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POTENTIAL TEST CASE

Condo Conversions Can Be Troublesome In Somerville

City Ordinance Appears Vulnerable To Challenge

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SPECIAL TO BANKER & TRADESMAN

Several Massachusetts cities and towns, including Amherst, Boston, Brookline, Cambridge and Somerville, have local ordinances restricting condominium conversions of rental housing. Somerville deserves special attention among these communities.



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Massachusetts laws involving condominium conversions are not straightforward.

When conversions increased during the 1970s and 1980s, urban policy-

makers feared that rental housing would become unavailable or unaffordable. Declaring that condominium conversions were partly behind housing shortages, the state legislature enacted Chapter 527 of the Acts of 1983 (the Condo Conversion Act). This statute protects tenants in buildings with four or more dwelling units.

The Condo Conversion Act requires property owners to notify tenants in such buildings of their intent to convert buildings into condominiums at least one year in advance (two years for handicapped, elderly, and low- and moderate-income tenants). Tenants have rights of first refusal to purchase their rental units under terms

at least as favorable as those offered to the public. Landlords must pay relocation benefits to displaced tenants, and help handicapped, elderly and low- and moderate-income tenants find substitute housing. The Condo Conversion Act allows municipalities to adopt more stringent regulations for conversions of buildings with four or more units.

During the 1990s, the Rent Control Prohibition Act took effect, generally abolishing local rent control and condominium conversion restrictions, but specifically preserving tenant protections under the Condo Conversion Act. Because the Condo Conversion Act does not apply to buildings with fewer than four dwelling units, it is less effective in communities having an abundance of two- and three-family residences, such as Somerville.

Recognizing this limitation of the Condo Conversion Act, Somerville claims authority to restrict conversions under separate enabling legislation enacted in 1985, which allowed regulation of all residential condominium conversions, including those involving less than four units. The Rent Control Prohibition Act supposedly nullified the 1985 legislation, but Somerville disregards that argument. The Somerville ordinance requires owners to apply to a Condominium Review Board for removal permits to convert residential buildings to condominiums. Owners must pay a nonre-

fundable application fee of \$500 per unit.

The ordinance also requires prior notice of conversions, rights of first refusal and relocation payments for tenants, similar to the Condo Conversion Act. So far, no property owners have seriously tested the legality of Somerville's ordinance in the courts, but commentators speculate that if push comes to shove, the courts are likely to rule against the ordinance as to buildings with fewer than four units.

In practice, the Somerville ordinance causes more inconvenience than controversy for property owners. Condominium developers routinely follow the rules, submit applications, pay fees and obtain removal permits from the Condominium Review Board. However, a recent application for removal permits for a three-family property became unusually hostile, resulting in multiple lawsuits involving the Board and the property owner.

Somer Hill Inc. purchased a three-family property in 2015 and applied to convert it into condominiums. It obtained removal permits for two vacant units from the Condominium Review Board.

Unfortunately for Somer Hill, a stubborn tenant occupied the remaining unit. The tenant lawyered up and engaged in a bitter crusade to prevent Somer Hill from completing the conversion. During a series of lively hearings in 2016, the tenant persuaded the board that one of the sup-

posedly vacant units was actually occupied, and that Somer Hill otherwise failed to comply with the ordinance. The board withheld the final removal permits. The owner filed lawsuits against the board in superior court and district court. The board revoked both removal permits, including the permit issued for the unit that was indisputably vacant.

After months of courtroom sparring, the board issued removal permits for all units, including the troublesome tenant's unit,

and Somer Hill sold the vacant units. Meanwhile, the tenant fights on, having filed three separate lawsuits against Somer Hill, one of which names the board as a co-defendant. Somer Hill faces months of vexatious litigation with the tenant.

According to Anne Vigorito, Somer Hill's attorney, "the Somerville condominium conversion ordinance was drafted before repeal of rent control, yet it has not been amended to reflect such repeal; therefore, substantial portions of the ordinance are il-

legal."

For now, the Somerville condominium conversion ordinance remains on the books as to rental properties with less than four dwelling units. Whether it can fully withstand a legal challenge by a determined property owner remains to be seen. ■

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