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Cooperatives & Condominiums Alert

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New York Introduces the Affordable Housing Retention Act

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Part GG of the New York Senate's ELFA Budget, known as the "Affordable Housing Retention Act," enables condo conversions while preserving affordable housing and protecting tenant rights



What's the impact?

- The Affordable Housing Retention Act enables condo conversions in NYC while ensuring permanent affordability for income-restricted units, and gives tenants protections including rent stabilization, eviction safeguards, and purchase opportunities.
- Eligible project requirements are outlined in Part GG, including details regarding preservation plans and Qualified Owner framework.

Last night, the New York legislature released the final version of the Education, Labor and Family Assistance article of the State's budget. Included in the final version is Part GG, dubbed the "Affordable Housing Retention Act" (AHRA).

Introduction of General Business Law Section 352-eeeeee

ALHA introduces a new Section 352-eeeeee to the New York General Business Law, and Section 339-mm of the Real Property Law to establish a comprehensive legal framework for the conversion of certain mixed-income rental buildings in New York City to condominium ownership in exchange for the creation of permanently affordable housing. The primary goal is to expand homeownership opportunities while ensuring the long-term preservation of affordable housing units that are at risk of expiring or in need of additional capital to meet ongoing maintenance and repairs. AHRA creates a regulated pathway for property owners to convert market-rate units to condominiums in exchange for permanent affordability commitments for existing income-restricted units, meeting two important policy goals—increasing homeownership in New York City while preserving existing affordable housing in perpetuity. For preservation plans, sponsor must enter into contracts with tenants or bona fide purchasers representing 15% of the market-rate units in the building, group of buildings or development to declare the preservation plan effective.

What is an eligible project under AHRA?

To qualify as an "eligible project" under AHRA, a building or group of buildings must meet the following criteria:

- / **Size and age:** The project must consist of at least 100 dwelling units and must have been built after 1996.
- / **Type of ownership:** The building cannot be a Mitchell-Lama, Redevelopment Company, or Limited Profit Company property, nor can it be subject to certain other public housing programs.
- / **Affordable housing status:** The project must contain income-restricted rental units that are either at risk of expiring affordability restrictions or are permanently affordable but require additional support to remain viable because they are already permanently affordable.
- / **Government assistance:** The building must have received substantial government assistance, such as low-income housing tax credits, bond financing, or property tax exemptions under Real Property Tax Law Section 421-a.
- / **No condominium prohibition:** The project must not be subject to an existing regulatory agreement or law that prohibits conversion to condominium ownership.
- / **Additional requirements:** In some cases, the project must demonstrate an agreement with the relevant housing finance agency to increase the number of income-restricted units or to ensure that at least 20% to 30% of units remain income-restricted in perpetuity.

What types of income-restricted rental units qualify?

AHRA defines several categories of income-restricted rental units eligible for preservation:

- / **Low-income units:** Units that meet the definition of “low-income unit” under Section 42 of the Internal Revenue Code and are subject to a regulatory agreement with a housing finance agency.
- / **Bond-financed units:** Units that meet the definition of “low-income unit” under Section 142(d) of the Internal Revenue Code and are subject to a regulatory agreement.
- / **Formerly regulated units:** Units that previously met the above definitions and, despite the expiration of regulatory agreements, have been continuously operated as income-restricted units, with documentation provided to the satisfaction of the relevant housing finance agency that such units have continued to operate as if they are still income-restricted rental units.
- / **Inclusionary housing units:** Units located in buildings that received zoning bonuses or are in mandatory inclusionary housing areas, as defined by New York City zoning regulations.

What are the required disclosures in a preservation plan?

