



Demystifying the Confusion about Detached/Site Condominium Ownership

Bernice L. Ross, CEO & President
BrokerageUP! & RealEstateCoach.com

Demystifying the Confusion about Detached/Site Condominium Ownership

I. Today you will learn how to:

- Correctly identify the styles of condominium ownership including detached/site/single family condominiums.
- Explain how detached/site condominium ownership differs from single family platted subdivisions and more traditional styles of condominium ownership including what exactly constitutes “surface ownership” of the land and the improvements.
- Correctly disclose the exact nature of site condominium ownership to all relevant parties including buyers, sellers, appraisers, lenders, MLSs plus being able to overcome transaction problems arising due to confusion regarding this style of ownership.

II. The Best of Both Worlds? Or a Source of Massive Confusion?



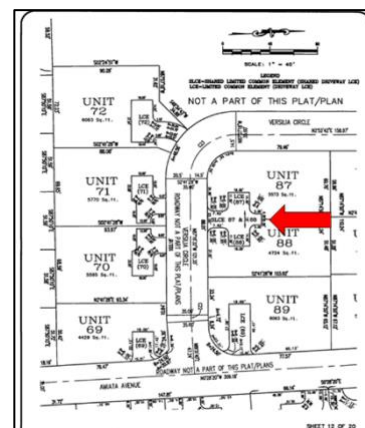
- **Can you tell which property is a “site/detached condo?”**
 - The MLS and the property tax rolls state the lot size for Property 1 is 10,332 square feet.
 - The MLS and the property tax rolls state the lot size for Property 2 is 11,848 square feet.
 - Both are in Planned Unit Developments with an HOA and CC&R’s.
- **You can’t identify a detached/site condominium by looking at the property, by what’s on the MLS, or what the tax assessor has posted as the “lot size” in the public records.**
- **Key point:** a condominium development is a form of OWNERSHIP, not a specific type of physical development or structure.

III. Three Types: Horizontal, Vertical, and “Site” Condominiums

- **What exactly is a “site condominium?”**
- **The FHA definition of site condominiums.**
 - Site Condominiums: A condominium project *“that consists entirely of single-family detached dwellings.”* These homes have no attached buildings, shared garages, etc.
 - Site condos also include projects made up of *“single family detached or horizontally attached (townhouse) dwellings where the unit consists of the dwelling and land.”*
- **HUD’s definition of “site” condominium.**
 - A single-family, totally detached dwelling (no shared garages or any other attached building, archways, or breezeways).
 - Is encumbered by a declaration of condominium covenants or condominium form of ownership.
 - The condominium unit consists of the entire structure as well as the site and airspace and are not considered to be common areas or limited common areas.
 - Insurance and maintenance costs are totally the responsibility of the unit owner.
 - Any common assessments collected will be for amenities outside of the footprint of the individual site.
- **Why this matters according to HUD.**
 - For developers, Condominium Project approval is **not** required for Site Condominiums; however, the Condominium Rider (Attachment D) must be included in the FHA case binder submitted for insurance endorsement.
 - For appraisers, site condominiums require different forms from platted subdivisions and traditional condominium units.
- **Example:**
 - The subdivision where I live has three types of condominiums.
 - Our “Lofts” are the traditional style of apartment or “vertical” condominiums.
 - Our townhomes (five to a building) are an example of “horizontal” condominiums.
 - The Villas are free-standing detached condominiums (like Property 2).
- **When you purchase a detached/site condominium, what exactly do you own?**
 - A detached/site/single family condominium is like owning a home in a regular platted subdivision that has an HOA, except you don’t own all the land.
 - One way of thinking about it is that the ownership rights are split, similar to what happens when someone sells their mineral rights but retains the rest of their property.



- The site condo owner has title to the “surface rights of the property,” but the HOA owns the remaining land.
- **What does “surface ownership” entail?**
- **Example:**
 - We have an HOA and separate sub-HOAs for the three types of condominiums.
 - Our subdivision is also a Planned United Development zoned as three lots.
 - All the residential units in our subdivision are situated on a single lot.
 - There is a commercial lot that has yet to be developed.
 - The city library is located on the third lot.
- **Three different categories of our ownership: “Common elements,” “limited common elements,” and “master units.”**
 - **“Common Elements”** refer to all the areas that are jointly owned by the members of the HOA, including the Land.” (This is identical to most types of condominium ownership.) Examples would be the swimming pool, Clubhouse, and all the other property where there are no Master Units (i.e., Lofts and Townhomes).
 - **“Limited Common Elements,”** if any, are those portions of Common Element reserved for the exclusive use of one or more Owners to the exclusion of other Owners. An example would be a shared driveway.
 - **“Master Unit”** means each physical portion of the Property designated by the Condominium Declaration for separate ownership, the boundaries of which are shown on the Plats and Plans.
- **What a master unit owner owns.**
 - A “Master Unit” is not a typical condominium unit.
 - A Master Unit does not include land.
 - The conveyance of a Master Unit is not a metes and bounds conveyance of land.
 - The creation of a Master Unit does not constitute a subdivision of land.
 - Each Master Unit is the surface of a designated piece of land, everything above the surface for 200 feet (in my subdivision), and anything below the surface that serves or supports the above-surface improvements and anything that exclusively serves the master unit.



