

## ALERTS AND UPDATES

### New Alternatives to Condominium Structure for Florida Real Estate Developers

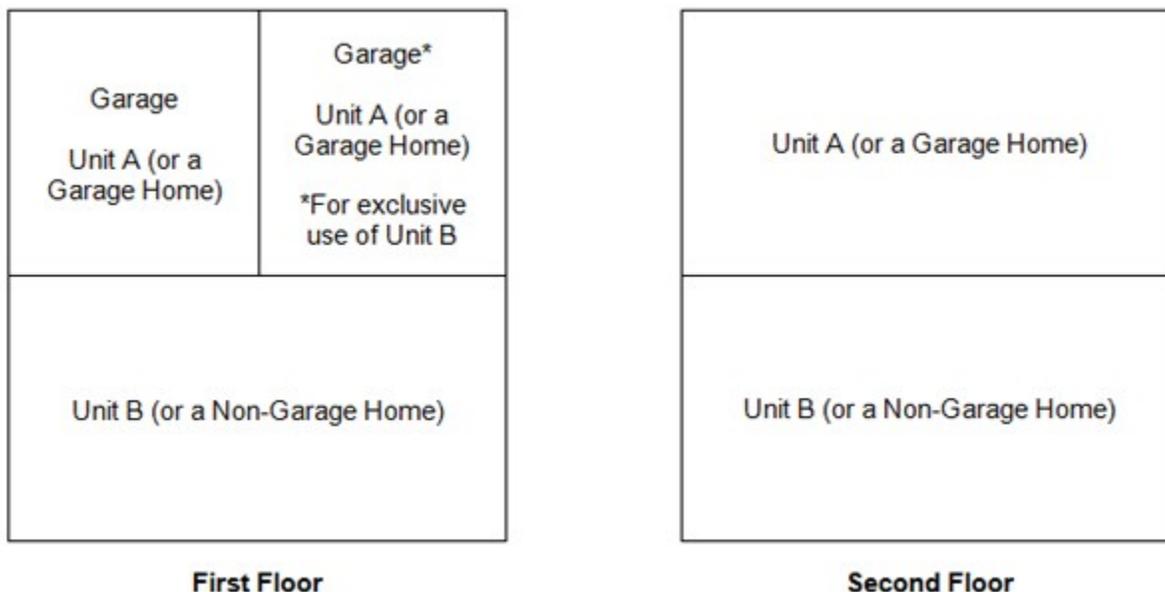
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Florida's real estate market is showing signs of a turnaround. However, residential developers have appeared hesitant to construct new condominium projects. As an alternative to projects using a condominium form of ownership, new low-rise or "garden style" projects that would typically need to be structured as a residential condominium have recently been approved by several Florida local authorities, potentially paving the way for an alternative non-condominium structure for projects that otherwise would need to be structured as a condominium.

With the current perceived stigma of falling values for condominiums as well as the increased costs associated with forming condominiums and operating condominium associations, developers of proposed low-rise or "garden style" projects in Florida may want to consider a hybrid structure that allows the development of these projects as non-condominiums that permits the individual units to be conveyed as non-condominium homes operated through homeowners' associations under Chapter 720 of the Florida Statutes.

With the proper documentation, including a declaration of covenants and restrictions, appropriate disclosures in homeowners' association and sales documents, and necessary approvals from the applicable governmental authorities and lenders, homebuilders can now construct low-rise or "garden style" residential townhomes, with each unit having exclusive use of a garage, that can be structured to allow ownership as non-condominium units as opposed to condominiums.

With this structure—a sample floor plan is depicted below—all units have exclusive use and access to a garage, though certain units actually have no garages ("Non-Garage Homes"), and other units contain two garages ("Garage Homes"). To accommodate the Non-Garage Homes with use and access to a garage, an easement is provided in favor of a Non-Garage Home for the exclusive use of one of the garages. This structure may also be available for living areas other than a garage through the use of easements or other rights.



With this structure, the following may warrant consideration:

1. **Easement.** A recorded declaration of covenants and restrictions should include the necessary easements in favor of the Non-Garage Home, including a perpetual, exclusive easement for the use and enjoyment of the garage and the driveway appurtenant to the garage.
2. **Taxes.** Fairness would dictate only that the owner of the Non-Garage Home pay the real estate taxes associated with the garage space over which it has exclusive use and enjoyment, although the garage is not part of the Non-Garage Home. Unless the local property appraiser agrees to assess each unit as if it has one garage, regardless of the legal description of the unit, a recorded declaration would have to provide a mechanism for the apportionment of real estate taxes.
3. **Homeowners' Assessments.** Depending on whether assessments are allocated to each unit based upon square footage or on an equal basis, a recorded declaration of covenants and restrictions should be drafted to account for any assessments allocated to the garage component.
4. **Utilities.** Depending on how the utilities will be metered and billed, a recorded declaration would have to provide a mechanism so that utility costs related to the garage used by the Non-Garage Home are paid by the owner of the Non-Garage Home. In addition, issues relating to utility lines serving the garage component would have to be addressed.
5. **Insurance.** Depending on whether the homeowners' association obtains and maintains insurance coverage over all of the units in the community, the developer may want to consult with local insurance companies to determine whether coverage can be obtained so that the owner of the Non-Garage Home can obtain insurance, both casualty and general liability, covering the garage component.
6. **Casualty.** Provisions should be set forth in a recorded declaration of restrictions and covenants to ensure that the garage used by the Non-Garage Home is reconstructed or repaired in the event of its damage or destruction.
7. **Maintenance.** A recorded declaration should contain provisions to ensure that the owner of a Non-Garage Home maintains and safely uses the garage component used by the owner of the Non-Garage Home.
8. **Parking.** The applicable governmental entity should confirm that applicable parking requirements are satisfied, notwithstanding the structure of this type of development.
9. **Disclosures.** Appropriate and sufficient disclosures should be included in a recorded declaration of covenants and restrictions as well as sales documents advising purchasers and owners of the details of the structure, including the easements and issues relating to maintenance, taxes, insurance and property taxes.
10. **Other.** A recorded declaration of covenants and restrictions should account for other issues, including provisions relating to liability and indemnification issues.

## About Duane Morris

Duane Morris attorneys have considerable experience in drafting declarations, homeowners' association and sales documents as well as structuring low-rise projects that typically would be structured using a condominium form of ownership as non-condominiums, allowing such projects to be constructed and sold as fee-simple units. Additionally, Duane Morris attorneys have negotiated with lenders and governmental agencies in obtaining their approval for numerous projects that take advantage of this product type.

## **For Further Information**

If you have any questions about this *Alert* or would like more information, please contact [Jeffrey R. Margolis](#), [Barry D. Lapidus](#), any other [member](#) of the [Real Estate Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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