

Title	Nature of Condominium
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## Nature of Condominium

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### Abstract

A condominium is form of real property ownership in which an individual owns a unit exclusively and owns common elements jointly with all other unit owners in the condominium. Condominium ownership includes ownership of common land, common facilities and common equipment are the integral and inseparable parts of the unit. In this regard, some of the countries in ASEAN region promulgate the specific law for condominium because of the growth of population and development of the urban areas in their countries. The legal owners have the rights of common land, common facilities and common equipment as common ownership according to their Laws. In the transaction of the process of real estate ownership, there are various issues on the complexity of formation process, real estate market, exclusive rights and common rights. Therefore, developed countries should enact the Condominium Law for the protection of the rights of the unit owners in Condominium.

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### Introduction

Condominiums are a unique concept in the scope of Property Law. It generally refers to a system of separate ownership of parts of a building. It divides the building into two parts which are “individual units” and “common property”; and common parts and facilities of the building. Each individual unit owner is the absolute owner of his particular unit and also the owner of common property in a fixed ratio according to the value of the individual unit. Since the beginning of condominium building, the juristic condominium body and legal entity are formed. Then, the individual purchasers of each individual unit have to constitute for administration, control and maintenance of the common property. In the common-law history of real property, it permits a system of ownership of horizontally stacked or divided spaces and allows the ownership of apartments available of the population. The key characteristic that distinguishes the condominium from other forms of property ownership is that a unit owner entitles to an undivided interest together with other unit owners in the “common elements”. As a form of real property ownership, condominiums require a comprehensive allocation of rights and responsibilities

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regarding property use, maintenance, management, and costs; and regulation of human behavior due to the sharing of common areas and close proximity of living.

### **Materials, Methods**

This paper analyzes the domestic legal systems of some ASEAN countries to address the issue of the ownership on the real estate of Condominium property. It observes how to balance the protection of individual rights of the unit owner on the unit and the collective rights on the common property of the condominium. This paper uses the literature reviews and analytical study on the Condominium.

### **Findings**

As a form of real property ownership, condominiums require a comprehensive allocation of rights and responsibilities regarding property use, maintenance, management, and costs; and regulation of human behavior due to the sharing of common areas and close proximity of living. Condominium law becomes one of the most burgeoning areas of law for the most urbanized areas of the nation. By the growth of population and development of the urban areas in a country, the unit owners face the ownership and management problems although they have better rights than the owners of high-storeyed building. This paper argues the concept of condominium and especially details the major issues occurred in condominium law and practice.

### **Discussion**

#### **Historical Development of Condominium**

Historically, the sales of parts of buildings first occurred during the eras of the Babylonians, Egyptians, Greeks and Venetians in the First Dynasty, nearly two centuries before the birth of Christ. The concept of selling parts of a building was very popular in Europe during the middle ages due to an acute shortage of housing, hence creating a need for a more efficient use of available land. This led to individual ownership of parts of a building and became widespread in the French cities of Nantes, Saint Malo, Caen, Rouen, Rennes, and Grenoble. The condominium concept was also popularly exercised in Latin America.

The condominium concept first spread from Europe to South America and in 1928. Brazil became the first country to pass a law permitting the sale of "horizontal

property" meaning condominiums followed by Chile in 1937, Argentina, Uruguay in 1948, Cuba in 1952, Venezuela in 1958 and Guatemala in 1959.

The condominium statutory of the United States of America came, not from Europe, but from Puerto Rico where large populations lived and continued to live in limited spaces. The first condominium law passed in the United States was in the Commonwealth of Puerto Rico in 1958. This is due to an allowance for room, for expansion, except upwards, and is limited by proximity to the sea. In 1958, Puerto Rico, the first United States jurisdiction then enacted a condominium statute, providing a solution to land scarcity by incorporated a condominium concept into law called Horizontal Property Act of 1958. Puerto Rico was the first North American jurisdiction to promulgate a statute on apartment ownership or condominium in 1958.

By 1970, the condominium concept had been incorporated into law in almost every state in the United States and provinces in Canada. For Southeast Asian countries, the Philippines, a United States' commonwealth, adopted the principle of condominium law from United States in 1966. In 1967, Singapore adopted the Land Title (Strata) Act, in 1979, Thailand adopted the Condominium Act, in 2007, Malaysia adopted the Building and Common Property (maintenance and management) Act and in 2016, Myanmar adopted the Condominium Law.

### **Terminology of Condominium**

The origin of the word condominium can be traced back to its Latin meaning of "dominion with others" or "shared dominion"; in other words, joint rule over a territory. Condominium owners jointly own the common property of their developments including parks and parking spaces.

Condominium is derived from the Latin *con*, or "with," and *dominium*, or "control." Essentially, condominium means control of a piece of property with other individuals.

Condominium is a multilevel building which is built in an area that is divided into sections which are structured functionally, whether horizontally or vertically that constitutes as units in which each can be owned and used separately, mainly for housing complemented with common equipment, common facility and common land.

