

Chapter 20

Condominium Control

Legal Tactics: Tenants' Rights in Massachusetts
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Condominium Control

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Italicized words are in the Glossary

The purpose of this chapter is to tell you how the state law protects tenants facing condominium conversion, what local *ordinances* protect tenants against condo conversion, and what rights tenants have when facing problems caused by absentee condo owners.

Condo Laws: A Brief History

In the late 1970s and early 1980s a condominium boom hit Massachusetts. A new market for condos was created by a prosperous economy that attracted young professionals and first-time home buyers who needed a cheaper form of homeownership and sought entrance into the expensive real estate market. Apartments in Boston and its suburbs became vulnerable to condominium conversion. Thousands of rental units were converted to condominium ownership.¹ In some communities the entire stock of rental housing was converted.²

As condominiums continued to escalate in value, property owners converted their rentals to condominiums and absentee owners bought condos as investments. As a result, units previously affordable to lower-income residents were converted to condos and became unaffordable.³

In 1983, in response to the threat of displacement tenants faced as a result of condo conversion, the state legislature passed a law that adopted certain basic protections for tenants. The law also allowed communities to adopt greater or different protections as they thought might be warranted.

Note: By 1983, several communities had already adopted similar protections based on rent control or other enabling authority.

Then, in the early 1990s, the condo market sagged and there was a glut of newly converted condos. While at first condos provided affordable shelter to young families, many owners became dissatisfied with the cumbersome rules and regulations, as well as with the lack of freedom to make repairs or alterations without condominium association approval. At the same time, absentee owners of many condominiums saw their investments fail, causing them to ignore or abandon their responsibilities as owners. More and more condominiums fell into disrepair. In response, the state legislature adopted more laws to protect tenants and responsible condominium owners.

In the mid-1990s came the abolition of rent and eviction controls, coupled with a real estate boom. Market forces dramatically raised rent levels for tenants, and the purchase of condominium units had become in many cases unrealistic even for middle-income tenants.

Now, in 2008, there is a lot of uncertainty in the market with the foreclosure crisis. Tenants facing displacement due to foreclosure need to be vigilant to be sure that condominium conversion is not being contemplated, or if it is, that they get the full set of rights and protections provided by state law.

Key Terms to Know

Under both state and local condo laws, the following words usually mean⁴:

Low or Moderate Income = Your income is considered low or moderate if it equals 80% of the median income in your area for a household of your size. Contact your local housing authority for the figure in your area.

Elderly = You are considered elderly if you are 62 years or over.

Handicapped = People with physical disabilities are considered handicapped.⁵

Master Deed = The master deed is a document that includes a statement that the owner wants to convert the property in question into condominiums. It includes a description of the land on which the building or buildings are located; a description of the building; a set of plans showing the layout; a statement of the purpose of each building and unit, including restrictions on use; the method by which the master deed may be amended; the name and mailing address of the management agent; a statement that by-laws have been enacted; and the name of the lessor of each lease. A master deed must be recorded in the registry of deeds or land registration office where the real estate is located.⁶

Protections for Tenants Under the State Condo Law

In 1983, the legislature passed a statewide condominium and cooperative conversion eviction law, providing certain basic protections for tenants in Massachusetts.⁷ The state condo law, which applies to buildings with four or more units, provides that in most situations a landlord who wants to convert her rental units to condominiums or a cooperative must provide every tenant with the following protections:⁸

- Proper notice of conversion,
- The right of "first refusal" to buy the apartment,
- Rent protections, and
- The right to moving expenses.

The state condo law covers all types of housing except:

- Public housing,
- Buildings with fewer than four units,
- Rooming houses occupied by residents who stay less than 14 days, and
- Any building that has not been used for residential purposes for at least one year prior to an owner's filing a master deed for a condo conversion.

In addition to the statewide condo law, the following communities have adopted local condo *ordinances*, providing tenants with greater or different protections:

- Abington
- Acton
- Amherst
- Boston
- Brookline
- Haverhill
- Lexington
- Malden
- Marlborough
- Newburyport
- Somerville

If you live in any of the above communities, your local condo law applies to you and the state condo law does not (although certain statewide protections cannot be altered). Included in this chapter is a brief explanation about each of these

local ordinances. **To get a copy of your local condo law, contact your local town or city hall.**

Note: The statewide condo law and local condo ordinances based on the statewide law were not affected by the abolition of rent control-related regulation in 1994.⁹

1. Proper Notice of Conversion

If your landlord wants to convert the apartments in your building into condominiums or a cooperative, the landlord must send you a written notice **at least one year** before she wants you to move out.¹⁰ If you are a low- or moderate-income tenant or there is an elderly or handicapped person in your household, your landlord must give you **two years' notice** before she wants you out.¹¹ (As noted below, this two-year period must be extended for elderly, handicapped, or low- and moderate-income tenants if the landlord fails to find comparable housing within the notice period.)

A condo conversion notice does not mean that you have to automatically move out of your apartment. The purpose of this notice is to legally *terminate your tenancy*. In order to move you out, your landlord must file an *eviction* case in court and a judge must give your landlord permission to evict you. **Unless a judge gives your landlord permission to evict you, you do not have to move out of your apartment.**

A condo conversion notice must be hand-delivered to you or sent by *certified mail*. The notice must include a statement of your rights.

Note: If you have a *lease* and the term of your lease ends after the date on the condo conversion notice, your landlord cannot force you out before the date on your lease. If she does, you may have legal *defenses* or *counterclaims* that you can use to prevent or delay your eviction. For example, if the notice your landlord sent you was improper, a judge should *dismiss* your eviction case. For information about what your rights are

during the eviction process and how to fight an eviction, see **Chapter 13: Evictions**.

If you decide to move out before the date on the notice of a conversion, you may be entitled to moving expenses. Make sure to give your landlord proper notice that you are moving out. See the section in this chapter called **Moving Expenses** and **Chapter 12: Moving Out**.

2. Right to Purchase

Under the state condo law, when a landlord gives you notice of conversion, she must also offer you the first right to purchase your unit.¹² This is called a "right of first refusal."¹³ The landlord must do this by including with the condo conversion notice a document called a "purchase and sale agreement." This document will tell you how much the landlord wants to sell the unit for once it is converted into a condo. If you want and can afford to buy the apartment, you have 90 days to negotiate a purchase price with the landlord. During this 90-day period, the landlord cannot offer to sell the unit to anyone else.¹⁴

If you do not want to buy the unit or cannot afford to buy it, the landlord can sell the unit on the open market after the 90-day period has passed.¹⁵ Any person or entity buying your unit will then become your new landlord. This new landlord must follow all the provisions of the state condo law, and must honor your right to remain in your apartment until the expiration of your notice or your lease.

