

Davis Malm & D'Agostine P.C.

Offering the Depth and Breadth of Knowledge to Handle All Your Association's Legal Needs

by Pamela Schweppe

Thirty-four years ago, when Davis Malm & D'Agostine P.C. was founded, a condominium lawyer's job consisted primarily of paying a visit to the Registry of Deeds. In those days, condominiums were merely an emerging concept in the real estate industry. But those days are long gone.

Fortunately, the Boston-based legal firm has stayed on the cutting edge of condominium law as it has evolved over the years and become ever more complex.

Take Millennium Place in Boston, for example. Who in 1979 could have foreseen a 1.9-million-square-foot, mixed-use complex with four governing boards and an umbrella board? "There are a lot of moving parts," admits John Ciolfi, general manager of Millennium Place Primary Condominium, the umbrella organization. "The condo documents are the size of a phone book."

In 2007, when Millennium Place was entering litigation, a board member recommended that Samuel B. (Sandy) Moskowitz, a shareholder at Davis Malm, serve as the association's attorney. He is now their general counsel. "As property managers, we rely on attorneys to provide us with good information, so that the board can make good decisions," Ciolfi says. "Davis Malm takes that to the nth degree. It's comforting to know that you can just pick up the phone and your attorney is going to do a thorough job."

The Complexity of Community

"It's all about creating a community," says Moskowitz. "To me, that's what a condominium is." That means under-

standing what makes each association unique — what its vision is and how it is controlled and governed — then crafting the documents to accomplish that vision.

Of course, condominium documents are a big part of the business, but specializing in condominium law also means developing expertise in all the issues that contribute to a community's quality of life. With its long experience in the field, Davis Malm has in-depth knowledge of a broad range of issues, from the environment and financial practices to zoning, development, and land use. Common issues include collections, parking rights, boundary disputes, insurance, issues with neighbors, and construction and repairs.

"Something most people who don't live in a condominium would never think much about is pets. But pets become major issues in some condominiums," reveals shareholder Howard S. Speicher. Cell towers are also a consideration no one would have foreseen in 1979, requiring negotiations involving leases, operation, and termination. "We can take the most challenging situation, figure out what to do, and do it," Moskowitz says.

Sometimes, the shareholders of Davis Malm are compelled to become sleuths as well as attorneys. A specialist in litigation, Speicher recalls a case in which he was representing the unit owners of a 300-unit property that was in the process of transitioning from the developer to the association. But the developer was refusing to disclose crucial financial information. "It turned out the developer was trying to keep the unit owners from suing him by

keeping control of the board," Speicher says. "It was a five- or six-year process and a series of litigations, but we were able to bring the case to a successful conclusion." Adds shareholder J. Gavin Cockfield, "We have the experience and the ability to represent associations with regard to those disputes."

"Everything is in our wheelhouse," adds Paul L. Feldman, also a Davis Malm shareholder. He notes further that founding partner Julian J. D'Agostine was among the first to redefine what real estate lawyers do by broadening the scope of their practice.

For example, Davis Malm was among the first legal firms involved in the development of a facility using a condominium structure to provide multiple levels of care, from independent residences to assisted living. "There was a master condominium with sub-condominiums, so there were different components," Feldman explains. "But in terms of zoning, it was all one big parcel. We had to be innovative to get the job done."

Building on Thinking Outside the Box

To achieve successful results for their clients, the attorneys at Davis Malm pride themselves on thinking creatively and coming up with innovative solutions to thorny problems. "When you represent an association, you have to understand what makes that community unique and what their rights and responsibilities are," Moskowitz says. "Then you have to be creative and pragmatic, to figure out how to give the client what they need in the simplest way."

“We do it all, from the simple to the sophisticated,” agrees fellow Davis Malm shareholder Robert J. Galvin. A case in point is an urban association managed by Mediate Management Company of Boston. According to Mark Mediate, president of Mediate Management, the original condominium documents hadn’t been written properly, resulting in confusion around the rights of the three units on

Galvin was brought in and was instrumental in resolving the situation, which involved obtaining permission from the Back Bay Architectural Commission, creating a Grant of Limited Common Area arrangement for the henhouse that infringed on public space, revising the documents, and getting the owners of abutting units to sign off on the deal. “It’s a great firm. I use them a lot,” says Mediate. “We have a nice working relationship.”

And they are active members of the New England chapter of the Community Associations Institute, where networking and sharing best practices with colleagues on the Attorneys’ Committee and other groups helps them keep abreast of ever-changing condominium laws — always with doing what’s best for the client in mind.

