

NOTES

Casting New Light on a Continuing Problem: Re-Considering the Scope and Protections Offered by Massachusetts's Condominium Conversion Regulations

*“Unless the available stock of rental housing, and the tenants who reside therein, receive further protection from the consequences of conversion of said accommodations to condominiums and cooperatives than the law now affords, this rental housing shortage will generate serious threats to the public health, safety, and general welfare of the citizens of the commonwealth, particularly the elderly, the handicapped, and persons and families of low and moderate income.”*¹

I. INTRODUCTION

Twenty-five years ago, the Massachusetts General Court declared an emergency regarding rental housing in the Commonwealth.² It responded by enacting the Massachusetts Condominium Conversion Act (the Conversion Act), which regulates the conversion of rental housing into condominiums.³

1. Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 926 (summarizing findings of Massachusetts General Court), *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181. This act as amended is not codified in the Massachusetts General Laws, but is referenced and reproduced in chapter 183A of the Massachusetts General Laws. *See* MASS. GEN. LAWS ch. 183A (2006).

2. *See* § 1, 1983 Mass. Acts at 926 (attributing rental-housing depletion, in part, to condominium conversions). Massachusetts was not alone in recognizing the depletion of rental-housing stocks during this period. *See* DIV. OF POLICY STUDIES, U.S. DEP'T OF HOUS. & URBAN DEV., THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS AND COOPERATIVES XI-1 (1980) [hereinafter 1980 HUD STUDY] (detailing state legislatures' responses in wake of rental-housing crisis); KEITH B. ROMNEY & BRAD ROMNEY, CONDOMINIUM DEVELOPMENT GUIDE: PROCEDURES, ANALYSIS, FORMS ¶ 10.05[1], at 10-33 to 10-34 (Warren, Gorham and Lamont 2d ed. 1983 & Supp. 1990) [hereinafter ROMNEY] (providing examples of nationwide legislative acknowledgements and responses to rental-housing shortages); Bernard V. Keenan, *Condominium Conversion of Residential Rental Units: A Proposal for State Regulation and a Model Act*, 20 U. MICH. J.L. REFORM 639, 639 n.3 (1987) (citing 1980 HUD STUDY, *supra*) (observing roughly 50 percent of states have enacted tenant protections from condominium conversion).

3. *See generally* 1983 Mass Acts at 926-33 (granting minimum protection standards for tenants residing in rental housing undergoing conversion). The Massachusetts Conversion Act defines the term “convert” as, “the initial offer, in any manner, for sale and transfer of title to any residential unit as one or more condominium units pursuant to an individual unit deed or deeds” § 2, 1989 Mass. Acts at 1182. The Massachusetts condominium enabling statute (Massachusetts Condominium Law) defines the term “condominium” in the following way:

The land or the lessee's interest in any lease of such land which is submitted to the provisions of [Mass. Gen. Laws ch. 183A], the building or buildings, all other improvements and structures

The Act grants current tenants, particularly those who are elderly, handicapped, and low-to-moderate income, numerous protections if they reside in housing undergoing conversion.⁴ It also provides minimum requirements for all apartment conversions in Massachusetts, permits cities and towns to adopt additional protections, and exempts certain municipalities from its provisions.⁵

The same emergency declared twenty-five years ago continues to be a problem today for elderly, handicapped, and low-to-moderate-income tenants, in part because condominiums remain a significant percentage of the Massachusetts real-estate market.⁶ Condominium sales reports typically do not indicate whether the sale was of a newly constructed condominium or of a converted condominium; this makes it difficult to specifically determine the number of condominiums converted from rental housing.⁷ The conversion of rental housing to residential condominiums appears to be a large share of Massachusetts condominium sales, despite the lack of precise statistics on the structure of condominium sales.⁸ Of particular concern to this Note, converted condominiums containing fewer than four units constitute roughly one-third

thereon, and all easements, rights and appurtenances belonging thereto, which have been submitted to the provisions of [Mass. Gen. Laws ch. 183A].

MASS. GEN. LAWS ch. 183A, § 1 (200) (defining condominium for statutory purposes). Frequently, statutes group the term “condominiums” with that of “cooperatives.” See THOMPSON ON REAL PROPERTY, § 36.04(a), 234-35 (David A. Thomas ed., 2d ed. 2004) (distinguishing condominium from cooperative form of real-estate ownership). For the purposes of this Note, the distinction between the terms is not determinative of the protection afforded to tenants or buyers. The term “condominium” will refer to both types of housing.

4. §§ 4-5, 1983 Mass. Acts at 929-31 (providing remedies to current tenants); see *infra* notes 38-42 and accompanying text (detailing specific Massachusetts Conversion Act protections afforded to tenants). The terms “elderly,” “low-to-moderate income,” and “handicapped” are defined by the Conversion Act. See § 3, 1983 Mass. Acts at 928-29 (listing definitions of “elderly tenant,” “handicapped tenant,” and “low or moderate income tenant,” for purposes of Act). References in this Note to elderly, handicapped, and low-to-moderate income tenants assume the same definition of those terms as provided by the Conversion Act.

5. See § 2, 1983 Mass. Acts at 927 (applying Act’s protections “to all housing accommodations in any city or town of the commonwealth”). Municipalities that receive authorization through a special act to govern condominium conversion are exempt from the Act. *Id.* The Act further permits towns or cities to provide additional tenant protections beyond the Act’s requirements with a two-thirds vote of the governing body of the city or town. *Id.*

6. See MASS. ASS’N OF REALTORS, CONDOMINIUM SALES AND SELLING PRICES: REGIONAL COMPARISONS FOR YEAR END 2007 VS. YEAR END 2006 (2008), available at <http://www.marealtor.com/content/upload/AssetMgmt/Documents/Member%20Resources/Research/quarterly/2007%20YE%20Report%20-%20Condo.pdf> (demonstrating condominiums compose one-third of single-family home sales in Massachusetts). In 2007, purchasers bought 41,510 single-family homes and 19,789 condominiums. See *id.*

7. See 1980 HUD STUDY, *supra* note 2, at IV-1 to -4 (attributing difficulty in compiling condominium-conversion statistics to inconsistent reporting processes); see also Stephanie V. Siek, *Advocate: Condo Law Is Ignored*, BOSTON GLOBE, Aug. 4, 2005, at 1 (noting exact conversion statistics difficult to obtain).

8. See Steve Adams, *Condo Boom; As State’s Single-Family Market Cools Off, Condominiums Remain Red Hot*, PATRIOT LEDGER, Apr. 2, 2005, at 31 (describing positive response to condominium conversion in Quincy, Massachusetts); Kimberly Blanton, *Somerville Aims To Aid Tenants in Condo Conversions*, BOSTON GLOBE, May 27, 2006, at B6 (describing Somerville’s increasing volume of converted condominiums). For the first time, the *Massachusetts Landlord’s Survival Guide* will include a chapter on condominium conversion. See Siek, *supra* note 7.

and possibly as many as two-thirds of all converted rental units.⁹

Small unit volume (SUV) rental-housing conversion, the conversion of rental housing containing less than four units, is problematic for current tenants and landlords because the Conversion Act does not apply to rental housing with fewer than four units.¹⁰ A tenant living in a three-unit residential apartment building, such as a townhouse, for example, receives no protection under the Conversion Act if the landlord or building owner decides to convert the building into condominiums.¹¹ Additionally, municipal ordinances that provide exemptions or additional protections from the Conversion Act differ in their applicability to housing with four or more units.¹²

This Note argues that there should be more protection for tenants and buyers of converted SUV residential properties. Part II examines rental-housing conversion practices and provides a summary of federal, state, and local laws designed to protect individuals and the public from the adverse effects of conversion.¹³ Part III begins with a discussion of the current law's failure to adequately protect the elderly, handicapped, and low-to-moderate income SUV tenants from conversion's negative effects.¹⁴ Then, Part III argues that

9. See OFFICE OF POLICY DEV. AND RESEARCH, U.S. DEP'T OF HOUS. AND URBAN DEV., AMERICAN HOUSING SURVEY FOR THE BOSTON METROPOLITAN AREA: 1998 44 (2000) available at <http://www.census.gov/prod/2000pubs/h170-98-3.pdf> [hereinafter BOSTON HOUSING CENSUS] (reporting that out of eighty-three thousand condominiums, twenty-eight thousand contained between two and four units). If the proportion of condominium units is equivalent to the proportion of converted rental-housing units, then small-unit conversions represent roughly one-third of all conversions. *Id.* But see S. REP. NO. 96-736, at 49-50 (1980), reprinted in 1980 U.S.C.A.N. 3506, 3556-57 (arguing rentals with fewer than five units, composing 60 percent of rental market, uneconomical for conversion). In Cambridge, Massachusetts, two-thirds of all condominiums containing between one and three units were converted from pre-existing structures. See CAMBRIDGE CMTY. DEV. DEP'T, CITY OF CAMBRIDGE, MASSACHUSETTS, HOUSING PROFILE 31 (2006), available at http://www.cambridgema.gov/cdd/data/housing/hsg_profile_2006.pdf [hereinafter CAMBRIDGE HOUSING PROFILE] (providing statistics on converted condominiums in Cambridge). Condominium conversions exceeding three units compose one-third of all converted properties, but compose between two-thirds and three-fourths of the total number of converted condominium units. See *id.* (reporting conversion statistics by building size, not by total number of units within building).

10. See Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 928 (including rental housing within definition of "housing accommodation"). The Conversion Act defines housing accommodations to exclude "buildings containing fewer than four housing accommodations." *Id.*

11. See *Adams v. Maloney*, No. 02-P-1667, 2004 WL 1432982, at *1 (Mass. App. Ct. June 25, 2004) (determining tenant cannot rely on Conversion Act because building contained fewer than four units).

12. Compare BOSTON, MASS., CODE ch. X, § 10-2.1(i)(3) (2007) (exempting fewer than four units), and BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.4 (2007) (adopting Conversion Act's protections and, therefore, exempting fewer than four units), with CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.010 (2007) (regulating removal of all rent-controlled housing without minimum-unit exemption), and SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-65 (2008) (regulating removal of all "rental units" without minimum-unit exemption).

13. See *infra* Part II.A (detailing condominium-conversion process including history, economic motivation, and local trends); *infra* Part II.B (describing Massachusetts's statewide condominium-conversion law and its tenant protections); *infra* Part II.C (addressing Massachusetts municipal ordinances, which may replace or supplement statewide condominium-conversion tenant protections); *infra* Part II.D (discussing federal involvement in condominium conversions and what, if any, protections federal law provides).

14. See *infra* Part III.A (arguing significant percentage of conversions consist of small-unit volumes

eliminating the SUV rental-housing exemptions, requiring developers to report condominium conversions to government agencies, and compiling conversion statistics will increase public awareness and enforcement of tenant protections.¹⁵

II. HISTORY

A. A Brief History of Condominiums and Conversion

Since state governments passed the first condominium enabling statutes in the 1960s, condominiums have represented a significant percentage of the United States's residential real-estate market.¹⁶ During the last forty years, the conversion of rental housing into residential condominiums has paralleled and in some areas even exceeded the construction of new condominiums.¹⁷ Condominium developers are motivated to convert existing properties, rather than construct new physical properties, because conversion is typically less expensive than new construction.¹⁸ Property owners favor conversion because it ensures immediate profitability from the sale of the property, rather than potential long-term profitability from renting the property.¹⁹ Purchasers,

whose tenants receive inadequate protections).

15. See *infra* Part III.B (suggesting amendment of relevant laws' definitions and requiring conversion notifications to increase awareness and enforcement).

