

Poison Pills and Common Areas



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There are two cases worth noting in this issue of our newsletter. The first is a case which is scheduled for argument in the Supreme Judicial Court regarding poison pill provisions in condominium documents.

These provisions prevent associations from litigating matters particularly against developers unless they receive a vote of a certain percentage of the entire beneficial interest (usually 80%) along with an approval of a litigation budget.

The case of Trustees of Cambridge Point Condominium Trust v. Cambridge Point, LLC., et al will decide whether this case is against public policy and whether these types of provisions should be unenforceable.

The next case involves common area and limited common area and exclusive use of these areas. Calvao v. Raspallo involves a dispute in a two-unit condominium where one of the unit owners, attempting to act as trustee, approved a renovation in the common areas without a vote of the adjoining owner.

The Court found in a broad basis that expansion of a condominium unit into a common area requires unanimous consent of all the owners. This would seem to be at odds with the condominium statute in particular M.G.L. c. 183A, § 5 which permits condominium trustees to grant any unit owner the exclusive use of any portion of the common area without unanimous consent. At any rate, if this case is read narrowly, it involves a situation where the sole trustee who acted was not able to act in the capacity as a trustee because the permission of the adjoining unit owner was not secured and argument of compliance under the statute is all that is required.