

## THE ILLINOIS CONDOMINIUM PROPERTY ACT: AN ANALYSIS OF LEGISLATIVE EFFORTS TO IMPROVE TENANTS' RIGHTS IN THE CONDOMINIUM CONVERSION PROCESS

### INTRODUCTION

Kathy first learned that her apartment building was “going condo” from a stranger who knocked on her door and asked if he could come inside and take a look around.<sup>1</sup> He said that he was planning to buy her apartment.<sup>2</sup> At another building, all of the tenants’ leases were changed to month-to-month tenancies.<sup>3</sup> The building was then sold, and the new owner served all of the tenants, including seniors and persons with disabilities, with thirty-day notices to terminate tenancy.<sup>4</sup> Once the tenants vacated, rehab construction began, and a sign went up offering new condos for sale.<sup>5</sup>

Stories such as these exemplify the ways in which Illinois condominium developers, eager to reap profits, have either ignored the state statutory requirements for condominium conversions or circumvented the law altogether. In Illinois, the conversion of existing apartment buildings to condominiums is regulated by the Condominium Property Act (“the Act”).<sup>6</sup> The Act provides tenants with the right to advance notice of an impending conversion, extra time to move, and the right to purchase their units.<sup>7</sup> In the midst of the most recent surge in condominium conversions, however, many tenants, especially those with month-to-month tenancies, were denied their rights under Illinois law.<sup>8</sup>

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1. *Advocates Criticize ‘Stealth’ Condo Conversions*, ROGERS PARK COMMUNITY ACTION NEWSLETTER (Rogers Park Cmty. Action Network, Chicago, Ill.), Spring 2005, at 5, available at [http://www.rpcan.org/images/RPCANews\\_Spring\\_05.pdf](http://www.rpcan.org/images/RPCANews_Spring_05.pdf).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. 765 ILL. COMP. STAT. 605/1–605/32 (2006).

7. 765 ILL. COMP. STAT. 605/30.

8. See Antonio Olivo, *Condos Evicting Affordable Housing: Rogers Park Has Lost 900 Apartments a Year Since '03, Study Finds*, CHI. TRIB., Oct. 25, 2006, sec. 2, at 11; LAKESIDE CMTY. DEV. CORP., THE COMMUNITY HOUSING AUDIT: HOUSING REDEVELOPMENT IN ONE CHICAGO NEIGHBORHOOD 20–21 (2006), <http://www.lakesidecdc.org> (go to <http://www.google.com>; then enter “Lakeside Audit Report” in the search box; then follow “Lakeside CDC—News and An-

The topic of condominium conversion regulation received significant attention in the late 1970s and early 1980s when the nation first experienced a dramatic increase in conversions.<sup>9</sup> In response, many states and cities enacted legislation to protect the private rental market, as well as tenants displaced by conversions.<sup>10</sup> The most recent wave of conversions has given rise to renewed concern that, in spite of the statutory protections in place, condominium conversions continue to displace long-time residents from their communities, deplete the supply of affordable housing, and violate tenants' rights in the process.<sup>11</sup>

In Chicago, one of the nation's most active conversion markets,<sup>12</sup> tenants' advocates have reported increased complaints from tenants who believe that their landlords are "going condo" but have failed to observe state and city requirements.<sup>13</sup> As a result, tenants and neighborhood-based organizations have called for a wide range of reforms, including a city-wide moratorium on condominium conversions.<sup>14</sup> These calls for reform have highlighted growing dissatisfaction with the state's conversion regulations and spurred several legislative efforts to reexamine the Act and extend conversion protections to tenants who vacate their units without receiving any notice of an impending conversion or of their rights as conversion tenants.<sup>15</sup>

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nouncements Press Releases") [hereinafter COMMUNITY HOUSING AUDIT]; *Advocates Criticize 'Stealth' Condo Conversions*, *supra* note 1, at 5; *Rally and March Against Condos on September 30*, METROPOLITAN TENANTS ORG., Sept. 25, 2006, <http://www.tenants-rights.org/2006/09/rally-and-march-against-condos-on.html> [hereinafter *Rally and March*].

9. OFFICE OF POLICY DEV. & RESEARCH, U.S. DEP'T OF HOUSING & URBAN DEV., *THE CONVERSION OF RENTAL HOUSING TO CONDOMINIUMS & COOPERATIVES: A NATIONAL STUDY OF SCOPE, CAUSES AND IMPACTS* i-ii (1980) [hereinafter HUD REPORT].

10. *Id.* at XII-1.

11. See Lisa J. Huriash, *South Florida Condo Conversions Are at an All-Time High, Leaving Renters in a Tight Spot*, SUN-SENTINEL, Aug. 6, 2005, <http://www.sun-sentinel.com/news/local/southflorida/sfl-cwestcondosaug06.0.7292259.story?coll=sfla-home-headlines>; Lyndsey Layton, *Families Absent From Flourishing D.C., Study Says*, WASH. POST, Oct. 24, 2006, at B8; Tom Scheck, *Minneapolis Losing Affordable Housing to Condo Conversions*, MINN. PUB. RADIO, Sept. 30, 2005, [http://news.minnesota.publicradio.org/features/2005/09/30\\_scheckt\\_condoconversions/](http://news.minnesota.publicradio.org/features/2005/09/30_scheckt_condoconversions/); Lesley Wright, *Condominium Conversion Rules Mulled*, ARIZ. REPUBLIC, Oct. 17, 2006, at 4, available at <http://www.azcentral.com/arizonarepublic/local/articles/1017necondo1017.html>.

