

ASK THE FORMER REGULATOR

Would New Law Allow for Conversion of a Hotel to a Condominium?

New York may be looking to amend the Multiple Dwelling Law to allow for the conversion of hotel properties to residential use. Does the proposed law allow for the conversion of a hotel to a for-sale condominium, and if so, what type of filing would be made under the Martin Act?

By Erica F. Buckley

Question: I understand that New York may be looking to amend the Multiple Dwelling Law to allow for the conversion of hotel properties to residential use. As written, does the proposed law allow for the conversion of a hotel to a for-sale condominium, and if so, what type of filing would be made under the Martin Act?

Answer: As of the date of this article, there have been a couple of different proposals on amendments to the New York State Multiple Dwelling Law (the MDL) to encourage the conversion of certain commercial and hotel properties to residential use. This article focuses on Part L of Gov. Andrew M. Cuomo's Transportation, Economic Development, and Environmental Conservation Bill in the latest executive budget as it relates to eligible hotel properties. See [Part](#)

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Part L would add a new §277-a to the MDL to encourage the conversion of certain Class B hotel properties to residential use in designated areas of New York City. The purpose of the law is to promote live-work neighborhoods that will bolster the economy by waiving existing requirements of the zoning resolution. The law applies to building permits lawfully issued on or before Dec. 31, 2024.

MDL §277-a would apply to the conversion, alteration, or improvement of certain Class B multiple dwellings which operated as a hotel prior to the effective date of the law that meet the following criteria: (1) the hotel has less than 150 rooms and (2) the hotel is located in Manhattan but outside of the exclusion area that extends roughly from 110th Street south to

Chambers Street and the Brooklyn Bridge, or one of the other boroughs in New York City. Upon conversion, alteration, or improvement of the hotel to residential use, the building must be subject to an agreement with either the Division of Housing and Community Renewal (the DHCR) to provide a minimum of 25% of the housing units as affordable housing (the affordable units), or another city or state agency to provide housing and supportive services for any population. Part L would empower the DHCR to promulgate suitable rules and regulations, including providing for a definition of affordable or supportive housing, as well as the required length of time of the affordable restrictions for the affordable units.

The MDL defines a Class B multiple dwelling as "a multiple dwelling which is occupied, as a rule transiently, as the more or less temporary abode of individuals or families who are lodged with or without meals. This class shall include hotels, lodging houses, rooming houses, boarding houses, boarding schools, furnished room houses, lodgings, club houses, college and school dormitories, and dwellings designed as private dwell-

ings but occupied by one or two families with five or more transient boarders, roomers, or lodgers in one household.” N.Y. Mult. Dwell. Law §4(9).

Furthermore, the MDL defines a hotel as “an inn having thirty or more sleeping rooms.” Id. at §4(12).

Read together, the legislation and existing law would facilitate the conversion of hotels having between 30 and 150 rooms that are located in Northern Manhattan or the Financial District into condominiums provided that 25% of the housing units are affordable housing. The legislation does not specify whether the affordable units must be rented to persons of certain income levels or can be sold to qualifying purchasers and instead anticipates that such details would be determined by the DHCR.

Absent the DHCR promulgating a rule that would expressly prohibit the affordable units being offered for sale or located within a homeownership project; it appears as though it would be possible to convert an existing hotel to a for-sale condominium. Given the statutory mandate that at least 25% of the housing units be affordable units, a hotel to condominium conversion would likely take the form of a mixed-income project during the period for which the affordable units are subject to a regulatory agreement with the DHCR.

On its face, Part L appears to contemplate that an owner of a hotel would undertake substantial renovations to convert the property to residential status. Therefore, for purposes of this article, it will be assumed that the hotel is vacant, not in any way subject to the Rent Stabilization Code, and is free of permanent tenants, as such term is defined by 9 NYCRR 2520.6(j). (Note that the analysis would be substantially different if the hotel were a Class A multiple

dwelling subject to rent stabilization, which would potentially trigger compliance with N.Y. Gen. Bus. Law §352-eee and 13 NYCRR Part 23.) It is also assumed that the hotel is a transient hotel, not an apartment hotel, which the Zoning Resolution classifies differently, and apartment hotels may not find easy exception from the reach of the Rent Stabilization Code.

The conversion of a vacant hotel would be subject to §352-e of the General Business Law, which requires the filing of an offering plan to make and take part in a public offering of condominium units in or from New York. See N.Y. Gen. Bus. Law §352-e(1)(a). Moreover, 13 NYCRR Part 20 would govern since the hotel would be vacant at the time of conversion to residential status.

The filing of an offering plan under Part 20 is generally straightforward, but in this case, a hotel to condominium conversion plan would likely include a number of special risks that the sponsor should consider. First, there may be various physical aspects of the conversion that would be noted as a special risk due to zoning flexibility. According to Eli Meltzer, from Meltzer/Mandl Architects, P.C., hotels have no density restriction on the number of keys they can provide, and most rooms are smaller than a typical studio. Therefore, reconfigurations may result in unique design features not typically found in a new construction project. Second, if the condominium is operated as a mixed-income project, it is likely that the condominium’s governing documents would have to accommodate certain restrictions required by the inclusion of the affordable units, such as special allocation of common interests pursuant to N.Y. Real Prop. Law §339-m and provisions necessary for the condominium to perform its DHCR regulatory agreement obligations.

See State of New York Department of Law Real Estate Finance Bureau Memorandum, **Special Allocations of Common Expenses Pursuant to N.Y. Real Prop. Law §339-m**. Finally, if the affordable units are in fact offered for sale, then the offering plan will also provide for specific disclosures for the affordable unit purchasers, including but not limited to restrictions on price, income, subletting, primary residency requirements, and the terms governing the ownership of the affordable units, e.g., any resale restrictions or limits on common charges. See State of New York Department of Law Real Estate Finance Bureau Memorandum, **Affordable Housing Plan Disclosures** (Jan. 5, 2012).

The idea of converting commercial buildings and hotels to residential use is a potentially exciting prospect for property owners and developers alike, but one that requires lawmakers to agree on this noble policy goal. It is hardly in dispute that the idea of live-work communities in New York City would be well-received, but not all lawmakers may agree on the form of housing that is most important (i.e., rental vs. homeownership). If Part L does become law as currently drafted, it appears as though hotel owners would be one step closer to being able to convert their properties to for-sale condominium status. What is less clear is whether the DHCR would permit affordable homeownership of former hotels—something agency rules could address. In the rulemaking process, the public would have an opportunity to participate to advocate for the various benefits of homeownership.