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New type of ownership better than some

Fractional ownership beats timeshare and land-lease

Buy land, Will Rogers once said, since they ain't making any more of the stuff.

That statement may have been true when the famous American humourist said it around 1930, but it's not true any longer.

The fact is that although the amount of acreage is not increasing, developers, lawyers and governments in the last 75 years have come up with many innovative ideas to create new ways of owning land where none existed before.

Condominiums, for example, may consist of land and land deeds in the sky. Although the concept dates to Roman times, the first condominium law was not enacted in Ontario until 1967.

Since our Condominium Act was revamped in 2001, we now have common elements condominiums, vacant land condominiums, leasehold condominiums and phased condominiums.

All of these are new legal ways of holding title to registered lands that could not be owned in this way prior to 2001.

In addition to simple ownership where a deeded owner holds land (on the ground or in a condominium) forever and can dispose of it by sale or bequest in a will, Ontarians can now purchase co-operative or co-ownership apartments, timeshares or interval ownerships, land-lease properties, life lease residences and now, fractional ownership.

I had heard of fractional ownerships before, but only in the context of what were effectively joint ventures in luxury cars, yachts, cruise ships, jets and stadium suites.

Recently, I had occasion to represent a group of clients who are developing what will become a golf and residence club just west of Collingwood in the Town of the Blue Mountains. The project is my first close encounter with fractional ownership of real estate, a concept that originated in the U.S. about 10 years ago.

I'm not a fan of the timeshare concept of resort ownership, in which participants have a time-limited interest, are exposed to the financial problems of the developer, and often experience difficulties in financing or reselling their interests. (See the March 29, 2003, edition of Title Page, at http://www.aaron.ca, for a case where the timeshare lease holders lost everything when the promoter went bankrupt.)

Fractional ownership is a new breed of title-holding which is a mixture of timeshare and condominium.

Each luxury chalet is a condominium unit, deeded in perpetuity to 10 separate owners, each of whom purchases a five-week fractional deed to the property and a proportionate interest in the attached golf course, tennis courts, clubhouse, pool and other common facilities. The five weeks of ownership can be consecutive or spread throughout the year.

The golf course and other facilities are the common elements of the condominium corporation, shared and paid for by the chalet unit owners.

Since the title is not a simple right of use like a timeshare, but is held by registered deed, it is readily transferable like any other real estate and can be financed with a conventional mortgage.

Most important, in a recreational community where the participating owners have deeds to the land, they are the ones who control the management company and not the other way around as in timeshares.

The owners' interest survives, as they do in a condominium project, even if the developer steps out of the picture along the way. The permanence and legal structure of fractional ownership offers many advantages over the timeshare and land-lease concepts. In my view, it's a much better option.

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