12. Peter Slatin, *Preaching to the Converters*, THE SLATIN REP.: REAL ESTATE INTELLIGENCE, Nov. 30, 2005, <http://www.theslatinreport.com/story.jsp?articleName=1201converts.txt&Topic=Residential&fromPage=Search> (citing Real Capital Analytics, Top 20 Markets for Conversion Sales as of November 2005—reported as the markets with the highest volume of apartment buildings sold for the purpose of conversion).

13. Curtis Black, *Tenants to March for Condo Freeze*, COMMUNITY MEDIA WORKSHOP: NEWSTIPS, Sept. 28, 2006, [http://www.newstips.org/interior.php?section=Newstips&main\\_id=669](http://www.newstips.org/interior.php?section=Newstips&main_id=669).

14. See *id.*

15. See H.B. 5334, 94th Gen. Assem. (Ill. 2006) (proposing the establishment of a Condominium Advisory Council to study the Condominium Property Act and suggesting possible amend-

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In the summer of 2007, in response to the growing push for reform, the Illinois General Assembly amended the Act's conversion regulations.<sup>16</sup> House Bill 1797 ("H.B. 1797") was designed to close a significant loophole in the Act's provisions and create a much needed enforcement mechanism for the Act's existing tenant protections. The amendment provides valuable enforcement provisions necessary to address the "stealth conversion" problem, in which a developer converts a building without notifying tenants or observing state requirements.<sup>17</sup> While H.B. 1797 represents a significant improvement, much more must be done to bring Illinois regulations up to par with the most effective and equitable regulations found in other states, including those experiencing comparable, if not higher, rates of condominium conversion.

This Note examines recent concerns regarding the Illinois Condominium Property Act conversion regulations and the state legislature's newest amendment, which was designed to address the Act's flaws. Part II provides an overview of Illinois's recent conversion craze and the development of condominium conversion regulations across the country.<sup>18</sup> Part III analyzes Illinois conversion regulations and recent legislative activity, particularly in comparison with legislation in other jurisdictions regulating condominium conversions. It examines the new amendment's strengths and weaknesses and proposes several additional amendments to further strengthen the tenant protections and enforcement provisions necessary to ensure the measured and healthy development of Illinois communities.<sup>19</sup> Finally, Part IV presents the recent condominium conversion craze in context, recognizing the growing affordable housing crisis in Illinois and the impact that the current Illinois conversion law has upon the state's renters and the housing market as a whole.<sup>20</sup> Ultimately, this Note concludes that, while Illinois has taken an important first step in improving its condominium conversion regulations, the legislature should further amend the Act to provide even stronger enforcement mechanisms and

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ments); H.B. 1797, 95th Gen. Assem. (Ill. 2007). Initially introduced in April 2006 as H.B. 5783, and reintroduced in February 2007, H.B. 1797 called for an amendment to the Condominium Property Act that would award \$10,000 in damages to any tenant vacating an apartment within eighteen months of its conversion to a condominium if the landlord failed to provide notice of conversion.

16. H.B. 1797, 95th Gen. Assem. (Ill. 2007). This bill passed both houses of the General Assembly on May 22, 2007, and Governor Rod R. Blagojevich signed it on August 16, 2007. *Id.*

17. See *Advocates Criticize 'Stealth' Condo Conversions*, *supra* note 1, at 5 (describing the "stealth conversion" phenomenon).

18. See *infra* notes 22–119 and accompanying text.

19. See *infra* notes 120–246 and accompanying text.

20. See *infra* notes 247–288 and accompanying text.

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establish meaningful protections for vulnerable classes of tenants.<sup>21</sup> Such legislative efforts would bring Illinois in line with the many other jurisdictions regulating condominium conversions and help to ensure the equitable and measured development of Illinois communities.

II. REGULATING THE CONDOMINIUM CONVERSION PHENOMENON

The nation’s most recent housing boom fueled the conversion of record numbers of existing apartments to condominiums.<sup>22</sup> Hoping to take advantage of unprecedented increases in residential real estate values, developers converted thousands of apartments, redeveloping entire neighborhoods and forcing tenants to either purchase their units or move out.<sup>23</sup> While the housing market has retreated from its record highs, the conversion craze of the past several years exposed significant flaws in the Illinois Condominium Property Act, particularly in terms of its effectiveness in regulating conversions and protecting tenants’ rights.<sup>24</sup>

This Part details the recent conversion phenomenon in Illinois, the factors driving the rapid conversion of existing apartments, and the Illinois conversion regulations in effect during this latest wave of conversions.<sup>25</sup> It also provides a general history of conversion regulations, including a review of the most common tenant protections and conversion requirements found across the country.<sup>26</sup>

A. The Illinois Condominium Conversion Craze

Illinois and its rental housing stock have proven to be fertile ground for condominium conversions. In 2005, the most active year for conversions, the metropolitan Chicago area ranked ninth in the country

21. See *infra* Part V.

22. MARCUS & MILLICHAP RESEARCH SERVS., NATIONAL APARTMENT RESEARCH REPORT 7 (2008), <http://www.marcusmillichap.com> (follow “Research” hyperlink; then follow “Access Research Reports” hyperlink; then follow “National Apartment Report” hyperlink) (“Roughly 315,000 apartments were converted from 2003 to 2006 . . . .”); Charisse Jones, *Soaring Numbers of Rentals Go Condo: Apartment Dwellers Both Hopeful, Fearful*, USA TODAY, July 7, 2005, at A1 (“At least 70,800 apartment units were sold to condominium developers nationwide in 2004, up from 7,800 in 2002 . . . . As of June 1, at least 43,900 units ha[d] been sold to developers [in 2005] . . . .”).

