

Legal

BY KENNETH A. KREMS

The Condo Conversion Process

Over the last few years, condominiums seem to be sprouting up all around Massachusetts. It's hard to walk down some blocks in Boston without seeing three or four "For Sale" signs for condos. Some of these condos are new construction, while others are conversions of existing apartment buildings to condos.

Certain steps must be taken to form a condo, such as drafting the master deed, declaration of trust, unit deed and other documents, having plans done, reviewing the title to the property and formulating a budget. In addition, each type of condo has its own set

of challenges. New construction involves navigating a maze of land use and zoning issues, while a significant issue in condo conversions is how to treat and deal with existing tenants.

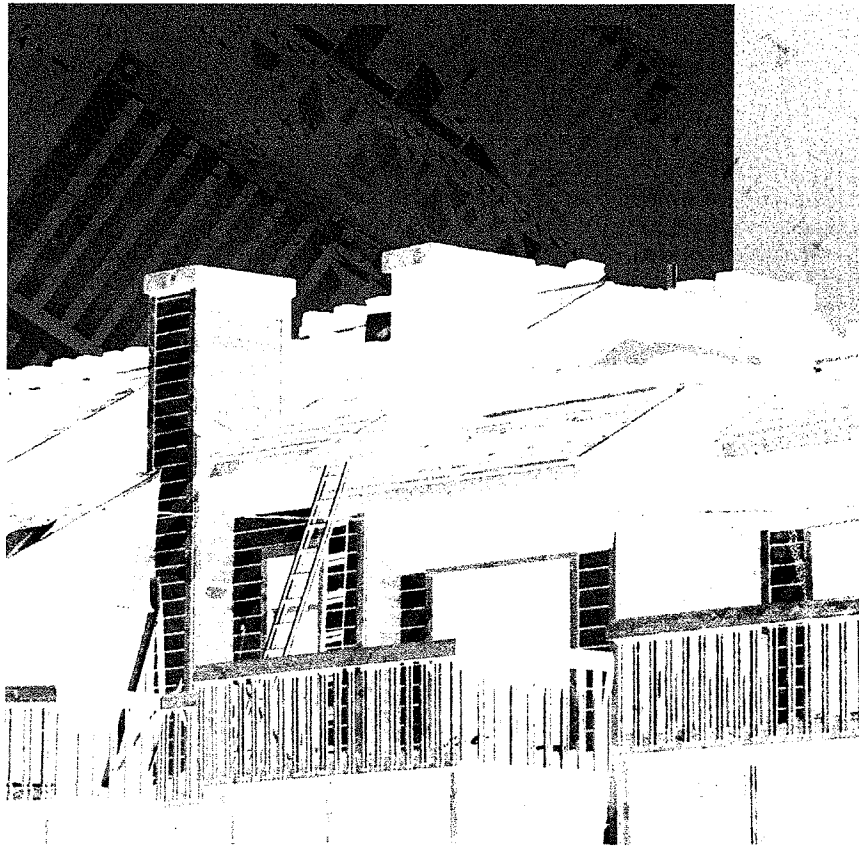
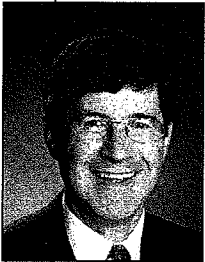
Owners of apartment buildings that are being converted have to be very careful in their dealings with existing tenants. The commonwealth's condo conversion statute, Chapter 527 of the Acts of 1983, is incorporated into Massachusetts General Laws Chapter 183A, the Condominium Act. Chapter 527 delineates with specificity the obligations of the owner/developer who is converting an apartment building or complex and the rights of the tenants. It contains numerous safeguards for current tenants. The law generally applies to buildings containing four or more units. However, two buildings of two or three units each which are part of the same development would come under the purview of the statute.

At or around the time that the owner files the master deed establishing the condo, the owner must serve a notice on all of the current tenants. Pursuant to the statute, the notice should provide that a master deed has been filed to convert the building or buildings into a condominium. The notice must also contain a lengthy list of other information.

The owner has to inform the tenants as to how long they may remain in their apartments before they are required to move. This period is the greater of one year from the date the tenant receives the notice or the expiration date of the tenant's lease. Moreover, if a hand-

icapped, elderly, or low- or moderate-income tenant resides in the unit, the notice period is increased to two years. The statute defines the meaning of handicapped, elderly, and low- or moderate-income; the burden of proving that a tenant qualifies as being within one of these categories rests with the tenant.

Tenants may not be evicted for the purpose of facilitating the sale of the apartment as a condo until the expiration of the notice period. However, the owner may proceed with an eviction for nonpayment of rent, for breach of the rental agreement or for other good cause at any time. Such non-condo related



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eviction actions move through the courts in the normal course without regard to Chapter 527.

The owner must inform the tenant that he has the exclusive opportunity to purchase the unit for a period of time. A signed purchase-and-sale agreement is included with the notice, and the tenant has 90 days to execute the agreement and return it to the owner. The agreement has to contain terms which are the same or more favorable than the terms which the owner will extend to the general public for the 90 days following the expiration of the tenant's 90-day purchase period.

The tenant must be informed that if she does not purchase her unit or another of the condos being offered for sale, she has the right to relocation benefits. The benefits are in the amount of the actual costs of moving not to exceed \$750, or \$1,000 in the case of a handicapped, elderly, or low- or moderate-income tenant. The relocation benefits are payable after the tenant vacates, provided that all rent is paid and that the tenant vacated voluntarily by the expiration of the notice period.

A handicapped, elderly, or low- or moderate-income tenant is entitled to assistance in locating comparable rental housing at a comparable rent in the same municipality. The owner's failure to find such housing extends the notice period for these tenants for two additional years.

If a tenant has a lease, the lease is automatically extended on the same terms until the end of the notice period. The major exception to this is that the rent may increase annually by the increase in the consumer price index or 10 percent, whichever is less.

Care should be taken to prepare the notices to the tenants in strict conformity with the statute, and to have them properly served. It doesn't do any good to send them by regular first-class mail if the tenant later claims she didn't receive it. The owner has to be certain that the notices are sent by certified mail, return receipt requested, or delivered in person.

Sometimes in larger developments the owner intends to sell the units in phases. In that case, a short notice must be sent to the tenants in units that will not be sold for at least one year informing them as to when their units will be offered for sale. When that occurs, the owner has to send them the detailed notice describing all of their rights.

Owners who do not comply with this statute may be fined or imprisoned, and each unit converted in violation of the law constitutes a separate offense. What also happens when the law is not followed is this: the notice period ends and the tenant does not vacate, so the owner files a summary process action to get the tenant out. Because the notice wasn't written correctly

or the owner otherwise didn't comply with the statute, the tenant has to be given a new or additional notice period before he can be evicted.

One related issue that arises in conversions is whether and to what extent renovations will be made to the units and to the building itself. Usually vacant apartments are renovated at least to some degree, but units that are purchased by the tenants residing in them may receive little or no upgrades. It is vital to disclose to prospective purchasers which renovations have or will be done, as well as any issues relative to the condition of the building. If there has been significant settling of the building, prior environmental problems or similar issues, they should be disclosed up front, and any engineering reports should be made available. Of course, all buyers, including current tenants, will have the opportunity to have their own inspections done before they commit to the purchase.

Converting apartment buildings to condos can satisfy a substantial need in the community while also being profitable. It is important for the owner to honestly portray the condition of the property. The chances of a smooth conversion process are also increased if the owner provides the proper notices to existing tenants, and treats them fairly. ■