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2014 update on commercial condominiums

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These are some of my thoughts on Commercial Condominiums as we enter the final months of 2014:

(1) In commercial condominiums, I am putting in provisions for mediation or arbitration for all disputes other than collection of common area expenses. For arbitration, I have been using quick draw arbitration: one arbitrator selected by the executive director of REBA, after consultation with both parties, arbitration to be held within thirty days, and limited to one day with discovery limited by the arbitrator. The findings and results of such arbitration are binding upon the parties and may thereafter be submitted to any court of competent jurisdiction. The cost of such arbitration is paid by the individual submitting the matter to arbitration.

(2) I am seeing more tenants in commercial office condominiums exercising the option to purchase in their leases. Therefore, care must be taken to make certain that these options to purchase are carefully drafted. Tenants must be aware that courts will strictly construe the notice provisions for exercising the option to purchase.

(3) In small commercial condominiums such as two unit condominiums, I am including a right of first refusal.

(4) Finally, changes in Section 6(a)(i) of Chapter 183A, the Massachusetts Condominium Statute, which allow for assessment of common expenses based on area, have become very important to commercial condominiums. Clearly, in an office condominium, buyers usually will agree that area is the best way to assess common expenses.

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