23. The national median home price rose 55% between 2000 and 2005. James Poniewozik, *America’s House Party*, TIME, June 13, 2005, at 16. See, e.g., COMMUNITY HOUSING AUDIT, *supra* note 8 (discussing the impact of condominium conversions on the Chicago neighborhood of Rogers Park).

24. Mary Umberger, *Home Prices Finally Hit Wall: Decrease is 1st in 11 Years; Chicago Avoids Drop—For Now*, CHI. TRIB., Sept. 26, 2006, sec. 1, at 1.

25. See *infra* notes 27–90 and accompanying text.

26. See *infra* notes 91–119 and accompanying text.

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for condominium conversions.<sup>27</sup> That same year, 3,965 units were converted to condominiums in downtown Chicago alone, more than any other year since 1979.<sup>28</sup> Chicago suburbs also experienced similar trends, with approximately 4,500 suburban units converted to condominiums in 2006.<sup>29</sup> Chicago's recent conversion craze is the city's third wave of conversions within the past thirty-five years.<sup>30</sup> The first occurred in the late 1970s and early 1980s, and the second swept the city in the early 1990s.<sup>31</sup>

This latest conversion craze has had a detrimental effect upon the supply of affordable housing. Nearly 5,000 rental units in Chicago were sold for conversion in 2005, while the creation of new rental units hovered at just around 2,000, resulting in a net loss of approximately 3,000 rental units.<sup>32</sup> This continued a larger trend in which Chicago lost at least 34,400 units of housing between 2000 and 2003.<sup>33</sup> This reduction in the overall supply of available apartments placed upward pressure on rents, making affordable housing more difficult to find.<sup>34</sup> Affordable rental units are already scarce, with 53% of Chicago renters spending 30% or more of their income on rent.<sup>35</sup> The cost of supplying affordable rental housing has also increased in light

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27. Slatin, *supra* note 12.

28. Alby Gallun, *Daley Seeks to Slow Condo Conversions: Panel to Scope Out Ways to Curb Drain on Affordable Housing*, CRAIN'S CHI. BUS., Oct. 23, 2006, at 3; John Handley, *New Look in Market for Condos: Former Rental Units Are Competing with New Construction*, CHI. TRIB., Sept. 5, 2005, sec. 4, at 1.

29. Annemarie Mannion, *Conversion Country: Suburban Complexes Offer Condo Buyers Space, Location and Affordability; Investors Like Them, Too*, CHI. TRIB., Apr. 22, 2007, sec. 16, at 1. In 2005, 2,139 units were earmarked for conversion in northwest suburban Cook County alone. Posting of Alison Soltau to New Homes Magazine Blog, [http://yochicago.com/magazine/condo-conversions/chicagos-biggest-condo-conversion-boom-since-70s-offers-better-variety-product\\_419](http://yochicago.com/magazine/condo-conversions/chicagos-biggest-condo-conversion-boom-since-70s-offers-better-variety-product_419) (Mar. 20, 2006).

30. John Handley, *My Condo Town: Need for Instant Gratification Fuels a Boom in Conversions Downtown*, CHI. TRIB., Sept. 18, 2005, sec. 16, at 1.

31. *Id.*

32. MARCUS & MILLICHAP RESEARCH SERVS., NATIONAL APARTMENT RESEARCH REPORT 14 (2006).

33. Ed Sacks, *Rental Costs Push Higher: Conversions From Apartments to Condos Decrease Supply*, CHI. SUN-TIMES, May 20, 2007, at 4; see also Patrick Olsen & Alberto Trevino eds., *Rental Dilemma: Cook County's Condo Boom Comes at Expense of Affordable Housing*, CHI. TRIB. RED EYE EDITION, July 26, 2004, at 6.

34. See Perry J. Snyderman & Portia O. Morrison, *Rental Market Protection Through the Conversion Moratorium: Legal Limits and Alternatives*, 29 DEPAUL L. REV. 973, 978 (1980).

