



nerej

Legal and management issues to be aware of when investing in a vacation condominium

June 25, 2015 - Spotlights

think of vacations. Often this means a resort or a second home condominium. There are many concerns in buying a vacation condominium. The usual concerns involve pools, parking, and pets. Noise is also an issue, given the close proximity of the units. Also, transient occupants may not remove their trash when they leave.

There are other issues as well, such as the right to lease your unit. Many units in a vacation condominium are often owned by absentee landlords and rented out on a weekly or monthly basis. The rules and regulations for the condominium must be drafted to take this into account. Tensions often exist between renters and owners, and between couples with children and couples without children.

Often vacation condominiums contain mixed uses. There can be tensions between, for example, homeowners and an on site restaurant involving odors, noise, and allocation of expenses. There can also be tensions in a golfing condominium, between the owner of the golf course and the residential owners, where the ownership of the golf course is separate from the ownership of the residences. These tensions include noise during golf tournaments and allocation of expenses between the owner of the golf course and all of the owners of residential units.

Where a vacation condominium is both commercial and residential, in an attempt to reduce the tensions between commercial and residential owners, often a rules committee is created by the owners. One of the functions of the rules committee can be to make rules and regulations regarding signage. This is necessary to prevent the owner of the restaurant unit from installing signs that are bothersome to the owners in the adjacent cottages.

Given the popularity of golf, in the 1980s and 1990s many condominiums were created consisting of residential units and a golf course as the main amenity.

The following is a paragraph I have used to clarify relationships in a golfing condominium consisting of phase one as the golf unit and the remaining units as residential units:

"Mixed Use Condominium. The Declarant and all Unit Owners acknowledge that the Condominium is a Mixed Use Condominium, Phase One being a golf course and the other phases being used for residential dwelling purposes. Phase One has different budgetary requirements than the other phases described in Article ___ of the Condominium Trust. In recognition of the mixed-use nature of the Condominium, all of the Unit Owners will cooperate to ensure harmony within the Condominium. For example, the owners of Residential Units agree that golf balls from the golf course may land on the residential phases and will have to be retrieved. The owners of the Residential Units will allow such retrieval. As the golf course will traverse the Condominium, those using the golf course will have the right and easement to access all of the golf holes, fairways and tee areas as shown on the site plan. The maintenance and repair of all appurtenances to The Golf Unit shall be the obligation

of the Owner of The Golf Unit. The appurtenances of The Golf Unit include the golf fairways, tee boxes and the Land located in Phase One, the tennis courts, pool and all other amenities in Phase One. The Owners of the Residential Units will have no rights as to Phase One or the Golf Unit. The owners of the Residential Units acknowledge that they are aware of the noise and hazards of living near a golf course and that they, their invitees and their dwellings may be struck by golf balls. The owners of the Residential Units acknowledge that during golf tournaments there will be added noise and congestion. During a tournament, vehicles will be parked on all of the roads to be constructed on the Land. Although all roads to be constructed on the Land are part of the Common Areas and Facilities, all roads shall be used by employees and invitees of the Golf Unit without any interference by the owners of the Residential Units."

Moving from a golfing community to a beach community, I should note that vacation condominiums were a subject of a case involving a "cottage colony" in the Town of Dennis on Cape Cod. The case is *Goldman v. Dennis*, 375 Mass. 197 (1978). The Goldman case upheld a town by-law that regulated the conversion of certain types of buildings to the condominium form of ownership.

I have never liked the Goldman case. A condominium is a form of ownership. It is not a form of land use.

The court in the Goldman case said that there are some situations where a municipality may regulate a condominium conversion if the conversion will intensify the use of the property.

The issue of a vacation condominium is complicated by a condominium statute (Chapter 183A) that provides little guidance to the owners of vacation or seasonal condominiums.

I should mention that there are boat dock condominiums, often in vacation areas such as Cape Cod. Also, there are hotel condominiums which consist of one unit being a hotel and the remaining units being residential vacation units. The condominium form of ownership has been used to create some interesting vacation condominium projects.

Massachusetts does have a separate statute covering timeshares, but this statute does not apply to a vacation condominium unless it has been made into a timeshare pursuant to the timeshare statute (Chapter 183B).

One difference between a vacation condominium and other condominiums is that the board of trustees meets less often, and, when they do meet, they often meet by a telephone conference call. The condominium documents for a vacation condominium must allow for meeting by a telephone conference call, as the Trustees may spend most of the year far away from their vacation condominium.

Finally, it is essential that the condominium be managed by a management company that has experience with vacation condominiums. There are rental agreements with residents, move in and move out issues, and many other matters that require a management company with expertise in managing vacation condominiums.

A management company may also have to deal with workouts involving a troubled or failed vacation condominium development, run-away expenses, bank loans to the vacation condominium association and litigation against unit owners who are often out of state.

In any event, your resort or second home condominium may have its share of legal issues.

Saul Feldman, Esq. is a real estate attorney with Feldman Law Office, Boston.