IV. Detached/Site Condominiums Are Very Similar to Traditional Platted Subdivisions

- **Similarities.**
 - Owners of detached/site condominiums have fee simple title just like owners in platted subdivisions.

- In subdivisions with HOAs, there are CC&Rs, By-Laws, and use restrictions limiting what owners can and cannot do to their property.
- The HOA typically maintains any private streets, entry gates, drainage easements, and open space.
- The homeowner maintains their own insurance.
- Performs their own exterior and interior maintenance of the structure.
- Maintains all the systems that support the property.
- **Detached/site condominiums are described in three dimensions.**
 - Detached/site condo attorney Bob Burton explains how this style of ownership can be very similar to that of a subdivided platted lot.

We define the unit as anything that exclusively serves that unit, irrespective of whether it's located within the boundaries of that unit, tree roots, grassroots, swimming pool, foundation, (plus) telecommunication lines that run from a main line service in the street branch off, and exclusively serve that particular home. The detached condominium unit actually, in reality, looks like a square with a bunch of legs hanging off of it.

- **Planned Unit Developments.**
 - Both platted subdivisions and site condominium subdivisions may be Planned Unit Developments (PUD).
 - A PUD is a community of single-family homes, condos, and or townhomes, where all homeowners belong to an HOA.
 - The subdivision may include restaurants, shopping, educational facilities, recreation, etc.

V. Differences Between Detached/Site Condominiums and Traditional Platted Subdivisions

- **How they differ.**
 - Traditional subdivisions where the homeowners own their lots are created by plat map submitted to a county or city for approval.
 - According to Bob Burton who has written site/detached Condominium Declarations in multiple states for almost 20 years, what you won't see in a traditional set of CC&Rs for a platted subdivision is the Condominium Declaration which is used to create the Units within the lot.
- **Example of Condominium Declaration.**
 - The Declaration for the subdivision where I live is 673 pages long.
 - A substantial proportion of it is devoted to the amendments that create the new units.

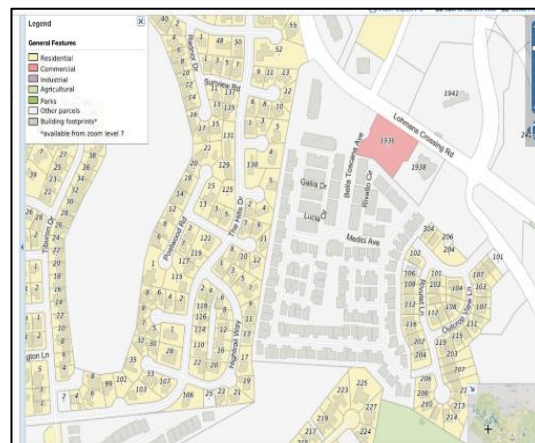
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- In the case of my unit, the original plat showed the property as being three separate units, but the developer reduced it to two units using an Amendment to the original Condominium Declaration.
- **Unit boundaries.**
 - Instead of a legal description of the lot lines on the property, Burton explains:

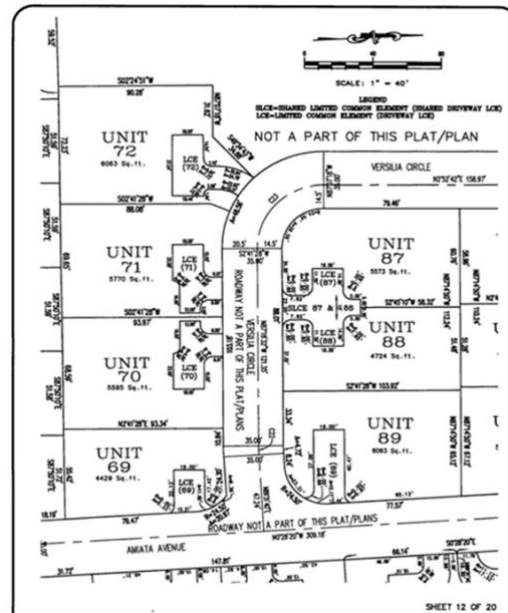
You will see unit boundaries and how the units are configured. In a detached condo, you'll see an upper boundary, you'll see a lower boundary, and you'll also see a discussion about side-to-side boundaries. Think of a detached condominium as a three-dimensional airspace in effect, that encapsulates the home as well as the exclusive yard space around the home.

