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Statutory Protection Against Condominium Conversions for North Carolina Residential Tenants

On January 1, 1984 North Carolina joined the majority of jurisdictions by granting residential tenants statutory protection against conversion of their leased units into condominiums.¹ This protection, enacted as an amendment to the North Carolina Unit Ownership Act,² requires a landlord or developer to provide advance notice of the conversion to all residential tenants, and grants these tenants the first option to purchase their particular unit.³ The statute was enacted in response to a growing condominium conversion trend that has been characterized as the "most controversial real estate phenomenon to strike America in over 100 years."⁴ This note examines the impact of the conversion trend on residential tenants and analyzes the effectiveness of North Carolina's response.

States began recognizing condominium ownership during the early 1960s,⁵ and over ninety percent of the existing two million condominiums were created after 1970.⁶ Condominiums never have been a source of much legal or political controversy, and they are now recognized in every state.⁷ Although condominiums frequently are created through new construction, conversion of rental housing into condominiums recently has become popular.⁸ During the first half of this decade, an estimated 1,139,000 rental units will be converted into condominiums—three times the number converted dur-

1. A condominium consists of "two principal elements: (1) separate ownership of a part of a building (apartment), coupled with (2) common ownership with other apartment owners in the land and such part of the buildings as are intended for common use." A. FERRER & K. STECHER, *LAW OF CONDOMINIUM* 2 (1967). See also N.C. GEN. STAT. § 47A-3(5) (1976) ("'Condominium' means the ownership of single units in a multi-unit structure with common areas and facilities.").

2. N.C. GEN. STAT. §§ 47A-1 to -37 (1976 & Supp. 1983). The Act recognizes condominium ownership and establishes procedures for the registration, public sale, and management of a condominium project.

3. N.C. GEN. STAT. § 47A-36 (Supp. 1983). See *infra* notes 29-34 and accompanying text.

4. *Condominium and Cooperative Conversions—The Federal Response: Hearings Before the Subcomm. on Commerce, Consumer, and Monetary Affairs of the House Comm. on Government Operations*, 97th Cong., 1st Sess. pt. 1 162 (1981) (statement of Kathleen R. Beal) [hereinafter cited as *1981 House Hearings*].

5. U.S. DEP'T OF HOUS. & URBAN DEV., *THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES, A NATIONAL STUDY OF SCOPE, CAUSES AND IMPACTS XI-1* (1980) [hereinafter cited as HUD REPORT].

The condominium originated in the ancient civilizations of the Middle East and the Mediterranean and has long been recognized under civil law. For a discussion of the historical development of condominium ownership through ancient, civil, and common law, see A. FERRER & K. STECHER, *supra* note 1, at 14-81; P. ROHAN & M. RESKIN, *CONDOMINIUM LAW AND PRACTICE* 2-1 to 2-9 (1983).

6. *Condominium Housing Issues: Hearings Before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking, Housing, and Urban Affairs*, 96th Cong., 1st Sess. 2 (1979) (statement of Sen. Harrison A. Williams, Jr.) [hereinafter cited as *Senate Hearings*].

7. Note, *Condominium Conversion Lease Extensions for Elderly and Disabled Tenants: Is Virginia's New Law a Panacea?*, 17 U. RICH. L. REV. 207, 209-10 (1982).

8. Condominium conversion involves a "change in the legal form of a multi-family rental property from single to multiple ownership. The change is made by filing a legal declaration, master deed, or subdivision application to the appropriate government body. After any necessary approval is received units in the condominium . . . may be sold." HUD REPORT, *supra* note 5, at

ing the 1970s.⁹

Several factors have caused this dramatic increase. First, landlords find conversion economically desirable. The aggregate sale price of units in a converted building will secure a return ten times the building's annual rental income,¹⁰ and from one and one-half to two times the market price of the building as rental property.¹¹ Such an immediate and sizeable return is extremely attractive, particularly considering the growing body of local landlord-tenant regulations¹² and the increasing cost of maintenance and administration.¹³ Second, a strong market for condominiums has developed among a wide spectrum of buyers. The condominium offers the economic¹⁴ and tax¹⁵ advantages of home ownership to low-to-middle income families who cannot afford traditional single-family homes. Upper income families view condominium ownership as an economically attractive means to enjoy an urban lifestyle while avoiding the maintenance burdens of the traditional single-family home.¹⁶ The condominium also has become an attractive investment device; one-third of all condominiums are held as investment property for lease to tenants.¹⁷

The original tenant of the converted unit is the third party (in addition to the landlord and the unit purchaser) affected by a conversion. Approximately twenty-two percent of tenants purchase their individual unit.¹⁸ An additional twenty-two percent obtain continued lease agreements from the new unit own-

app. ii. For a description of the administrative and financial requirements of conversion, see *id.* at III-1 to -23.

