

Commercial Condominium Legal Structures

Issue	Freehold Commercial	2 Separate Condos	Unit in Residential Condominium
Risk	<ul style="list-style-type: none"> ▪ Freehold component creation involves additional municipal approvals (Consents) and detailed easements 	<ul style="list-style-type: none"> ▪ Additional expense of creating separate condominium, especially if small commercial area ▪ "Dormant" Condominium is difficult and expensive to re-activate 	<ul style="list-style-type: none"> ▪ Arbitrary and onerous rules and by-laws by condominium board can impact commercial functioning with few remedies ▪ Property manager often aligned with residential condominium board
Flexibility	<ul style="list-style-type: none"> ▪ Maximum leasing flexibility to divide/combine areas, add/remove walls 	<ul style="list-style-type: none"> ▪ Independent functioning commercial condominium with ability to use, sell or lease units ▪ Can sell entire commercial condominium, or only portions and retain prime corner units one at a time 	<ul style="list-style-type: none"> ▪ Declarant must build flexibility directly into Declaration beforehand (removal of demising walls, access to roof etc.) ▪ Leasing/construction flexibility through vertical plane unit boundaries ▪ Sub-metering of commercial units
Control	<ul style="list-style-type: none"> ▪ Freehold owner has full control of property (subject only to easements and Shared Facilities Agreement provisions) 	<ul style="list-style-type: none"> ▪ Commercial condominium owner has full control of property (subject only to easements and Shared Facilities Agreement provisions) 	<ul style="list-style-type: none"> ▪ Commercial Units within Residential Condominium subject to condominium board and other owners ▪ Declaration and zoning permitted "Uses" remain subject to (arbitrary) by-laws and rules ▪ Noxious users (eg. restaurants) may be forced out through passing of new rules or by-laws
Cost	<ul style="list-style-type: none"> ▪ Additional costs (and development time) for preparation of complex stratified reference plan and Shared Facilities Agreement 	<ul style="list-style-type: none"> ▪ Additional costs (and development time) for complex stratified reference plan, Shared Facilities Agreement, and additional Disclosure, Draft Plan and Final Plan (for commercial) 	<ul style="list-style-type: none"> ▪ Standard condominium process with no additional reference plan or shared facilities agreement
Marketability/Value	<ul style="list-style-type: none"> ▪ Highest market value ▪ Property sale independent of condominium connection and associated stigma (excepting shared facilities agreement) ▪ Easier future severability to sell portion if required for increased value 	<ul style="list-style-type: none"> ▪ Second-highest market value ▪ Severability dependent upon "Dormant" or "Active" condominium ▪ Locked into Registered Commercial Unit configuration 	<ul style="list-style-type: none"> ▪ Lowest market value ▪ Future severability (to sell portion of commercial unit) virtually impossible

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Size Matters	<ul style="list-style-type: none"> ▪ Require minimum commercial area threshold required to justify cost/complexity of "freeholdizing" 	<ul style="list-style-type: none"> ▪ Separate condominium not worth creating if commercial area too small 	<ul style="list-style-type: none"> ▪ Easiest and most cost effective for smaller commercial areas
Stratified Reference Plan	<ul style="list-style-type: none"> ▪ Required to describe separate freehold/residential lands and easements ▪ Plan may be simplified through "unitized" service areas in residential condominium 	<ul style="list-style-type: none"> ▪ Required to describe separate residential/commercial condominiums and easements ▪ Additional rights through "unitized" service rooms in either condominium (preferably in commercial for greater control) 	<ul style="list-style-type: none"> ▪ Not required
Selling/ Mortgaging	<ul style="list-style-type: none"> ▪ Entirety can be sold or mortgaged ▪ Portions cannot be sold or mortgaged without Committee of Adjustment (severance) Approval 	<ul style="list-style-type: none"> ▪ Distinction between "Active" and "Dormant" condominiums ▪ "Active" commercial condominium units can be sold or mortgaged on "unit by unit" basis ▪ Entire "Dormant" condominiums can be sold or mortgaged, as "Dormant" condominiums ▪ Portions of "Dormant" condominiums cannot be sold as they are not legal condominiums (must first be legally re-activated, including audits, reserve funds, common expenses etc.) ▪ Disclosure documents required before any condominium unit can be legally sold/transferred 	<ul style="list-style-type: none"> ▪ Commercial units can be sold or mortgaged upon condominium registration
Severance	<ul style="list-style-type: none"> ▪ Severance requires Committee of Adjustment approval ▪ Additional stratified reference plan needed 	<ul style="list-style-type: none"> ▪ If you own all Commercial Units in condominium, you can subdivide 	<ul style="list-style-type: none"> ▪ Commercial units cannot easily be severed or subdivided (Condominium Amendment requires 90% unit owner approval)

