Lowndes

Insights

Land Condominiums Revisited: A Deeper Dive into Florida's Statutory Definition of "Land" and Advanced Structuring Techniques

Article
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Sequel to Land Condominiums: A Powerful Tool for Accelerated Development and Financing Flexibility

The enthusiastic feedback we received on our overview article confirmed a widespread appetite for drilling further into the *why* and *how* of land-condominium structures. At the center of that discussion lies a deceptively simple statutory provision: Florida Condominium Act § 718.103(9). Its expansive definition of "land" equips real estate counsel and deal architects with an almost boundless design palette. This deep-dive unpacks that definition, shows how to translate it into practical deal geometry, and closes with a ten-point checklist you can deploy on your next project.

The Statutory Springboard: § 718.103(9)

"Land" means *the surface of a legally described parcel of real property and includes, unless otherwise specified in the declaration … airspace lying above and subterranean space lying below such surface.* The term may instead refer to *any portion* of that vertical column - or even be limited to airspace or subsurface volumes entirely - *with or without* the surface itself. A condominium unit can therefore be defined as *any combination* of these elements, contiguous or not.

Key Take-Aways

- **Three-Dimensional Freedom.** Units can be carved horizontally, vertically, or volumetrically (think cubes, slices, or "donut-hole" cavities).
- **Surface-Optional Drafting.** A declaration may expressly **exclude** the ground plane, enabling elevated or subterranean units without fee ownership of the dirt.
- **Stackable & Non-contiguous Parcels.** Separate, non-touching volumes - e.g., a sky-bridge plus a roof deck - can comprise a single unit if legally

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Conceptual Underpinnings

Florida's legislature intentionally decoupled "condominium" from traditional brick-and-mortar imagery. Instead, the Act focuses on *space + governance*: (i) a legally described volume; (ii) fee-simple title thereto; (iii) an undivided interest in the common elements; and (iv) a recorded declaration binding those elements together. Once practitioners internalize that pivot, land-condo creativity flourishes:

Traditional View

Land-Condo Reframe

Lot lines anchored at grade

Legal volumes anchored in 3-D space

Plat approval prerequisite

Condominium survey and plot plan & declaration - no subdivision review

Uniform infrastructure timing

Staggered phasing & use-rights allocations via limited common elements and reserved easements

One lender, one collateral block

Parcel-specific financing stacks

Advanced Structuring Moves

1. **Air-Rights Condominiums.** Carve out the first 70 feet of vertical column as *Unit A* (future multifamily), retain the next 30 feet as common element parking deck, and sell an aviation-easement-proof *Unit B* starting at 100 feet for a rooftop restaurant.
2. **Subsurface Stormwater Vaults.** Designate an underground stormwater detention or reuse cistern as a standalone subsurface unit - allowing separate ownership, maintenance obligations, and financing while keeping surface development unencumbered.
3. **Non-Contiguous Assemblage.** Group scattered retail pads into one "Retail Podium Unit" to secure anchor-tenant financing while leaving the residential tower as an independent "Vertical Lot."
4. **Temporary Entitlement Bridge.** Record a land condo early to close equity and construction loans, then merge units into platted lots post-infrastructure via § 718.117 termination.

Drafting Focus Points

- **Declarant Reservation Clauses.** Retain unilateral rights to reallocate limited common elements as phasing evolves.
- **Unit Boundary Precision.** Use metes-and-bounds plus elevation callouts (NAVD 88 benchmarks) to withstand title-insurer scrutiny.
- **Easement Matrix.** Map vertical utilities, structural load paths, and access cores; embed cross-easements to avoid future "air-locked" units.
- **Lien Management.** Require blanket consents from construction lenders to lien relocation upon condo termination.

Financing & Tax Nuances

Consideration

Impact

Title Insurance

"Future Advance Priority" endorsement often easier when collateral is a discrete condo unit rather than fractional undivided tenant-in-common interest.

Ad Valorem Taxes

County appraisers issue distinct folio numbers; unit-level assessments prevent joint and several liability for entire tract.

Credit-Tenant Leases

Lenders can take unit-specific Assignments of Rents and SNDAs, enhancing collateral isolation.

Bond Financing

Public-facility air-rights units can qualify for standalone special-assessment or CDD financings without obligating private components.

Regulatory Pitfalls & Litigation Lessons

- **Plat-Vs-Condo Boundary Conflicts.** Ensure that any later subdivision plat does not conflict with the condominium description; otherwise, duplicated boundary lines can cloud title and create issues for existing liens.
- **HOA & Master-Association Overlap.** Clarify cost-sharing formulas where a master HOA overlays the land condo.
- **Construction Defects and Statutory Warranties.** Condominium Act imposed warranties and risks need to be properly understood and allocated.

Ten-Point Checklist for Prospective Land-Condo Transactions

1. **Deal Objective Defined?** Value-add, phased sale, JV split, financing silo? Purpose drives condominium plan geometry.
2. **Vertical & Horizontal Boundaries Surveyed?** Obtain LiDAR or BIM data to draft metes-and-bounds cuboids.
3. **Local Code Compatibility Confirmed?** Verify that zoning and land use regulations permit indented uses independent of the condominium overlay.
4. **Title-Policy Scoping.** Engage underwriter early to bless airspace descriptions.
5. **Lender Education Package Prepared?** White-paper plus cash-flow diagrams ease credit-committee review.
6. **Easement & Utilities Matrix Complete?** Identify utility chase rights and maintenance obligations before recordation.
7. **Termination Path Mapped?** Draft lien-relocation mechanics and vote thresholds up-front.
8. **Tax Parcel Projections Modeled?** Run millage scenarios for each unit type.
9. **Association Budget Stress-Tested?** Ensure reserves align with phased turnover timelines.
10. **Exit Strategy Alignment?** Confirm that future plat, merger, or bulk sale is not hamstrung by declaration covenants.

Conclusion & Next Steps

The statutory latitude embedded in Florida's definition of "land" allows practitioners to sculpt property interests that transcend conventional lot lines. From air-rights dining decks to subterranean vaults, the land-condominium toolkit adapts to virtually any development puzzle, *provided* counsel and the developer team choreograph surveyors, lenders, and title insurers in lockstep.

If this deeper exploration sparked ideas or questions about applying land condos to your projects, let me know, and in the meantime have a great week, and stay creative!