9. *Id.* at VII-37. From 1970 through 1979, 346,476 rental units were converted. The vast majority of these conversions, 260,730, occurred in the last four years of that decade. *Id.* at IV-6.

10. Judson, *Defining Property Rights: The Constitutionality of Protecting Tenants from Condominium Conversions*, 18 HARV. C.R.-C.L. L. REV. 179, 187 (1983).

11. Berger, *The New Residential Tenancy Law—Are Landlords Public Utilities?*, 60 NEB. L. REV. 707, 733-34 (1981).

12. Judson, *supra* note 10, at 187. Such regulations can include rent controls, eviction restrictions, and heating standards, as well as general building, fire, and health code requirements. The more stringent landlord-tenant regulations are found in the large urban centers. As such, the desire to escape regulation is not as significant a factor in North Carolina as in more populous states.

13. From 1967 to 1980, general consumer prices increased 148% while rent increased only 92%. Berger, *supra* note 11, at 729 n.109. Rent has failed to keep pace with other prices because of local rent controls, organized tenant resistance, and the inability of low and fixed income tenants to pay higher rents. HUD REPORT, *supra* note 5, at I-13; Judson, *supra* note 10, at 187.

14. Because the owner of a condominium possesses an equity interest in his unit, he benefits from any appreciation in the value of the unit. A tenant possesses no such interest. Berger, *supra* note 11, at 734.

15. The condominium owner may deduct payments for mortgage interest, I.R.C. § 163(a) (1976), and real property taxes, I.R.C. § 164(a)(1) (1976), in calculating his federal income tax. The tenant, however, receives no deduction for rent payments. Furthermore, the condominium owner can qualify for capital gains treatment of any appreciation in value when the unit is sold. I.R.C. § 1202 (Supp. 1981).

16. Judson, *supra* note 10, at 186. Thirty-eight percent of condominium purchases are motivated principally by noneconomic reasons. HUD REPORT, *supra* note 5, at VI-8.

17. HUD REPORT, *supra* note 5, at VI-2. See also *id.* at VI-11 to -14 (analysis of the condominium as investment).

18. *Id.* at IX-10.

ers and remain in their unit.¹⁹ The remaining fifty-six percent, however, are displaced by the conversion because they cannot or choose not to remain.²⁰ This high displacement rate has caused the current controversy over conversions and has prompted the legislative responses discussed in this note. Displaced tenants must compete among themselves to locate affordable replacement housing, often in a rental market characterized by a low vacancy rate.²¹ Because conversion removes rental units from the market, each conversion makes the search for housing more difficult.²² In addition to this problem of finding replacement housing, conversion also imposes moving expenses, as well as the burden of reestablishing a lifestyle in a new building or community, on the tenant.²³ Although these problems exist in any type of relocation, conversion is unique because it involves the involuntary simultaneous displacement of a large group of people.

Response to the conversion problem began at the municipal level in North Carolina. In 1980 Chapel Hill, a university town heavily dependent on rental housing, asserted the authority to regulate conversions through its zoning powers and barred a landlord from converting his apartment building into condominiums.²⁴ The North Carolina Court of Appeals held this action invalid in *Graham Court Associates v. Town of Chapel Hill*.²⁵ The court ruled that the town's zoning powers provided no right or legal authority to prohibit the conversion.²⁶ The applicable zoning statute²⁷ authorizes a municipality to regulate the *use* of land within its boundaries, but the court found that conversion merely changes the form of ownership.²⁸ Accordingly, the conversion was not subject to local regulation.

Two years after this unsuccessful municipal effort, the North Carolina legislature enacted the tenant protection statute.²⁹ The statute contains two provisions designed to ease the tenant's burden during conversion. First, it

19. *Id.* at IX-13.

