



nerej

Saul Feldman - I believe the Uniform Condo Act (UCA) is superior to the Mass. Condo Act (Chapter 183A)

July 28, 2011 - Spotlights

It is mid-year. In looking back over the first half of 2011, I have concluded that the most gratifying thing I have done professionally was to write an article published in the New England Real Estate Journal in which I compared Chapter 183A, the Mass. Condominium Act (Chapter 183A) to the Uniform Condominium Act (UCA). The article attempted to demonstrate that the UCA is far superior to Chapter 183A.

The response I received from other condominium lawyers has been mixed. Some lawyers agreed that a statute such as the UCA, which has detailed mandatory provisions, was better for everyone than Chapter 183A, which is merely an enabling statute. Other lawyers said that Chapter 183A was better because it allows flexibility and creativity.

Until this year, I agreed with the school of thought that preferred keeping Chapter 183A. Chapter 183A has, over the past four (4) decades, allowed me to push the envelope in order to be able to give my developer and converter clients the condominium regimes that they wanted. Chapter 183A has allowed me to draft documents which maximized flexibility and marketability and minimized liability. However, I have concluded that a detailed second generation statute such as the UCA is better for everyone concerned.

Lawyers have also said that we have an extensive body of case law interpreting Chapter 183A that would be adversely affected by the adoption of the UCA. To this I would reply that the case law is often confusing and less than helpful. I would rather look to a comprehensive second generation statute such as the UCA than to the case law on condominiums in Mass.

It occurs to me that, if the UCA were adopted, we could draft condominium documents that incorporated by reference sections of the UCA. This could allow us to draft shorter condominium documents

According to Wayne S. Hyatt, author of Condominium and Homeowner Association Practice: Community Association Law, the leading national textbook in the field (page 12, Third Edition), the UCA:

"still stands as the primary example of quality legislation regarding condominiums."

The adoption of a more comprehensive statute would make condominium practice easier for everyone. For example, when title insurance companies are asked to insure a condominium regime that is out of the ordinary, such as phasing within a building, they put the onus on condominium lawyers, asking us to opine that the condominium complies with Chapter 183A. We end up citing cases that say Chapter 183A is merely an enabling act and that anything that is not specifically prohibited is allowed. Phasing within a building is not prohibited, therefore it must be allowed. A more comprehensive statute would cover expandable condominiums and therefore it would be easier to write an opinion letter on this type of a condominium.

Chapter 183A does not require that significant construction take place before Units are assigned an interest in common elements. The UCA, on the other hand, requires that there be substantial completion (Section 2-101(b)). The UCA is better on this matter and most other matters.

When Chapter 183A was adopted in 1963, there was little knowledge about condominiums and other common interest communities. Today, there are many condominiums and many condominium lawyers. We should be able to come up with a better condominium statute, modeled after the UCA.

Conclusion

I would argue that the adoption of the UCA in Mass. would be better for condominium law and practice. Chapter 183A will continue to require amendments and judicial clarifications. Adopting the UCA would be better than continual amendments of Chapter 183A and litigation when specific problems arise.

The UCA is very comprehensive. It balances developer interests and the protection of consumers. The UCA carefully defines Special Declarant Rights to give the developer rights to develop the condominium. The UCA also includes a detailed section on express warranties of quality (Section 4-113) and implied warranties of quality (Section 4-114). The UCA covers leasehold condominiums, phased condominiums, limited common elements, exercise of development rights, rights of secured lenders, protection of buyers, operating the association, management and master associations.

When Chapter 183A was enacted in 1963, it was geared toward simple apartment buildings. Over the years, the condominium form of ownership has expanded to townhouses, free standing homes, office buildings, warehouses, mixed use buildings, vacation homes, and retail buildings. A statute that may have worked in 1970 or 1980 does not work in 2011.

There needs to be a committee which will draft a new statute based on the UCA. The formation of such a committee would be a worthy goal in the next six (6) months of 2011.

Saul Feldman is a real estate attorney with Feldman & Feldman, P.C., Boston.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540