To convert the market-rate units to for-sale condominiums, the owner will need to submit a preservation plan to the Attorney General that must include the following disclosures:

- / **Regulatory agreement:** Proof of a regulatory agreement with the relevant housing finance agency, ensuring an extended affordability term for income-restricted units, has been agreed upon and will go into effect when the condominium conversion is consummated.
- / **List of income-restricted units:** Identification of all proposed income-restricted rental units.
- / **Qualified owner:** Identification of the qualified owner (a nonprofit or community land trust) who will take title to the income-restricted units within 365 days of the preservation plan being consummated.
- / **Financial disclosures:** Detailed operating expenses, revenues, allocation of common charges, projected taxes, and rents for income-restricted units.
- / **Financing for the income-restricted rental units:** Description of any financing and tax exemptions applicable to the income-restricted units.
- / **Condominium governance:** Explanation of how the interests of the qualified owner will be represented on the condominium board.
- / **Amenities access:** Assurance that tenants of income-restricted units will have access to building-wide amenities for a nominal, non-rent fee, the details of which are governed by the regulatory agreement.

- / **Leasing and marketing:** Commitment that vacant income-restricted units will be leased to low-income households, potentially through the NYC Housing Connect portal.
- / **Rent stabilization:** Confirmation that all income-restricted units will remain subject to rent stabilization for the duration of the extended affordability term (i.e., in perpetuity for so long as they operate as rental housing).
- / **Tenant rights:** Disclosure of non-purchasing tenant rights, including protections against eviction and unconscionable rent increases, and for certain categories of tenants, good cause eviction protections under Article 6-A of the Real Property Law.

What is the role of the Qualified Owner?

One of the key aspects of AHRA is that the income-restricted rental units must be conveyed to a “Qualified Owner” under the following framework:

- / **Definition:** The qualified owner must be a nonprofit housing development fund company, a community land trust, or another charitable corporation with a primary purpose of owning and operating affordable housing for low-income families.
- / **Responsibilities:** The qualified owner takes title to the income-restricted units and is responsible for their ongoing operation, maintenance, and compliance with regulatory agreements.
- / **Oversight:** The qualified owner operates under the supervision of the relevant housing finance agency, ensuring that affordability and tenant protections are maintained in perpetuity.
- / **TOPA:** The qualified owner also can work with the existing tenants of the income-restricted rental units to carry out a tenant opportunity to purchase by creating a permanently affordable cooperative, if the tenants so choose this option.

Tenant opportunity to purchase for the tenants of the income-restricted units

AHRA also has a unique tenant opportunity to purchase (TOPA) option, allowing the Qualified Owner a framework to work closely with the tenants of the income-restricted rental units should they also wish to become homeowners. The Qualified Owner can work with interested tenants in creating a limited equity housing cooperative under Article XI of the Private Housing Finance Law (HDFC Coop), provided certain conditions are met and subject to the oversight of the relevant housing finance agency. Key features of the TOPA option include:

- / **Affordability:** Offering prices for cooperative shares in the HDFC Coop must be affordable to existing tenants and/or qualified low-income purchasers (as defined by law).

- / **Tenant protections:** Tenants of income-restricted rental units who choose not to purchase retain rent stabilization protections throughout and after the conversion; moreover, they cannot be evicted solely for not purchasing.
- / **Perpetual affordability:** The regulatory agreement and the certificate of incorporation of the HDFC Coop must ensure that converted units remain reserved for low-income occupancy in perpetuity.
- / **Oversight and governance:** The housing finance agency retains oversight, including the ability to appoint a new board of the HDFC Coop in case of violations, require homeownership training, and regulate resale procedures.
- / **Financial protections:** The dedicated capital account for the HDFC Coop remains under agency oversight, and obligations of non-income-restricted unit owners to support services and financial viability continue post-conversion.

Protections for eligible senior citizens and eligible disabled persons

AHRA provides robust protections for eligible senior citizens (62+) and eligible disabled persons:

- / **Eviction protections:** No eviction proceedings may be commenced against these tenants except for non-payment of rent, illegal use, refusal of reasonable access, or similar breaches.
- / **Rent increase limits:** For those not protected under the rent stabilization laws, rent increases are deemed unconscionable if they exceed the limits set by New York's Good Cause Eviction Law, regardless of condominium exemptions or high-rent thresholds.
- / **Continued regulation:** If the unit was subject to government rent regulation before conversion, that regulation continues.
- / **Irrevocable rights:** The rights granted to these tenants cannot be abrogated or reduced by expiration or amendment of the law.
- / **Dispute resolution:** Disputes over eligibility are resolved by the Attorney General, whose determination is final unless challenged in court within 30 days.