Issue	Freehold Commercial	2 Separate Condos	Unit in Residential Condominium
Shared Facilities Agreement (SFA)	<ul style="list-style-type: none"> ▪ Shared facilities agreement governs residential and freehold lands interaction ▪ Shared costs defined under shared facilities agreement (relatively minor compared to maintenance fees) 	<ul style="list-style-type: none"> ▪ Shared facilities agreement governs residential and commercial condominium lands interaction ▪ Shared costs under shared facilities agreement (relatively minor compared to maintenance fees) ▪ Shared Facilities costs are in addition to common expenses 	<ul style="list-style-type: none"> ▪ Not required.
Support Rights	<ul style="list-style-type: none"> ▪ Support rights between freehold to residential and vice versa, required (typically “blanket” easement) – not covered by common law 	<ul style="list-style-type: none"> ▪ Support rights between commercial to residential and vice versa, required (typically “blanket” easement) – not covered by common law 	<ul style="list-style-type: none"> ▪ Support rights inherent in one condominium corporation
Development Process & Registration	<ul style="list-style-type: none"> ▪ Residential condominium development process creates freehold lands ▪ Complex development process requiring draft condominium plan (for Residential component), stratified reference plan, shared facilities agreement, and final condominium plan (for Residential Component) 	<ul style="list-style-type: none"> ▪ Complex development process requiring multiple draft condominium plans, stratified reference plan, shared facilities agreement, and multiple final condominium plans 	<ul style="list-style-type: none"> ▪ Simpler development process with ▪ No shared facilities agreement or stratified reference plan needed
Absolute Title	<ul style="list-style-type: none"> ▪ Not required for freehold, however, automatic conversion through residential condominium 	<ul style="list-style-type: none"> ▪ Absolute Title required 	<ul style="list-style-type: none"> ▪ Absolute Title required
Tarion	<ul style="list-style-type: none"> ▪ No Tarion deposit required for freehold 	<ul style="list-style-type: none"> ▪ No Tarion deposit required for commercial condominiums 	<ul style="list-style-type: none"> ▪ No Tarion deposit required for commercial condominium units
Addresses	<ul style="list-style-type: none"> ▪ Separate address for freehold 	<ul style="list-style-type: none"> ▪ Separate address for commercial condominium 	<ul style="list-style-type: none"> ▪ Shared address (typically)
Zoning	<ul style="list-style-type: none"> ▪ Freehold tenure not dealt with in zoning ▪ Uses – based on applicable City Zoning By-Laws 	<ul style="list-style-type: none"> ▪ Uses – based on applicable City Zoning By-Laws 	<ul style="list-style-type: none"> ▪ Uses based on applicable City Zoning By-Laws, but also regulated by Declaration limitations, and subject to by-laws and rules

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Viability	<ul style="list-style-type: none"> ▪ Viable and desirable street-level retail locations 	<ul style="list-style-type: none"> ▪ Separate condominium gathers entire commercial 	<ul style="list-style-type: none"> ▪ Small commercial spaces may have difficulty getting tenants with good

	<p>enhanced through freehold tenure with likely developer long-term investment</p> <ul style="list-style-type: none"> ▪ Small commercial spaces may have difficulty getting tenants with good covenants and are not always viable 	<p>area into one ownership</p>	<p>covenants and are not always viable</p>
Developer Commercial Experience	<ul style="list-style-type: none"> ▪ Residential developers often not experienced commercial landlords ▪ Selling commercial may be better exit strategy for residential developer 	<ul style="list-style-type: none"> ▪ Separate commercial condominium provides exit strategy through sale of units 	<ul style="list-style-type: none"> ▪ Commercial units typically an "afterthought" to meet municipal planning requirements ▪ Residential developers and high-rise architects designing commercial space ▪ Small commercial spaces
Parking	<ul style="list-style-type: none"> ▪ Parking often not required for freehold lands ▪ Freehold can be assigned parking for owner or guests through Declaration, severance reference plan ownership, or as parking units later transferred (or retained by developer) 	<ul style="list-style-type: none"> ▪ Parking spaces must be provided to meet City standard; if parking required commercial condominium may have parking arrangements with residential condominium (by agreement or declaration) 	<ul style="list-style-type: none"> ▪ Parking spaces must be provided to meet City standard ▪ Declaration, by-laws and rules govern use of parking by guests/owners of commercial units
Determining Commercial/ Retail Requirements	<ul style="list-style-type: none"> ▪ Commercial leases with specific end-users beforehand are best but hardest to secure (and keep) ▪ Residential condominium documents need flexibility for unknown tenant requirements (tenant roof access for satellite dishes; service rooms; control rooms) 	<ul style="list-style-type: none"> ▪ Access to and use of residential condominium areas can be enshrined in Condominium Declaration ▪ Blanket easements may provide additional flexibility 	<ul style="list-style-type: none"> ▪ Declaration can permit commercial units to secure openings/removal of walls for improved flexibility and exclusive use/units for roof communication equipment or signage
Property Management	<ul style="list-style-type: none"> ▪ May be subject to property management provisions of Shared Facilities Agreement but not dealing with the residential condominium property manager directly ▪ Potentially biased Residential property management firm managing both entities 	<ul style="list-style-type: none"> ▪ Separate commercial condominium corporation could engage independent property manager, but may will retain residential condominium property management for cost savings 	<ul style="list-style-type: none"> ▪ Dealing with residential condominium property management