35. U.S. CENSUS BUREAU, 2006 AMERICAN COMMUNITY SURVEY, CHICAGO, ILL., POPULATION & HOUSING NARRATIVE PROFILE (2006), available at [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en) (enter Chicago, Ill. in the fact sheet search feature; select "Go"; then select "Narrative Profile" hyperlink).

of rising land values and increased density restrictions.<sup>36</sup> Against the backdrop of a particularly tight rental market, condominium conversions present a stark example of the removal of affordable rental units from the market.<sup>37</sup>

### 1. *Reasons for Condominium Conversions*

A number of factors in the housing market recently combined to make conversions attractive to developers and home-buyers alike.<sup>38</sup> Home-buyers have been drawn to the apparent investment opportunity of home ownership, as evidenced by the steady rise of home values across the nation for the past eleven years.<sup>39</sup> In Chicago, home values increased 37% from 1990 to 2001.<sup>40</sup> Meanwhile, mortgage rates declined to forty-five-year lows in 2005, significantly increasing buyers' access to credit.<sup>41</sup> For many home-buyers, condominiums represent an affordable alternative to single family homes.<sup>42</sup> Condominiums, therefore, allow more individuals to become homeowners and to take advantage of significant economic benefits, such as income tax savings and accrued equity.<sup>43</sup>

From the perspective of developers, condominium conversions were particularly attractive during the housing boom of 2004 to 2006 for several reasons. First, increasing home prices and strong demand for condominiums have made the development and sale of condominiums an opportunity to realize significant profits, with cash-on-cash returns ranging anywhere from 15% to 30%.<sup>44</sup> Second, converting existing buildings is generally less expensive and more profitable than new

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36. JOINT CTR. FOR HOUS. STUDIES AT HARVARD UNIV., *AMERICA'S RENTAL HOUSING: HOMES FOR A DIVERSE NATION* 11 (2006), available at <http://www.jchs.harvard.edu/publications/rental/index.html> (select "America's Rental Housing: Homes for a Diverse Nation" hyperlink).

37. See Olsen & Trevino, *supra* note 33, at 6.

38. See HUD REPORT, *supra* note 9, at V-31-V-32; Robert Chambers, Comment, *Pushed Out: A Call For Inclusionary Housing Programs in Local Condominium Conversion Legislation*, 42 CAL. W. L. REV. 355, 359-60 (2006).

39. Olsen & Trevino, *supra* note 33, at 6; Umberger, *supra* note 24, at 1.

40. Olsen & Trevino, *supra* note 33, at 6.

41. RESEARCH DIV. OF THE NAT'L ASS'N OF REALTORS, *HOME PRICE ANALYSIS FOR CHICAGO-NAPERVILLE-JOLIET* 3 (Sept.-Oct. 2005), <http://redpepperinvestments.com/Chicagoantibubble.pdf>.

42. Donald H. Haider, *Economics, Housing and Condominium Development* (Ford Found., Working Paper, 1980).

43. Sean Zielenbach, Commentary, *Affordable Housing: A Critical Analysis of Low-Income Homeownership Strategies*, 13 J. AFFORDABLE HOUS. & CMTY. DEV. L. 446, 448-50 (2004); see also Haider, *supra* note 42, at v-viii.

44. Joe Gose, *Condo Conversion Craze*, NAT'L REAL ESTATE INVESTOR, June 2004, at 21; see also Victoria A. Judson, *Defining Property Rights: The Constitutionality of Protecting Tenants from Condominium Conversion*, 18 HARV. C.R.-C.L. L. REV. 179, 184-86 (1983).

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construction projects, typically costing approximately 33% less.<sup>45</sup> This has been further exacerbated by recent increases in the cost of building materials and supplies, making new construction particularly expensive.<sup>46</sup> Finally, landlords have seen their profits diminish significantly by the much higher property tax assessment rates of rental property compared with those of owner-occupied property, given that, in Cook County, multi-family buildings have been assessed at rates over 62% higher than single-family residential properties.<sup>47</sup>

## 2. Regulation of Condominium Conversions

Condominium conversions are widely regulated at the state and local levels.<sup>48</sup> Conversion statutes generally strive to mitigate the loss of affordable rental units and the potential displacement of low- to moderate-income residents by protecting tenants' rights to remain in possession, providing tenants a statutory right to purchase their units, and providing relocation assistance for tenants who opt to move rather than buy.<sup>49</sup> Many conversion statutes specifically address the needs of more vulnerable categories of tenants, such as elderly, disabled, and

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45. COMMUNITY HOUSING AUDIT, *supra* note 8, at 6.

46. Increases in the cost of materials and components for construction have greatly exceeded increases in all other goods, with the Producer Price Index for materials and components for construction increasing 10.1% from December 2003 to December 2004 and 6.1% from December 2004 to December 2005. BUREAU OF LABOR STATS., U.S. DEP'T OF LABOR, PRODUCER PRICE INDEX—COMMODITIES: 12 MONTHS PERCENT CHANGE (2007), <http://www.bls.gov/ppi> (follow the "Commodity Data" hyperlink; then check the box "Materials and Components for Construction;" then follow the "Retrieve Data" hyperlink). In comparison, the Consumer Price Index (CPI) for all items increased just 3.4% in 2005 and 3.3% in 2004. BUREAU OF LABOR STATS., U.S. DEP'T OF LABOR, CONSUMER PRICE INDEX (2007), <ftp://ftp.bls.gov/pub/special.requests/cpi/cpi.ai.txt>; see also Nell Henderson, *Inflation Mounted Swiftly In May: Price Increases Outstrip Wages as Gas Takes Toll*, WASH. POST, June 15, 2006, at D1 (noting an increase in the CPI of 5.2% annual rate as of May 2006 . . . "More than half of the May CPI increase reflected higher rents and hotel and motel rates. Rents have been rising as the housing market cools, vacancy rates fall and many landlords boost their prices to cover higher energy bills and property taxes."). These economic conditions are similar to those that fueled the first wave of condominium conversions throughout the 1970s. See Haider, *supra* note 42, at 8.