If you are an elderly, handicapped, or low- or moderate income tenant and you do not buy the unit at the end of 90 days, the landlord must help you find a new apartment.¹⁶ This apartment must be in the same town where you now live and must be comparable to your current apartment in terms of rent and conditions. If your landlord does not find you a comparable apartment, you are entitled to up to an additional two years in your current apartment.¹⁷

3. Rent Protections

If you receive notice of a conversion, the law controls how much your landlord can increase your rent. The owner of the building or any subsequent owner of your condo cannot increase your rent by more than 10% per year or the increase in the Consumer Price Index the year before your landlord gave you notice, whichever is less.¹⁸ This applies to tenants with or without *leases*. For example, if your landlord gave you notice that your apartment was being converted to a condo in 2008, and the increase in the Consumer Price Index was 1.6% in 2007, your rent could not be raised more than 1.6%.

If you have a written lease, your landlord cannot raise your rent until the lease expires.

The one exception is that the landlord can increase the amount of rent as described in the previous paragraph. If you have what is called a "tax escalator clause" in your lease, your landlord may also be able to raise the rent before the lease expires if the property taxes go up.¹⁹ See **Chapter 5: Rents** for more information about tax escalator clauses.

If you have a written lease, the landlord must also renew your lease for however long you are allowed to remain in your apartment under the identical terms. For example, if you had a lease that expired September 1, 2008, and the landlord gave you one-year notice of condo conversion in February 2008, the landlord would have to extend your lease on its original terms until February 2009.

In an effort to avoid giving tenants proper notice of conversion or moving expenses, some landlords have attempted to raise rents before they actually file a master deed, thereby forcing existing tenants out. Under the law, however, the owner merely has to have an "intent to convert" in order for tenants to be protected against rent increases.²⁰

4. Moving Expenses

If you get a notice of conversion, your landlord may have to pay a certain amount to cover your moving costs. A landlord must pay your moving expenses if:

- You do not owe any rent, and
- You voluntarily move out before the date on the conversion notice.

You are entitled to a maximum of \$750. If you are an elderly, handicapped, or low- or moderate-income tenant, you are entitled to a maximum of \$1,000.²¹ You must document your actual moving expenses.

Local Protections for Tenants Facing Condo Conversion

The state condo law allows towns and cities to adopt, by a two-thirds vote of their local legislative bodies, local *ordinances* or bylaws regulating condominium conversion that are stronger than, or which otherwise differ from, the statewide law.²² **To get a copy of your local ordinance or bylaw, contact your city or town hall.** What follows are brief descriptions of each of the local condo ordinances in Massachusetts.

1. Abington

Abington has a local bylaw that requires owners or developers to obtain a permit to convert an existing structure to condominium or cooperative ownership.²³ The developer or owner must first give notice of the intent to convert to the tenants. This notice to tenants must be mailed by *registered mail*, return receipt requested, set forth generally the tenants' rights under the bylaw, and include a copy of the bylaw.

After an owner or developer gives tenants the notice of intent to convert, she can then file an application for a permit to convert with the Town Clerk, who gives the application to the Planning Board. The application must include a

filing fee, copies of the notices of intent, and other items that may be required by the Planning Board. The owner or developer must obtain a permit prior to filing the master deed.

The Planning Board must then hold a public hearing within 60 days of the filing of the application. It must publish a notice of this hearing in the local paper and send it by mail to the applicant, owners, and tenants. The Board must take final action on the permit application within 30 days of the public hearing. If no action is taken, the permit is automatically considered granted. A copy of the permit must be filed with the recorded master deed, and the applicant must notify the Town Clerk within 10 days of recording the master deed. Permits expire if a master deed is not filed within 12 months of the Planning Board's issuing the permit, and an 18-month period must pass before another permit may be filed.

A condominium conversion permit must be granted if the Planning Board finds that the applicant has fully complied with the local bylaws. A permit may be denied if it is shown that tenants' rights were violated prior to the application's filing. The Planning Board may also revoke (take back) a permit if five or more tenants petition the Board and show that tenants' rights have been violated during the 12- or 24-month conversion notice period.

Within 60 days of the filing of the master deed, the owner or developer must offer to sell each unit to the tenant occupying the unit on terms and conditions substantially the same as or more favorable than those in the state condo law. See **Protections for Tenants under the State Condo Law** in this chapter.

The owner may not proceed with eviction within the 12-month period following the recording of the master deed, or within 24 months in the case of low- to moderate-income, handicapped, or elderly tenants as defined in the state condo law. There is no explicit exception to these protections for other types of eviction unrelated to condo conversion. There are no specific additional protections beyond what the state

condo law provides in terms of the owner's requirement to help low- and moderate-income, handicapped, and elderly tenants find comparable housing, or to provide relocation assistance.

During the conversion notice period, the owner has a right to enter the unit to inspect, obtain data, or show the unit to prospective or actual workers or purchasers. The owner must give two days advance notice and may only enter at reasonable times and a tenant may not unreasonably withhold her consent for an owner to enter.

Harassment by the owner is barred. This includes unreasonable requests to enter a unit, failure of the owner to make repairs in a timely and professional manner, imposition of unjustifiable increases in rent (as measured by the state condo law), failure to provide the tenant with essential services, and verbal harassment or threats against the tenant.

The definitions of "elderly" and "handicapped" in the Abington bylaws differ from the state condo law: elders are persons age 60 or older, and handicapped includes people with mental disabilities.

2. Acton

In 1981, Acton obtained special state enabling authority to regulate condo conversion before the statewide law was passed. This authority was revised in 1987.²⁴ Since its condominium regulation was not based on rent control, it should not have been affected by the abolition of rent control-related laws in 1994.²⁵

Acton's enabling law prohibits conversion or removal of certain types of housing as rental housing without a permit. Housing that requires a permit includes buildings with six units or more, or non-owner-occupied buildings with five units or more. Permits must be granted if:

- The owner has given proper notice to all tenants of periods to vacate, rights of first refusal, relocation benefits, assistance in locating comparable housing, and appropriate provisions for extension of rental agreements and rent limitations during the notice period. The notice periods, rights of first refusal, and relocation benefits are the same as those in the statewide law; and
- The owner has provided certification from a registered engineer or architect that the units meet all applicable building and health codes.

