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Creative use of condominium form of ownership when a traditional subdivision is not possible - by Saul Feldman

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A condominium is a good way to create a multiple ownership of real estate when the local planning board will not approve a subdivision under the Mass. Subdivision Control Law (Chapter 41, Section 81K-GG).

By using the condominium form of ownership, I have been able to avoid the problems of obtaining subdivision approval from local planning boards.

For example, in Danvers, north of Boston, I have created Garden St. Condominium, a condominium consisting of a large retail store (Lowe's) as one unit and the remaining units in an adjacent office building and on pads for retail uses, all on one 29 acre lot.

Also, in Hingham, south of Boston, I have created the Black Rock Condominium, a golf condominium with the golf course and clubhouse as one unit and the free standing or attached homes as the remaining units, without a subdivision. The entire lot contains approximately 370 acres.

Currently, we are serving as Special Condominium Counsel for numerous condominiums such as a mixed-use, multi-phased condominium located on over 50 acres in Massachusetts.

There are often competing agendas. For example, the developer may want to be in control as long as possible. The purchasers of each piece of the site, on the other hand, want to take control as soon as possible. The lenders want to be secure. Everyone wants well drafted condominium documents in order to minimize the likelihood of litigation.

Title insurance has made the process much easier. Most title companies treat phasing rights as an interest in real estate. Therefore, title insurance is available.

When a tract of land cannot be subdivided, a phased condominium works very well. The entire land is put into the condominium and the Declarant reserves the right to construct buildings in future phases on the portion of the land which is common area.

On a much smaller scale, often there are two houses on one lot which can not be subdivided. A condominium can be created with each house being a unit in the condominium. Subdivision approval is not required.

There are many issues involving condominiums such as phased condominiums, parking in urban and rural condominiums, and the reasons for creating a condominium before construction begins.

As Chapter 183A, the Mass. Condominium Statute, is an enabling statute allowing for flexibility, it will continue to be used in creative ways when a traditional subdivision is not possible.

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