20. *Id.*

21. The national vacancy rate is 4.8%. *Senate Hearings, supra* note 6, at 2 (statement of Sen. Harrison A. Williams Jr.).

22. Comment, *The Condominium Conversion Problem: Causes and Solutions*, 1980 DUKE L.J. 306, 317. Because of the high cost of construction and mortgage financing, few converted units are replaced through new construction. *Id.* at 317-18.

23. Judson, *supra* note 10, at 190-91. These relocation problems have a more severe effect on elderly and disabled tenants. See *infra* notes 38-43 and accompanying text.

24. *Graham Court Assocs. v. Town of Chapel Hill*, 53 N.C. App. 543, 546, 281 S.E.2d 418, 419 (1981).

25. 53 N.C. App. 543, 281 S.E.2d 418 (1981).

26. *Id.* at 551, 281 S.E.2d at 423.

27. N.C. GEN. STAT. § 160A-381 (1981). A similar statute, N.C. GEN. STAT. § 153A-340 (Supp. 1983), authorizes county governments to regulate the use of land within their boundaries. Presumably, the *Graham Court Assocs.* ruling would apply to county as well as municipal governments.

28. *Graham Court Assocs.*, 53 N.C. App. at 551, 281 S.E.2d at 422. *Accord* City of Miami Beach v. Arlen King Cole Condominium Ass'n, 302 So. 2d 777 (Fla. Dist. Ct. App. 1974); AMN, Inc. v. South Brunswick Township Leveling Bd., 93 N.J. 518, 461 A.2d 1138 (1983); Maplewood Village Tenants Ass'n v. Maplewood Village, 116 N.J. Super. 372, 282 A.2d 428 (1971). *But see* Goldman v. Town of Dennis, 375 Mass. 197, 375 N.E.2d 1212 (1978) (conversion involving a probable change in the building's use is subject to zoning regulation).

29. An Act to Protect Renters of Apartment Buildings Being Converted to Condominiums,

requires the landlord to give the tenant ninety days notice of the conversion.³⁰ If the tenant's lease extends beyond this ninety-day period, presumably he will be allowed to complete his full lease term.³¹ Second, the landlord must give the tenant a thirty-day first option to purchase his unit.³² The landlord must include with the option an offering statement containing a description of the condominium and any planned improvements, the terms of any warranties, and any other information given to prospective nontenant buyers.³³ Once the tenant elects to exercise his option, he is granted an additional thirty days to complete the sale.³⁴

The ninety-day notice requirement is similar to notice requirements enacted by twenty-five other states and the District of Columbia.³⁵ The purpose

1983 N.C. Adv. Legis. Serv. ch. 624, § 1 (codified at N.C. GEN. STAT. §§ 47A-34 to -37 (Supp. 1983)).

30. N.C. GEN. STAT. § 47A-36(a) (Supp. 1983).

31. The statute is unclear on this point. A landlord could argue that the statute empowers him to evict a tenant at the end of the 90-day notice period, regardless of the remaining duration of the lease. One commentator, however, has noted that such a construction would be an unconstitutional taking of the tenant's leasehold without due process. See Note, *Condominium Conversions—Balancing Tenants' Rights and Property Owners' Interests*, 27 WAYNE L. REV. 349, 359 (1980).

32. N.C. GEN. STAT. § 47A-36(b) (Supp. 1983).

33. *Id.* § 47A-35.

34. *Id.* § 47A-36(b).

The constitutionality of North Carolina's tenant notice and first option provisions is not at issue. Courts have consistently found these and more stringent tenant protection requirements constitutional when subjected to due process (uncompensated taking) and equal protection challenges. See *River Park Tenants Ass'n v. 3600 Venture*, 534 F. Supp. 45, 50 (E.D. Pa. 1981) (extended notice requirement for elderly and disabled tenants survives equal protection analysis (*dicta*)); *Flynn v. City of Cambridge*, 1981 Mass. Adv. Sh. 692, 418 N.E.2d 335 (1981) (temporary moratorium on all evictions during conversion upheld against due process challenge); *Grace v. Town of Brookline*, 379 Mass. 43, 399 N.E.2d 1038 (1979) (6 month moratorium on all evictions during conversion upheld against due process and equal protection challenges); *Reiner-Kaiser Assocs. v. McConachie*, 104 Misc. 2d 750, 429 N.Y.S.2d 343 (1979) (ban on eviction of elderly tenants during conversion upheld against equal protection challenge); see also *Judson*, *supra* note 10, at 198-230; *Rosenthal*, *The Legality and Practicality of Condominium Conversion Moratoriums*, 34 U. MIAMI L. REV. 1199, 1211-1222 (1980); Note, *Fifth Amendment Takings and Condominium Conversion Regulations that Restrict Owner Occupancy Rights*, 62 B.U.L. REV. 467, 486-91 (1982); Note, *The Validity of Ordinances Limiting Condominium Conversions*, 78 MICH. L. REV. 124, 134-35 (1979).