3. Amherst

Under Amherst's bylaw, adopted in 1984, no condominium or cooperative conversion is permitted unless a conversion permit has been obtained.²⁶ Permits can be obtained only if either (a) the vacancy rate for rental units in the town is above 5%, or (b) prohibiting a conversion would constitute an unconstitutional taking, which the Board of Selectmen must specifically determine.

The Board must consider a number of factors when deciding whether to grant or deny a permit, including:

- The impact of the proposed conversion on the tenants;
- The availability of rental housing of comparable type, quality, and cost in the town;
- The ease or difficulty of the affected tenants in finding alternative rental housing;
- Any efforts to lessen the impact on the tenants (including guaranteed rights to remain for fixed periods, payment of moving expenses and other relocation costs, and securing of alternative housing);
- The physical condition of the property, and the financial viability of the property if maintained as rental housing;
- Whether the property (or units in it) is vacant, for how long, and why; and

- The age, financial status, and health of the affected tenants and the length of their tenancies.

An application for a conversion permit must be accompanied by a written plan setting out an orderly process for conversion, and a description of the governing process by which the owners' association or cooperative corporation shall operate during and after conversion. The Board of Selectman may also condition the granting of a permit upon the owner's making special provisions for certain units and the tenants in those units. No permit is to be granted unless an independent licensed engineer or architect certifies that the property meets all applicable building and health codes. The Board may enact regulations related to the procedure for conversion permits and impose a reasonable filing fee.

Tenants may not be evicted for the purpose of permitting renovation, rehabilitation, or occupancy by purchasers for nine months after an application for a conversion permit, or for six months after a permit is granted, whichever is longer. Harassment is prohibited, as is the failure to make necessary repairs or provide required services, or the seeking of unreasonable rent increases during the notice period. Tenants have the right of first refusal to purchase their units. There is no provision beyond what the state condo law provides for longer notice periods, extensions of leases, or relocation benefits (although the Board could include such conditions in its permit decision).

4. Boston

In Boston, between 1979 and 1994, condominium conversion protections were provided under the city's rent control laws.²⁷ Initially, protections were limited to extended notice periods, right of first refusal, moving expenses, and relocation assistance, similar to those ultimately adopted in the statewide law.

Beginning in 1984, a condominium conversion eviction ban was established for elderly, disabled, and low- to moderate-income tenants. This was

gradually expanded to encompass more groups. Finally, in 1988, the city established a general ban on condominium conversion evictions and required that owners seek removal permits to convert units to condominiums.²⁸

In 1994, rent control laws were abolished by a narrow statewide referendum vote.²⁹ After the expiration of transitional rent control protections in 1995-1996, condo protections could no longer be based on rent control authority.³⁰ As a result of the efforts of housing advocates, Boston then adopted a local condo ordinance based on the authority in the statewide condo law.³¹ Early efforts to adopt a local condo ordinance in 1995 and 1996, however, were invalidated by litigation filed by the Greater Boston Real Estate Board.³² In 1999, the Boston condo ordinance was finally adopted and currently remains in effect.³³

Boston's law differs from the statewide law in the following respects:

- There is a five-year notice period for elderly, handicapped, or low- to moderate-income households, in comparison to the statewide two- to four-year period.
- Boston's ordinance includes people with mental disabilities in the definition of "handicapped."
- The five-year notice period is automatic, unlike the statewide law, which requires the tenant to show that the owner did not provide relocation assistance in order to get an extension of up to two years on the original two-year period.
- The notice period applies to both new conversions and units already converted and occupied by elderly, disabled, or low- to moderate-income tenants who previously had rent control protections against condominium conversion eviction.³⁴
- If an owner has given a notice of proposed conversion, the tenant's lease is to be extended through the notice period, and rent increases through the notice period are limited to 10% per year or the annual

percentage increase in the Consumer Price Index, whichever is less.

- The owner may evict the tenant only for "just cause."
- If a tenant is in a unit at the time of conversion and has not received a notice of a condo conversion eviction, any eviction is presumed to be a condo conversion eviction—unless the owner can show that this was not the case (for example, the owner simply wanted a higher rent, but intends to keep the unit as rental housing).
- Relocation benefits are double those under the statewide law (\$3,000 for all tenants, and \$5,000 for elderly, disabled, or low- to moderate-income tenants).³⁵
- There are two rights of first refusal: (i) at the time the property is first converted to condominiums or cooperatives, even if it is not the owner's intent at that time to displace the tenant; and (ii) any time the owner intends to displace the tenant in order to facilitate sale or occupancy of a condominium unit. The tenant is to be offered the unit on the same or better terms that are offered to third parties and to have a 90-day period to enter into a purchase and sale agreement.
- Boston's Rental Housing Resource Center (RHRC) is to be given copies of various notices and *affidavits* from the owner to monitor compliance. If there is a dispute about whether a tenant is low- to moderate-income, elderly, or disabled and therefore entitled to enhanced protections, either RHRC or the courts, at the parties' preference, can resolve the dispute. Other disputes are to be resolved by the courts.

5. Brookline

Up until 2006, the status of condominium conversion controls in Brookline was unclear. In 1981, Brookline originally provided condo conversion protections under local rent and eviction control laws. Those provisions ended with the end of rent control in 1994-1996.

However, since 1981 Brookline also had a special condo conversion enabling law separate from its rent control scheme. This local enabling law prohibited any person from converting an apartment building or other multifamily dwelling containing four or more residential units to a condominium without first obtaining a special permit.³⁶ Based on this, in 1986 Brookline adopted two local bylaws regarding condo conversion and protection of tenants in properties not otherwise covered by its local rent control law.³⁷ In 1994, the statewide law eliminating rent control explicitly referred to Brookline's 1981 condo law as one of the laws which was being abolished.³⁸

In 1998, Brookline revised its bylaws, and eliminated any reference to rent control laws or to special income, age, or disability qualifications. The result was that special protections for elderly, disabled, and low- or moderate-income tenants were eliminated (including the right to longer notice periods and to extension on those periods if comparable housing was not secured), and relocation benefits were eliminated.