16. See ROMNEY, *supra* note 2, ¶ 1.01[3], at 1-4 (providing history of United States condominium use). In the Northeast, particularly the Boston metropolitan area, condominiums compose roughly one quarter of total housing sales. See *id.* ¶ 1.01[3], at S1-4 to -5. The price disparity between lower priced condominium units and higher priced homes has contributed to the popularity of condominiums in the Boston area. *Id.* There was a plethora of scholarly publications in the 1980s addressing the effects of condominium conversion on communities and tenants. See, e.g., Constance Cranch, Comment, *The Regulation of Rental Apartment Conversions*, 8 FORDHAM URB. L.J. 507, 511-16 (1980) (addressing benefits for condominium owners and displacement of the elderly and low-income families); Amy Goldstein, Note, *Conversion Condominium Development: An Issue of Tenants' Rights*, 30 CLEV. ST. L. REV. 99, 102 (1981) (considering Ohio's tenant protections in response to 1970s rental-housing shortage); Robert M. Schlein, Note, *Government Regulation of Condominium Conversion*, 8 B.C. ENVTL. AFF. L. REV. 919, 920-21 (1980) (examining state and municipal efforts, particularly in Massachusetts, to regulate condominium conversion); John Serini, Note, *Condominium Conversion Legislation: Limitation on Use or Deprivation of Rights?—A Re-Examination*, 15 NEW. ENG. L. REV. 815, 816 (1980) (reviewing condominium-conversion legislation and evaluating its constitutionality).

17. See ROMNEY, *supra* note 2, ¶ 1.01[3], at 1-5 (including conversion of existing rental housing in rise of condominium ownership). Condominium conversion may have unlimited potential because of real-estate ownership demand. See *id.* ¶ 1.02[4], at 1-11 to -12; see also David A. Fine, Comment, *The Condominium Conversion Problem: Causes and Solutions*, 1980 DUKE L.J. 306, 307 (1980) (stating converted rental housing represents largest share of new condominium units). In Cambridge, Massachusetts, from 1970 to 2004, converted condominium units composed approximately four-fifths of all condominium unit sales, while new construction composed approximately only one-fifth of all condominium unit sales. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 25.

18. See ROMNEY, *supra* note 2, ¶ 1.01[3], at 1-5 (suggesting conversion popular because it involves lower costs than new construction); Fine, *supra* note 17, at 307 (suggesting one reason for converted condominium demand as relatively inexpensive price over new construction).

19. See ROMNEY, *supra* note 2, ¶ 1.02[4], at 1-12 (suggesting property owner's decision to convert

especially single persons and young couples, create a large market for conversion because condominiums in general, and converted condominiums in particular, are less expensive to purchase than single-family homes.²⁰

Rental property conversion in urban areas contributes to the gentrification of American cities.²¹ Condominium conversions and the gentrification of urban areas can be detrimental to poor, elderly, and disabled residents.²² Conversion often displaces tenants from their current rental housing because tenants cannot afford to purchase the converted condominium units and, simultaneously, conversion shrinks the overall rental-housing stock.²³ This trend increases the difficulty of securing alternative affordable rental housing, especially for low-to-moderate income, handicapped, and elderly tenants.²⁴ New construction of affordable housing, while significant, fails to adequately supplement the loss of rental housing caused, in part, by conversion.²⁵ Current apartment vacancy rates in Massachusetts remain low, ranging between 5 and 6 percent; however,

depends on market forces). Rental-property conversion becomes favorable when it is more profitable to sell the units as condominiums than operate them as rentals. *See* Fine, *supra* note 17, at 311 (contending landlords convert when rental profits shrink).

20. *See* Fine, *supra* note 17, at 308 (explaining several factors feed increased demand for conversion). The conversion of rental housing satisfies public demand, particularly that of young professionals, for condominium ownership. *See id.*; *see also* Peter J. MacDonald, Note, *Displacement in Gentrifying Neighborhoods: Regulating Condominium Conversion Through Municipal Land Use Controls*, 63 B.U. L. REV. 955, 955 (1983) (attributing urban revitalization to conversion of rental properties in urban areas).

21. *See* Fine, *supra* note 17, at 307 (arguing conversion as long-range urban decay solution); MacDonald, *supra* note 20, at 959-61 (describing conversion's impact on disrupting urban communities); Brian C. Mooney, *Loan Pattern Fueled; Condo Conversions*, BOSTON GLOBE, Dec. 20, 1989, at 22 (suggesting mortgage-lending practices in lower-income Boston regions facilitated condominium conversions and contributed to gentrification). Gentrification occurs when affluent persons invest in previously underdeveloped urban real estate and revitalize it. *See* MacDonald, *supra* note 20, at 955 n.6.

22. *See* Condominium and Cooperative Conversion Protection and Abuse Relief Act, 15 U.S.C. § 3601(a)(2) (2000) (stating rental-property conversion limits housing stock for elderly, low-to-moderate income, and handicapped tenants); Act of Nov. 30, 1983, ch. 527, § 1, 1983 Mass. Acts 926 (declaring conversion causes affordable rental-housing emergency particularly affecting elderly, poor, and handicapped tenants), *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181; *see also* Fine, *supra* note 17, at 307 (noting conversion adversely displaces tenants and reduces available rental housing); MacDonald, *supra* note 20, at 955 n.6 (explaining gentrification process often displaces less affluent residents in underdeveloped areas).

23. *See* § 1, 1983 Mass. Acts at 926 (indicating, absent significant production of new rental housing, conversion reduces volume of available rental housing).

24. *See id.* (suggesting tenants experience difficulty in finding new housing after displacement following conversion); MacDonald, *supra* note 20, at 960-61 (describing tenants' plight in locating comparable affordable housing after displacement from conversion); *see also* Cara Solomon, *Seniors Shoved Aside by Condo Conversions*, SEATTLE TIMES, Aug. 13, 2007, at A1 (detailing how Seattle's rise in condominium conversions resulted in seniors being displaced). Typically, these senior citizens have fixed incomes, usually social-security benefits, and cannot afford the costs of relocating to new rental housing. Solomon, *supra*.

25. *See* § 1, 1983 Mass. Acts at 926 (ascribing lack of affordable rental housing to conversion and lack of production of new rental housing). Massachusetts tried to ensure an adequate supply of affordable housing beginning in the 1970s when the legislature enacted chapter 40B of the Massachusetts General Laws. MASS. GEN. LAWS ch. 40B, § 2 (2004). Scholars have questioned the success of chapter 40B in ensuring adequate volumes of affordable housing. *See* Christopher Baker, Note, *Housing in Crisis—A Call to Reform Massachusetts's Affordable Housing Law*, 32 B.C. ENVTL. AFF. L. REV. 165, 166 (2005) (arguing chapter 40B fails to meet overall objective of providing sufficient affordable rental housing).

this is not quite as low as the vacancy rates experienced during the affordable-housing crisis of the late 1970s and 1980s.²⁶

Recently there has been a movement to convert SUV rental housing.²⁷ During the 1970s and 1980s, the conversion of SUV rental housing was uneconomical because the tax and property benefits to the converter were too insignificant to encourage conversion.²⁸ Recent trends, however, particularly in Cambridge, Massachusetts, strongly suggest that SUV conversions now have economic benefit.²⁹ In Cambridge, the conversion of SUV rental housing into one-, two-, and three-unit residential condominiums may constitute two-thirds of all rental properties undergoing conversion.³⁰

In Massachusetts, the three legislative areas that significantly impact condominium conversions are the Conversion Act, individual municipal ordinances, and, under federal law, the Condominium and Cooperative Conversion Protection and Relief Abuse Act (CCCPARA).³¹ This Note will examine each of these legislative areas to determine the current protection offered to tenants, property owners, and property buyers.³²

26. See U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE AND OFFICE OF POLICY DEV. AND RESEARCH, HOUSING VACANCIES AND HOMEOWNERSHIP, ANNUAL STATISTICS: 2007, TABLE 3. RENTAL VACANCY RATES, BY STATE: 1986 TO 2007, available at <http://www.census.gov/hhes/www/housing/hvs/annual07/ann07t3.html> (providing vacancy rates of Massachusetts's rental housing from 1986 to 2007); 1980 HUD STUDY, *supra* note 2, app. I at 31 (noting Boston's metropolitan area vacancy rates fell below 5 percent in late 1970s).

27. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (cataloging Cambridge, Massachusetts, condominium-conversion statistics, separately identifying one-, two-, and three-unit conversions). The United States Census Bureau does not differentiate between newly built and converted condominiums. See BOSTON HOUSING CENSUS, *supra* note 9, at 44 (omitting distinction between newly built versus converted condominiums).

28. See S. REP. NO. 96-736, at 49-50 (1980), reprinted in 1980 U.S.C.C.A.N. 3506, 3556-57 (arguing conversions of housing with fewer than five unit unlikely because uneconomical for rental-housing owners).

29. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (indicating one- to three-unit condominium conversions more frequent than conversions of those with four or more units).

30. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (totaling condominium conversions from 2000 to 2004). Out of 365 converted condominiums between 2000 and 2004, 259 (seventy percent) were one-, two-, and three-unit residential condominiums. *Id.* The single-unit residential condominiums are part of mixed-use condominiums with both residential and commercial units. *Id.* at 31 n.4.

31. See generally MASS. GEN. LAWS ch. 183A (2003) (providing creation and framework for condominiums). The Conversion Act establishes minimum tenant protections against potential abuse resulting from the conversion of rental housing into condominiums. See Act of Nov. 30, 1983, ch. 527, § 4, 1983 Mass. Acts 929-31, amended by Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181. Special acts have previously authorized Boston, Brookline, Cambridge, and Somerville to regulate condominium conversion. See BOSTON, MASS., CODE ch. X, § 10-2 (2007) (setting forth rental-housing equity ordinance); BROOKLINE, MASS., BY-LAWS art. 5.2, §§ 5.2.1-5.2.6 (2007) (providing condominium-conversion ordinance); CAMBRIDGE, MASS., CODE ch. 8.44 (2007) (detailing rent-control and condominium-conversion ordinances); SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-61 to -76 (2008) (introducing condominium-conversion and removal-of-rental-units ordinance). The CCCPARA impacts conversion by both expressing Congress's desire for tenants to receive conversion protection and providing condominium purchasers protection from self-dealing developers. See 15 U.S.C. §§ 3601-3616.

32. See generally *infra* Parts II.B, II.C, and II.D (describing Massachusetts statewide conversion law, local conversion laws, and federal laws affecting conversion).

B. *The Massachusetts Conversion Act*

In 1983, the Massachusetts legislature passed the Conversion Act in response to the Commonwealth's rental-housing shortage.³³ The Act's goal was to protect low-to-moderate income, elderly, and handicapped tenants from the loss of rental housing due to condominium conversions.³⁴ This original version of the Act supplemented existing tenant protections within the typical landlord-tenant relationship, such as the prohibition on tenant eviction prior to lease termination without showing just cause.³⁵ In 1989, the Massachusetts legislature amended the Act primarily to clarify the form, as well as the period when landlords must give notice of intent to convert to tenants.³⁶ The Conversion Act remains in effect today, despite the 1994 repeal of rent control throughout the Commonwealth.³⁷

Under the Conversion Act, tenants must receive at least one- or two-years notice of an owner's intent to convert the rental housing, and owners cannot evict tenants during this notice period.³⁸ Tenants have the right to purchase the

33. § 1, 1983 Mass. Acts at 926 (providing justification for Massachusetts Conversion Act).

34. *See id.* (declaring purpose).

35. *See* MASS. GEN. LAWS ch. 239, § 1(a) (2003) (providing summary process for tenants from repossession of property by landlords). The Massachusetts Attorney General's Office publishes a limited overview of landlord and tenant rights in Massachusetts and omits mention of the Conversion Act's tenant protections. *See* OFFICE OF ATTORNEY GEN. MARTHA COAKLEY, COMMONWEALTH OF MASS., THE ATTORNEY GENERAL'S GUIDE TO LANDLORD/TENANT RIGHTS 8-9 (2007) [hereinafter ATTORNEY GENERAL'S GUIDE]. The organization MassLegalHelp, which is dedicated to "promoting justice in Massachusetts with legal information," publishes, in greater detail than *The Attorney General's Guide*, information on tenant rights, including tenant protections from condominium conversion. *See* LEGAL TACTICS: TENANTS' RIGHTS IN MASSACHUSETTS: PRIVATE HOUSING 1 (Annette Duke ed., 6th ed. 2003), available at <http://www.masslegalhelp.org/housing/legal-tactics1> (providing overview of tenant rights in Massachusetts including tactics, forms, and laws).