35. See ARIZ. REV. STAT. ANN. § 33-1326(B) (Supp. 1983) (120 day notice); CAL. GOV'T CODE § 66427.1(c) (West 1954) (180 day notice); COLO. REV. STAT. § 38-33-112(3) (1973) (90 day notice); CONN. GEN. STAT. ANN. § 47-88b(b)(3) (West Supp. 1983) (180 day notice); D.C. CODE ANN. § 45-1868 (b)(1) (1981) (120 day notice); FLA. STAT. § 718.606(1) (Supp. 1981) (270 day notice for tenants in possession over 180 days; 180 day notice for all other tenants); GA. CODE ANN. § 44-3-87(a) (Supp. 1983) (120 day notice); ILL. ANN. STAT. ch. 30, § 330(a) (Smith-Hurd Supp. 1983) (120 day notice); ME. REV. STAT. ANN. tit. 33, § 1604-111(a) (Supp. 1983) (120 day notice); MD. REAL PROP. CODE ANN. § 11-102.1(c) (Supp. 1983) (180 day notice); MICH. STAT. ANN. § 26.50(204) (Callaghan Supp. 1983) (120 day notice); MINN. STAT. ANN. § 515A.4-110(a) (West Supp. 1983) (120 day notice); MO. ANN. STAT. § 448.4-112(1) (Vernon Supp. 1984) (120 day notice); N.H. REV. STAT. ANN. § 356-B:56(II) (Supp. 1981) (90 day notice); N.J. STAT. ANN. § 2A:18-61.2(g) (West Supp. 1983) (3 year notice); N.Y. GEN. BUS. LAW § 352-eee(2)(d)(ii) to -eee(2)(d)(ii) (McKinney Supp. 1983) (local governments in New York City metropolitan area empowered to require 3 year notice); OHIO REV. CODE ANN. § 5311.25(G) (Page 1981) (120 day notice); OR. REV. STAT. § 94.116(1) (1953) (120 days notice); PA. STAT. ANN. tit. 68, § 3410(a) (Purdon Supp. 1983) (1 year notice); R.I. GEN. LAWS § 34-36.1-4.12(a) (Supp. 1983) (120 day notice); S.C. CODE ANN. § 27-31-420(A) (Supp. 1983) (90 day notice); TENN. CODE ANN. § 66-27-123(a) (1982) (60 day notice); VA. CODE ANN. § 55-79.94(b) (Supp. 1983) (120 day notice); WASH.

of such notice is to afford the displaced tenant ample time to secure suitable replacement housing. Although the ninety-day period is shorter than the notice periods provided in most conversion statutes,³⁶ it gives most tenants sufficient time to find replacement housing since a displaced tenant usually can find similar housing within thirty to ninety days.³⁷ For these tenants, the ninety-day notice period will ease the burden of conversion.

Although the notice period is sufficient for the majority of tenants, it is inadequate for elderly and disabled tenants, two groups with special housing needs. Conversion particularly harms the elderly. During a conversion, elderly tenants will very likely be among those displaced.³⁸ Because of fixed incomes, many elderly tenants are unable to obtain the necessary financing to purchase their individual unit.³⁹ Moreover, those who can afford to purchase may have no desire to do so. Given their shorter remaining life expectancies, the advantages of establishing equity in a condominium are less attractive to elderly tenants; such tenants may prefer to keep their financial resources in liquid assets for present use and enjoyment.⁴⁰

In addition to being highly susceptible to displacement, the elderly have the most difficulty in obtaining replacement housing. Many elderly tenants cannot search for new housing without physical assistance. Additional problems arise from the need to find housing with adequate security, easy physical access, and sufficient proximity to medical care.⁴¹ Finally, the elderly can suffer chronic emotional and psychological harm after being forced to move. Displacement disrupts established patterns of daily life and causes increased stress and anxiety. The more serious of these disruptions include impaired access to family members, friends, church services, and preferred medical care.⁴²

REV. CODE ANN. § 59.18-200(2) (Supp. 1983) (90 day notice); W. VA. CODE § 36B-4-110(a) (Supp. 1983) (120 day notice); WIS. STAT. ANN. § 703.08(1) (West 1957) (120 day notice).

