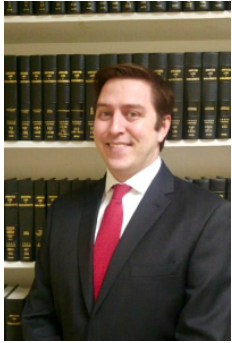


## What Does “Brexit” Mean for Your Condominium?



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First, I must apologize for the somewhat misleading title of this article, and admit that I am shamefully attempting to link an historic political-economic decision to the microcosm of community association law. Truth be told, I couldn't say how “Brexit” may impact condominiums or other associations in New England. I do not mean to downplay the potential significance of this event, the effects of which are yet to be known; however, it did genuinely spark my idea for this article.

As Britain prepares to leave the European Union, I wondered how many of our clients have ever wondered whether they could “Cleave” (sorry that was my play on “Condominium-leave”) their condominium unit from the rest of their association. This thought may never have crossed many owners' minds, as the practical and economic realities of condominiums (particularly townhouse or garden/apartment style buildings) make it infeasible, if not impossible, to split. That is to say nothing of the fact that most people who choose to live in a condominium do so, at least in part, for the community element and genuinely enjoy being part of a common association.

However, there are other condominium scenarios, which arise in the case of free-standing units, where owners have inquired of our firm whether they could break from the perceived unwieldy bureaucracy and shared expense of association living and establish their “independence” as single-family owners. So, what of it then? Is it possible or practical to break from one's association?

The short answer in Massachusetts is that while it may be possible to remove units from an existing condominium, it is no simple matter and there are many considerations - both legal and otherwise - that come into play. Because I am a lawyer, and this is a legal newsletter, we'll focus on the legal aspect of removal. Massachusetts General Law Chapter 183A Section 19 provides a roadmap for leaving the condominium. However, just as the classic song by Neil Sedaka teaches, “Breakin' Up Is Hard To Do.”

The first step in “Cleaving” is obtaining approval of at least seventy-five percent of the unit owners. Remember, this is the minimum percentage required for leaving the condominium and if the governing documents require approval of a higher percentage of unit owners then you will need to obtain that higher percentage before leaving the condominium. After obtaining approval from the required percentage of unit owners, you must then obtain consent from all lien holders of the affected units. In reality, obtaining approval from the lien holders will be a Herculean task, if not impossible. There is no single standard that lien holders will look at in making a determination as to whether they will consent to your leaving the condominium. In fact, many banks and mortgage companies in particular may be hesitant to consent because the condominium provides an additional safety net for the property.

Even if a group of split-minded owners were to accomplish removal pursuant to the statute, they may find that zoning and planning requirements render the effort fruitless. Local zoning ordinances impose specific dimensional requirements for lots which homes constructed under a condominium regime do not satisfy.

As you can see there are myriad legal considerations which make it exceedingly difficult to remove a unit or group of units from a condominium. If you are successful in removing certain units from a condominium, but later have buyer's remorse, there is a solution. That solution is as simple as having the removed units rejoin the condominium as Chapter 183A Section 19 does "not bar the subsequent resubmission of the land and buildings involved." We should be glad there is such a simple fix if there are any second thoughts after leaving because there does not appear to be any simple fix for the for the buyer's remorse many in Britain are experiencing from Brexit.