

**LENDING OR INVESTING IN THE RESORT, TIMESHARE OR CONDOMINIUM
PROJECT; A DUE DILIGENCE APPROACH**

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RESORT CONDOMINIUMS

1. Condominiums are the most common form of ownership at resort properties.
2. Condominiums are creatures of state law – they do not exist under common law.
 - Laws may vary in some respects from state to state, but the basic concept is the same
3. Condominium Principles
 - Single parcel of land owned by more than one owner
 - Each owner is given the right to exclusively own a portion of the parcel of land which is defined as a “unit” under the statutory schemes
 - Usually it is a volume of space that is defined by horizontal and vertical boundaries, i.e., like a town house or an apartment.
 - A unit can also consist of a lot of land which would have only horizontal dimensions
 - Each unit is deemed to be a separate parcel of real estate for transfer and tax purposes
 - Each unit owner owns in common with the other unit owners all of the land and other areas on the property which are not designated as units
 - Defined as “common area” under statutory schemes
 - Examples are roads, parking areas, land around buildings, entrance halls, corridors and common utilities
 - Interest of unit owners in common area is proportional based on the square footage of each unit or some other means established for the condominium
 - Common area is administered by a condominium owners association
 - Board of Directors
 - Annual budgets
 - Portions of the common area may be reserved for the exclusive use of a unit owner
 - Defined as “limited common area” in the statutory schemes
 - Typically parking spaces, patios next to a unit, etc.
4. Establishment of Condominiums
 - Condominiums are established by the developer submitting the parcel of land to the condominium form of ownership by means of a condominium declaration
 - Identifies the land
 - Describes the units, common area and limited common area
 - Contains the bylaws of the association
 - Developer can reserve the right to withdraw portions of the submitted land
 - Statutes may restrict the time period
 - Developer can reserve the right to add land to the condominium
 - Statutes may restrict the time period

- Developer may reserve the right to convert portions of the common area into units or limited common area
 - Statutes may restrict the time period
- Condominium is accompanied by a site plan and floor plans showing the features of the condominium

5. Conveyances of Interests in Condominium Units

- Owners acquire legal title to units by means of a deed which conveys the unit and a proportionate interest in the common area
- Title to the unit is subject to the condominium regime
- The interests of unit owners may be subject to mortgages
- At time of sale of a unit by developer, development mortgage loans must be partially released

6. Regulation

- In many states, condominium developments must be registered with the attorney general or other public body
 - Application
 - Public offering disclosures may be required
 - No sales permitted until registration process is completed
 - Some states allow nonbinding reservation or presell agreements
- Condominiums generally require local permits and approvals

7. Special Considerations

- Condominiums are frequently the base ownership regimes for timeshare or fractional resorts
 - Developer conveys the units to a club or trustee to be held for the benefit of the timeshare owners
- Some resorts today are skipping the condominium base and moving directly into trust ownership of the entire property, especially if it is going to be used exclusively for timeshare or fractional purposes.