Congress has conducted extensive hearings on the need for federal conversion rights for tenants. See, e.g., *1981 House Hearings*, *supra* note 5; *Condominium Conversions: Hearings before the Subcomm. on Housing and Consumer Interests of the House Select Comm. on Aging*, 96th Cong., 2d Sess. (1980) [hereinafter cited as *1980 House Hearings*]; *Senate Hearings*, *supra* note 6. In the Condominium and Cooperative Conversion Protection and Abuse Relief Act of 1980, 15 U.S.C. § 3605 (1982), however, Congress merely urged state and local governments to enact their own notice and first-purchase option requirements. This result reflected a belief that the issue of "notice and opportunity to purchase" is "more appropriately addressed at the state and local level." H.R. REP. NO. 1420, 96th Cong., 2d Sess. 167, *reprinted in* 1980 U.S. CODE CONG. & AD. NEWS 3617, 3712.

36. Most states require a 120 or 180 day notice to the tenants. See *supra* note 35.

37. HUD REPORT, *supra* note 5, at IX-15.

38. Thirty-seven percent of displaced tenants are over fifty-five years old. *1980 House Hearings*, *supra* note 35, at 7 (statement of Michael A. Stegman, Deputy Ass't Sec'y for Research, U.S. Dept of Hous. & Urban Dev.).

39. Note, *supra* note 7, at 210.

40. Note, *Conversion of Apartments to Condominiums and Cooperatives: Protecting Tenants in New York*, 8 U. MICH. J.L. REF. 705, 708 (1975).

41. Comment, *Conversion of Apartments to Condominiums: Social and Economic Regulations Under the California Subdivision Map Act*, 16 CAL. W.L. REV. 466, 468 (1980).

42. These disruptions and the emotional and psychological harm associated with them are discussed in several studies. See *1981 House Hearings*, *supra* note 4, pt.1 at 162 (report of Kathleen R. Beal, Gerontology Program, George Washington Univ.); *1980 House Hearings*, *supra* note

Like the elderly, the disabled require more time to adjust to the change and locate a new home. For example, they have specialized housing needs that require easy physical access and close proximity to medical care. Locating replacement housing that meets these special needs may be difficult. Rental costs can further complicate this search since many disabled tenants depend on fixed incomes.⁴³

Ten states and the District of Columbia have recognized these special problems and have enacted either eviction prohibitions or additional notice requirements for elderly and disabled tenants.⁴⁴ The North Carolina notice requirement lacks such a provision. Thus, although the current notice requirement is a significant step in the right direction, the legislature should consider an extended notice requirement of one to three years for elderly and disabled tenants.⁴⁵

The second provision of the North Carolina statute requires a landlord or developer to grant the tenant a thirty-day first option to buy his apartment.⁴⁶ This first-purchase option is designed to prevent developers from securing advance purchase commitments from third parties before notifying tenants of the planned conversion. First option requirements have gained wide legislative acceptance; twenty-one jurisdictions besides North Carolina now require them in all conversions.⁴⁷

35, at 65 (report of Dr. Leon A. Pastalan, Dir., Environment and Aging Program, Univ. of Michigan Inst. of Gerontology); *Senate Hearings, supra* note 6, at 116 (report of Legal Research & Serv. for the Elderly, Nat'l Council of Senior Citizens).

43. Note, *supra* note 7, at 210. If the tenant's disability is total, he may be completely dependent on social security, veteran's benefits, worker's compensation, or private insurance benefits for subsistence.

