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Exclusive use areas in condominiums

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It is difficult to get 100% of any group of condominium owners to agree on what day of the week it is, let alone to agree to give an easement to a neighbor.

The Massachusetts Condominium Statute, Massachusetts General Laws, Chapter 183A, Section 5(b)(2)(ii), permits a condominium trust to grant to a unit owner or to unit owners an easement to use a limited common area and facility, provided approval has been received: (1) from the owner of the unit or the owners of the units and their first mortgagees that immediately adjoin the limited common area and facility, and (2) the consent of at least 51% of the first mortgagees on units who have given notice of wanting to be notified. The consent of any unit owner and his first mortgagee whose access to his unit is affected is also required. Such an easement becomes appurtenant to the unit. Therefore, the grant inures to the benefit of future owners of the unit or units.

A limited common area and facility is a portion of the common areas and facilities for the exclusive use of one or more, but fewer than all, of the Units.

This means that the condominium trust may, for example, grant a hallway as an easement for a penthouse unit that occupies an entire floor as a limited common area and facility, appurtenant only to that unit.

There is no need for any sort of high vote requirement from the homeowners, such as 75% or 100%, because of Massachusetts General Laws, Chapter 183A, Section 5(b)(2)(ii).

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