47. Joanna Trotter, *Rental Property Tax Relief on the Horizon in Cook County*, METROPOLITAN PLANNING COUNCIL, Feb. 23, 2006, <http://www.metroplanning.org/ourwork/articleDetail.asp?pageID+&objectID=3153&categoryID=2>.

48. HUD REPORT, *supra* note 9, at XI-1, XII-2. As of June 1980, nearly half of the states had enacted protections for tenants of buildings undergoing conversion to condominiums. *Id.* at XI-1. Conversion regulations are generally considered constitutional as a valid exercise of state police power. For a general discussion of the constitutionality of conversion regulations, see Judson, *supra* note 44, and Molly S. McUsic, *The Ghost of Lochner: Modern Takings Doctrine and Its Impact on Economic Legislation*, 76 B.U. L. REV. 605 (1996).

49. Judson, *supra* note 44, at 179–80. See also Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 536–37 (1984).

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low-income individuals.<sup>50</sup> Low-income tenants whose apartments have been converted have an especially difficult time finding comparable housing at affordable rents.<sup>51</sup> Similarly, elderly and disabled tenants living on fixed incomes are disproportionately affected and may also have increased difficulties finding new accommodations due to limited physical mobility, difficulty in finding appropriate housing to accommodate physical needs, or a need to remain close to a doctor, a church, or another service.<sup>52</sup>

### 3. *The Illinois Condominium Property Act*

The Illinois Condominium Property Act was enacted in 1963, providing a statutory scheme for condominium creation and management.<sup>53</sup> Fifteen years later, the legislature amended the Act to provide tenants with protections in the conversion process.<sup>54</sup> Section 605/30 established a number of requirements for the conversion of apartment buildings.<sup>55</sup> Key requirements of section 605/30 include a notice provision, a lease extension, an explicit offer of sale, and the right of first refusal to purchase the unit.<sup>56</sup>

The notice provision requires developers to provide all tenants with written notice of their intent to convert at least thirty days prior to recording the declaration that submits the property to the Act.<sup>57</sup> This

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50. Thomas A. Louthan, Comment, *Condominium Conversion Lease Extensions for Elderly and Disabled Tenants: Is Virginia's New Law A Panacea?*, 17 U. RICH. L. REV. 207, 208 (1982); see, e.g., CHI., ILL., MUNICIPAL CODE 13-72-060(B)-(C) (1990); N.Y. GEN. BUS. LAW § 352-eeee(2)(d)(iii) (McKinney 1996) (prohibiting the eviction of eligible seniors and disabled tenants due to conversion); MD. CODE ANN., REAL PROP. § 11-102.1 (LexisNexis Supp. 2007) (requiring landlords to offer lease extensions for up to three years for low-income seniors and individuals with disabilities for up to 20% of the landlords' units); MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527, §§ 1-5D, 7, 8) (emergency legislation 1983) (West 2003) (establishing that elderly, disabled, and low- or moderate-income tenants must receive at least two years' notice before being required to vacate).

51. See Jeffrey James Minton, *Rent Control: Can and Should It Be Used to Combat Gentrification?*, 23 OHIO N.U. L. REV. 823, 832-33 (1997).

52. See 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, 713 (1987); see also Charles Sheehan, *Poor Seniors Take on Plans of Condo Giant*, CHI. TRIB., Apr. 27, 2005, sec. 2, at 1.

53. 765 ILL. COMP. STAT. 605/1-605/32 (2006).

54. 765 ILL. COMP. STAT. 605/30 (effective Jan. 1, 1978).

55. *Id.*

56. *Id.*

57. *Id.*; see also ILLINOIS FORMS: LEGAL & BUSINESS § 7:57 (West 2000). Prior to 1994, the notice of intent to convert was required a full 120 days prior to recordation; however, in 1993, the statute was amended to reduce the notice period to just thirty days prior to recordation. P.A. 88-417, 1993 Ill. Laws 3267. For a discussion of the Illinois Condominium Property Act as of 1981, see Stephen B. Cohen et al., *Condominium Law: A Comparison of the Uniform Act with the Illinois Act*, 14 J. MARSHALL L. REV. 387, 434-35 (1981).

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notice should include an explanation of tenants' rights in the conversion process.<sup>58</sup>

The Act's lease extension is one of the more significant rights for tenants not wishing to purchase their units. This provision establishes the right to extend the tenancy on the same terms and conditions for 120 days from the date the tenant receives the notice.<sup>59</sup> While all original leases must be honored, a tenant whose lease expires prior to the expiration of the 120-day notice period must be allowed to remain in the unit until the end of the 120 days, providing the tenant extra time to locate a new apartment.<sup>60</sup>

The developer is also required to offer the unit for sale to the current tenant. This provision states that the developer must provide tenants with a schedule of selling prices for all of the units and offer current tenants the right to purchase their individual unit, unless that unit must be vacated for renovations.<sup>61</sup> The offer of sale to the tenant must be held open for thirty days, unless the tenant declines the offer in writing.<sup>62</sup> Prior to the execution of any agreement for the sale of a unit, the developer must execute and acknowledge a certificate stating that he has provided all tenants notice.<sup>63</sup> This certificate must be attached to the declaration in order to record it and thereby submit the property to the Act.<sup>64</sup>

