

# Low-rise developments: Condominium or Freehold?

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Condominiums remain industry standard for mid-rise and high-rise developments: but for low-rise developments (e.g. townhouses, low-rise villas, low-rise apartments), there is a greater mixture between freehold and condominium ownership structures.

The term "condominium" describes a type of property ownership and governance rather than a physical structure or style of building. Contrary to popular belief, the condominium corporation is not the owner of the units or the common elements. What makes them "condominiums" is the owners shared ownership of the common elements as tenants-in-common, while keeping individual ownership of their own units. On the other hand, the term "freehold" denotes the most complete form of ownership of land, essentially absolute ownership.

The idea of absolute ownership continues to be a significant selling feature for many freehold developments. With absolute ownership, many prospective buyers prefer the greater autonomy associated with freehold developments. The condominium corporation's by-laws include rules that state how the condominium will be operated, how the property will be maintained, how much each unit holders' monthly payments are for operating costs and maintenance, and how the common elements and individual units may be used. Bylaws are usually made or changed by owners who own 60 per cent of the common elements. The prospect, for example, of the condominium corporation changing its rules on patio barbecues, or on in-unit flooring requirements, may be viewed negatively by many prospective buyers. While it is likely that any freehold development will include some form of rules and restrictions (usually in the form of restrictive covenants or a common elements agreement), generally there are fewer restrictions on the owners' rights in freehold developments.

One significant factor likely to impact the developer's decision to choose either a freehold or condominium style development is the extent of any common elements. If the development plan includes extensive common elements, a condominium ownership structure may prove more advantageous. For condominiums, the primary purpose of the condominium corporation is to manage the property and its business affairs. This includes managing and maintaining the common elements (usually carried out by a property manager under the supervision of the board of directors). For many property owners (including the elderly or seasonal occupiers), being relieved of the day-to-day maintenance often associated with home ownership is an attractive feature. For many property owners it is also comforting to know that neighbouring properties will be equally well maintained thereby preserving any 'kerb appeal'.

The presence of common elements does not mean that a condominium style development is the only option. It is possible to structure a freehold development in such a way that the common elements are governed by an agreement which is registered on title for the properties in the development. This type of agreement typically grants the property owners the right to use the common elements in exchange for a commitment to pay a fee towards maintaining the common elements, and is usually overseen by a home-owners' association. The downside to this form of arrangement is that there is no legislation to assist should the home-owners' association encounter issues enforcing the agreement: these agreements are very much at the mercy of the courts. By contrast, for condominiums the Condominium Act provides a tried and tested set of enforcement rules and powers. For example, in the event that a unit owner fails to pay his or her condominium fees, condominium corporations have a lien on a unit for non-payment. The lien generally takes priority over other encumbrances and

if it remains unpaid may result in foreclosure and sale of the unit. In addition, when an owner of a condominium take steps to sell his or her property, the condominium corporation will issue an estoppel certificate certifying (among other things) whether the owner has paid his or her condo fees.

Planning permission is another significant factor for developers to consider. Depending on the relevant municipality's zoning by-laws and planning requirements, creating a condominium style development usually allows the developer to get more density approved than he would if he had done single freehold lots. The planning downside for a condominium development is that the developer must, in addition to dealing with the relevant planning requirements, comply with the requirements set out in the Condominium Act and obtain approval from the Registrar for Condominiums. Arguably these additional planning requirements may be offset by the additional costs that are associated with freehold developments (such as drafting easements for maintenance and access and as a result of multiple service connection fees).

Of increasing popularity amongst developers is what is known as the "bare-land condominium". According to the Condominium Regulations, a bare-land property is one that "contains units that consist of land on which dwellings may be located or constructed after purchase". Essentially, the owners of a bare-land condo own their land and anything built upon it; the common elements will usually include roads, sewers, water systems and recreational facilities. The unit owner is responsible for all costs relating to the unit including completing repairs and maintenance of the home. This is attractive to some prospective buyers because: (1) condo fees are often lower; and (2) unit holders are able to make their own improvements (subject to restrictions on design and activities); and (3) there is still a set of rules, a board of directors, and legislative regime to protect the owners' interests.

Bare-land condominiums can also be attractive to developers because developers can convey title for each unit sooner and build as they receive funds. This is unlike a traditional condominium, where the developer would have to wait until a development is near completion before being able to register the development as a condominium corporation and sell units. Despite the increasing appeal of bare-land condominiums, these forms of developments are generally not available for multi-storey developments where there are different owners on different levels.

In terms of tax rebates, currently there does not appear to be any difference between a condominium and freehold development. Like other homebuyers, purchasers of condominiums may be eligible for Nova Scotia's First-Time Home Buyers Rebate and the GST/HST New Housing Rebate. (For more information and eligibility requirements please see [First-Time Home Buyers Rebate](#) and [GST/HST new housing rebate](#).)

A developer should also consider insurance needs for the project, and how the development will be financed. In Canada, financial institutions may prefer to finance a condominium development rather than a freehold development. In addition, developers may find that insurance premiums for condominium developments are more competitive than for freehold developments.

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