Issue	Freehold Commercial	2 Separate Condos	Unit in Residential Condominium
Reserve Fund	<ul style="list-style-type: none"> ▪ No 10% reserve fund requirement for freehold component ▪ Can amortize capital improvement costs how you 	<ul style="list-style-type: none"> ▪ No 10% reserve fund requirement for "Dormant" condominium corporation ▪ Active commercial 	<ul style="list-style-type: none"> ▪ Contribution to 10% reserve fund requirement for commercial units

	want	corporations require 10% reserve fund	
Signage	<ul style="list-style-type: none"> Freehold signage only governed by city by-laws, unless sec. 119 restrictive covenant on title impacting signage 	<ul style="list-style-type: none"> Commercial condominium controls its own signage on its property 	<ul style="list-style-type: none"> Condominium Declaration, by-laws and rules govern commercial unit signage Commercial Unit-friendly signage provisions can be enshrined in declaration by Developer before Registration Signs can be created through Sign Units, Sign Exclusive Use Areas for greater certainty Condominium board may implement by-laws and rules to negatively impact commercial signage May have to get board approval for any leasehold changes that affect signage
Voting & Condominium Corporation	<ul style="list-style-type: none"> Not applicable 	<ul style="list-style-type: none"> Not subject to residential condominium corporation; commercial condominium is separate 	<ul style="list-style-type: none"> Each residential and commercial condominium unit gets one vote, so commercial units typically "out-voted" in corporation; Voting influence requires control of many commercial units
Maintenance Fees & Percentages	<ul style="list-style-type: none"> No maintenance fees (just limited Shared Facilities Costs) 	<ul style="list-style-type: none"> Commercial units pay maintenance fee to Commercial Condominium board (if Active) "Dormant" condominium would <u>not</u> have monthly maintenance fees payable, just maintenance and repair costs as incurred Active commercial condominium could have higher maintenance fees depending on total square footage and number of commercial units 	<ul style="list-style-type: none"> Commercial units pay maintenance fees to condominium board, but Declarant creates lower common expense percentages at marketing/registration reflecting separate metering, direct utility payments, and non-usage of residential amenity areas

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Standard Unit Definition	<ul style="list-style-type: none"> ▪ No Standard unit definition required 	<ul style="list-style-type: none"> ▪ Standard unit definition is different for commercial units (typically excluding HVAC unit) 	<ul style="list-style-type: none"> ▪ Standard unit definition is different between residential and commercial unit (typically excluding HVAC unit)
Easements	<ul style="list-style-type: none"> ▪ Support, service, access easements between freehold and residential condominium (sometimes "blanket" easements) 	<ul style="list-style-type: none"> ▪ Easements between condominiums required for access, support, services, etc. (sometimes "blanket" easements) 	<ul style="list-style-type: none"> ▪ No easements required; Condominium Act provides necessary rights for unit owners
Roof Access (Communications)	<ul style="list-style-type: none"> ▪ Not permitted unless stratified ownership or easements arranged before residential registration 	<ul style="list-style-type: none"> ▪ Not permitted unless stratified ownership or easements arranged before residential registration 	<ul style="list-style-type: none"> ▪ Roof access and equipment installation permitted either through prior disclosure/registration documentation, or reasonable use of common elements
By-Laws, Rules	<ul style="list-style-type: none"> ▪ Not affected by by-law or rule changes in residential condominium 	<ul style="list-style-type: none"> ▪ Not affected by by-law or rule changes in residential condominium 	<ul style="list-style-type: none"> ▪ Rules, by-laws can be enacted to prejudice commercial units, despite "Use" protections/controls in Declaration