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Reconciling differing uses in a mixed-use condominium

April 24, 2014 - Spotlights

The common belief is that tensions between unit owners in a mixed-use condominium often lead to total dysfunction in the condominium. I want to demonstrate that it is often possible to resolve the differences between differing uses. I will do this by exploring a common fact pattern.

The tensions are between:

- (1) the condominium association in a mixed use building with residential units in most of the building, and
- (2) the owner of the restaurant unit.

In this example, there is a restaurant operating on the first floor of the building with the next several floors occupied by residential units.

The restaurant wants to obtain a liquor license and convert the restaurant to a sports bar which will, of course, generate even more noise. Under the condominium documents, a restaurant is allowed, but a sports bar is not allowed. The zoning allows for both a restaurant and a sports bar.

On the surface, this may seem like an impossible problem between the owner of the restaurant unit and the Condominium Trustees. The Trustees could hold firm and not allow the sports bar. If the restaurant goes ahead and converts the use to a sports bar, the parties will end up in years of litigation. Eventually, the Trustees may win and the restaurant may lose. However, in reality neither party will win. The costs of litigation in this case could be in excess of \$200,000.00. This just happens to be the cost of proper sound-proofing.

Saul Feldman, real estate attorney at Feldman Law Offices in Boston.

The solution is for the two parties to come to an agreement on proper sound-proofing of the ceiling of the restaurant unit. The cost should, of course, be borne solely by the restaurant.

This becomes a win-win solution for both parties and shows that a difficult problem that could lead to tension, dysfunction and litigation can be resolved by negotiation.

This is not rocket science. It just takes a commitment by the owner of the restaurant unit and the Condominium Trustees. The commitment is a commitment to negotiate and to reach a settlement that is good for both parties.

There will be a settlement agreement signed by the Owner of the Restaurant Unit and a majority of the Condominium Trustees.

The agreement will also be signed by as many of the Unit Owners as possible. The Condominium Trust must indemnify the Owner of the Restaurant Unit against claims by any of the Unit Owners who fail to sign the settlement agreement.

This fact pattern is quite common in Boston and other urban areas throughout the United States. My point is that most tensions in a mixed-use condominium can be settled and need not lead to dysfunction and litigation.