The tenant is also granted the right of first refusal to purchase the unit for a period of 120 days following the date of the conversion notice.<sup>65</sup> The right of first refusal was established through two amendments to section 605/30 in 1981 and 1982.<sup>66</sup> These amendments established the developer's obligation to provide the tenant with notice of any contract to sell the unit to a third party executed during the 120-day period and to allow the tenant to exercise his right to purchase the unit within thirty days.<sup>67</sup> The developer must provide the tenant the right to purchase on "substantially the same terms and conditions as set forth in a duly executed contract to purchase the unit."<sup>68</sup>

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58. See ILLINOIS FORMS: LEGAL & BUSINESS § 7:57 (West 2000).

59. 765 ILL. COMP. STAT. 605/30 (2006).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. 765 ILL. COMP. STAT. 605/30.

66. P.A. 81-1469, 1981 Ill. Laws 866; P.A. 82-126, 1980 Ill. Laws 1616.

67. P.A. 81-1469, 1981 Ill. Laws 866; P.A. 82-126, 1980 Ill. Laws 1616.

68. 765 ILL. COMP. STAT. 605/30.

Finally, the Act limits developers' ability to show occupied units to potential purchasers. Occupied units may be shown only "a reasonable number of times and at appropriate hours" and only "during the last 90 days of any expiring tenancy."<sup>69</sup>

Section 605/30 and these key provisions remained intact with no proposed changes for nearly twenty years. On April 25, 2006, however, in the wake of a record number of conversions in 2005, Representative Harry Osterman of the Fourteenth District introduced House Bill 5783 ("H.B. 5783").<sup>70</sup> That amendment attempted to address conversion abuses by extending section 605/30's protections to tenants who have already vacated their units.<sup>71</sup> House Bill 5334 ("H.B. 5334"), introduced at the same time, proposed the establishment of a Condominium Advisory Council to study the Act and suggest possible amendments.<sup>72</sup> Neither proposal was adopted in 2006. In 2007, however, Representative Osterman reintroduced the proposed amendment to section 605/30 as House Bill 1797 ("H.B. 1797"), and the proposal received a warmer reception.<sup>73</sup>

By the end of 2006, condominium conversions had become an issue of concern in a number of legislative districts. Tenant advocacy organizations continued to organize around the issue and were demanding change.<sup>74</sup> Representative Osterman's proposal, therefore, gained new, serious consideration, allowing it to be passed out of committee and later amended to better address developers' liability for failure to

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69. *Id.*

70. H.B. 5783, 94th Gen. Assem. (Ill. 2006), available at <http://www.ilga.gov/legislation/94/HB/PDF/09400HB5783lv.pdf>.

71. *Id.* The full text of H.B. 5783 reads as follows:

Any tenant who vacated a unit in a building on real estate that became a conversion condominium within 18 months before the real estate is submitted to the provisions of this Act or before the developer or his or her agent executed any agreement for the sale of a unit, without receiving a notice of intent defined in this Section, shall be awarded damages of \$10,000 plus reasonable attorney's fees and costs. A non-profit housing organization, suing on behalf of an aggrieved party, may also recover compensation for diversion of mission necessary for filing the action.

*Id.* This proposal contained one primary flaw: the eighteen-month retroactive provision penalizing landlords that do not provide vacating tenants with notice was inconsistent with the 120-day notice period already required by the Act. Allowing a tenant to seek damages after vacating a unit where the unit is subsequently converted as much as eighteen months later would only serve to extend the notice requirement for landlords seeking to avoid liability from 120 days to a full eighteen months. While this might have been a positive change from the perspective of tenants, it should be pursued directly by amending the statute's main notice and lease extension provisions.

72. H.B. 5334, 94th Gen. Assem. (Ill. 2006).

73. See H.B. 1797, 95th Gen. Assem. (Ill. 2007).

74. See, e.g., *Rally and March*, *supra* note 8.

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provide notice and to resolve issues of internal consistency with the existing statutory language.<sup>75</sup>

As amended, H.B. 1797 added three new subsections, (a)(2), (j), and (k), to section 605/30:

- (a)(2) If the owner fails to provide a tenant with notice of the intent to convert as defined in this Section, the tenant permanently vacates the premises as a direct result of non-renewal of his or her lease by the owner, and the tenant's unit is converted to a condominium by the filing of a declaration submitting a property to this Act without having provided the required notice, then the owner is liable to the tenant for the following:
  - (A) the tenant's actual moving expenses incurred when moving from the subject property, not to exceed \$1,500;
  - (B) three month's rent at the subject property; and
  - (C) reasonable attorney's fees and court costs.
- ...
- (j) A tenant is entitled to injunctive relief to enforce the provisions of subsections (a) and (c) of this Section.
- (k) A non-profit housing organization, suing on behalf of an aggrieved tenant under this Section, may also recover compensation for reasonable attorney's fees and court costs necessary for filing such action.<sup>76</sup>

