

# Pending Legislation May Impact Conversion of Chicago's Condominiums to Apartments

by Chad J. Richman

A FREEBORN & PETERS LLP CLIENT ALERT

## ABOUT THIS CLIENT ALERT:

There is legislation pending in the Illinois legislature that, if passed, would make acquiring entire condominium projects more difficult for investors and developers seeking to convert existing condominium projects to rental properties. This client alert discusses the new pending legislation as well as the process to acquire and de-convert existing condominium projects.

Legislation originally introduced in the Illinois General Assembly on February 3, 2017 as House Bill 2401, would, amongst other things, increase the minimum percentage threshold of unit owners in a condominium that may compel a sale of the entire condominium property to a single entity from 75% to 85% for condominiums of 7 units or more (unless less than 25% of the units are owner occupied, in which case the 75% threshold would still apply). This legislation is pending and has not been adopted and therefore is not currently law.



With land prices soaring, construction material and labor cost inputs rising and an abundance of vintage condominium buildings of a certain era in need of deferred maintenance and capital investment, Chicago's vintage condominiums are ripe for adaptive re-use. Accordingly, we are being approached by investors and developers to assist with the acquisition and de-conversion of condominium towers to apartment rental properties. In light of the above pending legislation, the process should be reviewed carefully on a case-by-case basis to confirm that proper legal measures are taken to ensure a successful and advantageous re-development project. The process typically works in two steps (I) obtaining the vote of unit owners to acquire the entire condominium; and (II) legally de-converting the condominium.

- I. **Obtaining the Requisite Vote to Acquire.** As mentioned above, fewer than all unit owners in a condominium may be able to compel a sale of the entirety of the condominium property to a single entity. Under current law, unless a greater percentage is provided for in the declaration or bylaws, Section 15 of the Illinois Condominium Property



Act (the “Act”) (765 ILCS 605/15) permits not less than 75% of all unit owners (where the property contains 4 or more units) calculated by unit percentage (not just those that attend the meeting) by affirmative vote at a meeting of unit owners duly called for such purpose, to elect to sell the property. If the requisite unit owner vote occurs, all owners (even dissenting unit owners) are bound to participate in the sale. Any dissenting unit owner who has filed written objection within 20 days after the date of the meeting at which such sale was approved is entitled to receive from the proceeds of the sale an amount equivalent to the value of its interest in the condominium property, as determined by a fair appraisal, less the amount of any unpaid assessments or charges due and owing from such unit owner. If there is a disagreement as to the value of the interest of a dissenting unit owner, Section 15 has a mandatory arbitration process whereby that unit owner and prospective purchaser each have the right to designate an expert appraiser, and both appraisers mutually designate a third appraiser. The three appraisers constitute a panel to determine by vote of at least two of the members of the panel, the value of the dissenting unit owner’s interest in the condominium property.

**II. De-Converting the Condominium.** Although legal de-conversion of the condominium is not legally essential to operate, finance and/or sell the condominium, the administrative aspects of the condominium ownership regime are somewhat burdensome and add an unnecessary layer of compliance. Also, for property tax purposes, a single rental property may be more favorably assessed than an aggregation of condominium units. For these reasons, a bulk buyer may want to “de-convert” a property (i.e., withdraw it from the provisions of the Act). Withdrawal of property from the Act is addressed in the Act itself. Section 16 of the Act (765 ILCS 605/16) permits all unit owners to withdraw the property from the Act by recording an instrument to that effect. To be effective, however, the withdrawal must be agreed to by all encumbrancers whose liens affect any of the condominium property, by having their liens transferred to the undivided interests attributed to the owners whose units were so burdened.

After withdrawal of the property from the Act, the property is deemed to be owned in common by all of the owners, with each owner having the same percentage as previously owned by such owner in the common elements. In the case of a single buyer, as contemplated in Section “I” above, the single bulk buyer will be the sole 100% owner of the property. Thus, withdrawal of a property from the Act can be accomplished by recording a simple declaration to that effect, executed by all unit owners and consented to by all the encumbrancers holding liens on the units. Involvement of a title company in the planning process for the withdrawal is essential to ensure the ability of the owner or owners after withdrawal of the property from the Act to convey insurable title in the entirety of the real estate to a future purchaser or lender.

In today’s market, with sluggish condominium sales and dynamic apartment rental projects, it is important to understand all available legal opportunities to assist with meeting one’s objectives.

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Chad is a Partner in the Real Estate Practice Group, and has significant experience in a broad range of real estate, finance, transactional, and general business matters.

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