<u>Condominiums of all Shapes, Sizes and Forms</u>

By: Robert Mullin, B.A. (Hons.), LL.B.
SmithValeriote Law Firm LLP

<u>Introduction</u>

In the 1960's condominiums were a novel alternative for home ownership. Today condominiums account for 33% of all new homes built in Ontario. The 'rise' of condominiums has many reasons, most notably, rapid urban growth.

Condominiums have become so widespread, they have literally blended into the fabric of our towns and cities. As with their numbers, condominiums now come in various shapes and sizes, only defying the creativity of their builders. High and low rise, town-homes, duplexes, row homes, detached & semi-detached condominiums dot the landscape. Even their application defies uniformity, as they can serve the residential, commercial and industrial segments with ease. These condominiums, however varied, traditionally shared one major similarity. Until recently, they were all 'standard condominiums', comprised of units owned by unit owners, with appurtenant common elements owned by the condominium corporation at large, of which the units owners were 'shareholders' of.

Like our province's urban growth, even the 'traditional model' of a condominium, is undergoing change. Like their physical variations, *The Condominium Act, 1998,* S.O. 1998, c.19; ("the Act"), now permits four new types of condominiums. With these changes condominiums now come in many shapes, sizes and now, forms.

Condominiums are now divided into two categories being 'freeholds' and 'leaseholds', with the majority of condominiums falling into the former. Freehold is a legal term that means that the owner owns his or her land absolutely and without a fixed duration. Leasehold means, conversely, that absolute ownership is not conveyed and there is a fixed duration to the use.

Freehold condominiums, unlike leaseholds, can be divided into four sub-categories, including;

a) Common elements condominiums;
b) Phased condominiums;
c) Vacant land condominiums; and
d) Standard condominiums, being the traditional corporation.

Freehold Condominiums

Common Elements Condominium Corporations

Unlike a traditional standard condominium, a common elements condominium corporation or 'CECC', has no units. The purpose of a CECC is to permit a community of homes or properties to own and maintain joint services, amenities or some physical feature. The normal example occurs when a builder builds a traditional subdivision of homes, with communal features that will not be cared for or owned by the local municipality, including; parklands, trails, playgrounds and perhaps a recreational centre. The question then turns, "who owns and maintains those services or amenities?" The builder may not want to make the entire complex a standard condominium, rather, only those amenities or services that are shared by multiple homeowners.

As a result, those shared amenities or services are turned into a condominium, without units, being a CECC. The owners of a CECC are invariably the neighbouring or abutting property owners, who each own an undivided interest in the CECC, which is permanently fixed to the title of their land. Such lands are referred to as "Parcels of Tied Land or "POTL". The owners of those lands are responsible to contribute monthly fees to the CECC. If unpaid, arrears form a lien against the homeowner's land or POTL. The owners of the POTLs have the right to elect the condominium's board of directors and are afforded most of the procedural safeguards provided in the Act.

Phased Condominiums

Phased condominiums serve a useful purpose to developers bringing condominium lands to market. Since massive amounts of capital and risk are the ante to bring condominium developments to fruition, many developers may not have either the capital or willing market to build and sell an entire development at once. As a result, if three high-rise condominium towers are proposed, a developer may elect to build them in stages, or 'phases'.

Prior to the Act's amendments, a developer would create a new condominium plan as each tower was completed. Each tower would form a new and distinct condominium. At the conclusion of a development, three separate condominiums would exist. Three condominiums, however, could create overlap, inconsistencies, and inefficiencies, as each corporation would govern one tower, in a community of three.

To that end, the Act now permits that an existing condominium corporation's declaration and description may be amended to include additional units and/or common elements, as the developer completes successive phases. Further phases may be added to the existing condominium corporation, for example, as the second or third towers are completed. Phased condominiums must be completed within ten years after the condominium is first registered.

Vacant Land Condominium Corporations

Vacant land condominiums corporations, or 'VLCCs', serve a very unique purpose, which contrasts that of a standard condominium corporation. Many buyers purchase their home, not only for its character, but also for the character of the street or neighborhood. A neighborhood, however, may be impaired or diminished by one or more neighbours who do not share the same vision. Historically, to preserve this character, municipal minimum standard by-laws, historical designations, or restrictive covenants imposed by the developer, were the common tools to preserve such a character. All were met with mixed success.

The term 'vacant land' is misleading. Although it often starts as an empty lot, a VLCC often leaves the construction of a home to the eventual buyer. A developer sells a vacant plot of land, and this plot is a unit within a condominium plan. The developer by means of restrictions in the condominium's declaration for a VLC, will often impose a variety of restrictions on what that buyer may build, and how he or she may use their land. To this end, the character of the street may be preserved and protected. VLCs can also be used within developments that have private streets and services. In such cases, the streets and services are established as common elements of the VLC. As with a standard condominium, breaches of a condominium's declaration, by-laws or rules, are enforced either via binding arbitration or court action.

<u>Leasehold Condominium Corporations</u>

Leasehold condominium corporations, or "LCCs", fill a unique niche in land development in Ontario. Many institutional or large property owners, like universities, may have surplus lands without immediate need. The landowner may wish to lease such lands for a defined period, after which these lands will revert back to the landowner. Condominiums created on such leased lands are LCCs.

The minimum term for such a lease is forty years, less a day, the maximum is ninety-nine years. Upon expiration, such leases may be renewed, but only upon mutual agreement between the landowner and the LCC. If the lease is not renewed at the end of the term the condominium corporation and condominium plan come to an end and the unit owners' interests in the property also end.

Unit owners, do not purchase a freehold interest in their unit, rather they acquire a 'leasehold interest' in both their unit and related common elements. Leasehold units may be wholly bought or sold, rented or encumbered (i.e.: mortgaged) akin to standard condominium units. A leasehold condominium corporation is created, with a board of directors, and all of the attributes of a standard condominium corporation, with appropriate variations. Included in the common expenses that are collected by a LCC is the land lease rental that is paid to the head landlord.

Conclusion

With the advent of LCCs, CECCs, VLCCs and phased condominiums, condominium development and expansion in Ontario can only grow. Although standard residential condominium corporations will likely continue to be the norm, builders will have increased flexibility to tailor their developments to the ever-changing needs and demands of buyers. It may not be outrageous to speculate that one day in the not too distant future every development will incorporate some ‘form’ of a condominium corporation.

With special ackowledgement to both Gardiner, R*. “The Condominium Act, 1998”*, 2001: Canada Law Book and Craig Robson.