In 2006, Brookline decided that its bylaws needed to be revised to provide tenants with at least the same protections that they would have under the state condo law. The Board of Selectmen decided to refer solely to the state law for condominium conversion tenant protections. One difference, however, between the Brookline bylaw and the state condo law is that Brookline's bylaws provide that within 48 hours of the recording of a master deed, the owners must file a copy of the master deed with the Building Department, which will then inspect the premises to confirm if they are in compliance with state and local codes.³⁹

6. Cambridge

Cambridge formerly had local condominium conversion laws that were based on special rent control authority. When rent control was phased out in 1994-1996, Cambridge no longer had any basis for these protections. Cambridge has not yet adopted a local condo ordinance under the authority of the statewide condo law. Although

an attempt was made in 2001 to pass a local ordinance, it did not obtain the necessary 2/3rds vote of the Cambridge City Council. Therefore, condo conversion protections in Cambridge are the same as those under the statewide law.

7. Haverhill

In 1985, Haverhill adopted a condominium conversion permit system.⁴⁰ The ordinance covers any building used in whole or in part for residential purposes. However, all buildings *exempt* under the statewide condo law are also exempt in Haverhill.

An owner of any housing unit covered under the Haverhill ordinance must apply for and be granted a special permit from the city council prior to converting to condominiums.⁴¹ No permit shall be granted if the vacancy rate is 6% or less or if the conversion would make the vacancy rate 6% or less. A relocation plan must be developed for all tenants. A tenant may stay for up to three years if comparable housing is not found.

8. Lexington

In 1987, following the announcement that Emerson Gardens, the largest rental housing development in Lexington, was facing condo conversion, residents and other supporters in the town passed a bylaw to create a condo conversion permit system.⁴² The system is run by a board appointed by the selectmen. It gives tenants in Lexington the following protections, in addition to those in the state condo law:

- Eviction protections are provided for elderly, handicapped, and low- or moderate-income tenants for up to five years if the tenants can show a hardship relating to matters such as finances, health, school, age, or family problems, or the lack of suitable housing in Lexington.
- All conversions and evictions must be licensed by the conversion board. Conditions may be imposed upon the granting of the license. The board may use

the following factors in making that determination:

- The protection of the public interest of the Town of Lexington,
 - The hardships imposed upon the tenants or the landlord,
 - The aggravation of the shortage of rental housing, and
 - The existence of reasonable accommodations to alleviate the hardship.
- The owner may be required by the town to sell up to 20% of the converted units to the Lexington Housing Authority for long-term affordable units.

9. Malden

In 1984, the city of Malden adopted a local ordinance to regulate condo conversion.⁴³ The Malden planning board is responsible for enforcing the ordinance. The ordinance does not apply to one- and two-family homes or to owner-occupied three-family homes. It also does not apply to buildings constructed or rehabilitated after 1968. Also exempt are housing accommodations in hotels, motels, inns, or tourist homes that are occupied by a majority of tenants for a period of less than 14 days.

This ordinance prohibits conversions unless there is a vacancy rate in excess of 3.5%. If the vacancy rate is above 3.5%, a tenant is entitled to two years' notice. If a tenant is 60 or older and has resided in a unit for five years or more, she is entitled to three years' notice.

10. Marlborough

In 1985, Marlborough adopted a condominium conversion ordinance as part of its zoning bylaws. The ordinance was amended in 2005.⁴⁴ It covers buildings that have been used in whole or in part for residential purposes within one year prior to the conversion. The original law has several unique provisions:

- No more than 25% of the housing accommodations in any building, structure or part of the building may be converted in any one calendar year.
- Tenants' right of purchase extends for a six-month period from the date of notice of the intent to convert.
- The notice period for tenants is at least three years for all tenants, and is five years for handicapped, elderly, or low- or moderate-income tenants. Moreover, this period for handicapped, elderly, or low- or moderate-income tenants can be extended for an additional two years if the owner fails to find substitute comparable rental housing in Marlborough at a similar rent.

Provisions on relocation benefits, extension of rental agreements and caps on rent increases, and limitation on eviction are similar to those in the state condo law.

In 2005, Marlborough provided that an owner could obtain a *waiver* from this law, and that the provisions of the state condo law would apply instead, provided the following conditions were met:

- The Mayor certified that the owner had paid \$1,250 to the Marlborough Affordable Housing Fund (or to such other fund for the benefit of affordable housing as may be designated by the City Council) for each unit to be created as a result of the filing of the master deed, with no more than 125 units being created by the owner.
- The owner and the Executive Director of the Community Development Authority (CDA) (or other person or entity designated by the City Council) signed a Monitoring Agreement, under which 70% of the units sold would be sold to those planning owner-occupancy, and a bond of \$500 times the number of units would be held to insure this condition was met within three years.
- Tenants would be reimbursed for relocation expenses in accordance with the state condo law without any proof of actual moving or

other expenses, as well as a “tenancy longevity bonus” equal to \$250 for every year or fraction of an uncompleted year greater than two years that the tenancy was in existence as of the filing of the master deed.

- The owner would pay the CDA or other entity \$10,000 in advance as compensation for administering the Monitoring Agreement.
- The owner provided the CDA or other entity with the condominium bylaws to be recorded including the 70% owner-occupancy requirement to exist at all times, and that provision may not be deleted or amended.

11. New Bedford

In 1988, New Bedford adopted a condominium conversion ordinance.⁴⁵ The law differs from the state condo law in a few respects:

- Elderly tenants are defined as those who are 59 years of age or older as of the date of receipt of notice.
- Three-unit buildings are covered, as well as buildings which have been used in whole or in part for residential purposes within one year prior to the recording of a master deed.
- Notices to the tenants must be in English, Spanish, and Portuguese, include certain disclosures in “clear and conspicuous” language, and be given either in hand or by *registered or certified mail*.
- A condominium review board monitors all conversions; verifies income, handicap, and elderly status; hears complaints about violations; and issues conversion permits. In addition, no permit is to be granted if, within the prior 12 months, the owner has taken any action to circumvent the state or local condo law, including unreasonable rent increases, reduction or elimination of services, termination of tenancy without cause, or the imposition of new conditions of the tenancy.