Protections for all non-purchasing tenants regardless of when occupancy commences

Non-purchasing tenants (i.e., tenants who elect not to purchase and all tenants of income-restricted rental units) are granted significant rights:

- / **Continued tenancy:** Their tenancies continue undisturbed during and after conversion.
- / **Rent stabilization:** If their units were regulated before conversion, that regulation continues.

For other non-purchasing tenants, rent increases are limited by New York's Good Cause Eviction Law if their rent is below 245% of fair market rent at the time of lease commencement.

- / **Eviction protections:** No eviction for failure to purchase or expiration of tenancy; only for cause (e.g., non-payment, illegal use).
- / **Service and amenity access:** All tenants (both market-rate and income-restricted) must receive all required services and have access to common amenities on a non-discriminatory basis, with only nominal, reasonable fees for amenities such as pools and gyms (not treated as rent).
- / **Management:** The same managing agent must manage all units, ensuring equal treatment.
- / **No waiver:** Any lease provision waiving these rights is void as against public policy.
- / **Irrevocable rights:** Their rights under the preservation plan cannot be abrogated or reduced by future law changes.

Creation of reserve funds under a preservation plan (New Real Property Law Section 339-mm)

Real Property Law Section 339-mm is also a part of AHRA, mandating the establishment of two key reserve funds upon the consummation of a preservation plan:

- / **Reserve fund:** The condominium board of managers must receive a reserve fund, funded by the sponsor, to be used exclusively for building-wide capital repairs, replacements, and improvements necessary for the health and safety of all residents, including those in income-restricted units. The required amount is generally 3% of the total price of all units, mirrored after Local Law 70—the New York City Reserve Fund Law.
- / **Dedicated capital fund:** The qualified owner of the income-restricted units must receive a dedicated capital fund, equal to 0.5% of the total price, to be used solely for repairs and improvements within the income-restricted units. This fund is subject to oversight by the housing finance agency and cannot be used for building-wide replacements.
- / **Reporting and penalties:** The board must report on fund activity semi-annually, and penalties are imposed for non-compliance, including daily fines for failure to establish or maintain the required funds.

Attorney General receives additional filing fees for its operations

AHRA also establishes a new fee structure for the submission and amendment of preservation plans:

- / **Initial filing fee:** \$750 for offerings not exceeding \$250,000; for larger offerings, 0.4% of the total offering amount, capped at \$60,000, with half due upon submission and half upon acceptance.
- / **Amendment fees:** \$750 for each amendment to a preservation plan, including price change amendments.
- / **Preliminary applications:** \$750 for each application to solicit public interest prior to filing a preservation plan, and \$750 for each amendment to such applications.
- / **Exemptions:** These fees replace the standard filing fees under Section 352-e for preservation plans. Nonprofit developers may be exempt from certain fees, and all revenue above specified thresholds is directed to the Real Estate Finance Bureau Fund to support the Attorney General's operations for its regulatory functions.

Attorney General rulemaking and public disclosure requirements

- / **Rulemaking mandate:** Within 365 days of the law's effective date, the Attorney General must propose rules necessary to implement AHRA.
- / **Consequence of non-promulgation:** The lack of promulgated rules cannot be used as a reason to refuse submission or filing of a preservation plan if all statutory requirements are otherwise met.
- / **Public access:** The Attorney General must make all offering statements, prospectuses, preservation plans, and amendments available to the public in a searchable online repository.

Expanded homeownership opportunities in NYC

The Affordable Housing Retention Act represents a significant step toward balancing expanded homeownership opportunities with the permanent preservation of affordable housing in New York City. By establishing clear criteria, robust tenant protections, dedicated funding mechanisms, and enhanced regulatory oversight, this legislation aims to ensure that the conversion of market-rate rental buildings to condominiums while protecting some of New York City's high quality and well-funded affordable rental housing. AHRA also creates opportunities for not-for-profits to own the permanently affordable housing that results from the condominium conversion and paves the way for a tenant opportunity to purchase at a time when homeownership for low-to-moderate income tenants is otherwise out of reach.

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