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Four thoughts on commercial condominiums as we enter the final months of 2014

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(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 Real Estate Bar Association (REBA), after consultation with both parties, arbitration to be held within thirty (30) days, and limited to one (1) 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.

The paragraph I use for quick draw arbitration is as follows:

"QUICK DRAW ARBITRATION. In the event that any unit owner or any trustee is aggrieved by any action or non-action of another unit owner or any trustee, or in the event that any decision is decided contrary the desires of any unit owner or trustee (except as to the collection of common area expenses), such unit owner or trustee may submit such action to arbitration. Such arbitration shall be conducted by an experienced arbitrator selected by the executive director of the Real Estate Bar Association (after consultation with both parties) who shall arbitrate such dispute in a one (1) day hearing to occur within thirty (30) days of the selection of the arbitrator. Discovery shall be limited by the arbitrator in his sole discretion. The findings and results of such arbitration shall be binding upon the parties and may thereafter be submitted to any court of competent jurisdiction. The cost of such arbitration shall be 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. A right of first refusal is very rare in a two (2) unit residential condominium. It is very common in a two (2) unit commercial condominium. Commercial unit owners want a way to control the use of the adjacent unit. They also want a way to expand. The right of first refusal is one way to achieve each of these goals.

(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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