12. Newburyport

The Newburyport ordinance is intended to supplement the statewide law.⁴⁶ The ordinance expands the notice requirements: all tenants have a right to at least a two-year notice of conversion; and elderly, handicapped, and low- or moderate-income tenants have a right to at least four years' notice of conversion.

If there is a conflict between the Newburyport ordinance and the state law, the provisions that provide the strongest protections for tenants govern.

The ordinance applies to buildings with four or more units. It does not apply to rental housing constructed after October 31, 1988, the date the ordinance was enacted. Rent increases and penalties for violations are the same as in the statewide law. All future residential rental units converted to condominiums are required to have new occupancy permits and new electrical inspections.

13. Newton

While Newton does not have any special condo law, it was granted special state enabling authority regarding condominium conversion in a very narrow context.⁴⁷

If a special permit has to be obtained from the Board of Aldermen for use or development of an apartment building, garden apartment building, or other multi-family dwelling containing three or more units, conversion to condominiums may not occur without obtaining an additional special permit from the Board of Aldermen. Such a permit shall be granted only upon a finding that the public convenience is served by such a conversion and the permit may contain such conditions and limitations necessary to protect tenant rights as the Board deems reasonably necessary. However, this law took effect only if Newton accepted the grant of authority in 1974, and it is not clear that Newton ever did so.

14. Somerville

In 1980, Somerville passed a local *ordinance* requiring a removal permit for the conversion of rental units to condominiums. Because there was a question as to whether Somerville had the authority to enact this ordinance, in 1985 the City sought and obtained state legislation allowing it to regulate condominium conversions.⁴⁸ This enabling legislation gave Somerville the authority to regulate condominium conversion more broadly than allowed under the state condominium conversion law.⁴⁹ Somerville then re-enacted its ordinance (with some revisions) in 1985.

Under the current ordinance, as it is being implemented by the City of Somerville, owners of all size buildings⁵⁰ are required to obtain a permit from the Somerville Condominium Review Board in order to convert units or buildings to condominiums.⁵¹ In addition, where the local ordinance applies, an owner intending to convert must give notice to the tenant one year prior to seeking to recover possession. An elderly, handicapped, or low- or moderate-income tenant⁵² must receive two years' notice of an owner's intent to convert. A tenant has a 30-day right to purchase following the granting of the removal permit or the filing of the master deed, whichever happened first. If the tenant fails to make an offer at the end of 30 days, the converter may not sell the condominium at a price that is more favorable than the one offered to the tenant for the next 180 days. Tenants have a right to reimbursement of expenses incurred for relocation up to \$350 or one month's rent, whichever is greater.

The Condominium Review Board generally issues conversion permits if the owner appears to have complied with the notice and relocation provisions of Somerville's current ordinance. There is currently no systematic way for tenants to be informed of the time and date of the Condominium Review Board's hearing at which the owner's request for a conversion permit is reviewed.

As of the writing of this edition of *Legal Tactics*, a new condominium conversion ordinance may be close to being approved in Somerville.

Developed by a Condominium Conversion Task Force appointed by Mayor Joe Curtatone and supported unanimously by Task Force members, **it will replace the current ordinance.** If the new ordinance is passed, it will do, in part, the following:

- Increase the period of protections for low-income, moderate-income, elderly, and handicapped tenants⁵³ in buildings with four or more units from two years to four years, unless the owner finds a comparable rental unit that is available to the tenant at the same or lesser rent within the City of Somerville;
- Decrease the period of time during which tenants have protections from one year to six months in buildings with three or fewer units;
- In buildings of four or more units, increase the amount of relocation expenses paid to displaced tenants from \$350 or one month's rent to \$4,000 for low-income, moderate-income, elderly, and handicapped tenants and increase the amount of relocation expenses to \$2,000 for all other tenants regardless of building size;
- Allow tenants who need relocation funds in order to move, access to these funds before moving;
- Give the right of first refusal to non-profit affordable housing developers on a list maintained by the City of Somerville's Office of Strategic Planning and Community Development;
- Prevent the undertaking of renovation work related to conversion in a tenant's unit unless agreed to by the tenant or expressly allowed under the terms of a written lease;
- Prevent the undertaking of renovation work related to conversion in empty apartments or common areas if the work creates or would create unreasonable disruption for existing tenants protected by the ordinance.

- Require owners to seek conversion permits from the Somerville Condominium Conversion Review Board, which shall hold a hearing and grant a permit only if the owner complies with the provisions of the new ordinance. Tenants will be given notice of the hearing on the matter and have the right to be heard.

For more information about the status of the new Somerville condo ordinance, contact Ellen Shachter, Cambridge and Somerville Legal Services, an office of Greater Boston Legal services at 617-603-2731.

Protections for Tenants Living in Condos

In 1991, the legislature took a first step toward addressing the pressing needs of condominium associations with financial problems and absentee condo owners.⁵⁴ The 1991 amendments to the state condominium law allow condo associations to collect rent from tenants in cases of prolonged delinquency by unit owners.⁵⁵ Tenants, in turn, are protected from *retaliation* by the absentee delinquent owner if they pay rent, or express an intent to pay rent, to the condo association.⁵⁶

In early 1993, the legislature adopted additional provisions intended to protect condo associations and tenants residing in condominium units where unit owners were not fulfilling their responsibilities.⁵⁷ The law gives condo associations a "super-priority" in being able to collect unpaid charges from unit owners (such as unpaid common-area charges, replacement reserves, or the like). This makes it much less likely that there will be prolonged defaults by unit owners.

Under the law, the condo association must designate a person or entity to oversee maintenance and repair of common areas and give written notice to all unit owners of this. When an owner rents to a tenant, the owner must also designate a person to oversee maintenance and repairs in the unit. At the start of a *tenancy*, the owner must notify the tenant and the condo association in writing of the name and phone number of the person responsible for maintenance of the unit, and also give the tenant written notice of the name and phone number of the person responsible for common-area repairs. Similar written notice must be given when there is any change in the person or entity responsible for repairs.⁵⁸ Unit owners must also supply the condo association with the name or names of any tenants or occupants of the unit, other than persons who are visitors for less than 30 days.⁵⁹

It can still be very difficult for a tenant in a condo unit to get repairs related to common areas done. This is because common-area repairs often require consent of the condo association. The bylaws for the condo association may outline how such decisions are made. However, in the case of an emergency, the unit owner may make such repairs and then bill the condo association.⁶⁰ A unit owner cannot, however, avoid responsibility under the state Sanitary Code for having a habitable unit because she must get approval from the condo association for common-area repairs.

