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A condominium lawyer walks up to a trailer... Chapter 183A, the Mass. condominium statute by Saul Feldman and Angel Mozina

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In this article, we want to clarify that in Massachusetts, phases in a condominium cannot be created on vacant land. A condominium in Massachusetts can be created in phases with trailers on each phase. We find it difficult to believe that little, if anything, has been written about this important subject.

Chapter 183A, the Massachusetts condominium statute, is a first-generation statute. Things that are not specifically prohibited are allowed. Unfortunately, a phase cannot consist merely of vacant land in Chapter 183A. There must be a structure on the land.

The way this is usually accomplished is by putting a construction trailer on the land to be phased. Later on, the trailer can be removed and replaced with the buildings.

The entire site is shown on the condominium site plan recorded with the Master Deed. Phase I is shown with a construction trailer. Unit 1 in Phase 1 is the trailer.

Sometimes, the land to be phased already has an existing structure that can meet the Massachusetts requirement. Often, it is a shed or storage space. Similar to the trailer, the shed or storage space can become Unit 1 of Phase 1 in the condominium documents.

The Site Plan will show the three-dimensional footage of the trailer or similar structure. The Master Deed will describe the trailer. The Master Deed will allow the Declarant to unilaterally amend the Master Deed in order to remove the trailer and add the actual building(s) on Phase 1 once the construction is completed and an as built plan may be prepared showing the building(s) that will replace the trailer or other pre-existing structure.

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Under Chapter 183A, the concept of phasing is mentioned only once. Section 5(b)(1) states that “the acceptance and recording of the unit deed shall constitute consent by the grantee to the addition of subsequent units or land or both to the condominium and consent to the reduction of the undivided interest of the unit owner if the master deed at the time of the recording of the unit deed provided for the addition of units or land and made possible an accurate determination of the alteration of each unit’s undivided interest that would result therefrom”.

Under the Uniform Condominium Act (“UCA”), which has been adopted in many states (but not Massachusetts), a subdivision of condominium units may consist merely of unimproved lots and the airspace above them. The UCA is a second-generation condominium statute. Specifically, the use of a subdivision consisting merely of unimproved lots is described in Item 11 in the Comment to Section 2-101 of the UCA: “nothing in the Act would require any residence to be built before the lots could be treated as units.”

We believe it is time Massachusetts adopted the UCA standard on phased condominiums. It would allow for faster phasing timelines with fewer legal and other logistical costs for busy and cost-conscious developers.

An example may be helpful. We have drafted documents in a condominium which consisted of six areas containing three commercial/retail areas, two residential areas, and common areas and facilities. Some of the units originally consisted of a trailer. The Declarant has the right without the consent of any third party to demolish and remove the trailer and construct a retail area. This would be accomplished by an amendment of the Master Deed recorded at the Registry of Deeds with an amended site plan showing the retail area. Another phase of the condominium consisted of an existing building, which was demolished and replaced by multi-family housing.

Finally, we must note that many surveyors do not have any familiarity whatsoever in using a trailer or other structures. This really holds up the entire process. It is important that surveyors get up to speed on the concept of using a trailer. If surveyors knew more about the use of a trailer, the job of attorneys like us who draft condominiums in Massachusetts would become less stressful!

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