44. See CONN. GEN. STAT. ANN. § 47(a)-23c(b) (West Supp. 1983) (general prohibition of eviction of blind, disabled, or elderly tenants); D.C. CODE ANN. § 45-1616(a) (1981) (prohibits eviction of elderly tenants with annual incomes below \$30,000 during a conversion); MD. REAL PROP. CODE ANN. § 11-137 (Supp. 1983) (3 year notice of conversion to elderly tenants on fixed incomes); MICH. STAT. ANN. § 26.50(204b) (Callaghan Supp. 1983) (4 to 10 year notice determined by tenant's age; 4 year notice to disabled tenants); MINN. STAT. ANN. § 515A.4-110(a) (West Supp. 1983) (180 day notice to elderly tenants); N.J. STAT. ANN. § 2A:18-61.22 to .39 (West Supp. 1983) (local government authorized to grant disabled and elderly tenants individual lease extensions for a maximum of 40 years); N.Y. GEN. BUS. LAW § 352-e(2-a)(b)(ii) (McKinney Supp. 1983) (prohibits eviction of disabled and elderly tenants during a conversion); PA. STAT. ANN. tit. 68, § 3410(f) (Purdon Supp. 1983) (2 year notice to blind, elderly, and disabled tenants); R.I. GEN. LAWS § 34-36.1-4.12(e) (Supp. 1983) (1 year notice to elderly tenants); S.C. CODE ANN., § 27-31-420(A) (Supp. 1983) (120 day notice to elderly tenants); VA. CODE § 55-79.94(f) (Supp. 1983) (local governments authorized to require 3 year notice to elderly and disabled tenants).

45. A 1 year notice requirement for elderly and disabled tenants is advocated in Note, *Municipal Regulation of Condominium Conversions in California*, 53 S. CAL. L. REV. 225, 277 (1979). See also Comment, *supra* note 22 at 331; Note, *supra* note 31 at 364.

46. See *supra* notes 32-34 and accompanying text.

47. See ARIZ. REV. STAT. ANN. § 33-1326(B)(2) (Supp. 1983) (30 day first-purchase option); CAL. GOV'T CODE § 66427.1(d) (West 1983) (90 day first-purchase option); CONN. GEN. STAT. ANN. § 47-88b(c) & (j) (West Supp. 1983) (90 day first-purchase option to individual tenant; 30 day first-purchase option to tenants' association); D.C. CODE ANN. § 45-1638 (1981) (60 day first-purchase option); FLA. STAT. § 718.612 (Supp. 1981) (45 day first-purchase option followed by right of first refusal to subsequent public offers at more favorable terms); GA. CODE ANN. § 44-3-87(b) (Supp. 1983) (60 day first-purchase option followed by right of first refusal to subsequent public offers at more favorable terms); ILL. ANN. STAT. ch. 30, § 330(a) (Smith-Hurd Supp. 1983) (30 day first-purchase option); ME. REV. STAT. ANN. tit. 33, § 1604-111(b) (Supp. 1983) (60 day first-purchase option followed by 180 day ban on public sale at more favorable terms); MD. REAL

Although North Carolina's thirty-day option period is shorter than that provided by most jurisdictions,⁴⁸ it should provide a tenant sufficient time to analyze the relevant information pertaining to the conversion and reach an intelligent decision. This decision is greatly simplified because the tenant already is familiar with the layout and condition of the complex and his particular apartment. Many tenants will desire a longer option period so they can explore housing and financing options, but this desire must be balanced against the landlord's interest in proceeding with the conversion. As such, the thirty-day option, although short, is adequate. The thirty-day period to complete the sale after exercise of the option is also adequate. A condominium developer usually establishes standard sales terms for all conversion units and obtains advance financing commitments from area lending institutions for qualifying purchasers.⁴⁹ Thus, the tenant-purchaser probably will not face lengthy negotiations or a prolonged search for financing. Any terms subject to negotiation can be settled within the thirty-day period. If the tenant chooses to secure his own financing, he has sixty days to accomplish that goal—the thirty-day option period plus the thirty-day settlement period. Thus, although the option is not a cure-all,⁵⁰ it provides needed guarantees for those tenants who are willing and able to buy their units.