Outnumbered, But Not Outgunned

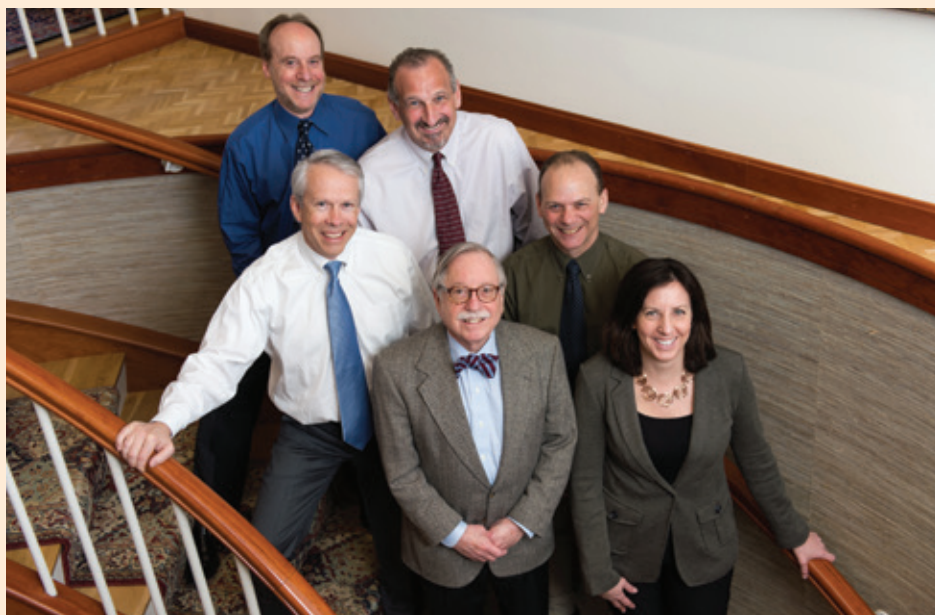
Another way that Davis Malm focuses on doing what’s best for the client is by keeping the staff “lean and mean,” as shareholder Amy L. Fracassini describes it. In that way, shareholders can remain closely in touch with the clients they represent.

Galvin recalls a story that summarizes that philosophy. In that case, litigators for the firm were battling against attorneys from Boston’s and New York’s largest law firms in what was to become a landmark case. At one point, an observer counted 19 of their attorneys in the courtroom to three for Davis Malm and told the Davis Malm team that it was outnumbered. In response, one of the firm’s litigators proclaimed, “Outnumbered, but not outgunned.” Davis Malm went on to win the case and achieve for its client a judgment that for many years was the largest in Massachusetts history.

That story captures the essence of the firm, which celebrates the artist Frederic Remington for his stirring depictions of the pioneers of the Old West. To the shareholders of Davis Malm, that is the spirit everyone in the firm brings to their work: teamwork, independence, resourcefulness, and dedication.

As Moskowitz puts it, “We pride ourselves on having the ability to help owners and developers meet whatever their demands are and assist them with whatever issues they face. We’re able to handle any issue.”

For more information about how your association can benefit from Davis Malm & D’Agostine’s expertise, call (617) 367-2500, or visit www.davismalm.com.



Davis Malm & D’Agostine is fully staffed to serve your legal needs. Shown clockwise from far left: shareholders Sandy Moskowitz, Paul Feldman, Howie Speicher, Amy Fracassini, Bob Galvin, and Gavin Cockfield. Other Davis Malm condominium attorneys (not shown) include Josh Grossman, shareholder; Neal Bingham, associate; Jim Gallagher, associate; and Kendra Kinscherf, associate.

the top floor of the Commonwealth Avenue property. The original document granted these owners the right to enclose the roof area. “The documents intended an enclosure to mean a fenced-in deck area,” Mediate explains. But, thanks to ambiguities in the original document, the owners of two of the three units built henhouses on the roof instead. Complications ensued when the unit owners sought permission to improve the structures.

“We had to navigate getting the documents consistent with what was there,” Mediate explains. “It was a long, drawn-out process, because one of the henhouses was built on what was common space, so it was a particularly difficult situation.”

Writing the Book on Condominium Law

It’s not surprising that Galvin had the skills to negotiate the problem. After all, you might say he wrote the book on condominium law — literally. He is the co-author and editor of *Massachusetts Condominium Law* (written in 1988 and updated in 2010) and the author of the condominium chapter in *Crocker’s Notes on Common Forms* (written in 2006 and updated in 2010), which Moskowitz claims is the “Bible of the real estate industry.”

The attorneys at Davis Malm have also been involved in legislative issues, including passage of the 1993 “super lien” statute that gives associations leverage over banks in collecting unpaid fees.