VI. How to Recognize If a Property Is a Detached/Site Condominium

- **The easiest way.**
 - The easiest way to recognize if a property is a detached/site condo is to look at a plat map.
 - A detached condo will have a unit number and a square footage number that corresponds to the footprint of the land on which the unit is situated.
 - The following plat map is for the subdivision where Property 2 is located.
- **Plat map example.**
 - Property 2 is located in the white part of the map.
 - You can see three lots in the subdivision.
 - In the white area, you can also see street names, but there are no lot numbers.
 - The yellow areas are two typical platted subdivisions and include the lot numbers for each property.
 - The pink lot is an undeveloped commercial property. (Continued on next page).



- **A closer look at the plat map.**
 - Notice there is no lot number; instead, there is a Unit Number for each property.
 - The plat shows square footage numbers that corresponds to footprint of the land on which the unit is situated.
 - For example, Unit 71 has 5,770 square feet and Unit 72 has 6,063 square feet.
- **Units 71 and 72 are detached condominiums situated on a single lot.**
- **What's even more confusing.**
 - Sadly, there is almost no state or local guidance in NJ, NY, & PA.
 - Even though California, Michigan, and Texas have detailed laws, there is still massive confusion there as well.



- **Best place to search state condo laws: Justia US Law: <https://law.justia.com/>**
 - NJ only TWO searchable references.
 - Why developers love these.
 - **In New York, only 5 searchable results.**
- Another surprising difference is that New York does not have a specific statute governing homeowners' associations.
- In PA, 11 searchable results, ALL lawsuits.
- Are site condos controlled at the local level in Pennsylvania? Apparently, the answer is "yes."

VII. The Result of the Confusion? Widespread Errors Across the Entire Industry

- **Primary reasons:**
 - Most realtors are ignorant about detached/site condominium ownership.
 - So are most appraisers, attorneys, MLSs, mortgage professionals, and local building departments.
 - Even FHA, Fannie, and HUD have issues.
 - The sheer number of errors is staggering.
- **Examples:**
 - Bad advice from realtors
 - Ignorance of both the press and the New York Legislature about this style of ownership. Fortunately, NY Governor Hochul got it right.

VIII. MLS Issues

- **Almost all MLSs lack the necessary input fields to accurately describe site/detached condos correctly.**
 - Beyond the industry's overall ignorance about detached/site condominiums, the other source of major disclosure errors rests with the MLSs and the portals.
 - Virtually all MLSs require realtors to indicate whether a property is a single-family residence or a condominium.
 - There is no way to select both "condominium" and "single-family residence" on most MLSs.
 - The reason? MLSs lack an entry field that correctly describes this type of ownership.
 - **The second major issue is the "lot size" on the MLS listing input form.**
 - There are absolutely no MLS guidelines or rules to guide agents and brokers in this area.
 - Do you fill out a notation in the MLS description or leave it blank?
 - If you put lot size with an asterisk, how do you describe "surface ownership?"
 - A description of "surface ownership" should be handled by an attorney!
 - **How would you handle your MLS input form for a site condominium on your local MLS?**
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- **This issue bleeds over into the portals that rely on MLS information.**

IX. How to Correctly Disclose Detached Condo Ownership on Seller Disclosure Statements

- **Exactly how should realtors disclose a site/detached condominium?**
 - Should realtors even attempt to advise their sellers to make this disclosure on the state mandated disclosure documents? Probably not!
 - Does their brokerage and/or realtor association or an attorney need to draft a separate detached/site condominium addendum?
 - Who needs to take the lead?
 - What should realtors do when the attorneys don't even know?
- **Property tax appraisers/assessors are consistently getting it wrong as well.**
 - For example, Units 71 and 72 are detached condominiums situated on a single lot. So why did our Tax Appraisal District give the boundaries and a value of the "lot size in the public records?"
 - **The simple answer:** They failed to check the plat map and/or legal description. Alternatively, they didn't know that a Unit number coupled with a square footage number describing the boundaries of the Unit indicates the property is a detached/site condominium.
- **This is a major mistake that realtors, MLSs, appraisers, and lenders make daily all over**

the country.