According to above definitions, Condominium consists of two parts. The first part is a collection of private dwellings called units. The second part consists of the

common elements of the building. Common elements may also include structural elements and mechanical and electrical services.

A condominium unit is often legally defined as a space of air or three dimension areas located within the walls, roof and floor, and the ceiling of a condominium structure.

Accessory Unit means a unit, whether or not part of a building, that is designed for use with any principal unit, whether as a garden, garage, car parking space, storage space, swimming pool, laundry, stairway, passage or any other such purpose, and that is shown on a strata plan as an accessory unit.

Unit owner means the person, or combination of persons, who hold legal title to a unit. A mortgagee or a trustee designated under a deed of trust, as such, may not be deemed a unit owner.

Condominium unit co-owners have exclusive ownership rights to their unit and the right to share the common elements of the condominium development with other co-owners.

Generally, the term of unit owner is owner of condominium unit which the person owning jointly or in common interest including the exercise of voting rights, a lessee of a unit shall be deemed to be the unit owner.

The common elements include the land on which the building stands, the lobby, public halls, access roads and parking areas; and the electrical, mechanical, heating and air conditioning systems that service the building.

Common land is land used under an undivided common right and a piece of land used under an undivided common right, which is an apartment building over it, determined in accordance with the building license. By this concept, all strata title holders have their share ownership of the land which is calculated based on the proportional comparative value of each of the area of the strata title unit but also on the share ownership of common equipment and common facility.

Common equipment means a part of condominium that is inseparably owned for joint use in one integrated function with condominium units. The examples of this are foundation, column, wall, floor, block, roof, stair, lift, pipes, electricity system, gas, and telecommunication.

Common facilities mean a property that is not part of condominium but inseparably and jointly owned for joint use. The examples of this are meeting room, park, landscaping, social building, religious building, parking space, and playground,

boat docks, clubhouses, gardens, tennis courts and swimming pools, separate or integrated parking space with condominium building structure.

Condominium Corporation means a condominium or strata corporation established under provincial legislation.

Developer means a person who undertakes to develop a real estate condominium project, including a person who succeeds to the interest of the developer by acquiring a controlling interest in the developer or in the project.

### **Types of Condominium**

The types of condominium can be classified into two basic categories: leasehold and freehold.

#### **Leasehold Condominium**

A Leasehold Condominium is created on lands for which the declarant possesses only a leasehold interest in title, and has consent of the holder of actual title to develop the condominium on the lands.

Leasehold Condominium is like a traditional condominium except that the condominium is on land which is leased by the developer as opposed to being owned by the developer. In order to qualify as a Leasehold Condominium, the declarant must possess a leasehold interest in land that covers the whole of the proposed condominium property, and may refer to as unit “owners” they really also possess only a leasehold interest in their units. The lessor (owner) of the lands must sign the declaration as well as the declarant (lessee), and the lessor’s consent will later be required if there are to be any changes made to the declaration after registration. The purpose of the Leasehold Condominium is land use and revenue making for institutions, such as hospitals and universities that cannot sell their lands.

#### **Freehold Condominium**

The term “freehold” is often used to suggest some special kind of condominium in which one owns more of the property than in another kind of condominium. A freehold condominium is simply one where the title held by the declarant, and being conveyed to the unit owners, is not leasehold. The condominium is created on lands for which the declarant holds title and can convey the same to the purchasers of units in the condominium. This means that the owner actually owns the unit and does not merely have a leasehold interest in it.

There are four sub-categories of freehold condominium, such as Standard, Phased, Common Elements and Vacant Land Condominiums.

### **Requirements for Construction of Condominium**

The requirements for construction of condominium include;

- (i) administrative requirements,
- (ii) technical requirements and
- (iii) ecological requirements.

**(i) Administrative requirements** refer to required licenses to construct a condominium such the status of land, license to build, and land use license. The application for land use license is submitted by attaching the following requirements: Certificate of right of land; Letter of information of district/city's planning; Site plan; Architecture plan comprising the layout, look, and division of condominium describing clear horizontal and vertical boundaries; Architecture plan with its calculation; Plan layout describing the common equipment, common facility and common land; and Public utility plan and its installation including its equipments.

**(ii) Technical requirements** consist of:

(a) Building structure that includes location use requirement and intensity and building architecture. Location use means types of function or combination of function of condominium that may be built on certain location or area. Where, a building intensity means technical requirement on density and building height of condominium that is required on certain location or area, that includes coefficient of building foundation, coefficient of building floor, and total of building's floors.

(b) Building reliability that includes safety, health, comfort, and practical requirement. Safety requirement means the capacity of condominium to support the weigh and to avoid and to manage fire and lightning potential event. Health requirement includes light, airing, sanitation and use of building materials system. Comfort requirement includes moving space; inter relationship between spaces, the air condition, view, and noisy rate. Practical requirement includes the practical relation to, from, and in the condominium including its facilities.

