

# Ask the Former Regulator: Condo Conversions Under Amended Law for Small Buildings

By Erica F. Buckley

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**Q**uestion: My wife and I jointly own a five-unit building in Manhattan, where we have resided for the last 20 years. We are looking to retire and move out of state in the future. Are we eligible to convert our building to condominium under the amended law for small buildings, and if so, do we have to sell our unit right away, or can we offer it for sale later?

**Answer:** The short answer to both questions is likely yes, with some caveats. Therefore, I will briefly recap the 2022 amendments to the Martin Act and how it may apply to your situation.

## The Small Buildings Amendment

The 2022 Laws of New York, Chapter 696, amended General Business Law Section 352-eeee to permit a lower threshold for certain small buildings undergoing cooperative or condominium conversion. Under a non-eviction plan, the law now provides for the following:



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A plan which may not be declared effective until written purchase agreements have been executed and delivered for at least fifty-one percent of all dwelling units in the building or group of buildings or development by bona fide tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan for filing; *provided, however, that for a building containing five or fewer units, and where the sponsor of the offering plan offers the unit that they or their*

*immediate family member has occupied for at least two years, the plan may not be effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant.*

Further, the amendment adds the following underlined language as clause (2) of subparagraph (i) of paragraph (c) of subdivision 2 of Gen. Bus. Law § 352-eeee:

*For buildings containing five or fewer units, the plan may not be declared effective until written purchase agreements have been executed and delivered for at least fifteen percent of all dwelling units in the building subscribed for by bona fide tenants in occupancy or bona fide purchasers who represent that they intend that they or one or more members of their immediate family occupy the dwelling unit when it becomes vacant, provided that the sponsor of the offering plan offers the unit that they or their immediate family member have occupied for at least two years. As to tenants who were in occupancy on the date a letter was issued by the attorney general accepting the plan filing, the purchase agreement shall be executed and delivered pursuant to an offering made without discriminatory repurchase agreements or other discriminatory inducements.*

Under the revised statute, owners of a building with five units or less where they or their immediate family member have resided for

two years or more may be declared effective once 15% of the units are in contract. In terms of who is eligible to be counted toward meeting the 15% threshold, the law requires three things: (1) that the owner-occupied unit be offered for sale, (2) that sponsor not engage in any form of discriminatory inducements and (3) that the 15% be met with purchase agreements from either tenants in occupancy or bona fide purchasers who represent that they or a member of their immediate family member intends to reside in the unit once it becomes vacant.

These requirements are taken from the plain language of the statute. However, when you also consider 13 NYCRR Part 23 and informal guidance provided by the Office of the New York Attorney General, you, as the owner-occupants, must offer your unit for sale under the plan, and your unit could not be used toward meeting the 15% threshold needed to declare the plan effective unless you and your wife enter into a purchase agreement with a bona fide purchaser who affirms that they or a member of their immediate family member intends to reside in the unit once it becomes vacant. In other words, a sale to yourselves won't work.

The legislative history justifies the change in the Martin Act to allow for small owners to increase their mobility. The Office of the Attorney General has taken the position that an owner-occupied unit must be offered for sale, and for such unit to be used for purposes of declaring the plan effective, the sale must comply with the Part 23 regulations,

which allows only tenants in occupancy or bona fide purchasers with an intent to reside to count towards the 15% threshold.

Specifically, 13 NYCRR Section 23.3(s)(4)(iv) prohibits the following purchasers from counting toward effectiveness: any purchaser who is sponsor, selling agent or the managing agent or is a principal of the sponsor, selling agent or managing agent or is related to the sponsor, selling agent or managing agent or to any principal of the sponsor or the selling agent or the managing agent by blood, marriage or adoption or is a business associate, an employee, a shareholder or a limited partner, except that such a purchaser, other than the sponsor or a principal of the sponsor, may be included to the extent permissible under Section 23.5(e)(6)(viii)(c) or (e)(6)(ix)(b)(2), which allows a sponsor to provide proof satisfactory to the Department of Law that the proposed purchaser is a bona fide tenant in occupancy.

Based upon informal guidance from the Department of Law, a husband and wife who jointly own a building would need to offer the unit they occupy for sale to take advantage of the small building conversion process

under the Martin Act. The Department of Law appears to be looking at the legislative history to support this interpretation since part of the justification for the change was to make it easier for small building owners to move from their homes.

Accordingly, to take advantage of the small building option under the Martin Act, you will need to offer your unit for sale to the public, and you must enter into a contract with either a tenant in occupancy or a bona fide purchaser who affirms that they or their immediate family member has an intent to reside once you and your wife move out of the unit. Should you sell an occupied unit to a tenant in occupancy or a vacant unit to a bona fide purchaser, you would be able to sell your unit later, but it must be offered for sale to the public as part of the small building conversion process.

**Erica F. Buckley** *is the former chief of the Real Estate Finance Bureau. She leads Nixon Peabody's Cooperatives & Condominiums and State Attorneys General practices. This column is for informational purposes only and is not a substitute for agency guidance.*