The new language also helped to garner the support of the Illinois Association of REALTORS<sup>77</sup> and additional congressional support.<sup>78</sup> On August 16, 2007, Governor Rod R. Blagojevich signed the bill, and it was enacted as Public Act 95-0221, effective January 1, 2008.<sup>79</sup>

#### 4. *The Chicago Condominium Ordinance*

Within the City of Chicago, the Condominium Ordinance ("Ordinance") provides additional protections for tenants.<sup>80</sup> The Ordinance requires developers to give tenants notice 120 days prior to recording the declaration rather than the thirty days that state law requires.<sup>81</sup>

75. H.B. 1797, 95th Gen. Assem. (Ill. 2007) (House Amendment No. 1).

76. *Id.*

77. See QUORUM CALL NEWSL. (Ill. Ass'n of REALTORS®, Springfield, Ill.), April 27, 2007, available at <http://www.illinoisrealtor.org/Member/publications/quorum/2007/qc4-27-07.asp>; Sargent Shriver Nat'l Ctr. on Poverty Law, 12 POVERTY ACTION REP. 9 (Apr. 2007), available at <http://www.povertylaw.org/news-and-events/poverty-action-report/april-2007/APR%20PAR%20PDF.pdf>.

78. See Illinois General Assembly, Bill Status for H.B. 1797, <http://www.ilga.gov/> (search "Search the 95th General Assembly, By Number" for "H.B. 1797") (last visited Feb. 25, 2008).

79. *Id.*

80. See CHI., ILL., MUNICIPAL CODE § 13-72-060 (LexisNexis Supp. 2007) (requiring notice to tenants of intent to declare submission of property for condo consideration).

81. § 13-72-060(A).

The tenant is then allowed the same 120-day period, as under state law, in which to stay in the unit.<sup>82</sup> Most significantly, Chicago provides an additional 60 days—180 days total—to “any tenant who is over 65 years of age, or who is deaf or blind or who is unable to walk without assistance.”<sup>83</sup> Chicago also places an additional limitation on the showing of occupied units to prospective purchasers by prohibiting showings for thirty days after the tenant receives the notice of intent.<sup>84</sup>

The Ordinance contains a municipal penalty provision, which states that violation of any provision of the ordinance is punishable by a fine ranging from a minimum of \$100 to a maximum of \$300 for the first offense; \$300 to \$500 for the second and each subsequent offense in any 180 day period.<sup>85</sup> If a developer violates the ordinance more than three times within a 180-day period, he may be incarcerated for up to six months.<sup>86</sup> Finally, violations shall also “be cause for revocation of any license issued to such violator or offending party by the City of Chicago.”<sup>87</sup> These fines are payable to the city, however, and do not provide any specific remedy for the aggrieved tenant.

Despite the existence of state and local regulations intended to protect tenants and ease transitions from rental to condominium units, many Illinois tenants have been denied the benefits of these regulations. The recent legislative efforts to amend the state’s conversion regulations were designed to address this problem.<sup>88</sup> For the past three decades, developers have been able to avoid providing some tenants 120 days of guaranteed occupancy before they are required to vacate as section 605/30 mandates. Tenants with month-to-month leases have been particularly affected, given the short period of time in which a landlord can terminate the tenancy and then quickly con-

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82. § 13-72-060(B).

83. *Id.*

84. § 13-72-060(D).

85. CHI., ILL., MUNICIPAL CODE § 13-72-110.

86. *Id.*

87. *Id.*

88. Representative Osterman elaborated on the legislative intent behind H.B. 1797 during the Bill’s third reading before the Illinois House of Representatives:

In many communities in the Chicagoland area there’s a large growth of condominium conversions. In some instances individual tenants who should have been required to receive notice of intent to convert a building to condominium do not receive that. Current . . . laws on the books are silent on any penalties for not providing the notice. What House Bill 1797 will do is give relief to those tenants who do not receive notice of intent to convert a condominium. Our hope is that they will be given those notices in the future . . . .

H.B. 1797, 95th Gen. Assem. Reg. Sess. (Ill. House Transcripts May 1, 2007) (statement of Rep. Osterman).

vert the unit without providing notice.<sup>89</sup> Additionally, the protections the statute does provide have become particularly weak in comparison to the protections found in a number of other states' conversion regulations. H.B. 1797 goes a long way toward addressing these problems, particularly in terms of preventing stealth conversions and providing effective enforcement mechanisms for tenants who have been denied their rights in the conversion process.<sup>90</sup> The state's conversion regulations, however, still fail to provide the same rights to tenants with month-to-month leases as those with longer-term leases and further fail to provide necessary protections for the state's most vulnerable tenants.