36. *See* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181 (amending Massachusetts Conversion Act's provisions on tenant notice requirements), *amending* Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 926. The Conversion Act's notice requirements were again amended in 1990, but not in a manner significant to this Note. *See* § 8, 1990 Mass. Acts at 1045 (granting municipalities first-refusal rights, over tenants, if purchasing rental housing for affordable-housing purposes), *amending* Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 926.

37. *See* Massachusetts Rent Control Prohibition Act, MASS. GEN. LAWS ch. 40P, § 2 (2006) (prohibiting rent control in Commonwealth with limited exceptions); *Greater Boston Real Estate Bd. v. City of Boston*, 705 N.E.2d 256, 257 (Mass. 1999) (concluding Conversion Act remains valid despite 1994 rent-control prohibition); *see also* *Fore L. Realty Trust v. McManus*, No. 9975, 2006 WL 2270405, at *2-*3 (Mass. App. Div. Aug. 3, 2006) (concluding Conversion Act's tenant-notification requirements unaffected by chapter 40P).

38. *See* 1989 Mass. Acts at 1181 (establishing notice periods depending on tenant's classification and corresponding eviction prohibitions). The Conversion Act requires a minimum two-year notice for elderly, handicapped, or low-to-moderate income tenants and one-year notice for all other tenants. *See* § 4, 1983 Mass. Acts at 930; *see also* *McManus*, 2006 WL 2270405, at *2-*3 (holding tenants entitled to notice of conversion intent under section 4(a) of Conversion Act); 15-17 *Univ., LLC v. Lucas*, No. 1650, 2006 WL 870740, at *2 (Mass. App. Div. Mar. 24, 2006) (upholding trial court's decision that law student qualified as tenant with low-to-moderate income). The notice must be in writing, be delivered by certified mail, and state in clear language

converted units on terms substantially similar to the terms offered to the public, and if tenants do not exercise their right to purchase, they may be entitled to relocation expenses.³⁹ Landlords are required to provide assistance in finding alternative housing for some tenants.⁴⁰ The Conversion Act also restricts landlords from drastically increasing rental prices until the notice period expires.⁴¹ Owners who do not comply with the Act can face a minimum \$1,000 fine, a sixty-day confinement, and injunctions from further violations.⁴² The Act does not affect buyers of converted condominium units because the conveyance to a bona fide purchaser remains valid despite any violations committed by the owner.⁴³ The Act, however, does create a moratorium on conversions; its entitlements result in delays but not prohibitions.⁴⁴

The rights and obligations created by the Conversion Act are enforceable in Massachusetts courts.⁴⁵ Tenants, however, are seldom aware of the Act or the protections it provides.⁴⁶ District attorneys have the authority to prosecute violators; unfortunately, they rarely use this authority.⁴⁷ Instead, tenants often have to assert their rights under the Act as a defense during an eviction proceeding.⁴⁸

the owner's intent to convert and the tenant's rights pursuant to the Conversion Act. *See* 1989 Mass. Acts at 1181.

39. *See* 1989 Mass. Acts at 1181 (granting tenants first-purchase rights of their housing units). The Conversion Act requires the owner to provide the tenant with substantially the same terms as an offer to the general public. *See* § 1, 1983 Mass. Acts at 926. The Act permits a \$1,000 maximum in relocation expenses for nonpurchasing elderly, handicapped, or low-to-moderate income tenants and a \$750 maximum for all other tenants. *Id.*

40. *See* 1989 Mass. Acts at 1181 (requiring unit owners to locate comparable housing for elderly, handicapped, or low-to-moderate income tenants).

41. *See* 1989 Mass. Acts at 1181 (limiting rental increases only to adjust for inflation during notice period). *But see* *McManus*, 2006 WL 2270405, at *3 (suggesting rent-control repeal invalidated Conversion Act's limitations on rental-price increases).

42. *See* Act of Nov. 30, 1983, ch. 527, § 5, 1983 Mass. Acts 931-32 (providing mechanism for punishing violators), *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181. *But see* *Siek*, *supra* note 7, at 1 (suggesting lack of enforcement or even awareness of Conversion Act's current protection).

43. *See* § 5, 1983 Mass. Acts at 931-32 (protecting condominium-unit purchasers from conversion violations).

44. *See* 1983 Mass. Acts at 926-33 (omitting prohibition on conversion of rental units into condominiums). Other state legislatures and municipalities have enacted moratoriums opposed to offering protections to current tenants. *See* Dara K. Newman, Note, *If You Can't Build It, They Won't Come: Condominium Construction Moratoria and Gentrification*, 35 B.C. ENVTL. AFF. L. REV. 593, 610-11 (2008) (detailing legislative and municipal enactments imposing condominium-conversion moratoriums).

45. *See* 1989 Mass. Acts at 1181 (granting district, superior, and housing courts jurisdiction to hear Conversion Act violations). The Conversion Act does not specify who is charged with enforcing the Act's provisions. *See* 1983 Mass. Acts at 926-33 (failing to specify enforcing agency or officer).

46. *See* *Siek*, *supra* note 7, at 1 (describing tenants' lack of awareness regarding Act's protections).

47. *See id.* (suggesting district attorneys address complaints of Conversion Act violations). The lack of current enforcement likely results from the public's ignorance of the Act's protections. *See id.* The Massachusetts Attorney General's Office does not include the Conversion Act in its *Guide to Landlord/Tenant Rights*. *See generally* ATTORNEY GENERAL'S GUIDE, *supra* note 35 (failing to mention of Conversion Act in discussion of landlords' and tenants' rights).

48. *See* *Siek*, *supra* note 7 (commenting on possibility of Conversion Act's enforcement in tenant eviction

The Conversion Act contains two major limitations that prevent it from applying to all converted rental properties.⁴⁹ First, the Act's definition of "housing accommodation" creates an exemption for conversion of buildings with fewer than four residential units.⁵⁰ The justification for this exception is unclear because the legislative history does not provide a reason for defining "housing accommodation" as a building with four or more units.⁵¹ Second, as originally passed, the Conversion Act exempts five municipalities from the Act's requirements because the legislature had previously authorized these municipalities to govern condominium conversion.⁵² The Act allows all other municipalities to provide additional tenant protections through a two-thirds vote of the municipal or town legislative authority.⁵³ Any additional

proceedings).

49. Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 928 (excluding from definition of "housing accommodation" buildings with fewer than four units and specific municipalities), *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181. Towns and cities authorized by special act to regulate conversion were exempt from the Conversion Act's provisions. *Id.* at 927. *But see* Greater Boston Real Estate Bd. v. City of Boston, 705 N.E.2d 256, 257 (Mass. 1999) (suggesting special acts authorizing municipalities to govern conversion potentially invalidated by rent-control prohibition).

50. *See* § 3, 1983 Mass. Acts at 928 (defining "housing accommodations" for Conversion Act); Adams v. Maloney, No. 02-P-1667, 2004 WL 1432982, at *1 (Mass. App. Ct. June 25, 2004) (determining tenant could not rely on Conversion Act because building contained under four units). Massachusetts General Law chapter 183A, the enabling statute for condominium creation, does not impose a minimum-unit requirement for condominium creation. *See* MASS. GEN. LAWS ch. 183A, § 2 (2006) (failing to set forth minimum-unit threshold). The Massachusetts Condominium Law is mute on the issue of condominium conversion. *See* Grace v. Town of Brookline, 399 N.E.2d 1038, 1043-44 (Mass. 1979) (determining Massachusetts Condominium Law confers no favor on condominiums in relation to other real-estate ownership forms); Keenan, *supra* note 2, at 639 n.3 (describing Massachusetts Condominium Law as having "no relevance on topic of condominium conversion"). Further, the Massachusetts Condominium Law does not create an exception for condominiums from otherwise applicable land-use or other local real-estate controls. *See* Grace, 399 N.E.2d at 1044 n.16 (contending Massachusetts Condominium Law not intended to isolate condominiums from rent or eviction controls).

51. *See* S. Res. 2107, 1983 Mass. Gen. Ct., Reg. Sess. (Mass. 1983) (providing no discussion of fewer-than-four-units exemption); S. Res. 2143, 1983 Mass. Gen. Ct., Reg. Sess. (Mass. 1983) (including only legislative text without mention of legislative intent); H.R. 6738, 1983 Mass. Gen. Ct., Reg. Sess. (Mass. 1983) (omitting discussion on justification for exempting all rental housing with fewer than four units). Contemporary newspaper accounts provide no explanation for the exemption; instead, they assume the Conversion Act protects all tenants. *See* Chris Black, *Condo Bill Consensus Called 'Close'*, BOSTON GLOBE, Sept. 13, 1983, at 1A (stating Conversion Act requires all tenants receive one-year or two-years notice prior to eviction); Andrew Blake, *Mass. House Backs Condo Conversion Bill*, BOSTON GLOBE, Nov. 15, 1983, at 1A (describing Conversion Act as giving all tenants at least one-year notice). Massachusetts repealed rent-control legislation, which had similarities to the Conversion Act, created an exemption for SUV rental housing. *See* MASS. GEN. LAWS ch. 40 app., §§ 1-3 (2004), *repealed by* Massachusetts Rent Control Prohibition Act, MASS. GEN. LAWS ch. 40P (2004) (excluding owner-occupied two- or three-family homes from definition of rent-control unit).

52. *See* § 2, 1983 Mass. Acts at 927 (exempting from Act's provisions any municipality with special-act authority to regulate condominium conversions).

53. *See id.* (permitting greater tenant protection than Conversion Act if approved by two-thirds vote of municipal governance). Municipalities must also provide legislative findings that a rental-housing shortage exists prior to enacting additional protections. *Id.* The Conversion Act defers to local legislators to determine when an emergency in rental housing exists. *Id.* The Act does not require specific measurements, such as vacancy rates exceeding 5 percent, to constitute a rental-housing emergency. *Id.*

protections and conversion ordinances governing the five exempt municipalities must have the purpose of protecting current tenants.⁵⁴ The next section will examine several of the cities that have condominium conversion ordinances, their sources of authority, and the protections that they offer.

C. Municipalities and Condominium Conversion

1. Constitutional and Statutory Considerations

The Massachusetts Constitution prohibits municipalities from passing ordinances and regulating civil relationships unless related to the exercise of municipal police powers.⁵⁵ Landlord-tenant relationships are civil relationships that municipalities cannot govern absent an independent municipal authority.⁵⁶ Municipalities have the independent authority to regulate public health, zoning, and police activity.⁵⁷ Municipalities may also derive independent authority from a statutory grant of authority.⁵⁸ In a 1994 statewide referendum vote, the Massachusetts electorate voted to abolish rent control.⁵⁹ Subsequently, the Massachusetts legislature adopted a prohibition on rent control and a statewide policy for ending rent control throughout the Commonwealth.⁶⁰

54. See 1989 Mass. Acts at 1181 (limiting Act's protections to those tenants residing in housing accommodations when notice given); *Greater Boston Real Estate Bd. v. City of Boston*, 705 N.E.2d 256, 258 (1999) (interpreting Conversion Act to grant municipalities with authority to protect only current tenants from conversion). In *Greater Boston Real Estate Board*, the SJC held that the Conversion Act did not grant municipalities authority to protect future tenants by preserving current rental-housing stock. *Greater Boston Real Estate Bd.*, 705 N.E.2d at 258.

55. See MASS. CONST. amend. art. II, amended by MASS. CONST. amend. art. LXXXIX, § 7(5) (placing limitations on local powers). The Amendment, known as the Home Rule Amendment, states in relevant part, "[n]othing in this article shall be deemed to grant to any city or town the power to . . . enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power . . ." *Id.*

56. See *Bannerman v. City of Fall River*, 461 N.E.2d 793, 794-95 (Mass. 1984) (classifying landlord-tenant relationship as civil relationship, thereby prohibiting municipalities from governing it without independent municipal authority); *CHR Gen., Inc. v. City of Newton*, 439 N.E.2d 788, 790 (Mass. 1982) (concluding Home Rule Amendment's language of "private or civil relationships" sufficiently expansive to encompass landlord-tenant relations).

