



Sweeping new rent laws impact cooperative and condominium conversions

By Erica F. Buckley

Tucked carefully into Part N of the Housing Stability and Tenant Protection Act of 2019 are sweeping changes to the Martin Act that will drastically impact the nature of how tenants and landlords approach occupied cooperative and condominium conversions going forward. This bulletin provides a summary of the changes, as well as policy recommendations to the attorney general's office to ensure that tenant protection and homeownership opportunities are equally balanced under the new law.

Summary of Part N

With respect to the conversion of rental properties to cooperative and condominium status, the Act proposes to amend Article 23-A of the General Business Law as follows:

- Changes the definition of a “non-eviction” plan as an offering plan that may be declared effective by 51% of the tenants in occupancy on the date the plan is accepted for filing by the Department of Law. Removes the current threshold of 15% to declare a plan effective, and also removes the ability to use bona fide purchasers with an intent to reside in the apartment towards meeting the percentage required to declare the plan effective.
- Adds language clarifying that for eviction plans, the provisions of the law as amended apply retroactively to plans submitted prior to the effective date of the Act.
- Changes the definition of “eligible senior citizens” to clarify that the protections apply as of the date of submission of the plan to the Department of Law.
- Changes the definition of “eligible disabled persons” to clarify that the protections apply as of the date of submission of the plan to the Department of Law.
- Clarifies that a non-eviction plan may not be declared effective until 51% of the tenants in occupancy agree to buy, as opposed to the current threshold of 15% of tenants in occupancy and bona fide purchasers with an intent to reside.
- Adds a new section that prevents any evictions from being commenced against eligible senior citizens or eligible disabled persons who reside in free-market apartments, and provides that such tenants shall not be subject to unconscionable rent increases, which is

defined as “comparable apartments during their occupancy considering the following factors: building services, level of maintenance and operating expenses”. Makes clear that landlords can still bring eviction proceedings for non-payment or lease violations.

- Adds a provision explicitly providing for a ninety-day (90-day) exclusive period for all tenants in occupancy to buy upon acceptance of the plan for filing by the Department of Law, and states that the apartment cannot be shown to a third party during such time unless waived by the tenant. Provides for an additional six-month (6-month) exclusive period at the end of the ninety-day (90-day) exclusive period for tenants in occupancy to purchase their apartment under the same terms and conditions agreed to by a bona fide purchaser. Requires sponsor to send a notice to the tenant in occupancy providing the terms of the agreement with the bona fide purchaser, which will then give the tenant in occupancy fifteen (15) days from the mailing date of the letter the right to exercise their exclusive right to buy.
- Empowers the Attorney General to adopt, amend and rescind suitable rules to carry out the section, as well as the right to waive any requirements of the statute that are not necessary to carry out the intent of the Martin Act.

The Act’s changes to the law would be effective as of the effective date, but, except as noted above in respect of eviction plans, will only apply to offering plans that are submitted to the department of law after such date.

Policy Suggestions Going Forward:

Legislative history tells us that the Martin Act is meant to stabilize neighborhoods by facilitating homeownership while protecting tenants in occupancy who do not participate in the conversion process. See 1982 N.Y. Laws, ch 555 §§ 1, 9. Assuming the legislature was not seeking to implement a moratorium on cooperative and condominium conversions by adopting Part N, there are some immediate policy changes that the New York Attorney General can make to implement to effectuate the statute.

Policy Suggestion Number 1: Issue Policy Guidance on the “Quiet Period” During the Red-Herring Phase.

The attorney general has interpreted the Martin Act as mandating a “quiet period” from the date of submission of the red herring to acceptance for filing of the black book. This mandate is not codified in statute or regulation and may stifle a tenant’s ability to become a homeowner. Given the foregoing, the attorney general should issue guidelines to facilitate conversations between tenants and sponsors during the conversion process, especially in light of the new criteria of achieving buy-in from 51% of the tenants in occupancy on the date the plan is accepted for filing. A start would be to permit conversations between tenants and sponsors where there is a duly organized tenants’ association represented by counsel.

Policy Suggestion Number 2: Revise Cooperative Policy Statement #11 “Testing the Market in Rental Buildings”

CPS-11 permits sponsors to engage in limited marketing efforts to free-market tenants in a rental building poised to convert to cooperative or condominium. Market-rate tenants are able to enter into reservation agreements which secures their ability to buy once the offering plan is filed. The

genesis of the policy was to provide greater options to free-market tenants during the conversion process before the Martin Act protections take effect (*i.e.*, the ability to become a non-purchasing tenant). However, the policy is too restrictive and fails to fully engage rent-regulated tenants, which may result in losing potential homeowners during the conversion process. This policy should be amended to permit expanded marketing to tenants in occupancy, such as those that are regulated purely due to tax benefits such as 421-a.

Policy Suggestion Number 3: Revise Cooperative Policy Statement #3 “Resident Application in Tenant Sponsored Plans to Convert Occupied Premises”

CPS-3 was last updated in the 1990s, and only allows for the solicitation of the small sum of \$250.00 from tenants who might be interested in exploring a tenant-sponsored conversion. Funds are meant to be used for professional fees for attorneys and engineers to help explore the option of buying. This sum should be raised based upon the nature of the building (e.g., rent-regulated at \$2,500 and free market at \$10,000). Moreover, CPS-3 should also permit the same solicitation of funds among tenants who are seeking to work collectively with sponsors during the conversion process. Having funds to explore conversion will become critical and therefore this policy must be updated to permit tenant organizing and planning towards homeownership.

Policy Suggestion Number 4: Issue Policy Guidance on the Waiver Process Afforded under the Statute.

Part N affords great latitude to the attorney general to waive any requirements of the statute that are not necessary to carry out the intent of the Martin Act. Waivers will become a critical component of any conversion plan going forward and must be available to landlords and contract-vendees as early on in the process as possible. The waiver process should allow for creative solutions in reaching the effectiveness requirement (including potential waivers of the 51% requirement), so long as the conversion plan promotes homeownership while protecting tenants from harassment or eviction due to the decision to forgo buying. Carefully crafted waivers could promote the intent of the Martin Act, while meeting policy goals such as the preservation of permanently affordable rental housing.

Policy Suggestion Number 5: Provide Grant Monies to Non-profits for Technical Assistance for Tenants During the Conversion Process.

Attorney General James has already shown herself to be a strong proponent of affordable housing by providing grant funds for community land trusts and mission-based affordable housing programs. If we are serious about giving tenants the resources they need to become homeowners, then grant monies should be made available to non-profits such as the Urban Homesteading Assistance Board and Habitat for Humanity NYC to provide much-needed technical assistance and legal representation during the conversion process.

Next Steps:

Since the governor has now signed the Tenant Stability and Protection Act of 2019, the industry will need to come to terms with the changes and think more strategically on how to approach cooperative and condominium conversions. However, none of this will be possible unless we come together and work collectively with the New York Attorney General to shape this new law in a way

that best serves the intent of the Martin Act and promotes responsible business opportunities in the marketplace.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Erica F. Buckley at ebuckley@nixonpeabody.com or 212-940-3733
 - Shakti Rhys at srhys@nixonpeabody.com or 212-940-3100
 - Ruben Ravago at rravago@nixonpeabody.com or 212-940-3735
 - Ari Glatt at aglatt@nixonpeabody.com or 212-940-3732
 - Justine Martin at jmmartin@nixonpeabody.com or 212-940-3018
 - Will Truskowski at wtruskowski@nixonpeabody.com or 212-493-6647
 - Damaris Claudio-Williams at dclaudiowilliams@nixonpeabody.com or 212-940-3061
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