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Considerations before converting your residential rental income property into condominiums

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A new generation of young professionals is looking for a means to enter the housing market. Condominiums are an attractive price point and form of ownership for such new generation. To meet this demand, owners of rental housing are, in increasing number, considering converting their currently rented properties into condominiums, to be sold for a premium. A number of considerations enter into this decision, not the least of which is the applicable law. In 1983, the Mass. legislature passed The Mass. Condominium Conversion Statute. Broadly speaking, it creates hurdles for owners to jump before converting their property to condominiums, as well as consequences for landlords who fail to jump these hurdles.

What Does This Mean?

Any owner who currently rents residential housing is familiar with the mass of law governing the landlord-tenant relationship, but a set of rules apply on top of those when an owner decides to convert a rental property to condominiums. Aspects which were formerly limited only by the landlord-tenant law become governed by the Condominium Conversion Statute, which restricts a landlord's acts to a greater degree. The law also introduces new and different restrictions on landlords and their relationship with their tenants.

Restrictions on Landlords

Timelines - The limitation on condo conversion that is perhaps most acutely felt by an owner is the lengthy time period that the law provides for tenants between finding out that their rental is being converted and the termination of their tenancy. The law requires owners to extend current leases to one year from the date of notifying tenants of conversion, and places limits on any rent increases associated with the extension.

Right of First Refusal - Any owner converting their property must give their current tenants a ninety day right of first refusal. That is, the current tenant must have the opportunity to purchase the soon-to-be-converted rental unit that they occupy before it is offered to the general public. The landlord must offer the converted unit on the same terms and conditions than those which the owner extends to the general public.

Relocation Assistance - Landlords must provide their tenants relocation assistance in the form of \$750 to a tenant to assist with moving expenses within ten days of the tenant having vacated the unit. The law requires the tenant to provide documentation to prove their costs.

Protected Tenants - Certain tenants are provided further and increased protections by the law: those who are disabled, elderly, or of low or moderate income. The protected tenants, for example, receive two year extensions on their leases when notice of conversion is given. Their maximum relocation assistance payment is increased to one thousand dollars, and their landlord must assist them with locating comparable housing.

Exclusions - Buildings of less than four residential units are exempt, whether or not the owner occupies one of these units.

Municipal Restrictions

The Mass. Condominium Conversion Statute allows individual cities to pass their own condominium conversion rules that supersede the state's rules. So far, several cities have taken this route including Boston, Brookline, Chelsea, Somerville, Lexington, Malden and Marlborough, among others.

Zoning Restrictions

The condominium conversion process could also reveal problems with zoning compliance. Each city or town has zoning by-laws that restrict the number of separate occupancies or families that can reside in a building, located in a particular zoning district. For example, a zoning restriction to two families in a certain location would prohibit creation of three units, even though three rental units currently exist. This happens when a rental unit is not legally existing as, for example, a basement unit is illegally converted. Zoning code review is necessary in all condominium conversions.

Summary

The door is open to the opportunity to increase the value of rental property by partitioning it into condominiums. Care must be taken to avoid the pitfalls and penalties in navigating the process. Further, with the duration of the process extended by State and city laws, a conversion, even one not planned for several more years, should begin sooner rather than later with an inquiry into protected tenant status and a survey of the specific laws applicable in your locality.

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