57. See *Bannerman*, 461 N.E.2d at 796 (acknowledging municipalities' independent supervisory authority over public health limited by constitutional provisions regulating civil relationships); *CHR Gen., Inc.*, 439 N.E.2d at 790-91 (recognizing police and zoning powers as independent municipal powers).

58. See MASS. CONST. art. II, amended by MASS. CONST. art. LXXXIX, § 7 (authorizing Massachusetts legislature to delegate enumerated powers like governing of civil relationships to municipalities).

59. See Connie Page, *Tenant-Owner Tensions Rise After Vote Kills Rent Control*, BOSTON HERALD, Nov. 11, 1994, at 6 (discussing passage of rent-control prohibition); Adrian Walker & Peter J. Howe, *Landlords Rail Against Moves To Undo Rent-Control Rejection*, BOSTON GLOBE, Nov. 11, 1994, at 34 (summarizing statewide initiative results in favor of ban on rent control). The Massachusetts electorate had the authority to prohibit rent control throughout the Commonwealth. See *Ash v. Attorney Gen.*, 636 N.E.2d 229, 232 (Mass. 1994) (holding Massachusetts Constitution permits voter initiative seeking prohibition of rent control). Only three communities in the entire state-Boston, Cambridge, and Brookline-had rent control ordinances in effect. See Walker & Howe, *supra* (contrasting statewide approval on voter initiative with Boston, Cambridge, and Brookline voters' rejection of initiative).

60. See MASS. GEN. LAWS ch. 40P, § 2 (2006) (describing statute's purpose to prohibit rent control

In *Greater Boston Real Estate Board v. City of Boston*,⁶¹ the Massachusetts Supreme Judicial Court (SJC) considered whether the abolition of rent control nullified municipal ordinances governing condominium conversion.⁶² The SJC held that Boston's municipal authority to govern condominium conversion was limited solely to authority derived from the Conversion Act.⁶³ The general prohibition on rent control created an exemption for the Conversion Act, but specifically repealed Boston's special act authorization to enact rent-control ordinances.⁶⁴ The SJC deemed Boston's ordinance provisions as exceeding the city's authority because the provisions prevented the conversion of rental housing to protect future tenants, and the Conversion Act only granted authority to protect current tenants.⁶⁵ The SJC struck down the entire ordinance because it could not sever the invalid provisions from the otherwise valid ordinance provisions.⁶⁶

Zoning laws generally cannot govern condominium creation or transfers.⁶⁷ They do not affect real-estate ownership, but rather real-estate usage, such as whether a given property can be used for residential or for commercial purposes.⁶⁸ Municipalities cannot use zoning laws to regulate conversion so long as converted condominiums use the real estate in the same manner as the

broadly, except for limited voluntary compliance by owners); Act of Jan. 4, 1995, ch. 282, § 1, 1995 Mass. Acts at 1040 (providing uniform statewide policy for abolishing rent control). The Massachusetts legislature specifically excluded the Conversion Act from the repeal of various Massachusetts acts authorizing municipal rent-control schemes. *See id.* at 1041 (omitting 1983 Mass. Acts 926 from definition of rent control abolished by uniform statewide policy).

61. 705 N.E.2d 256 (Mass. 1999).

62. *Id.* at 257 (addressing effect of rent-control abolition on municipal ordinances governing condominium conversion); *see also* Richard Chacon, *Judge Voids City Condo Ordinance*, BOSTON GLOBE, Nov. 23, 1996, at B4 (detailing Boston Housing Court's invalidation of Boston's condominium-conversion ordinance); Andrea Estes, *City Asks for Condo Conversion Control*, BOSTON GLOBE, Nov. 3, 1998, at 19 (summarizing parties' arguments before SJC). Two years later, the SJC upheld the Boston Housing Court's invalidation. *See Greater Boston Real Estate Bd.*, 705 N.E.2d at 257-58.

63. *Greater Boston Real Estate Bd.*, 705 N.E.2d at 257 (holding municipal authority to govern condominium conversion limited by Mass. Gen. Laws ch. 40P). Municipalities' sole authority to govern conversion derives from the Massachusetts Conversion Act. *Id.*; *see also* MASS. GEN. LAWS ch. 40P, § 2 (2004) (prohibiting rent control throughout Commonwealth).

64. *See* § 4, 1995 Mass. Acts at 1042 (prohibiting, under rent-control abolition, ordinances created pursuant to Boston's authority under multiple special acts).

65. *Greater Boston Real Estate Bd.*, 705 N.E.2d at 257-58 (holding Boston ordinance exceeded Conversion Act authority in two instances). The definition of "tenant" exceeded the Conversion Act's authority because tenants taking occupancy after conversion were entitled to the same protection as those residing prior to conversion. *Id.* The City of Boston also exceeded its authority by protecting rental-housing stock for current and future tenants because the Conversion Act only authorizes the protection of current tenants from rental-housing loss resulting from conversion. *Id.* at 258.

66. *Greater Boston Real Estate Bd.*, 705 N.E.2d at 259-60 (invalidating entire ordinance because remaining clauses could not stand independently from invalid clauses).

67. *See* CHR Gen., Inc. v. City of Newton, 439 N.E.2d 788, 791 (Mass. 1982) (acknowledging condominiums unaffected by zoning laws because they alter ownership, not property usage).

68. *See id.* (stating zoning purpose to regulate real-estate use applies without regard to ownership).

prior structure.⁶⁹ When conversion would alter the usage of property, courts have upheld ordinances regulating conversion as an exercise of the independent municipal public health or police power rather than zoning power.⁷⁰

An additional consideration in determining the validity of a municipal or state regulation governing condominium conversion is whether the regulation constitutes an unconstitutional taking of property without just compensation.⁷¹ Under a Takings Clause challenge, condominium-conversion regulations may be found unconstitutional because they interfere with the owner's property rights and permanently alter the property's usage.⁷² However, during the 1980s, when condominium conversion regulations were first enacted, courts determined that property ordinances designed to regulate procedures for evictions of tenants from apartments undergoing conversion are generally valid and constitutional.⁷³

69. See *Bannerman v. City of Fall River*, 461 N.E.2d 793, 796 (Mass. 1984) (determining apartment-to-condominium conversion would not affect building usage and invalidating municipal ordinance); *CHR Gen., Inc.*, 439 N.E.2d at 792 (invalidating zoning ordinance limiting type of property ownership, rather than property usage). The *CHR General* court suggested that if the city wanted to regulate condominium conversion, it would need to seek permission to do so from the Massachusetts legislature. *CHR Gen., Inc.*, 439 N.E.2d at 792.

70. See *Goldman v. Town of Dennis*, 375 N.E.2d 1212, 1213 (Mass. 1978) (upholding ordinance governing conversion of summer rental units into single-family condominiums because property use differed); *Gamsey v. Bldg. Inspector of Chatham*, 553 N.E.2d 1311, 1314 (Mass. App. Ct. 1990) (upholding ordinance governing conversion of public lodgings into condominiums because of possible sewage-system burden). The *Gamsey* court reassured that these facts were distinguishable from those in *CHR General* and *Bannerman* because "[a] conversion from motel to condominium use may well entail more than a 'paper' conversion changing the form of ownership without altering the use of the land." *Gamsey*, 553 N.E.2d at 1314.

71. See U.S. CONST. amend. V (providing "private property" shall not be "taken for public use, without just compensation"); *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 241 (1897) (incorporating meaning of Fifth Amendment's Takings Clause into Fourteenth Amendment's Due Process Clause); Victoria A. Judson, *Defining Property Rights: The Constitutionality of Protecting Tenants from Condominium Conversion*, 18 HARV. C.R.-C.L. L. REV. 179, 199-203 (1983) (discussing takings-doctrine challenges to condominium-conversion regulations); Kevin Andrew Gliwa, Note, *Fifth Amendment Takings and Condominium Conversion Regulations That Restrict Owner Occupancy Rights*, 62 B.U. L. REV. 467, 467-68 (1982) (arguing conversion restrictions on owner's property rights raise Fifth and Fourteenth Amendment takings concern).

72. See Judson, *supra* note 71, at 202 (describing three theories why condominium conversion might embody unconstitutional takings). These three major theories are, first, that conversion regulations interfere with the property owner's right to the use of his property; second, that these regulations, by transferring some property interests from owners to tenants, constitute a permanent restriction of the property's usage; and third, that conversion regulations interfere with the property owner's right to exclude tenants from his property. *Id.*

73. See *id.* (suggesting courts balance property-right infringement against legislative purpose of conversion regulations); Keenan, *supra* note 2, at 658-71 (concluding "even severely restrictive condominium conversion regulations will probably withstand [Takings Clause] constitutional attack"); see also *Grace v. Town of Brookline*, 399 N.E.2d 1038, 1045-46 (Mass. 1979) (upholding Brookline's temporary ban on tenant evictions against takings challenge).

2. Individual Ordinances Governing Condominium Conversion

Currently, at least nine Massachusetts municipalities have ordinances governing the conversion of rental housing into condominiums.⁷⁴ Four of these municipalities—Haverhill, Lexington, Malden, and Newburyport—supplement the protections provided by the Conversion Act by offering additional tenant protections during conversion.⁷⁵ Of these four municipalities, only Malden extends tenant protections to rental housing containing fewer than four units.⁷⁶ The legislature granted some municipal governments authority to govern condominium conversion prior to the prohibition on rent control, and this Note will discuss four of them—Boston, Brookline, Cambridge, and Somerville—to determine the impact of these ordinances on condominium conversion.⁷⁷

Boston governs condominium conversion through the Rental Housing Equity Ordinance (RHEO).⁷⁸ The Boston City Council enacted the RHEO

74. See Mac McCreight, *Condominium Control*, in LEGAL TACTICS: TENANTS' RIGHTS IN MASSACHUSETTS: PRIVATE HOUSING 334-38 (Annette Duke ed., 6th ed. 2003), available at <http://www.mass.legalhelp.org/uploads/nu/iy/nuiy9tLjTT6n9KNa7726hQ/20.Condominium-Control-FINAL.pdf> (providing list of municipalities with ordinances governing conversion of rental units). The municipalities that have passed ordinances distinct from the Conversion Act are Acton, Boston, Brookline, Cambridge, Haverhill, Lexington, Malden, Newburyport, and Somerville. *Id.*

75. See, e.g., HAVERHILL, MASS. CODE ch. 255, art. XI, § 255-99 (2007), available at [http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0760%2D255%2Ehtm%23Section255%2D99%2E&c n=1601&n=\[1\]\[558\]\[5\]\[56\]\[1505\]\[1632\]\[1522\]\[1601\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0760%2D255%2Ehtm%23Section255%2D99%2E&c n=1601&n=[1][558][5][56][1505][1632][1522][1601]) (requiring, prior to conversion, permit in addition to Conversion Act requirements); LEXINGTON, MASS., CODE ch. 144, § 144-2 (2007), available at http://www.e-codes.generalcode.com/codes/1818_A/1818-144.pdf#xml=http://www.e-codes.generalcode.com/searchresults.asp?cmd=pdfhits&index=1818_A&filename=1818-144.pdf&fn=D:\siteinfo\ecodes\codebooks\1818_A\1818-144.pdf (stating condominium-conversion ordinances designed to supplement existing state law); MALDEN, MASS., REV. ORDINANCES OF 1991, ch. 3, § 3.11 (2007), available at <http://www.ci.malden.ma.us/download/laws/cityordinances/pdf> (declaring serious public emergency exists in Malden and need for additional tenant protections); NEWBURYPORT, MASS., CODE ch. 5, art. VIII, § 5-252 (2006), available at <http://www.municode.com/Resources/gateway.asp?pid=11344&sid=21> (providing condominium-conversion ordinance supplements to state laws regulating condominiums and conversion); McCreight, *supra* note 74, at 335-38 (summarizing individual municipal ordinances governing condominium conversion and their authority).

