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### Why Convert your Commercial or Residential Property to Condominium?

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In addition to the large number of properties developed as new condominiums in Ontario, more and more existing buildings – both residential and commercial – are being “converted” to condominium. What this means, and why property owners might consider it a good thing, are the subject of this memorandum.

#### **First Things First: What is a “Condominium”?**

The term “condominium” represents a system of property ownership that includes aspects of both shared and exclusive means of possessing title to the subject lands. Therefore, a condominium is not a particular “thing” so much as it is an idea or concept in law. Condominiums can be created on lands used for residential, commercial, recreational, industrial or other purposes (or any combination of these). They can be high-rise or low-rise buildings, townhomes, detached homes, strip malls, office buildings, warehouses, factories or even vacant tracts of land. In short, any property can in principle become a condominium to be used for virtually any purpose.

The most typical type of condominium is called “Standard” under the Ontario *Condominium Act, 1998*. Land subject to a Standard Condominium Plan generally consists of two or more “units” and other property designated as the “common elements”. Each unit is a separate parcel of land capable of being owned exclusively by an individual. The common elements are the remainder of the land within the condominium plan and are owned in common by all the unit owners (that is, title to each unit comes with an undivided interest in the common elements). The developer of a proposed condominium project decides which precise parts of the land will be units and which will be the common elements.

The *Condominium Act, 1998*, also provides for other types of condominium, namely:

- Phased Condominiums (which are Standard Condominium Plans created and registered in stages),
- Vacant Land Condominiums (condominium plans in which, amongst other things, at least one of the units is devoid of any building or structure),
- Common Elements Condominiums (condominium plans that contain only common elements and no units – ownership of the common elements is shared by the owners of separate parcels of land that are “tied” to the condominium plan by legal devices), and
- Leasehold Condominiums (condominium plans created on lands leased, rather than owned, by the developer).



### **Converting Pre-Built Properties to Condominium**

As the preceding summary indicates, the process of developing a condominium is not so much about *what is built* but about *how title to the property will be held*. This is why it is not only possible (subject to planning restrictions that can be imposed by municipal and provincial authorities) to make any kind of new development a condominium, but also to convert any existing, already developed buildings or structures into condominiums. Converting an existing building or structure into a condominium does not inherently alter its use or design, but simply changes the way its title is held. For example, while a building can change from commercial or industrial uses to residential once converted (many “loft” condominium conversions are of this type), if the owner/developer wants, it could also remain a commercial or industrial property post-conversion.

Typically, pre-built properties will be converted to Standard Condominium Plans. This is not only typical, but often is the only practical choice. However, when deciding to convert your property to condominium, initially the door is wide open to consider all the possibilities that the land and the existing building(s) and structure(s) in it can provide: If it makes sense to do so, existing properties can be converted to any type of condominium plan.

### **Benefits of Conversion to Condominium**

In our experience, the investment required to convert an existing property to condominium (i.e., legal, surveying, engineering and other professional fees and municipal charges) yields several positive benefits including, depending on the then current market for property, the likely increase in the overall value of the land based on the aggregate of the typically increased market values of the individual units. Other potential benefits of condominium conversion include:

1. **Improved governance:** The Ontario *Condominium Act, 1998* provides a uniform guide for condominium governance bringing substantial clarity to property management, helping make dispute resolution amongst owners and/or occupants easier, defining obligations for maintaining, repairing and insuring the property and helping ensure its long term health through such things as mandatory reserve funds (savings to help pay for future major repairs and replacements of the common elements), all of which can contribute positively to the marketability of the units. Properly maintained reserve funds can also help manage cash flow relating to repairs and avoid surprise costs.
2. **Greater market acceptance:** In recent years, the popularity of condominiums has been a major, driving force behind housing market increases. Commercial condominium units are also a growing market, being attractive to business owners who value equity and independence. Thus conversion can mean higher demand and shorter selling periods.
3. **Avoidance of high costs of construction:** Due to the high costs and lengthy duration of construction projects, the conversion of an existing structure could be more cost-effective and expedient than developing a new condominium.
4. **Reduced tax burdens:** We are informed that various tax related benefits may flow from conversion to condominium and operating the property in accordance with the *Condominium Act, 1998*. For example, since residential condominium units are usually taxed at the same rate as other privately owned residences, conversion of rented residential units might result in a reduction in property tax obligations even if the assessed value of the property overall increases. Reserve fund contributions might also provide unique tax benefits in certain cases for both commercial and residential condominium owners. You should speak with an accountant or other knowledgeable tax professional to determine what benefits could exist based on your plans and circumstances.
5. **Ability to mortgage and sell units individually:** In all cases other than a Common Elements Condominium (a unique option we can discuss with you if it seems appropriate), the result of conversion is that instead of there being single title to the property as a whole, the land is subdivided into individual units that can be separately owned, sold and mortgaged. Without conversion to condominium, any charge must be registered against title to the whole property, and any sale must be a sale of the whole of the property. Conversion provides flexibility in regard to both sales and financing. For example, the owner could register a charge against title to only some of the units in order to secure financing without encumbering the whole of the land, or sell some units and retain others.
6. **Flexibility in estate planning:** The flexibility for sales and financing that results from subdividing the property into multiple units also provides the property owner with greater flexibility in estate planning. For example, an owner of an entire condominium complex can bequeath individual units to his or her various successors. Co-owners who convert property can distribute the units amongst themselves or their successors for the same or similar purposes.

We would be pleased to discuss with you the possible benefits, options and processes involved in converting your property to condominium. Please do not hesitate to contact us.