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Opting out of age restricted condos

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Developers of age restricted condominiums should put a provision in the Condominium Documents that allows the developer to remove the so called "over 55" provision.

Given the current market, such an opt out provision can be very important.

The Boston Globe recently described the plans of developers to go back to a local zoning board to amend the special permit to remove the "over 55" age restriction.

I am troubled if the Condominium Documents fail to allow the developer to opt out of this limitation.

A buyer could well have a case against a developer who sold him a unit in an age restricted condominium unless the developer has reserved the right to opt out of the age restrictions.

The Master Deed should give the developer the unilateral right to eliminate the over 55 age restriction with the consent of the ZBA, even after unit deeds are recorded. This was what we have used in the past:

"The declarant reserves the absolute right to eliminate or revise the age restrictions in this paragraph at any time, if a change in the Special Permit, the zoning by-laws of the Town, State law or federal law so requires or permits."

Age appropriate housing is a more marketable product than age restricted housing. Product is often as important as price and location in real estate.

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