X. Appraisal Issues

- **Appraised value.**
 - Because detached/site condos have surface rights to the land, Bob Burton argues: *There really should be no difference between the appraised value of a detached condo versus a subdivided lot. Within the boundaries of the detached condo that is exclusively yours, you own fee simple title to that component. There should be no difference in value between the detached condo and the platted lot subdivision.*

XI. Reasons Detached Condominium Ownership Is Preferable to Platted Lot Ownership

- **Consumer protection.**
 - Detached/site condominium ownership: *Is much more protective of the consumer than a traditional platted subdivision. If you think condominiums as somehow inferior to traditional platted subdivisions, almost all states have a process where the developer is required to provide comprehensive information to the purchaser prior to their entering into the purchase and sale agreement for a condominium unit. Platted subdivisions lack this protection.*
- **FHA benefits for developers and consumers.**
 - Site condominiums are exempted from FHA's Condominium Project and Processing Guide.
 - This increases affordability.
 - If they were not exempt, the project would have to meet certain presale requirements prior to issuance of FHA mortgage insurance on a specific unit. (In some cases, FHA may require up to 50 percent of the units be pre-sold before any of them can close.)
- **Master Planned Communities.**
 - Master Planned Communities outperform single family platted subdivisions—"The lifestyle commands a price premium."
 - While not all detached/site condominiums are located in Master Planned Communities, those that are outperform individual homes in traditional platted subdivisions. (Research findings from John Burns Consulting.)

XII. What Could Possibly Go Wrong? Case Study

- **Background.**
 - In 2016, my husband and I built a 2,220 square foot semi-custom home.
 - We thought it was in a platted subdivision with a 6,603 square foot lot.
 - The sign on the property had a unit number, but the street mailing address made no reference to a unit number.

- We didn't discover what that meant until six years later.
- **Drainage issues.**
 - The developer of our subdivision failed to install adequate drainage in many parts of the community.
 - Our property was one of the worst cases.
- **No response from developer.**
 - I hounded the developer for three years to fix the issues with no action.
 - I finally took the issue to our local building department to get the developer to respond.
 - The issues were never completely addressed.
- **Our HOA came up with the wrong conclusion about who was responsible for the repairs.**
 - I spent six months trying to get this handled in conjunction with the HOA.
 - The HOA advised us that all the residential structures in our subdivision were situated on a single lot (which was correct.)
 - Because of that, the HOA had to make any repairs (incorrect.)
- **Even our HOA attorney didn't get it right.**
 - The attorney for the HOA contradicted that advice by telling the Board that we owned our own lots (that was partially correct—we owned the surface area of the lot.)
 - That meant I was responsible for repairing the drainage on my property (partially correct. The HOA was responsible for maintaining the drainage that did not support our unit exclusively.)
 - Because the ponding was putting our foundation at risk, we hired our own contractors to handle the repairs.



XIII. In The Midst of All of This, We Applied For a HELOC

- **Incorrect forms used for the HELOC.**
 - The lender gave us a single-family residence loan application, i.e., for a platted lot in a Planned Unit Development.
 - The appraiser used the form for appraising single-family homes for platted lots in Planned Unit Developments, instead of the forms for appraising condominiums.
 - Both the lender and the appraiser missed several of the required condominium forms and disclosures.
- **Additional source of misinformation.**
 - The Travis County property tax records showed our “lot size” rather than stating the boundaries of the surface area of the land on which our Unit was located.