**(iii) Ecological requirements** include the synchronization and harmony of environment function. This means the synchronization of made-up environment, natural environment and social culture, including the cultural values that need to be preserved. The construction of condominium that has important impact to the

environment must be supplied with the environmental impact analysis according to the prevailing laws.

In constructing a condominium, the developer has to separate the condominium with the condominium unit, common equipment, common facility, and common land. Common facility will become common equipment if it is built as part of condominium building. The separation as previously mentioned will make clear the following:

- a. Boundaries of condominium unit that is separately used for each owner;
- b. Boundaries and detail of common equipment and common facility that become the right of each condominium unit; and
- c. Boundaries and detail of common land and the scale of part that become the right of each condominium unit.

### **Advantages of Condominium**

Condominiums are popping up everywhere these days. Home buyers are now seeking the conveniences of condominium living and moving from single detached housing towards the condominium. There are several factors that lead to the popularity and success of condominium living in countries throughout the world. Firstly, many people like to live in condominiums as they are attracted to the idea of owning a property at a fairly inexpensive price enhanced by a secure and uncomplicated lifestyle. People strive to reduce travel time and keep the benefits of being right in the middle of the busy city or near commercial areas where facilities for employment, education, recreation, and public services already exist. Secondly, there is the desire for home ownership rather the tenancy. Most people prefer to own their own home, rather than rent which is one of the reasons condominium consumers would rather pay monthly mortgage installments. It ensures that their monthly payments go towards an eventual asset rather than monthly rental for apartment living.

Thirdly, there is the low cost of using facilities provided in condominiums such as swimming pools, fitness rooms, saunas, clubhouses, and the like. Some condominiums have retail units designed for commercial purposes such as a mini-marts, bookstores, beauty salons, and restaurants providing extensive convenience and allowing the condominium resident to stay at home rather than leave the condominium compound. Fourthly, there is the element of security with neighbors

above and below their condominium unit as well as the freedom to leave home for months without worrying about the house-break-ins, damage or theft. Finally, there is the issue of condominium unit owners maintaining their own unit. The responsibility of cleaning, maintaining, repairing the garden, the hallways, the lobby, the facilities, and the like are eliminated because these duties are part of the condominium body management's responsibilities.

### **Legal Structure of Condominium**

According to the historical background of condominiums, during the middle ages, the co-ownership principle was applied to condominium living created many disputes between unit owners as the co-ownership principle lacked clear-cut rules governing the repair and maintenance of common areas. The condominium law created an entirely new system of separate ownership of parts of a building and the principle of managing the common property by establishing a juristic condominium body; a legal entity set up for the purpose of administration, control and maintenance of the common property areas. It eventuated in order to prevent the disputes as seen in the middle-ages and to regulate, in great detail, the community relations of a large group of people living in condominiums.

### **Condominium Ownership in Myanmar**

Condominium means a single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas.

A recent trend in today's commercial real estate market is the creation of high-storeyed buildings i.e., the dedication of commercial buildings as condominiums. All condominium projects have Planning Permit, Building Completion Certificate, Ownership Books, Bylaws and the Sale Contracts. In order that the buyer of condominium unit entitles to the validity of ownership, they can rely on the main law, Condominium Law 2016, as well as the relevant laws such as the Transfer of Property Act, 1882, the Urban Rent Control Act, 1960 and the Transfer of Immovable Property (Restriction) Law, 1987. The Condominium Law has the provisions to solve the problems of ownership, common property rights and inadequacy of housing for an increasing population.

The Condominium Law in Myanmar is enacted in 2016 by Notification No. 24/2016 with the aims to support urban and regional development; to create community housing in order to provide adequate of housing for an increasing population in the urban areas; and to establish a legal framework in which condominium apartments. There are (11) Chapters and (39) Sections. It describes the definitions, objectives, formation of management committee and its duties and powers, functions and duties of the department, registration and establishment of a condominium, and rights and obligations of the developers. Especially it concerns with rights and obligations of the unit owner.

### **Conclusion**

As there are many advantages of a condominium structure in comparing with other types of housing, including leases and cooperatives, many people like to live in condominiums for the idea of owning the property at a fairly inexpensive price enhanced by a secure and uncomplicated lifestyle. Condominium ownership includes the ownership of common land, common equipment and common facilities which all are the integral and inseparable parts of the unit. Condominiums have also gained popularity when the cost of urban land has risen disproportionately to the cost of building construction, generally as a result of increases in population density resulting from migration to cities.

One or more of the various types of condominium, or strategies for combining condominium types, may apply more appropriately to one project or land than another depending on the interests of the developer and proposed uses of the property, but almost any land use can accommodate and likely be benefited in some way by the application or one or more of the condominium concepts in the Act.

Condominiums are completely creatures of statute and condominium association is a separate legal character and entity from the owners. Many condominiums have strict rules concerning the alteration of the unit space or its appearance. There is currently Condominium Law in Myanmar and it needs to encourage the effective legal mechanisms. As a result, both of the unit owners and developers in Myanmar are being entitled to the interests of real estate property.

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