76. Compare HAVERHILL, MASS., CODE ch. 255, art. XI, § 255-99(g) (2007) (exempting buildings containing fewer than six units), and LEXINGTON, MASS. CODE ch. 144, § 144-3 (2007) (defining "housing accommodations" to exclude buildings with fewer than four units), and NEWBURYPORT, MASS., CODE ch. 5, art. VIII, § 5-254(a) (2006) (providing Newburyport ordinance protection applies only to rental housing containing four or more units), with MALDEN, MASS., REV. ORDINANCES OF 1991, ch. 3, § 3.11(B)(2) (2007) (extending protections to three-unit-housing accommodations unless owner resides therein).

77. See *infra* notes 78-100 and accompanying text (detailing ordinances of Boston, Cambridge, Brookline, and Somerville governing condominium conversion). The town of Acton was previously authorized by special act to create laws regarding condominium conversion. Act of May 8, 1981, ch. 128, 1981 Mass. Acts at 123-25, amended by Act of Dec. 8, 1987, ch. 548, 1987 Mass. Acts at 959-63. As of April 2007, Acton does not have a condominium-conversion ordinance in its by-laws. See generally ACTON, MASS., CODE, available at <http://www.town.acton.ma.us/uploadedFiles/About/General%20Bylaws%202007.pdf>. Without its own condominium-conversion by-laws, Acton must comply with minimum requirements prescribed by the Conversion Act, which does not apply to housing accommodations with fewer than four units. See Act of Nov. 30, 1983, ch. 527, § 2, 1983 Mass. Acts at 927 (providing minimum tenant protections for condominium conversions in absence of valid municipal ordinance), amended by Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181.

78. See BOSTON, MASS., CODE ch. X, § 10-2 (2007), available at <http://www.amlegal.com/>

pursuant to the Conversion Act after the SJC declared the previous conversion ordinance invalid.⁷⁹ The RHEO provides types of protections to elderly, low-to-moderate income, and handicapped tenants similar to the Conversion Act.⁸⁰ Significantly, the RHEO offers greater protection than the Conversion Act by providing a five-year notice of conversion for these categories of tenants and relocation reimbursement of up to \$5,000.⁸¹ Rental housing that contains fewer than four units, however, is exempt from the RHEO's protection, meaning these categories of tenants who live in buildings that contain less than four units receive no RHEO protection.⁸²

Brookline governs condominium conversion through its local bylaws.⁸³ It no longer governs tenant protection by special act, but rather by the Conversion Act.⁸⁴ Brookline rental units, or housing accommodations consisting of fewer than four units, do not have to abide by the Conversion Act's requirements.⁸⁵

nxt/gateway.dll/Massachusetts/boston/cityofbostonmunicipalcode?f=templates\$fn=default.htm\$3.0\$vid=amlegal:boston_ma (detailing Boston's municipal ordinance governing conversion).

79. See *id.* (explaining source of municipal authority); *Greater Boston Real Estate Bd. v. City of Boston*, 705 N.E.2d 256, 258 (Mass. 1999) (invalidating chapter 3 of the City of Boston's Ordinances of 1996); see also Chacon, *supra* note 62 (summarizing Boston Housing Court's invalidation of Boston's conversion ordinance because it re-imposed rent control); Estes, *supra* note 62, at 19 (discussing oral arguments made before SJC in *Greater Boston Real Estate Board*). Prior to the SJC's 1998 decision in *Greater Boston Real Estate Board* and the 1994 prohibition of rent control, the SJC twice considered Boston ordinances affecting condominium conversion; both times the SJC strictly interpreted the authority granted to the City of Boston and invalidated ordinances exceeding this authority. See *Perry v. Boston Rent Equity Bd.*, 537 N.E.2d 580, 581 (Mass. 1989) (invalidating Boston's condominium-conversion regulation because it lacked authorization from city ordinance or legislative act); *Greater Boston Real Estate Bd. v. City of Boston*, 494 N.E.2d 1301, 1302 (Mass. 1986) (invalidating Boston ordinance provision governing condominium conversion because it exceeded authority granted by enabling statute).

80. Compare BOSTON, MASS., CODE ch. X, § 10-2.10(a)(2) (2007) (requiring one- to five-years notice of intent to convert prior to eviction), with § 4, 1983 Mass. Acts at 929-30 (providing one- or two-years notice of intent to convert). The RHEO limits rental-price increase during this notice period. BOSTON, MASS., CODE ch. X, § 10-2.10(e) (2007). Current tenants are provided first-purchase rights to the converted units at similar or more favorable terms than the general public. *Id.* § 10-2.10(f). Tenants are eligible for relocation benefits from \$3,000 to \$5,000. *Id.* § 10-2.10(g). Also, landlords are required to assist tenants with securing comparable housing. *Id.* § 10-2.10(h).

81. See BOSTON, MASS., CODE ch. X, § 10-2.10(a)(2) (2007) (proscribing at least five-years notice of intent to convert prior to eviction). The RHEO makes elderly, handicapped, and low-to-moderate tenants eligible for \$5,000 in relocation expenses. *Id.* at 10-2.10(g).

82. See *id.* § 10-2.1(i)(3) (exempting "buildings containing fewer than four residential units").

83. See BROOKLINE, MASS., BY-LAWS art. 5.2, §§ 5.2.1 to 5.2.6 (2007), available at <http://www.townofbrooklinemass.com/townclerk/By-law/ARTICLE%205.2Amd052306.doc> (providing Brookline's municipal ordinance).

84. See *id.* § 5.2.4 (removing tenant-protection regulation from town by-laws and subjecting municipality to Conversion Act). Brookline's prior authorization to regulate rent control and condominium conversion stemmed from the 1970 and 1981 special act authorizations, which were both repealed by the 1995 general prohibition on rent control. See Act of Jan. 3, 1995, ch. 282, § 3, 1995 Mass. Acts at 1041 (defining rent control as including two prior acts authorizing regulatory schemes in Brookline).

85. See Act of Nov. 30, 1983, ch. 527, § 3, 1983 Mass. Acts at 928 (exempting fewer-than-four-unit housing accommodations and, in turn, their tenants from Act's protections), amended by Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181; BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.4 (2007) (adopting Conversion Act's provisions for tenant protections during condominium conversion). Brookline's experience with

Brookline, however, requires notice to the municipal government within forty-eight hours of recording and rendering the master deed applicable to the Massachusetts condominium enabling statute.⁸⁶ While this notice provides no direct benefit to tenants, as they are already entitled to notice, it does raise awareness among Brookline public officials of condominium conversions.⁸⁷

The City of Cambridge regulates the conversion of controlled rental units through its rent-control ordinance.⁸⁸ The ordinance requires the approval of the Cambridge Housing Board prior to an owner's removal of a controlled rental unit from the market.⁸⁹ In determining whether to grant approval, the Cambridge Housing Board must consider the benefits to the individuals protected by the ordinance, the hardships imposed upon these individuals, and the overall detriment to the housing market by removing the rental units.⁹⁰ Similar to Brookline, the Cambridge ordinance applies only to rental housing containing four units or more.⁹¹ The ordinance provides current tenants with civil remedies for ordinance violations and imposes fines for ordinance violations.⁹²

condominium conversion during the 1960s and 1970s is well documented. *See generally* JOHN R. DINKELSPIEL ET AL., CONDOMINIUMS: THE EFFECTS OF CONVERSION ON A COMMUNITY (1981) (detailing impact of conversion on Brookline's tenants, landlords, condominium purchasers, overall community, and fiscal policy). Brookline's prior condominium-conversion ordinances were frequently the subject of judicial challenge. *See generally* Loeterman v. Town of Brookline, 524 F. Supp. 1325 (D. Mass. 1981) (denying Takings challenge of unconstitutionality to Brookline's rent-control ordinance); Grace v. Town of Brookline, 399 N.E.2d 1038 (Mass. 1979) (holding Brookline by-laws did not exceed scope of special-act authorization); Zussman v. Rent Control Bd., 326 N.E.2d 876 (Mass. 1975) (challenging Brookline rent-control board's denial of eviction certificate).

86. BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.1 (2007) (requiring both notice of conversion and subsequent health and building inspection).

87. *See id.* (placing municipal government on notice of conversion).

88. *See* CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.010 (2007), available at <http://www.bpcnet.com/codes/cbridge/> (authorizing restrictions on removal of controlled rental housing from housing market). In 1976, the Massachusetts legislature, by special act, authorized rent control in Cambridge. *See id.* § 8.44.010 (noting Act of Mar. 31, 1976, ch. 36, 1976 Mass. Act 43, as source of authority). Chapter 36 is entitled "An Act Enabling the City of Cambridge to Continue to Control Rents and Evictions". 1976 Mass. Acts at 43-52. The 1995 prohibition on rent control, however, repealed this special act. *See* § 3, 1995 Mass. Acts at 1041 (listing "Chapter 36 of the Acts of 1976" within prohibited rent-control schemes).

89. CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.040 (2007) (denying market removal of any controlled rental unit, unless Rent Control Board grants permit). The Cambridge ordinance declares unlawful any sale or offer to sell a controlled rental unit without a permit. *Id.* § 8.44.070. Even if the Cambridge Rent Control Board denies the permit, Cambridge's ordinance creates an entitlement for property owners to receive "fair net operating income" from tenants, thus ensuring continued economic value. *See* § 7, 1976 Mass. Acts at 47 (outlining Board responsibility to ensure landlords receive "fair net operating income" from tenants in all controlled rental units); *see also* Gilbert v. City of Cambridge, 932 F.2d 51, 56-57 (1st Cir. 1991) (upholding permit denial provision against takings challenge).

90. CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.050 (2007) (requiring Board consideration of tenants' hardship and effect of removal on affordable-housing supply).

91. *See* § 3, 1976 Mass. Acts at 44-45 (excluding units in owner occupied two- or three-family homes from "controlled unit" definition); CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.020 (2007) (adopting definition of controlled rental unit from 1976 special-act authorization).

92. *See* CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.080 (2007) (authorizing equitable relief for ordinance

The City of Somerville regulates condominium conversion through the Somerville Condominium Conversion Ordinance (SCCO).⁹³ SCCO authority is derived from a Massachusetts special act.⁹⁴ The Massachusetts legislature intended the SCCO “to protect the tenants of residential units, especially when the property owner proposes to convert these to condominium ownership”⁹⁵ Recently, Somerville considered increasing the protections that the SCCO offers tenants.⁹⁶

The SCCO requires that the owner send the municipal government a notice of intent to convert.⁹⁷ Current tenants and the municipal government must receive this notice at least one year prior to the recording of the master deed.⁹⁸ In addition, the owner must obtain a permit from the board prior to the removal of the rental units from the marketplace.⁹⁹ Affected tenants receive first-purchase rights to the converted condominium units, relocation reimbursement, and judicial review of their claims.¹⁰⁰ Tenants also benefit from the SCCO’s lack of an SUV exemption and the imposition of penalties for noncompliant

provision violation). This ordinance provides for a \$500 penalty per unit removed in violation of the ordinance. *Id.* § 8.44.090.

93. See generally SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-61 to 7-76 (2008), available at http://www.ci.somerville.ma.us/CoS_Content/documents/forms/Condominium%20Conversion%20Ordinance%201985-9.pdf (providing Somerville’s condominium-conversion ordinance).

94. See Act of Mar. 31, 1976, ch. 37, 1976 Mass. Act 52-62, amended by 1985 Mass. Acts 480 (allowing Somerville independent legislative authority to govern condominium conversion). The general prohibition on rent control would have presumably revoked Somerville’s special act authority; however, Somerville’s special act was not specified in the 1995 definition of rent control. See Act of Jan. 3, 1995, ch. 282, § 3, 1995 Mass. Acts at 1041 (omitting Somerville’s rent-control authorization from special acts in “rent control” definition).

95. SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-63 (2008) (stating purpose of SCCO).

96. See Blanton, *supra* note 8 (describing proposal to increase notice requirements for Somerville’s elderly and disabled tenants); *News in Brief: Back to Work on the Condo Front*, BOSTON GLOBE, Nov. 19, 2006, at 8 (summarizing Somerville mayor’s failed proposal to extend notice period for disabled and elderly tenants); *Proposed Condominium Conversion Ordinance in Full*, SOMERVILLE NEWS, May 30, 2006, available at http://somervillenews.typepad.com/the_somerville_news/2006/05/proposed_condom.html (noting revisions Somerville mayor proposed to condominium-conversion ordinance).

97. SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-67(a) (2008) (requiring municipal notification of conversion).

98. See *id.* (requiring notification “no later than one year before the declarant files a master deed”). In 2006, property owners resisted proposals by Somerville’s mayor to increase the period of notification for elderly and disabled tenants from the current two years to four years; the mayor ultimately withdrew his proposal. See *News in Brief, supra* note 96, at 8 (indicating property owners strongly opposed Somerville mayor’s SCCO’s revisions and compared them to rent control).

99. Compare SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-66(a) (2008) (requiring removal permit from Somerville Condominium Review and Rental Unit Removal Board), with CAMBRIDGE, MASS., CODE ch. 8.44, § 8.440.40 (requiring issuance of removal permit prior to conversion of controlled rental unit into condominium).

100. See SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-69(a)-(c) (2008) (granting tenants right to purchase units at prevailing market price). Qualifying tenants can receive relocation reimbursements of \$300 or one month’s rent. *Id.* § 7-70. Individuals aggrieved by SCCO board decisions can seek equitable relief in court. *Id.* § 7-74. The SCCO also imposes fines for making false statements to the board, wrongfully removing units, and interrupting services to tenants. *Id.* § 7-76.

landlords.¹⁰¹

D. Federal Law Governing Condominium Conversion: The CCCPARA

In 1980, the United States Congress passed the CCCPARA during a nationwide rental-housing crisis.¹⁰² Similarly, Massachusetts sought to address this rental-housing shortage through the Conversion Act.¹⁰³ The CCCPARA's legislative purpose is two-fold: to protect elderly, handicapped, or low-to-moderate income tenants from eviction, and to protect condominium buyers from fraud and unfavorable long-term management leases.¹⁰⁴

The Massachusetts Constitution, state statutes, and local police powers authorize localities to regulate condominium conversion; the federal government, however, can only regulate condominium conversions involved with interstate commerce.¹⁰⁵ The CCCPARA addresses this interstate commerce threshold by requiring owners of condominium projects and residencies to offer them for sale through interstate commerce.¹⁰⁶ It provides legislative findings on the involvement of federal law in condominium markets.¹⁰⁷ By satisfying the Supreme Court's rational basis test, the CCCPARA has survived constitutional Commerce Clause challenges.¹⁰⁸

The CCCPARA expresses Congress's belief that elderly, handicapped, and

101. See SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-64 (2008) (defining, for ordinance purposes, "housing accommodations" as rental property containing at least one unit).

102. 15 U.S.C. §§ 3601(a)(1), (b) (2000) (declaring lack of affordable housing in United States).

103. See BARRY BROWN & BERNARD V. KEENAN, MASSACHUSETTS CONDOMINIUM LAW §§ 9.02, 9.03, at 9-2 to 9-20 (2d ed. 1996) (considering CCCPARA and Conversion Act as legislative responses to rental-housing shortage).

104. § 3601(a)(1), (2) (explaining negative impact of housing shortage on elderly, handicapped, and low-to-moderate income tenants). The CCCPARA's purpose is to minimize the negative impacts of condominium conversion. *Id.* § 3601(b). The CCCPARA also addresses the unconscionability of certain long-term leases imposed on unit purchasers by condominium agreements. *Id.* § 3601(a)(3). The CCCPARA attempts to remedy such purchases by providing for "appropriate relief" from unconscionable leases. *Id.* § 3601(b).

105. See U.S. CONST. art. I, § 8 (stating "Congress shall have power . . . to regulate Commerce . . . among the several States"); see also Bay Colony Condominium Owners Ass'n v. Origer, 586 F. Supp. 30, 32-33 (N.D. Ill. 1984) (upholding constitutionality of CCCPARA from Commerce Clause challenge). The court in *Origer* held that there was a rational basis for Congress's finding that interstate commerce could be affected by interstate market for converted condominiums. *Origer*, 586 F. Supp. at 33.

106. See § 3603(15) (providing definition of interstate commerce). The CCCPARA defines interstate commerce as "trade, traffic, transportation, communication, or exchange among the States, or between any foreign country and a State, or any transaction which affects such trade, traffic, transportation, communication, or exchange." *Id.* The CCCPARA incorporates the interstate-commerce limitation in its definition of condominium projects. See *id.* § 3603(5)(B) (requiring real-estate sales to utilize instrumentalities of interstate commerce to qualify as "condominium project").

107. See § 3601(a)(4) (noting interstate-commerce requirement satisfied by federal tax, housing, and development laws affecting condominium markets).

108. See *Origer*, 586 F. Supp. at 33 (holding congressional findings on condominium housing market's involvement with interstate commerce must have rational relationship). But see BROWN & KEENAN, *supra* note 103, § 9.02(B), at 9-3 (characterizing "interstate commerce" definition as broad, but unlikely to reach all rental units within CCCPARA's scope).

low-to-moderate-income tenants residing in multi-family rental-housing projects are entitled to adequate notice of pending conversion and first-purchase rights to the converted condominium.¹⁰⁹ Congress, however, created no enforcement mechanism for these tenant entitlements.¹¹⁰ Instead, Congress recommended that state and local governments address the housing shortage by providing protections, such as notice and relocation expenses, to elderly, handicapped, and low-to-moderate income tenants.¹¹¹

The CCCPARA does not apply to condominium projects or residencies consisting of fewer than five units.¹¹² House and Senate Reports justified exempting rental housing containing five or fewer units because Congress believed that these units were economically infeasible for condominium conversion.¹¹³ Congress maintained this rationale despite statistics demonstrating that rental housing with five or fewer units composed 60 percent of nationwide rental housing.¹¹⁴

III. ANALYSIS

This section will analyze the effectiveness of Massachusetts statutory and municipal law and federal law in protecting tenants residing in SUV rental

109. See 15 U.S.C. § 3605 (2000) (describing Congress's desired protections for tenants).

110. See *id.* (limiting CCCPARA's tenant protections to suggestions for state and local governments, not federal requirements). The CCCPARA allows claimants to bring suits in law and equity for Act violations. *Id.* § 3611(a). For tenants, the CCCPARA neither provides individual federal rights for courts to enforce, nor mandates state and local governments to act, thereby creating a cause of action against state and local governments for their failure to act. See *id.* §§ 3605, 3611; see also BROWN & KEENAN, *supra* note 103, § 9.02(D), at 9-4 to 9-5 (interpreting CCCPARA's lack of mandatory provisions or enforcement mechanisms providing minimal effect on tenants rights).

111. See § 3605 (stating policy that state and local governments are responsible for protecting tenants from conversion). While the CCCPARA does not provide for tenant protection, it does provide for judicial enforcement of buyer's protections; recently, courts have entertained causes of action brought by unit purchasers under the statute. See *id.* §§ 3607-11; see also, e.g., 605 Park Garage Assocs. v. 605 Apartment Corp., 412 F.3d 304, 306 (2d Cir. 2005) (entertaining purchaser's claim for relief under § 3607(a) and developer's attorney's fees claims under § 3611(a)); Darnet Realty Assocs. v. 136 East 56th St. Owners, Inc., 214 F.3d 79, 81 (2d Cir. 2000) (recognizing buyer's termination authority under § 3607); Bd. of Managers of Charles House Condominium v. Infinity Corp., 21 F.3d 528, 533 (2d Cir. 1994) (allowing buyer action under CCCPARA, but limiting action strictly to contract terms); see also Salvatore LaMonica, Note, *Developer Leases Under the Condominium and Cooperative Abuse Relief Act of 1980*, 15 HOFSTRA L. REV. 631, 632 (1987) (commenting on limited judicial enforcement of CCCPARA in its early years of existence).

112. See § 3603(5)(A) (defining condominium project to exclude projects with fewer than five residential condo units). The CCCPARA also defines "conversion projects" to exclude projects containing fewer than five residential units. *Id.* § 3603(7).

113. See S. REP. NO. 96-736, at 49-50 (1980), reprinted in 1980 U.S.C.C.A.N. 3506, 3556-57 (providing justification for exemption of buildings with fewer than five units). The CCCPARA's Senate Report describes the residential structures containing less than five units as typically owner-occupied and uneconomical for conversion. *Id.*; see also BROWN & KEENAN, *supra* note 103, § 9.02(B), at 9-3 (suggesting exemption reflects economic infeasibility).

114. See S. REP. NO. 96-736, at 49-50 (providing congressional findings on composition of rental-housing market containing fewer than five units).

housing.¹¹⁵ Since the the United States Congress, Massachusetts legislature, municipalities passed laws governing conversion, housing markets and the economics of conversion have changed.¹¹⁶ Recent housing-market trends demand a re-evaluation of the degree to which Massachusetts and federal conversion laws protect tenants in rental properties undergoing conversion.¹¹⁷ This Note argues in favor of amending definitions in the Conversion Act, various municipal ordinances, and the CCCPARA to reflect the changing marketplace of conversion practices.¹¹⁸ Further, in order to achieve the stated purposes of these laws, state and local governments must become more aware of conversion and enforce better the current legal protections.¹¹⁹

*A. Massachusetts and Federal Laws Are Ineffective
at Protecting Tenants from SUV Conversions*

Both the Massachusetts and federal government have expressed a desire to protect tenants from the negative impacts of conversion.¹²⁰ Current Massachusetts and federal laws governing condominium conversion of rental housing fail to protect a significant percentage of the persons experiencing conversion of their apartments.¹²¹ SUV rental-housing units comprise a considerable portion of the properties converted into condominiums.¹²² Statistics from Cambridge, Massachusetts, demonstrate that SUV conversions have increased steadily since the early 1970s and now constitute two-thirds of

115. See *infra* Part III.A and Part III.B (addressing weaknesses in current law and suggesting language and enforcement alterations).

116. See *infra* notes 120-124 and accompanying text (discussing significant conversion of SUV rental housing).

117. See *infra* notes 125-147 and accompanying text (suggesting scope of legal protections should adapt to changing economics of conversion).

118. See *infra* Part III.B.1 (proposing amendments to Conversion Act, municipal ordinances, and CCCPARA).

119. See *infra* Part III.B.2 (highlighting lack of awareness of tenants and officials concerning current laws and need for enforcement).

120. See 15 U.S.C. § 3601(a)(1)-(2) (2000) (stating congressional desire to remedy restrictive impact upon elderly, handicapped, and low-income tenants); Act of Nov. 30, 1983, ch. 527, § 1, 1983 Mass. Acts 926 (declaring purpose of protecting current tenants from rental-housing shortage resulting in part by conversion), amended by Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181.

121. Compare § 3603 (5)(A), (7) (excluding buildings with fewer than five residential property units from condominium and conversion projects definitions), and § 3, 1983 Mass. Acts at 928 (applying Act only to buildings containing four or more units), and BOSTON, MASS., CODE ch. X, § 10-2.1(i)(3) (2007) (exempting fewer than four units), and BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.4 (2007) (exempting fewer than four units), with CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (providing statistics suggesting small-unit conversions constitute two-thirds of all conversions properties).

122. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (stating one-, two-, and three-unit conversions compose roughly two-thirds of all converted properties); see also BOSTON HOUSING CENSUS, *supra* note 9, at 44 (indicating 28,000 of over 83,000 Boston metro area condominiums contained between two and four units). The Census Bureau statistics suggest that SUV condominiums in the greater Boston area, either newly-built or converted, compose nearly one-third of all condominiums. See BOSTON HOUSING CENSUS, *supra* note 9, at 44 tbl.2-23.

converted properties in Cambridge.¹²³ The conversion of properties with more than three units is declining and now comprises less than one-third of all converted properties.¹²⁴

The Conversion Act recognized an emergency in the volume of available rental housing.¹²⁵ This Act had the goal of protecting the elderly, handicapped, and low-to-moderate income tenants from the depletion of affordable rental housing.¹²⁶ Currently, however, the Conversion Act fails to achieve its objective; it neglects tenants residing in one- to two-thirds of converted properties.¹²⁷

Likewise, municipal ordinances governing condominium conversion, except for Somerville's SCCO, do not extend protection to tenants residing in rental housing containing fewer than four units prior to conversion.¹²⁸ This occurs despite the Conversion Act's grant of authority that allows municipalities to increase tenant protections, such as by widening the scope of an ordinance's applicability.¹²⁹ Boston, for example, has used its authority under the Conversion Act to increase the notification period, but it has not broadened the scope of the units protected by its ordinance.¹³⁰ Somerville, on the other hand, provides protections from conversion to all tenants regardless of unit size.¹³¹

The effectiveness of conversion regulations also hinges on the validity of municipal ordinances following the general prohibition on rent control and

123. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (indicating rising trend among conversions from larger unit volumes to smaller unit volumes).

124. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (detailing four-or-more-unit condominium conversions decreasing relative to one-to-three-unit conversions). In the late 1970s, the conversion of properties containing four or more units constituted two-thirds of all conversions. *Id.* Since then, these conversions have steadily declined and now constitute between one-third and one-half of all conversions. *Id.*

125. See § 1, 1983 Mass. Acts at 926 (providing declaration of emergency).

126. See Act of Nov. 30, 1983, ch. 527, § 1, 1983 Mass. Acts 926 (including protection of elderly, handicapped, and low-to-moderate income tenants among law's primary motivations), *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181.

127. Compare § 3, 1983 Mass. Acts at 928 (excluding fewer-than-four-unit buildings from "housing accommodations" definition and applicability to Act), with CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (indicating conversion of buildings containing between one and three units compose one-third of converted units).

128. Compare BOSTON, MASS., CODE ch. X, § 10-2.1(i)(3) (2007) (exempting rental housing with fewer than four units), and BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.4 (2007) (excluding rental housing with fewer than four units), and CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.010 (2007) (applying exclusively to rent-control housing), with SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-64 (2008) (applying to any housing accommodation with one unit or more).

129. See § 2, 1983 Mass. Acts at 927 (authorizing municipal or town governing bodies to provide additional tenant protections by two-thirds vote).

130. Compare BOSTON, MASS., CODE ch. X, § 10-2.10(a)(2) (2007) (requiring up to five-years notice of intent to convert), with § 4, 1983 Mass. Acts at 929 (requiring one-year or two-years notice of intent to convert).

131. See SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-64 (2008) (extending ordinance protection to one-or-more-unit conversions). The validity of Somerville's ordinance, however, may be in doubt. See *infra* notes 137-141 and accompanying text (discussing impact of rent-control prohibition on Somerville's authorization to regulate condominium conversion).

Greater Boston Real Estate Board's invalidation of Boston's prior conversion ordinance.¹³² Cambridge's ordinance claims to derive authority from a special act—the purpose of which was to authorize the creation of a rent control scheme—rather than the Conversion Act.¹³³ Although the 1995 rent-control prohibition specifically repealed Cambridge's special-act authority, Cambridge nevertheless relies upon this authority in its condominium-conversion ordinance.¹³⁴ If challenged, a court applying *Greater Boston Real Estate Board* is likely to invalidate any portion of Cambridge's ordinance not specifically protecting current tenants from conversion.¹³⁵ Moreover, because Cambridge is subject to the Conversion Act's limitations to current tenants, efforts to protect rental housing for future tenants would exceed Cambridge's authority.¹³⁶

The SCCO, Somerville's ordinance governing conversion, derives its authority from a special act.¹³⁷ The 1995 rent-control prohibition did not explicitly repeal Somerville's special act, unlike Cambridge's ordinance.¹³⁸ The Massachusetts legislature, however, failed to expressly exempt the SCCO from the general prohibition; only the Conversion Act was mentioned as surviving the rent-control prohibition.¹³⁹ The SCCO is likely invalid because of the general prohibition on rent control and the SJC's decision in *Greater Boston Real Estate Board*, which limits municipal authority to govern condominium conversion to authority derived from the Conversion Act.¹⁴⁰

132. See *Greater Boston Real Estate Bd. v. City of Boston*, 705 N.E.2d 256, 257 (Mass. 1999) (acknowledging municipal authority to regulate condominium conversion beyond scope of Conversion Act); see also *supra* notes 59-60 and accompanying text (discussing rent-control prohibition's effect on municipal ordinances' special-act authorization to regulate conversion).

133. See CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.010 (2007) (announcing authority to govern conversion pursuant to 1976 Mass. Acts 43).

134. See Act of Jan. 3, 1995, ch. 282, § 3, 1995 Mass. Acts at 1041 (including 1976 Mass. Acts 43 within schemes repealed by rent-control prohibition); CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.010 (2007) (providing authority to govern conversion pursuant to 1976 Mass. Acts 43).

135. See *Greater Boston Real Estate Bd.*, 705 N.E.2d at 257-58 (limiting authority derived from Conversion Act to protections for current tenants); see *supra* notes 62-66 and accompanying text (discussing Conversion Act's limitation to only protect current tenants from conversion's adverse effects).

136. Compare CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.050 (2007) (requiring consideration of need to maintain rental-housing inventory in decision to grant removal permit), with *Greater Boston Real Estate Bd.*, 705 N.E.2d at 258 (invalidating conversion ordinance protecting future tenants because it exceeds Conversion Act authority).

137. See SOMERVILLE, MASS., CODE OF ORDINANCES ch.7, art. IV, § 7-61 (2008) (stating ordinance created pursuant to authority vested in the city by 1976 Mass. Acts 52).

138. See § 3, 1995 Mass. Acts at 1041 (omitting mention of 1976 Mass. Acts 52 from special acts repealed by rent-control prohibition).

139. See *id.* (repealing, generally, all special-act authorization for condominium-conversion regulations except Conversion Act).

140. See *Greater Boston Real Estate Bd. v. City of Boston*, 705 N.E.2d 256, 257 (Mass. 1999) (acknowledging Conversion Act's only source of municipal authority for condominium-conversion regulations). The Conversion Act does not apply to towns and cities authorized by legislative special act to govern condominium conversion. See Act of Nov. 30, 1983, ch. 527, § 2, 1983 Mass. Acts 927, amended by Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181. The rent-control prohibition, however, strongly indicates

Moreover, to the extent that the SCCO seeks to protect rental-housing stock and future tenants from conversion, in contrast to protections afforded current tenants authorized by the Conversion Act, the SCCO provisions may be invalid.¹⁴¹

On the federal level, tenants residing in SUV rental housing or individuals purchasing SUV condominiums are not protected by the CCCPARA.¹⁴² When Congress passed the CCCPARA in 1980, Congress believed, according to its reported findings, that conversion of rental housing with fewer than five units was uneconomical despite SUV rental housing constituting 60 percent of total rental housing.¹⁴³ If the experience in Cambridge, Massachusetts, is any indication, the conversion of rental housing with fewer than five units is actually cost-effective; however, the CCCPARA currently does not apply to these conversions.¹⁴⁴

Economics primarily drives the decision to convert rental housing or any other form of real property into condominiums.¹⁴⁵ When Congress passed the CCCPARA in 1980 and when the Massachusetts legislature passed the Conversion Act in 1983, converting SUV rental properties into condominiums was prohibitively expensive.¹⁴⁶ Today, however, the demand for condominium ownership, including ownership in condominium associations containing only one or two other members, is now a strong enough justification to convert SUV rental properties.¹⁴⁷

all prior special-act authorization, including but not limited to those special acts specifically mentioned within the definition of "rent control," was repealed. See Act of Jan. 3, 1995, ch. 282, § 3, 1995 Mass. Acts at 1041. But see McCreight, *supra* note 74, at 338 (suggesting Somerville's SCCO valid because it does not require below-market prices like rent control).

141. Compare *Greater Boston Real Estate Bd.*, 705 N.E.2d at 258 (invalidating Boston ordinance provisions offering protection only for future tenants), with SOMERVILLE, MASS., CODE OF ORDINANCES ch.7, art. IV, § 7-66(d) (2008) (requiring consideration of benefit to nontenant residents and rental-housing shortage in removal determinations).

142. See 15 U.S.C. § 3603(5)(A) (defining condominium project to exclude those with fewer than five residential condo units). Likewise, the CCCPARA defines conversion projects to exclude projects containing fewer than five residential units. *Id.* § 3603(7).

143. See S. REP. NO. 96-736, at 49-50 (1980), reprinted in 1980 U.S.C.C.A.N. 3506, 3556-57 (providing justification for fewer-than-five-unit exemption and percentages of units in rental housing). The CCCPARA Senate Report describes residential structures containing less than five units as typically owner-occupied, constituting 60 percent of all rental units and uneconomical for conversion. *Id.*

144. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (stating between one-third and two-thirds of conversions consist of residential condominium conversions with three or fewer units).

145. See ROMNEY, *supra* note 2, ¶ 1.02[4] at 1-12 (claiming prospective economic gains primary factor influencing conversion decision); Fine, *supra* note 17, at 311 (describing landlord's decision to convert driven by declining rental revenue).

146. See S. REP. NO. 96-736, at 49-50 (1980), reprinted in 1980 U.S.C.C.A.N. 3506, 3556-57 (finding conversion of fewer than five units uneconomical). Statistics provided by Cambridge, Massachusetts, support Congress's findings; between 1970 and 1979, roughly one-eighth of converted properties contained three or fewer residential units. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31.

147. See CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (suggesting one-third to two-thirds of current converted properties contain one to three units); BOSTON HOUSING CENSUS, *supra* note 9, at 44, (indicating one-third of all condominiums in Boston metro area contain four or fewer units); see also Blanton, *supra* note 8

B. Recommendations for Extending Protection to SUV Conversions

The simplest means of extending protection to tenants residing in SUV rental properties is to amend the relevant statutory definitions.¹⁴⁸ An amendment of the definitions, however, is only one of several steps necessary to ensure tenants receive the legal protections to which they are entitled.¹⁴⁹ Enhanced awareness of these laws and enforcement of the rights provided by them are essential to fulfilling their purpose.¹⁵⁰

1. Amending the Definitions

The legislature should amend the Conversion Act's definition of "housing accommodations" to encompass all housing accommodations rather than only those containing four or more units.¹⁵¹ This can be accomplished by eliminating from the "housing accommodation" definition the third exception to general applicability, which states that the Conversion Act does not apply to "buildings containing fewer than four residential units."¹⁵² This amendment would subject all buildings used for rental purposes to the Conversion Act's provisions, except for public housing, hotels, or housing used for charitable, educational, or hospital purposes.¹⁵³

Municipalities should also amend their ordinances, or alternatively, the Conversion Act should pre-empt municipal ordinances, to eliminate the SUV rental-housing exception.¹⁵⁴ Somerville's ordinance provides an example of how Boston and Cambridge can amend their ordinances to apply to all rental housing.¹⁵⁵ Brookline would not need to amend its ordinance if the legislature amends the Conversion Act because Brookline incorporates the Conversion Act

(indicating two- and three-family home conversions compose large portion of recent condominium sales).

148. See *infra* Part III.B.1 (considering impact of amending definitions in Conversion Act, municipal ordinances, and CCCPARA).

149. See *infra* notes 167-70 and accompanying text (emphasizing limited impact on tenant protection if only definitional change occurs).

150. See *infra* notes 171-80 and accompanying text (suggesting public officials and tenants unaware of conversion laws, and sufficient enforcement requires awareness).

151. See Keenan, *supra* note 2, at 672 (proposing statewide condominium-conversion legislation model without minimum-unit exemption).

152. See Act of Nov. 30, 1983, ch. 527, § 3, 1983 Mass. Acts at 928, *amended by* Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181 (providing four exceptions to general applicability of Act to all buildings used for rental purposes).

153. See *id.* (providing specific exceptions to Conversion Act's applicability to Massachusetts rental housing).

154. See Keenan, *supra* note 2, at 652-53 (arguing state regulation provides objective deliberative forums and increased resources for analyzing statewide conversion concerns). While a sizeable volume of condominium conversions occur in only a few urban areas, tenant protections are consistent in condominium conversion regulations resulting from statewide deliberations. *Id.* at 652.

