



New Limitations on Cooperative and Condominium Conversions



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Certain new provisions of the new New York State rent regulation and tenant protection laws will have a significant impact on condominium and cooperative conversions in New York State. The New York Housing Stability and Tenant Protection Act of 2019 (the “Tenant Protection Act”) was enacted and became effective on June 14, 2019.

Prior to the enactment of the Tenant Protection Act, developers were permitted to convert rental apartment buildings into cooperative or condominium forms of ownership pursuant to an “eviction plan” (*i.e.*, the developer would have the right to evict current tenants) or a “non-eviction plan” (*i.e.*, the developer would not have the right to evict current tenants). The Tenant Protection Act has eliminated the right to convert a building pursuant to an “eviction plan.”

However, New York State will now require that the effectiveness of any “non-eviction plan” for the conversion of a rental apartment building to a cooperative or condominium form of ownership will be conditioned on at least 51 percent of the tenants then renting apartments in the building entering into contracts with the sponsor to purchase their apartments. Prior to the Tenant Protection Act, in order for a “non-eviction plan” to be declared effective, the developer was required to enter into contracts of sale with respect to 15 percent of the units in the applicable building. These contracts could be with current tenants in the building or with bona fide non-tenant purchasers with the intent to reside in the applicable apartment. It is important to note that it is necessary for a condominium or cooperative offering plan to be declared effective before the developer can commence closing the sale of units in the building.

Furthermore, the Tenant Protection Act provides that existing tenants of the applicable building will have the exclusive right to purchase their apartments for a 90-day period after the applicable offering plan has been accepted by the New York Department of Law. An apartment cannot be shown to a potential third-party purchaser during such 90-day period unless the developer receives a waiver from

the applicable tenant. In addition, the existing tenant will have a 6-month right of first refusal (from and after the expiration of the 90-day exclusive period) to purchase their apartments under the same terms and conditions agreed to by a bona fide purchaser.

The Tenant Protection Act also prevents developers from (1) evicting eligible senior citizens and eligible disabled persons who reside in free-market apartments (except for evictions related to non-payment of rent or lease violations) and (2) unconscionable rent increases with respect to eligible senior citizens and eligible disabled persons who reside in free-market apartments.

Given the dramatic change this new law effects, there has been quite a lot of press coverage about how these changes will effectively prevent the conversion of existing buildings to a cooperative or condominium form of ownership. In addition, some commentators have opined that these new requirements were designed to “protect” the affordable housing stock of New York City and protect tenants’ rights to remain in their homes and, in effect, retain housing that can be rented by tenants in the future. Other commentators have suggested that the new statute will reduce housing stock since many developers will not enter the marketplace since it has become overregulated and hard to have economically viable rental properties. Time will tell, but the sweeping (and some would say draconian) nature of these provisions effectively may shut down the conversion market. There will still be ground-up construction of condominiums, but we would wager that we will not be seeing cooperative or condominium conversions any time soon unless these new provisions are amended to be more developer-friendly.