The law also gives a unit owner who sells to a nonprofit organization the right to provide a nonprofit buyer with financial information about the condo association.⁶¹ This indirectly benefits tenants because non-profits will then be able to determine how they can best maintain a controlling interest over the condo and stabilize the property.

Endnotes

1. According to a report commissioned by the Boston Redevelopment Authority and authored by Patrick Dober, *House of Cards: Absentee-Owned Condominiums and Neighborhood Instability* (March 1991).
2. W. Grigsby & L. Rosenberg, *Urban Housing Policy* (1975), pp. 196-206. Condominiums have changed the whole notion of "filtering," a long-accepted theory of how unrestricted market-rate housing for middle-income people is presumed to become available to low-income people as neighborhoods deteriorate. Gentrification replaced filtering. The rental units that remained, even those in poor condition, became more expensive because of lack of supply.
3. The Legislature did prohibit condominium conversion in rental housing created as part of a G.L. c. 121A urban renewal development, through the life of the G.L. c. 121A agreement. See G.L. c. 121A, §18D. Moreover, while cooperative conversion is not banned, it is a fundamental change that would require approval of the urban renewal agency. See *Bronstein v. Prudential Ins. Co. of America*, 390 Mass. 701, 710-712 (1984); *Gross v. Prudential Ins. Co. of America*, 48 Mass. App. Ct. 115, 122 (1999), rev. denied, 430 Mass. 1114 (2000).
4. On occasion, communities with local condo laws have used slightly different definitions for these terms. These are described in the discussion about such local laws.
5. Note that in the state condo law, St. 1983, c. 527, §3, the term "handicapped" is defined as a person who is "physically handicapped" as defined in G.L. c. 22, §13A as of the date the notice is given. Persons who are not physically handicapped do not come within the statute's protections, but may qualify for protection due to their low- or moderate-income status. Some local ordinances have extended the protections to persons with other disabilities.
6. St. 1983, c. 527, §3 (defining "low or moderate income," "elderly," and "handicapped"); G.L. c. 183A, §§2 and 8 (defining "master deed").
7. St. 1983, c. 527. The text of the relevant sections of this chapter can be found in any compilation of the Acts of 1983 legislative session, and is also printed in the annotations in G.L. c. 183A, §1. This legislation grew out of efforts that began in 1978 with an ad hoc statewide group of advocates and community activists called the Condominium Conversion Task Force. Up until this point, local groups in each community had organized to deal only with their local housing and condominium problems. Several cities and towns adopted condominium conversion ordinances, only to have them invalidated by the courts because home rule authority from the legislature was required. See *Bannerman v. City of Fall River*, 391 Mass. 328 (1984); *CHR General, Inc. v. City of Newton*, 387 Mass. 351 (1982). In the early 1980s, the Massachusetts Tenants Organization (MTO), formed partially as a response to the rental housing crisis (which had been made worse by condominium conversion), helped build a solid base of support for condo legislation. MTO first pushed for a complete ban on conversion, but could not get sufficient legislative support. Following the election of Governor Michael Dukakis in 1982, new discussions began to evolve around a more modest local option bill, providing statewide minimum standards and giving each community the authority to enact its own law to meet local needs. The rationale for this approach was that each community had a different problem. Some localities even wanted to encourage condominiums to build up the tax base. Other communities wanted to protect the scarce supply of rental housing and prevent displacement. In 1983, MTO and the real estate industry agreed to a bill that provided a minimum condominium conversion eviction notice standard for all localities. Despite the fact that realtors reneged on this agreement at the last minute, Governor Dukakis worked closely with MTO and was successful in guiding Chapter 527 of the Acts of 1983 through the legislature. The result was a victory for tenant organizing, even though tenants had to abandon the notion of a condominium conversion ban.
8. The state condo law was subsequently amended in 1984 (making several technical revisions related to cooperatives), in 1989 (making a number of substantive changes as recommended by the Attorney General's office to clarify and improve protections), and in 1990 (making clear that a locality's or a local housing authority's right of first refusal could trump that of an individual tenant). See St. 1984, c. 170, §§4-5; St. 1989, c. 709; St. 1990, c. 520, §8. While the law applies to both condominium and cooperative conversions, because cooperative conversions are so rare, throughout this chapter the term condo conversion, rather than condominium and cooperative conversion is used.
9. Condo regulation may continue as long as it is not part of a regulatory scheme requiring below-market rentals. See G.L. c. 40P, §§3-4; see also St. 1994, c. 282 (phasing out rent control, though exempting St. 1983, c. 527 from its provisions).

See *Greater Boston Real Estate Board v. City of Boston* (“GBREB IP”), 428 Mass. 797, 799 (1999); *Fore L Realty Trust v. McManus*, 71 Mass. App. Ct. 605 (2008); *Davenport Manor v. McNeil*, Western Housing Court, 06-SP-01975 (Fein, J., Aug. 9, 2006).