155. See SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-64 (2008) (defining housing accommodations to include any "building . . . which contains one or more rental units").

definitions into its ordinance.¹⁵⁶

Like the amendment to the Conversion Act, a simple amendment to the CCCPARA's definitions of the terms "condominium projects" and "conversion projects" would extend the protection offered by CCCPARA to SUV rental housing.¹⁵⁷ The legislature can amend the CCCPARA definitions of the terms "condominium projects" and "conversion projects," both of which currently require a minimum of five units, to have no minimum-unit requirement.¹⁵⁸ This reduction in the minimum-unit requirement, however, could fall short of the interstate-commerce authority upon which the CCCPARA relies.¹⁵⁹ The effect on interstate condominium markets, however, would likely be the same or similar with fewer-than-five-unit condominium projects and conversion projects, because the same entities and financial institutions could be used for projects with both greater than and fewer than five units.¹⁶⁰

Unfortunately for tenants, even a change in the CCCPARA's definition of condominium projects or conversion projects would not provide additional protection.¹⁶¹ The CCCPARA did not provide tenants an enforceable right to seek judicial relief.¹⁶² While it expressed Congress's belief that tenants residing in rental housing undergoing conversion should receive protection, it left the enforcement of this protection to state and local governments.¹⁶³ Because Congress's belief that tenants should receive protection from conversion's harmful effects is without legal effect in courts and does not create any rights, an amendment to the definitions of "condominium project"

156. BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.4 (2007) (adopting Conversion Act provisions, including definitions applying tenant protections during condominium conversion).

157. See 15 U.S.C. § 3603(5)(A), (7) (2000) (defining "condominium project" and "conversion project" to require five or more units). Removing the five-or-more-unit language would extend protections to all condominium or conversion projects. *Id.*

158. See *id.* § 3603(5)(A), (7) (providing "condominium project" and "conversion project" definitions).

159. See *id.* § 3601(a)(4) (providing interstate-commerce justification for federal regulation of condominium conversions and condominium-management leases); BROWN & KEENAN, *supra* note 103, § 9.02(B), at 9-3 (suggesting interstate-commerce requirement may not be satisfied with current definitions, despite congressional findings). *But see* Bay Colony Condominium Owners Ass'n v. Origer, 586 F. Supp. 30, 33 (N.D. Ill. 1984) (holding sufficient basis to pass CCCPARA under Commerce Clause). Eliminating the exemption for buildings with fewer than five units could invalidate Congress's earlier finding of interstate-commerce impact because this finding assumed small unit conversions to be uneconomical. See 15 U.S.C. § 3601(a)(4); S. REP. NO. 96-736, at 49-50 (1980), *reprinted in* 1980 U.S.C.C.A.N. 3506, 3556-7 (providing, in CCCPARA's legislative history, Congress's finding that SUV rental housing is uneconomical for conversion).

160. See § 3601(a)(4) (justifying federal regulation based upon interstate-commerce authority because of federal involvement in condominium-housing market).

161. See § 3605 (stating Congress's desire for tenants to have protection without creating any federal rights); see also BROWN & KEENAN, *supra* note 103, § 9.02(D), at 9-4, 9-5 (contending CCCPARA provides minimal impact on tenants rights).

162. See § 3605 (expressing Congress's sense that tenants should receive "adequate notice" of conversion and first-purchase rights); see also BROWN & KEENAN, *supra* note 103, § 9.02(D), at 9-4 to 9-5 (suggesting any indication of rights too abstract for courts to provide equitable relief).

163. See 15 U.S.C. § 3605 (2000) (expressing reservations about federal involvement and placing duty to act on state and local governments).

and “conversion project” would only have a persuasive effect on state and local government’s condominium conversion policies.¹⁶⁴ Moreover, purchasers of SUV condominiums, while not a central consideration of this Note, would receive additional protections if Congress amended the definitions of “condominium project” and “conversion project” to include conversions of any unit volume.¹⁶⁵

2. Increasing Awareness and Enforcement

Amending the definitions provided in the Conversion Act, municipal ordinances, and the CCCPARA will not alone ensure that tenants—specifically those who are elderly, low-to-moderate income, and handicapped—receive sufficient protection.¹⁶⁶ In addition, it is essential to inform tenants about these laws, and the government must strictly enforce them to better effectuate their intended protections.¹⁶⁷ Currently, the Conversion Act’s protections are not widely known to tenants.¹⁶⁸ Moreover, state and local officials empowered to enforce the Conversion Act’s provisions may even be unaware of its protections.¹⁶⁹

A further limitation on the Conversion Act’s enforcement, as well as on the municipality enforcement mechanisms, is the fact that conversions are often unreported.¹⁷⁰ Public agencies, such as the Massachusetts Attorney General’s Office and the various district attorneys’ offices, are generally uninformed about conversions absent a tenant’s report of violations.¹⁷¹ The Conversion Act does not require developers or landlords to file their notice of intent to convert with anyone other than the tenant.¹⁷² This lack of reporting severely limits statewide enforcement of the penalties for Conversion Act violations.¹⁷³

164. Compare § 3603(5), (7) (providing “condominium project” and “conversion project” definitions), with § 3605 (setting forth no enforceable tenant protections such as notice or relocation expenses).

165. See §§ 3607-3609 (providing protections against unconscionable leases and self-dealing contracts benefiting developers).

166. See Siek, *supra* note 7, at 1 (describing public officials’ lack of awareness and enforcement of law).

167. See *id.* (suggesting many tenants unaware Conversion Act protects them from conversions).

168. See Siek, *supra* note 7, at 1 (discussing tenants who failed to enforce entitlements because they were unaware of Conversion Act’s existence).

169. See ATTORNEY GENERAL’S GUIDE, *supra* note 35, at 1-11 (omitting mention of Conversion Act in discussion of landlord and tenant rights); Siek, *supra* note 7, at 1 (detailing state and local officials’ ignorance of Conversion Act’s provisions).

170. See Act of Jan. 12, 1990, ch. 708, 1989 Mass. Acts 1181 (limiting requirement of notice of intent to convert to tenants only), amending Act of Nov. 30, 1983, ch. 527, 1983 Mass. Acts 926.

171. See Siek, *supra* note 7, at 1 (suggesting Attorney General’s Office informed of violations only through tenant complaints).

172. 1989 Mass. Acts 1181 (omitting requirement of notice of intent to convert to anyone other than tenant).

173. See Siek, *supra* note 7, at 1 (suggesting prosecuting Conversion Act violators requires tenant complaints because state otherwise unaware). Absent direct notification of developer’s intent to convert to a state agency, the Attorney General and district attorneys will only enforce those violations reported by tenants. *Id.*

Municipal ordinances, on the other hand, have inconsistent requirements for a notification of intent to convert; enforcement would benefit from preemptive state legislation requiring consistent notification requirements.¹⁷⁴

The Massachusetts legislature should amend the Conversion Act to mandate owners to notify a statewide agency of their intent to convert.¹⁷⁵ Requiring notification of intent to convert serves two main purposes.¹⁷⁶ First, it places the Attorney General's Office in a proactive position to enforce the provisions of the Conversion Act.¹⁷⁷ Mandatory notification will likely encourage compliance with the Act's tenant-protection provisions because converters will likely fear liability for noncompliance.¹⁷⁸ Second, notifying a single state agency of intent to convert would allow the agency to compile these notifications and create a reliable measure for conversion throughout the Commonwealth.¹⁷⁹ This compilation would contribute to public awareness of the conversion phenomenon and improve protections for tenants, especially those who are elderly, handicapped, and low-to-moderate income and who face displacement through the conversion of SUV rental housing.¹⁸⁰

Finally, tenants residing in buildings containing only rental housing would benefit from codification of the Conversion Act into the General Laws of Massachusetts.¹⁸¹ Currently, the Conversion Act is only a session law; one can only locate it in the annotated version of the Massachusetts General Laws by reference.¹⁸² Public attention to a session law such as the Conversion Act

174. Compare BOSTON, MASS., CODE ch. X, § 10-2.10(b) (2007) (requiring removal permit and notice of intent to convert, but only to tenant), and CAMBRIDGE, MASS., CODE ch. 8.44, § 8.44.040 (2007) (denying removal from market of any controlled rental unit unless Rent Control Board grants permit), with SOMERVILLE, MASS., CODE OF ORDINANCES ch. 7, art. IV, § 7-67(a) (2008) (requiring municipal notification of conversion), and BROOKLINE, MASS., BY-LAWS art. 5.2, § 5.2.1 (2007) (requiring notice of conversion to town inspector for purposes of health and building inspection). Scholars have suggested that state, rather than municipal, notification requirements provide better protection for tenants. See Keenan, *supra* note 2, at 653 (arguing state legislation results in more objective policies on condominium conversion).

175. See Keenan, *supra* note 2, at 683 (proposing legislation including requirement of notification to designated governmental department).

176. See *infra* notes 177-80 and accompanying text (suggesting conversion notification to state agencies improves enforcement and protection for tenants).

177. See Siek, *supra* note 7, at 1 (suggesting Attorney General will prosecute violators if tenants report violations).

178. See Siek, *supra* note 7, at 1 (suggesting 1980s enforcement of Conversion Act protections resulted from public awareness of conversion).

179. Compare *supra* note 7 and accompanying text (noting difficulty in compiling exact statistics on condominium conversion), with CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (demonstrating advantages of governmental compiling of statistics on converted condominiums).

180. Compare Siek, *supra* note 7, at 1 (suggesting awareness of conversion contributes to protection of tenants), with CAMBRIDGE HOUSING PROFILE, *supra* note 9, at 31 (listing between one-third and two-thirds of conversions result in residential condominiums with three or fewer units).

181. See *supra* notes 166-80 and accompanying text (analyzing awareness of current law's protections among public officials and tenants).

182. See *supra* note 1 (noting Conversion Act reproduced and referenced in Massachusetts General Laws).

wanes overtime, yet the potential harm to tenants continues.¹⁸³ The legislature should instead codify the Conversion Act and incorporate it as a separate chapter or within chapter 183A, the Massachusetts condominium law.¹⁸⁴

IV. CONCLUSION

Twenty-five years have passed since the Massachusetts legislature and the United States Congress gave serious consideration to the protections offered to tenants whose apartments undergo condominium conversion. During those twenty-five years, the economics of conversion has changed. Today, properties such as SUV rental housing represent a significant percentage of converted condominiums sold in the Commonwealth and urban areas. Additionally, the attention of both private citizens and public officials to condominium conversion's negative impact on tenants has also diminished. Both the Massachusetts legislature and the United States Congress should re-evaluate their laws governing condominium conversion to reflect the changing economics and address waning public attention.

Currently, Massachusetts law and the CCCPARA neglect tenants by exempting rental housing with fewer than four units and fewer than five units, respectively. The Massachusetts legislature should amend the Conversion Act's definition of housing accommodation by removing the "fewer than four units" exemption. This amendment will subject all housing accommodations throughout the Commonwealth, except for certain public housing, to the Conversion Act's provisions. Likewise, the CCCPARA should amend its definitions of "condominium" and "conversion project" to remove the fewer-than-five-unit exemption.

Further, the Massachusetts legislature should amend the Conversion Act to mandate owners to notify state agencies of their intent to convert. This reporting requirement would improve tenant protection by increasing public awareness, particularly among prosecutors, as to the location of conversions and the tenants entitled to protection. Additionally, mandatory reporting, coupled with the existing requirement of reporting to the tenant, should increase compliance with the Act's provisions.

Condominium conversion will remain a significant factor in both the condominium and overall real-estate market for years to come. Ultimately, conversion provides a positive change, as it revitalizes urban areas and creates opportunities for real-estate ownership, and no one should discourage this. Nevertheless, condominium conversion has a significant negative impact on tenants that the public must address. By adopting the measures recommended in this Note, there can be a proper balance between encouraging revitalization

183. See Siek, *supra* note 7, at 1 (describing public officials' decreased attention to enforcement of Conversion Act protections).

184. See *supra* note 1 (identifying location of Conversion Act's reference in Massachusetts General Laws).

and home ownership on the one hand, and ensuring that tenants, especially those who are low-to-moderate income, elderly, and handicapped, receive the necessary protections from displacement caused by condominium conversion.

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