

Condominium Conversions in Georgia



Under the Georgia Condominium Act (the “Act”), a conversion condominium is defined as “[a] condominium all or part of which may be used for residential purposes, which condominium contains any building or portion thereof that at any time before the recording of the declaration was occupied wholly or partially by persons other than persons who, at the time of the recording, had contractual rights to acquire one or more units within the condominium.” Many apartments would fall within the definition of a conversion condominium, and if the demand for condominium product picks up, apartment owners and developers may be asking the question, “to convert or not to convert?” This article, written in a question and answer format, explains some of the key mechanics of conversion condominiums to assist those apartment owners and developers that may be sitting on the conversion fence.

QUESTION: Will I need to get my apartment property rezoned or upgraded to current building code requirements before I can convert it to a condominium?

ANSWER: If the existing apartment property is lawfully zoned for multi-family residential use, it will not need to be rezoned before it can be converted to the condominium form of ownership. On this point, the Act provides that, “no zoning, subdivision, building code, or other real estate use law . . . shall prohibit the condominium form of ownership or impose any requirement upon a condominium which it does not impose upon a physically identical development under a different form of ownership.” This also means that new building code requirements cannot be imposed if the property can already be lawfully occupied as apartments and the condominium converter is merely changing the form of ownership of the property to a condominium. Of course, substantial renovations to an apartment or condominium may trigger the need to conform to new building code requirements. Similarly, if the property is lawfully being used for a nonresidential use, as is the case with many loft condominium conversions, the conversion to a multi-family residential use will likely trigger the obligation to comply with current building codes and zoning laws, unless a variance is obtained.

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QUESTION: What notice do I need to give my tenants if I am planning to do a condominium conversion?

ANSWER: The Act requires that apartment owners give tenants at least 120 days notice of the decision to convert an apartment to a condominium. During the 120 day period, tenants may not be required by the condominium converter to vacate the unit at any time during the 120 day period except by reason of nonpayment of rent, waste, or conduct which disturbs other tenants’ peaceful enjoyment of the premises, and the terms of the tenancy may not be altered during said period. The 120 day notice requirement was

enacted to insure an orderly transition from an apartment to the condominium form of ownership. The law gives tenants whose leases expire during the notice period additional time to stay in their apartments until the end of the notice period.



The 120 day notice requirement does not prematurely terminate leases that expire after the notice period is over. For example, if the notice period ends in July but a tenant's lease does not expire until November, the tenant can stay in the apartment until the end of the lease term. In addition, tenants may not be coerced into vacating their apartments early. Of course, the condominium converter can offer to allow tenants to move out early without penalty should they so decide.

QUESTION: Must I give tenants an opportunity to buy their units?

ANSWER: Under the Act, tenants must be afforded the opportunity to buy their units. Specifically, within 60 days of the notice to convert being sent to tenants, the condominium converter must offer tenants the opportunity to purchase their units. Tenants then have 60 days to decide whether or not to buy. In many instances, tenants will receive the offer to purchase their units at the time the notice to convert is delivered.

QUESTION: When can I start selling condominium units?

ANSWER: Sales of condominium units may begin as soon as the 120 day notice has been sent to tenants. However, sales may be limited to vacant units and those units occupied by tenants who have decided to go ahead and purchase.

QUESTION: Can the condominium be converted in phases?

ANSWER: The Act permits a condominium to be converted in phases. Therefore, the condominium converter can submit less than all of an apartment complex to the condominium form of ownership and reserve the right to add additional sections of the apartment complex to the condominium at a later date. However, as of the publication of this article, FHA prohibits phased conversion condominiums and requires that a conversion condominium be created and declared in a single phase.

QUESTION: What must be disclosed to purchasers about the condition of the property?

ANSWER: The Act requires that the condominium converter prepare a statement of condition of property based on a report prepared by an independent licensed engineer or architect. The statement of condition of property must include the following information: (1) a list of any outstanding notices of uncured building code violations, (2) a statement of the present condition of all structural components and mechanical and electrical systems, and (3) a statement of the useful life of the above items or a statement that no representations are made in that regard. Condominium converters are advised to go beyond the minimum disclosure requirements of the Act and disclose in exhaustive detail any past or present problems with the apartment. In so doing, condominium converters reduce the risk of a lawsuit by disgruntled owners alleging that the condominium converter committed fraud and misrepresentation by failing to disclose the true condition of the property.

QUESTION: Other than the statement of condition of property, what other information must be disclosed to purchasers?

ANSWER: Under the Act, certain purchasers of residential condominium units are required to receive a "condominium disclosure package" that contains various documentation and information, including the statement of condition of property in the case of a conversion condominium, related to the condominium development. In addition, the Act requires that certain statutory disclosures be incorporated in the condominium unit sales agreements as well as in sales or marketing brochures.

