

## DIGGING UP TREASURE - CONDOMINIUM TECHNIQUES FOR UNLOCKING VALUE

### I. Unlocking Value

- A. Sometimes value in real estate can be affected by the form of ownership.
  - 1. Does anyone doubt that the market value of a residential condominium unit is more than an equivalently sized and located residential housing cooperative unit?
  - 2. We have provided advice and counsel to housing cooperatives considering conversion to a condominium form of ownership and have taken part in the conversion of a cooperative to a condominium form of ownership.
  - 3. Might not floors in an office building, if sold, yield a higher per square foot price than the sale of the whole building?
- B. Real estate values can be restrained for a number of reasons.
  - 1. We pride ourselves on being able to bring innovative ideas to the table which can unlock value
  - 2. While this final section deal with ways in which the Michigan Condominium Act might be used to unlock value we would be pleased to discuss other methods we have used to unlock value in other circumstances
- C. Mixed Use Condominiums.
  - 1. Under the Michigan Condominium Act a variety of units can be created.

2. Residential, office, campsite, marina, or site condominium (commercial or residential) units are all possible.
3. While it appears at first blush that a project should consist of units which are all of the same type, such as attached housing, there is no such limitation in the law.
4. For instance, site condominium units and marina units could be created in the same project.
5. There are reasons why apples and oranges might be mixed.
6. It simplifies the assignment of what might otherwise be limited common elements such as boat slips.
7. It allows the developer or a co-owner to separately sell the marina slip (recall that limited common elements cannot be sold or alienated separately from the unit to which they are appurtenant).
8. The major drafting issues are expense allocation and balancing the interests of the different types of unit owners.
9. The costs of maintaining a marina unit may be more or less annually than the cost of maintaining an attached unit or a site condominium unit.
10. The replacement cost of marina infrastructure must eventually be incurred and must be properly addressed.
11. A site condominium unit might essentially be assessed for road maintenance and, perhaps twenty years after construction, replacement of the road.
12. Marina units have wharves, docks, piers, pilings and the like which might require repair and replacement more frequently.

13. It would be inequitable to make the charges for such items common expenses.
14. The documents should be drafted to spread those expenses over only the unit owners whose units are benefited by the particular limited common elements.
15. The other issue is that of political equity on the board of directors and in association management.
16. There should be an attempt to balance the interests of the groups so that, for instance, marina unit owners are not left without a voice in association affairs. Consider providing an advisory committee which must consist of only co-owners of a particular unit type.
17. Make one marina unit owner an ex officio member of the board; perhaps with no voting rights but with a right to attend and participate in the meeting.
18. The mixing technique will only have application in limited circumstances but should be considered in the right situation.
19. It could also be employed in a campsite/marina context or a office/residence context, in theory.
20. Remember that the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation have project guidelines which limit acceptance of mortgages in mixed use office/residential projects in many circumstances.
21. In another context, in a very dense urban setting one might, in theory, have something like residential units and parking space units, but the density of development, even in Michigan's urban areas, does not appear to justify such developments at this time.
22. Also, consider a project like the SkyLofts in Royal Oak, Michigan.

23. The project uses an array of techniques to blend commercial units and residential units in one building.
24. In the Skylofts, the commercial space is not even in the condominium project, though it occupies the same building.
25. The first floor commercial space is excepted out of the condominium entirely. The condominium project, in part, is created out of the airspace above the fee.
26. This innovation was allowed under the amendments to the condominium under 2001 Public Act 379. That Act added Section 72b:

**559.172b. Condominium project, establishment**

Sec. 72b. (1) A condominium project may be established for property consisting of a separate legal parcel in space that is considered the air space over a fee, improved or unimproved, in real property law. Such a condominium project may be provided easements, licenses, and other rights as may be necessary to provide access to and otherwise serve the needs of the project from the underlying surface parcel.

(2) This section applies to any question regarding whether any air space existing over a fee may be submitted to, and established as, a condominium under this act and applies to development as a condominium of air space over a fee.

27. This new authorization makes it possible to float the whole condominium project over the surface of the land, or several feet above it.

28. In the SkyLofts context this meant that the involvement and interaction between the residential and commercial projects could be minimized. However an extensive declaration of easements was needed to make responsibilities between the projects clear.
29. A developer might reserve the right to create a rooftop unit creating separately owned rentable space for an antenna array or billboard signage.