On their face, the option and settlement provisions should guarantee the tenant's right to purchase his unit if he so chooses. This result, however, may be defeated by two further provisions of the statute and by a significant omission. First, the tenant does not receive the first-option right to his unit if the "boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion."⁵¹ A landlord could claim that improvements to the unit constitute a substantial change in dimensions and

PROP. CODE § 11-136(a) (Supp. 1983) (60 day first-purchase option); MINN. STAT. ANN. § 515A.4-110(b) (West Supp. 1983) (60 day first-purchase option to buy followed by 180 day ban on public sale at more favorable terms); N.H. REV. STAT. ANN. § 356-B:56(II) (Supp. 1981) (60 day first-purchase option); N.J. STAT. ANN. § 2A:18-61.8 (West Supp. 1983) (first-purchase option); N.Y. GEN. BUS. LAW § 352-eee(2)(d)(ix) (McKinney Supp. 1983) (90 day first-purchase option); OHIO REV. CODE ANN. § 5311.25(G) (Page 1981) (90 day first-purchase option); OR. REV. STAT. § 94.122 (1983) (60 day first-purchase option followed by 60 day right of first refusal to any public offer at more favorable terms); PA. STAT. ANN. tit. 68, § 3410 (Purdon Supp. 1983) (6 month first-purchase option followed by 6 month right of first refusal to public offer at more favorable terms); R.I. GEN. LAWS § 34-36.1-4.12(b) (Supp. 1983) (60 day first-purchase option followed by 180 day ban on public sale at more favorable terms); S.C. CODE ANN. § 27-31-420(B) (Supp. 1983) (60 day first-purchase option followed by 15 day right of first refusal to public offer at more favorable terms); VA. CODE § 55-79.94(b) (Supp. 1983) (60 day first-purchase option); W.VA. CODE § 36B-4-110(b) (Supp. 1983) (60 day first-purchase option followed by 180 day ban on sale to public at more favorable terms); WIS. STAT. ANN. § 703.08(1) (West 1981) (60 day first-purchase option).

48. A 60 day option is required in 13 of the 21 jurisdictions requiring such options. Three states have longer option periods. See *supra* note 47.

49. HUD REPORT, *supra* note 5, at III-9. Such advance financing commitments are attractive to financial institutions because the institution is guaranteed all loan business for the project and gains a security interest in the entire project.

50. Only those tenants who are financially able to purchase their unit or who qualify for financing will benefit from this provision. Tenants who are too poor to qualify for financing are not assisted by this provision; they must rely on the ninety-day notice period to find replacement housing or negotiate a lease agreement with the new unit owner.

51. N.C. GEN. STAT. § 47A-36(b) (Supp. 1983).

deny the tenant a first-purchase option. In such a case, the tenant would be forced into litigation to preserve his option right. More significantly, this provision can create a dispute over option rights among the tenants if one unit is divided and merged into adjoining units during conversion.⁵² For these reasons, the legislature should consider one commentator's suggestion that tenants be given the option to purchase a unit within the conversion project if it is no longer possible to purchase his particular unit.⁵³

Second, the tenant loses his right to specific performance of the option if the landlord conveys the unit to a third-party purchaser who records the conveyance.⁵⁴ Although this result follows North Carolina's long-standing status as a "pure race" recording jurisdiction,⁵⁵ it robs the option of any real meaning. If the third-party purchaser records the conveyance, the tenant is limited to a suit for damages. Damages provide an inadequate remedy because, with the exception of moving expenses, the tenant can prove no pecuniary loss. This result, however, could be avoided by a statutory provision for alternative remedies. Such a provision might include a right to purchase an unsold unit or to recover liquidated damages in the amount of a set percentage of the unit's value. Either alternative would discourage landlords from selling units in violation of the tenant's option right.

A major omission from the North Carolina statute poses the final hazard to the option right. The tenant's option right may prove meaningless if the landlord demands an excessive price from the tenant during the option period, waits for the option to expire, and then offers the unit to the public at more favorable terms. A landlord might choose this course of action if he wanted to end relations with the tenant. To prevent such treatment of tenants, several states provide a statutory right of first refusal for a set period after the option expires.⁵⁶ Under this system, if the tenant declines to exercise his option and the landlord subsequently offers the unit to a third party at more favorable terms, the tenant has the right to purchase the unit at those terms. This first-refusal right requires the landlord to negotiate in good faith and eliminates the temptation to wait out the option period. It has received support from commentators⁵⁷ and should be included in the North Carolina statute.

Currently, all residential tenant conversion rights in North Carolina are provided by state law; local governments apparently lack authority to supple-

52. Wynn, *Condominium Conversions and Tenant Rights—Wisconsin Statutes Section 703.08: What Kind of Protection Does it Really Provide?*, 63 MARQ. L. REV. 73, 80 (1979).

