaster at the ceiling of the unit.
- b. Each unit is bounded horizontally by the interior surface of the unfinished concrete, masonry or block walls and columns.
- c. In the vicinity of windows and exterior doors, the unit boundaries shall be the unfinished interior surfaces of such doors, window and door frames and the interior surfaces of all glass panels located therein.
- d. Notwithstanding (b) above, in the vicinity of ducts and pipechases the unit boundaries shall be the unit side surface of the metal lath surrounding such chases.

Unit boundaries similar to the definitions numbered (2) and (3) above, and where the unit boundary is defined externally to the structure, are often used where the designation of maintenance responsibilities in the declaration is in reference to specific construction materials of the building or where the structure is to be entirely maintained by the unit owner. Here the unit boundary does not alienate the corporation's and unit owner's maintenance obligations with respect to the structure. Under these circumstances the position of the boundary may be chosen merely on the basis of convenience of description or on the

basis of a consideration of it's attractiveness to any prospective purchaser.

However the inclusion of the structure within the unit can act to the detriment of the unit owner in litigation involving structural defects, quality of materials or workmanship either, for example, under a warranty or for breach of contract. Apparently the High Court of Justice in Frontenac Condominium Corporation No. 1 versus the builder established that the condominium corporation cannot initiate a class action on behalf of the unit owners with respect to the units while the court allowed the condominium corporation to bring an action against the builder for incomplete or improper construction of the common elements. Consequently any action for construction deficiencies to the unit would have to be made on an individual basis with resulting high legal costs to the unit owner.

It is not the intention through the printing of the above sample definitions to have the format of the unit boundary definition become stereotyped, nor is their publication to be construed as an endorsement thereof; but rather it is intended that they will exemplify some of the principles and the terminology used to-date. The surveyor, in assuming responsibility for condominium boundaries, will be required to challenge his own ingenuity to design a unit boundary definition that will accommodate the special needs and the unique features of the project at hand.