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- This could also result in the property being overvalued by appraisers and for property tax purposes (and agents misrepresenting lot size on the MLS due to the errors in the property tax data.)
- **The result: we had to redo the entire loan application and resubmit the loan.**
 - When the escrow received the preliminary title report showing our property was a condominium, the lender contacted me asking me if we owned a condominium.
 - I explained how our property was a detached condominium.
 - The entire loan application had to be put on a different form and we also had to obtain a new appraisal.
- **The original loan documents and deed of trust were also incorrect.**
 - Our note was on the “Multistate Fixed Rate Note-Single Family-Fannie Mae/Freddie Mac Uniform Instrument Form 3200 1/01.”
 - Our Deed of Trust used the: “TEXAS-Single Family—Fannie Mae/Freddie Mac UNIFORM INSTRUMENT Form 3044 1/01.”
 - There was also a two-page CONDOMINIUM RIDER recorded on form 3140.
- **Part of the confusion for lenders.**
 - The Fannie Mae guidelines state:
Site condos in which the unit owner owns the detached condo unit and the land upon which the unit is built are a type of detached condo. The waiver of project review applies for new and established projects.
 - HUD Rule 4000.1 which also applies to FHA states:
*A Site Condominium refers to a project of Single Family, totally detached dwellings encumbered by a **Declaration of Condominium** covenants or a condominium form of ownership. They have no shared garages or any other attached buildings. Project approval is required for Site Condominiums that do not meet this definition.*
- **What these definitions fail to address.**
 - How the land is held.
 - How surface rights are different as opposed to owning a lot in a platted subdivision and/or Planned Unit Development.
- **When it comes to search, detached/site condominium owners are in a lose-lose situation.**
- **Properly inform sellers.**
 - Since all the portals pull their data from the MLS, the challenge is that the only choices are “single family” or “condo.”
 - Very few buyers who are searching for a single-family home will also search for condominiums.
- **The cost.**

- One of my neighbors has a beautiful home that was priced right.
- When the realtor learned the home had to be classified as a condo on the MLS rather than single family, the agent changed the listing to condominium.
- Showings dropped.
- The highly motivated sellers ended up taking the property off the market.
- **It's also hard finding comparable sales.**
 - Appraisers typically rely on MLS data for establishing details about a property and for locating comparable sales.
 - They cannot choose appropriate comparable sales when the detached/site condominium is lumped together with traditional condos where the owners have no surface rights to the land.
- **Lost buyers** (You need both the UNIT number for legal and tax information and the street address so buyers and their agents can locate the property using GPS.)
- **Unit number and street address.**
 - A buyer stopped me while I was out walking and asked, “Where is Unit 42?”
 - When I asked for the street name, they said that was the only address the realtor gave them.
 - While Unit 42 is the correct legal address, none of our 100 detached condominium units have a unit number on our properties—we only have street addresses.
- **Properly inform sellers.**
 - While realtors must use the Unit number for appraisal, lender, MLS, and title purposes, they must provide the street address to guide buyers to the right location.

XIV. What Needs to Be Done to End the Confusion and Set Things Right?

- **Eliminate the confusion.**
 - Both realtors and consumers have a difficult time wrapping their heads around what a detached/site condo actually is.
 - “Single Family Condominium” would be an easier term to understand (although you would still have to use your state’s definition of what the type of ownership is).
 - “Single family condominium” captures the duality of this style of ownership.
 - Site/detached condominiums should be allowed to appear in both the single family and condominium search fields on the MLS and the portals in the absence of an accurate way of describing them.
- **Another option to lot size.**
 - The MLSs must give realtors a second option when it comes to lot size.
 - This second option would reference the “Unit boundaries of the land.”
 - This describes the “surface rights” to which the buyer would have title as part of the

purchase of their unit.

- **Having an exterior picture of the property is crucial.**

XV. State Real Estate Commissions Must Incorporate Training on Detached/Site Condominiums in Real Estate Licensing Courses

- **Who needs training.**
 - New and experienced agents, broker owners, and managers.
 - Appraisers.
 - Mortgage professionals.
 - They must be able to explain this style of home ownership.
 - They must know how to make accurate buyer and seller mandated disclosures.

XVI. Minimizing Risk

- **Broker responsibilities.**
 - Brokers should compile a list of all detached/site condominium subdivisions in the areas they serve.
 - These properties should be flagged so the brokerage can make sure if they are listed, they will be accurately described on the MLS and in marketing materials.
 - Brokers must take steps to ensure their agents are fully trained about how to make accurate representations and disclosures to consumers.
- **Consulting legal counsel.**
 - Associations and brokerages should consult with their legal counsel as well as an experienced legal expert on detached/site condominium ownership in their state.
 - Counsel can draft language for realtors to use to make correct disclosures to their clients.
 - They should also draft a separate disclosure to be used in all detached/site condominium transactions including listing and buyer packages that describe this style of ownership.

XVII. Key Points

- Detached/site condominium ownership is a complex issue that requires immediate attention from the real estate industry.
- Failure to address the confusion and lack of training in this area puts both practitioners and their clients at risk.
- The industry needs to make changes to mitigate these risks and provide better guidance and accurate disclosures for everyone involved.
- Adopting the term "Single Family Condominium" and implementing necessary changes in MLS, portal search fields, along with industry professional training will improve understanding and accurate disclosure of this type of ownership.