10. A condominium is defined as land or the lessee’s interest in any lease of land submitted to the provisions of G.L. c. 183A, including the buildings, all other improvements and structures thereon, and all easements, rights and appurtenances belonging thereto. G.L. c. 183A, §1. A cooperative, on the other hand, can either be formed through a cooperative housing corporation as described in G.L. c. 157B, or may be a unit in some other housing cooperative organized under G.L. c. 156B or G.L. c. 157. St. 1983, c. 527, §3 (definitions of “condominium unit” and “cooperative unit”).
11. St. 1983, c. 527, §4(a).
12. St. 1983, c. 527, §4(b).
13. A right of first refusal is a discretionary agreement in which a party has an option to purchase, usually for a definite time period. For instance, it could be written into a lease that a tenant has the right to purchase for the first 30 days following receipt of the notice of intent to convert.
14. There is a limited exception to this if the city or town or the local housing authority exercises any right of first refusal that it may have to purchase the unit for the purpose of providing affordable housing. Such a right of first refusal can trump the tenant's right of first refusal. See St. 1990, c. 520, §8 (amending St. 1983, c. 527).
15. St. 1983, c. 527, §4(b).
16. St. 1983, c. 527, §4(d).
17. St. 1983, c. 527, §4(d).
18. St. 1983, c. 527, §4(e) (as amended by St. 1989, c. 709, §18).
19. St. 1983, c. 527, §4(e). See also G.L. c. 186, §15C.
20. See St. 1989, c. 709 (amending St. 1983, c. 527). The 1989 amendments to St. 1983, c. 527, as recommended by the Attorney General's office, made clear that tenants would not lose protections because formal condo notices had not been given (such as where a developer tried to oust tenants through subterfuge). Instead, as long as it could be shown through a variety of means that the owner had an "intent to convert," this would be sufficient to trigger protections under the statewide law.
21. St. 1983, c. 527, §4(c).
22. St. 1983, c. 527, §2. Even if local legislation is adopted, certain of the statewide baseline protections cannot be altered. Thus, a city or town cannot extend protections to properties not covered by the statewide law, and additional protections for certain classes of properties—housing accommodations converted from non-housing to housing uses after November 30, 1983, or which were constructed or substantially rehabilitated pursuant to any federal mortgage insurance program, without any interest subsidy or tenant subsidy attached thereto, or financed through the Massachusetts Housing Finance Agency, with an interest subsidy attached thereto—are prohibited. St. 1983, c. 527, §2.
23. See Chapter 35, Article 3 of the General Bylaws of Abington. The Abington bylaw extends to buildings with three or more units; coverage of 3-unit buildings may exceed the enabling authority granted by the state condo law. Chapter 35, Article 4 of the General Bylaws of Abington.
24. See St. 1981, c. 128 (amended by St. 1987, c. 548).
25. Authorities on Massachusetts condominium laws have come to the same conclusion. See Brown & Keenan, *Massachusetts Condominium Law*, §9.04-H (2nd ed. 1996) (Somerville and Acton condo conversion enabling laws probably survived abolition of rent control). See also endnote 9.

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26. Adopted at Amherst Town Meeting on March 29, 1984, as Article 1. Amherst, General Bylaws, Art. IV, Condominium and Cooperative Conversion, §§1-7. Amherst's bylaw applies to buildings with two or more rental units. As with Abington's bylaw, there is a question of whether extension of the bylaw to 2- and 3-family buildings would exceed the enabling authority granted by the state condo law. There is a provision in the Amherst bylaw that says it shall not apply to any property exempted by the state condo law. Amherst, General Bylaws, Art. IV, Condominium and Cooperative Conversion, §4(d).
 27. See St. 1969, c. 797; St. 1970, c. 863.
 28. In 1985, Boston attempted to establish a removal permit system. The Supreme Judicial Court found that this system was not authorized by the city's rent control enabling law as it would provide protections which were not related to tenant displacement. See *Greater Boston Real Estate Board v. City of Boston* ("GBREB I"), 397 Mass. 870 (1986). Boston subsequently obtained additional home rule authority allowing it to regulate the conversion of apartments to condominiums. See St. 1987, c. 45.
 29. G.L. c. 40P, often referred to as "Question 9," which was the number of the ballot initiative in 1994. See also *Ash v. Attorney General*, 418 Mass. 344 (1994) (finding that abolition of rent control in more than one community was a subject that could be put to statewide initiative); *Massachusetts v. Tobias*, 419 Mass. 665 (1995) (refusing to invalidate referendum results despite balloting problems).
 30. St. 1994, c. 282.
 31. Both G.L. c. 40P and St. 1994, c. 282 provided that condominium conversion protections authorized by St. 1983, c. 527 were not barred by their general prohibitions on rent control and other tenant protections, so long as they were not part of a rent control scheme (i.e., laws that required below-market rents). Similarly, the Boston Housing Court found that Boston might be able to provide protections under St. 1983, c. 527, as rent control protections ended. See *Greater Boston Real Estate Board v. Boston Rent Equity Board*, Boston Housing Court, 95-CV-00475 (Daher, C.J., June 26, 1995). "Moreover, the City and the Rent Board retain their authority to continue to regulate condominium conversions. The Rent Board derives such authority from St. 1983, c. 527, which statute expressly is excluded from the definition of 'rent control' in [c. 282]... the City derived its authority, should it become necessary, from that Act as well as from the City's original enabling statute. The provisions of [c. 282] that limit the powers of cities and towns to impose or enforce 'rent control' to 'covered units' and for prescribed periods of time do not apply to condominium conversions authorized under c. 527...."
 32. In *Greater Boston Real Estate Board v. City of Boston*, Boston Housing Court, 96-CV-0087 (Daher, C.J., Feb. 1, 1996), the Housing Court indicated that an ordinance adopted by the city in late 1995 (Chapter 9 of the Ordinances of 1995 of the City of Boston) might be invalidated on vagueness grounds. The City then withdrew that ordinance and adopted another in the spring of 1996 (Chapter 3 of the Ordinances of 1996 of the City of Boston). This ordinance was invalidated by the Housing Court (see *Greater Boston Real Estate Board v. City of Boston*, Boston Housing Court, 96-CV-00752 (Daher, C.J., Nov., 22, 1996)), and subsequently by the Supreme Judicial Court, because it extended protections to tenants who had moved into condominium units after they had been converted. This was found to be beyond the authority granted by St. 1983, c. 527. The SJC found that the remaining provisions of the ordinance could not be severed. See *Greater Boston Real Estate Board v. City of Boston* ("GBREB II"), 428 Mass. 797 (1999).
 33. See Chapter 8 of the Ordinances of 1999 of the City of Boston, as extended and revised by Chapter 12 of the Ordinances of 2004 of the City of Boston (current version at Municipal Code c. X, §10-2.10 (2006)).
 34. If an owner converted the property between the end of rent control and November 1999 and gave proper notice to the tenants under the statewide law, the notice period might be limited to the statewide period, but only if the owner filed papers saying this with Boston's Rental Housing Resource Center by January, 2000. See Municipal Code, c. X, § 10-2.13.B (1999).
 35. Between late 1999 and 2004, relocation benefits were \$1,500 for all tenants, and \$2,000 for elderly, disabled, or low- and moderate-income tenants. These relocation benefits were enhanced as part of the 2004 amendments to Boston's condo law.
 36. See St. 1981, c. 601.
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37. See Article XXXIX and XXXIX-A of the Bylaws of the Town of Brookline, Conversion of Multifamily Rental Housing and Condominium Conversion Protection for Non-Controlled Tenants (1986).
 38. See St. 1994, c. 282, §3(e), which defined, as part of rent control, "the conversion of such housing accommodations to the condominium or cooperative form of ownership," and specifically included St. 1981, c. 601 as part of the regulatory scheme being eliminated. On the other hand, the non-rent-controlled conversion permit system would not appear to have been barred by G.L. c. 40P.
 39. See amendment to Brookline, Mass., General Bylaws §5.2 (2006).
 40. Haverhill, Mass., Code, c. 255, §255-99 (2007).
 41. Haverhill, Mass., Ordinances, c. 255, §255-99A. The city council must consider the following factors: (1) the impact of the conversion on the stock of affordable rental housing in the city; (2) the availability of condominium and cooperative units in the city; (3) the impact of the conversion on the physical integrity of the building, the financial viability of the property as rental housing, and the ability of the owner of the property to properly rehabilitate the building where necessary; (4) the potential for relocating the tenants to comparable housing within the city; and (5) the age, physical condition, financial situation, and length of tenancy of the tenants. Haverhill, Mass., Ordinances, c. 255, §255-99C. If the owner fails to assist with relocation or find comparable substitute housing for the tenants, the notice period can be extended up to three years; otherwise, the notice requirements of the statewide law, Chapter 527, apply. (Haverhill, Mass., Ordinances, c. 255, §255-99E.) Buildings exempted under Chapter 527—two- and three-family owner-occupied buildings and buildings with six units or fewer—are also exempted under the Haverhill Ordinance. (Haverhill, Mass., Ordinances, c. 255, §255-99G.)
 42. Lexington, Mass., Code c. 63 (2007) (adopted May 13, 1987, and approved by the Attorney General, August 17, 1987).
 43. Malden, Mass., Rev. Ordinances, c. 3, §3.11 (2007). It is presumed under the ordinance that any eviction is for the purpose of a condominium conversion where certain conditions occur. For instance, there is a conversion when a unit in a building has been sold as a condo; where a master deed has been filed for a building where the unit in question is located; where a master deed has been filed within six months after seeking to "recover possession"; or where any tenant in the building has received a condo notice. The Malden ordinance adopts a variation on one of the concepts first proposed by the ad hoc committee in 1978. Under Malden's law, a person cannot bring any action to "recover possession" of a housing accommodation for condo conversion if the vacancy rate in the city is 5% or less. If that condition exists, a landlord cannot bring an action for eviction until the later of the expiration of the lease agreement or two years from the date of the original conversion notice. However, this section applies only to units where the occupants are in whole or in part over 60 years of age, or where they have lived in the unit for at least five years. The burden is on the tenant to prove age or length of residency. Coverage by this law includes all housing units, excluding only those owned or operated by the federal or state government and two- or three-family owner-occupied units constructed after 1968, except those that have been "substantially rehabilitated" before December 31, 1980. The planning board must issue a certificate of eviction before a court can grant a summary process judgment. The portion of the ordinance that exceeds the statewide law in terms of the scope of buildings covered is not permitted under the statewide law.
 44. See Chapter 63, §§132-134 and 136-140, including §127A as added in July 2005, of the Code of the City of Marlborough.
 45. See New Bedford, Mass., Code of Ordinances, c. 13, §13-5 (2007) (enacted by Ordinances of Jan. 14, 1988, §1). As with some other local laws, there is a question whether the coverage of 3-unit buildings is beyond the enabling authority granted by the state condo law.
 46. Newburyport, Mass., Code of Ordinances, c. 5, Art. VIII (2006).
 47. See St. 1974, c. 847. Special permits are usually required where housing development is denser than is usually permitted under local zoning laws. See G.L. c. 40A, §9; *Middlesex & Boston St. Ry. Co. v. Board of Aldermen of Newton*, 371 Mass. 849 (1977).
 48. This legislation, St. 1985, c. 218, was obtained through a home rule amendment and took the form of an amendment to Chapter 37 of the Acts of 1976, which was a prior rent control enabling law for Somerville. However, the 1985 enabling act provided