53. *Id.* at 81.

54. N.C. GEN. STAT. § 47A-36(c) (Supp. 1983).

55. Under a "pure race" recording system, the grantee who first records his deed will prevail over any other conveyance from the title source. This grantee will prevail regardless of any notice he may have of a prior, unrecorded conveyance. See N.C. GEN. STAT. § 47-18(a) (1976), construed in *Hill v. Pinelawn Memorial Park, Inc.*, 304 N.C. 159, 282 S.E.2d 779 (1981); *Patterson v. Bryant*, 216 N.C. 550, 5 S.E.2d 849 (1939).

56. Ten states currently provide a right of first refusal: Florida, Georgia, Illinois, Maine, Minnesota, Oregon, Pennsylvania, Rhode Island, South Carolina, and West Virginia. See *supra* note 47.

57. See, e.g., Note, *supra* note 31, at 364.

ment these state protections either by direct regulation⁵⁸ or through the exercise of zoning powers.⁵⁹ Thus, the North Carolina legislature should enact a sound and comprehensive tenant conversion rights statute. Although the current statute is a significant step in that direction, it is incomplete. The statute establishes a tenant's right to notice of conversion, a provision characterized as "the most fundamental tenant protection of all."⁶⁰ This notice requirement, however, fails to address the unique housing needs of elderly and disabled tenants. These tenants are affected most severely by a conversion and require more time to locate replacement housing. Accordingly, they should be provided additional notice of an impending conversion beyond the ninety days provided to all tenants.

The statute also correctly grants the tenant an option to purchase his converted unit before it is offered for public sale. Such an option will limit the disruptive effects of a conversion and avoid the expense of a move for those tenants willing and able to buy their unit. The statute in its present form, however, cannot fully implement this policy. A tenant can lose his option right if the conversion involves changes to the building layout or if the developer demands an excessive option price in an effort to wait out the option period. Moreover, this option right is unenforceable if the landlord conveys the unit to a third party who records the conveyance. The legislature should amend the statute to preclude any of these possibilities.

Condominium conversion is an established phenomenon in the American housing market. It offers significant benefits to landlords, developers, purchasers, and local communities.⁶¹ Conversion, however, can impose severe strain, even hardship, on the original tenant of the conversion property. This adverse

58. Prior to 1983 city and municipal governments were permitted to supplement all provisions of the Unit Ownership Act. N.C. GEN. STAT. § 47A-27 (1976) (amended *Id.* (Cum. Supp. 1983)). When the tenant protection provisions were added as article 2 of the Act in 1983, this authorization to supplement the Act was limited to the provisions of article 1, which governs the registration, public sale, and management of condominiums. 1983 N.C. Adv. Legis. Serv. ch. 624, § 2 (codified at N.C. GEN. STAT. 47A-27 (Cum. Supp. 1983)).

59. See *supra* notes 24-28 and accompanying text.

The problems created by condominium conversion vary from community to community; cities with a heavy reliance on rental housing experience the most severe impact. The legislature should permit local governments to respond to conversion problems by granting them some regulatory authority. Certainly, no North Carolina city is experiencing the conversion problems of the large urban centers, but some flexibility of response is needed.

60. *Senate Hearings, supra* note 6, at 132 (report of Legal Research and Servs. for the Elderly).

61. The advantages to a community of condominium conversion are detailed in Comment, *supra* note 22, at 314-17. Because the aggregate value of the individual converted units exceeds the value of the building as rental property, conversion increases the local tax base. Moreover, condominiums receive better maintenance than rental property and many buildings and individual units receive extensive renovation on conversion. Finally, conversion attracts upper and middle class families back into urban areas. Consumer spending by these families benefits area businesses. See also HUD REPORT, *supra* note 5, at VIII-1 to -36.

One commentator rejects this conclusion, arguing that, with the exception of the increased tax base, conversion offers no economic advantages to the community. *Senate Hearings, supra* note 6, at 49 (statement of Daniel Lauber, Planning/Communications Assocs.). Lauber argues that conversions typically occur in already stable neighborhoods and that the conversion itself is destabilizing because it displaces a large number of tenants.

impact can be reduced through appropriate legislation. North Carolina has initiated such a legislative response, one that it should now complete.

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