D. Office Conversion Condominiums.

1. Obviously any office building could be converted to an office condominium.
2. This “retail” sale might yield higher per square foot prices than sale of the whole.
3. The current interest rate environment can make suite ownership attractive to the small user.
4. Or consider professional practice dissolution.
  - a. Perhaps where two medical professionals need to part company but retain the real estate they each own and occupy in the building they own.
  - b. An office condominium arrangement can allow the partnership to dissolve and provide the means for each to retain their own suite.
5. A small office or industrial complex on one tract might not be readily divisible.
  - a. Setback issues might create non conforming buildings if the land were divided by metes and bounds descriptions.

- b. A metes and bounds division might cause parking deficiencies.
  - c. Creation of condominium units out of the buildings can avoid these issues while creating separate saleable units of real estate.
- E. Assessors Plat Lots and Parcels Without Division Rights; Setback Problems.
1. Sometimes large lots, like those in assessors plats, can consist of 10 or more acres.
  2. The large lot may not be readily divisible other than by a plat amendment action.
  3. Since Land Division Act Section 263 limits further division of platted lots to no more than four sub-parts, large assessor's plat lots or supervisor's plat lots can sometimes be difficult or legally impossible to divide under the Land Division Act.
  4. Divisions can be used up or might be insufficient to achieve the desired end.
  5. A site condominium regime can be placed over the platted lot, subject to municipal approval regulations related to site condominium projects.
  6. This technique should be remembered when all further division rights under Section 263 or Section 108 of the Land Division Act have been used.
  7. One might also be faced with a circumstance where the division rights, if available, cannot be used.
  8. This can occur in commercial developments where several buildings were built on one tract, but where the division would create non-conforming structures under local ordinances because of setback regulations.

9. Since a condominium project is not a “division” under the Land Division Act, a conversion of the buildings into several condominium units can achieve the same result.
10. The units can even be assigned surrounding limited common elements to give the substantial equivalent of a complete fee interest.

F. Can a Condominium Be Created Within a Condominium Unit?

1. Yes, a condominium project can be created within a condominium unit, and we are aware of at least two that have been created within existing condominium units.
2. While the projects are few and far between, there will certainly be more as buildings in commercial site condominium units are converted or owners seek to further divide the buildings.
3. There is no reason legally why they cannot be created.
4. Further authority for the concept is found under Section 72b of the Condominium Act, cited above.
5. If a condominium unit is not “airspace”, what is it? The key issue in drafting such documents will be to carefully characterize the rights to the common elements in the underlying condominium project and the rights and duties under those constituent documents.
6. Note also, that since the common elements, both limited and general, in the underlying project are owned by all the unit owners in the underlying project as tenants in common, no common elements in the underlying project can be included in the condominium project being created within one unit without the consent of the co-owners in the underlying project.

7. Therefore it is best to draft in fashion which avoids incorporating the common element of the underlying project in the "new" project.
8. The "new" condominium project must be entirely within the unit it occupies.

G. Street and Alley Vacation.

1. Sometimes adjoining street or alleys can be vacated to make tracts contiguous or enlarge them.
2. However, such circumstances might be rare.
3. Some street vacations can be accomplished through the plat amendment processes under MCL 560.104 and MCL 560.221 et seq., or by a separate request for street vacation under MCL 560.256.
4. County roads are abandoned under MCL 221.18. In a plat recorded under the Land Division Act, a street or alley may be vacated by the governing body of the municipality pursuant to MCL 560.256.
5. The resolution approving the vacation must be recorded before it will be effective.
6. Title to the vacated road vests in the property owners on either side of the road or alley.
7. Each owner receives title to the center of the road. If only half of the road is vacated, title vests in the property owner or owners abutting the vacated portion. See MCL 560.227a and Michigan Land Title Standard 13.1.
8. County roads may be abandoned upon petition to the county road commission under MCL 221.18.



9. Seven or more "freeholders" of the township where the road is located can file a petition seeking abandonment.
10. The petition must be accompanied by a list of the mailing addresses of the property owners abutting the road for which abandonment is proposed.
11. If all of the owners on the affected portion of the road have signed the petition, a hearing is held by the county road commissioners. If not all of the abutting owners have signed the petition a notice must be sent out to all abutting property owners and occupants and a notice is published announcing the proposed abandonment.
12. The board can then hear the abandonment petition and grant it if it is in the public interest.
13. If obnoxious public activities occur continuously at road ends terminating at lakes or rivers which affect value of adjoining property state statutes provide a mechanism to terminate public access.

H. Financing Uses.

1. A condominium regime was used to create different condominium units which were used to provide separate financing units at Ford Field for instance.
2. A condominium regime allowed an office complex owner to break out an uncompleted building and finance the remaining buildings, satisfying lender requirements for a single purpose entity.