authority independent of rent control, which arguably survived the abolition of rent control in 1994. As of 1985, Somerville had chosen not to have a local rent control ordinance.

49. There is some question as to whether St. 1985, c. 218 survives passage of G.L. c. 40P and St. 1994, c. 282, which prohibit municipalities from having any laws which are part of a scheme of rent control. As a result, and in order to avoid legal challenge, Somerville is only partially enforcing its local condominium ordinance and has withdrawn its implementing regulations.
50. The ordinance applies to all rental units except: (a) where the master deed was filed and purchase and sale agreements were signed before September 11, 1980; (b) where the apartments were occupied by the owner before a tenant occupied them; or (c) where the unit will be occupied by the owner or the owner's immediate family.
51. See St. 1985, c. 218; Somerville, Mass., Condominium Conversion Ordinances of 1985-89, Art. IV.
52. The definition of elderly, handicapped, and low-to-moderate income in Somerville's 1985 ordinance are the same as in St. 1983, c. 527.
53. The definition of "handicapped" is expanded beyond the way it is defined in c. 527 to include persons with physical or mental impairments which (1) substantially limits the persons ability to care for him or herself, perform manual tasks, walk, see, hear, speak, breathe, learn or work; or (2) significantly limits the housing appropriate for such person or significantly limits such person's ability to seek new housing; or (3) would be eligible for housing for handicapped persons under the provisions of G.L. c. 121B, Section 1.
54. At the time the legislation was passed, almost every condominium complex in Massachusetts had some delinquent owners. In 1992, condominium foreclosures increased by 27% over the previous year. The level of absentee condominium ownership in Massachusetts was 42% at that time. Citizens Housing and Planning Association, "The Growing Condominium Crisis in Massachusetts" (1992).
55. G.L. c. 183A, §6(c) (originally enacted by St. 1991, c. 554, §1).
56. See St. 1991, c. 554, §§1-4 (including anti-retaliation provision in G.L. c. 183A, §6(c), and adding parallel language to retaliation and eviction defense statutes, G.L. c. 186, §18, and G.L. c. 239, §2A).
57. See St. 1992, c. 400 (revising various provisions of G.L. c. 183A).
58. G.L. c. 183A, §10(k) (corresponds to St. 1992, c. 400, §14).
59. G.L. c. 183A, §4(6).
60. G.L. c. 183A, §§5(d)-(g).
61. G.L. c. 183A, §10(d).