### B. *The Illinois Statute in Context: The History of Conversion Regulation*

While the condominium form of property ownership is not a new concept, condominiums have only become popular in the United States within the last fifty years.<sup>91</sup> In 1958, Puerto Rico was the first U.S. territory "to adopt a statute allowing the creation of condominiums."<sup>92</sup> By 1968, all U.S. jurisdictions, including the Virgin Islands and the District of Columbia, had enacted condominium statutes.<sup>93</sup> Condominiums and the conversion of existing buildings to common ownership became so popular that, by 1983, nearly half of the states had enacted specific regulations for the conversion of apartments, providing tenants with a number of rights and protections in the process.<sup>94</sup>

89. See Keenan, *supra* note 52, at 690–91.

90. See H.B. 1797, 95th Gen. Assem. (Ill. 2007).

91. Condominium is defined as a "single real-estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, along with the development's other owners, in the common areas." BLACK'S LAW DICTIONARY 314–15 (8th ed. 2004). There is evidence that the condominium form of property ownership was employed by "the Hebrews in the fifth century, B.C., in Babylon during the second century, B.C., and in France during the Middle Ages." Louthan, *supra* note 50, at 209. See also William K. Kerr, *Foreward*, in ALBERTO FERRER & KARL STECHER, LAW OF CONDOMINIUM iii–iv (1967); ALBERTO FERRER & KARL STECHER, LAW OF CONDOMINIUM WITH FORMS, STATUTES AND REGULATIONS 15 (1967).

92. Horizontal Property Act, P.R. LAWS ANN. tit. 31, § 1291 (2003); Snyderman & Morrison, *supra* note 34, at 973.

93. Patrick J. Rohan, *The "Model Condominium Code"—A Blueprint for Modernizing Condominium Legislation*, 78 COLUM. L. REV. 587, 587 (1978). In 1979, the rate at which condominiums were being created was so high that the U.S. Department of Housing and Urban Development estimated that, by 2000, one-half the U.S. population would live in condominiums. Snyderman & Morrison, *supra* note 34, at 973.

94. Louthan, *supra* note 50, at 210; see also HUD REPORT, *supra* note 9, at viii.

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In 1980, concerns for tenants' rights in the conversion process drew national attention, leading Congress to pass the Condominium and Cooperative Conversion Protection and Abuse Relief Act ("Conversion Act").<sup>95</sup> The Conversion Act announced a strong statement of policy focused on protecting the "housing opportunities of low- and moderate-income and elderly and handicapped persons."<sup>96</sup> The Conversion Act failed, however, to establish any enforcement mechanism that would require states or local jurisdictions to enact such regulations. The Act even authorized states to essentially override the federal statute.<sup>97</sup> As one commentator stated, the Conversion Act appears to have had little consequence.<sup>98</sup>

Of much greater significance is the Uniform Condominium Act (UCA), which was finalized the same year as the Conversion Act.<sup>99</sup> Promulgated by the National Conference of Commissioners on Uniform State Laws, the UCA contains tenant protections originally modeled after "provisions set forth in the condominium statutes of Virginia and the District of Columbia."<sup>100</sup> This uniform act requires landlords converting apartment buildings to provide tenants notice 120 days prior to the date they are required to vacate their units and the right of first refusal to purchase their apartments for sixty days.<sup>101</sup> If a tenant fails to buy his unit, the landlord may not offer the unit on more favorable terms to other prospective buyers for an additional 180 days.<sup>102</sup> The UCA, including its conversion provisions, was incorporated into the Uniform Common Interest Ownership Act (UCIOA), a more comprehensive act, promulgated in 1982.<sup>103</sup> By 1994, five states had adopted the UCIOA, and twenty-one states had adopted the UCA or substantially similar legislation.<sup>104</sup> While over half of the states have adopted the uniform acts, it is common for states to adopt only a portion of the suggested legislation or to tailor the act to conform with state law or differing local perspectives.<sup>105</sup>

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95. Condominium and Cooperative Conversion Protection and Abuse Relief Act of 1980, 15 U.S.C. §§ 3601–3616 (2000).

96. § 3601.

97. § 3610.

98. See Keenan, *supra* note 52, at 641 n.6.

99. UNIF. CONDO. ACT § 4-112 (amended 1980), 7 U.L.A. 609 (2002).

100. § 4-112 cmt. 1.

101. § 4-112.

102. *Id.*

103. UNIF. COMMON INTEREST OWNERSHIP ACT § 4-112, 7 U.L.A. 147 (2002).

104. UNIF. COMMON INTEREST OWNERSHIP ACT § 4-112, 7 U.L.A. 1.

105. See, e.g., ARIZ. REV. STAT. ANN. § 33-1201 (2007) (adopting the UCA as of January 1, 1986, absent Article Four of the UCA containing conversion provisions). Alabama's version of the UCA, effective January 1, 1991, diminishes conversion tenant protections by reducing the required time period for notice to vacate from 120 days to sixty days and eliminates the exclusive

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Since the promulgation of the UCA, the majority of states regulating conversions include the minimum provisions of the UCA, as does Illinois's Condominium Property Act.<sup>106</sup> A significant number of states, however, have decided to adopt additional tenant protections. These more comprehensive tenant protections and enforcement provisions highlight and clarify the deficiencies of the Illinois Condominium Property Act and the UCA.<sup>107</sup> A review of all of the states currently regulating condominium conversions reveals a number of additional, creative provisions designed to address the more immediate needs of conversion tenants.<sup>108</sup> These provisions are often tailored to the specific needs of tenants and address a range of concerns: reimbursement of a tenant's moving expenses;<sup>109</sup> special provisions for

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right of first refusal for sixty days. ALA. CODE § 35-8A-412 (2006). Statutory comments explain that the 180-day enforcement provision "seemed undesirably restrictive" and "largely unnecessary." *Id.* cmt. 3. The Alabama statute further restricts municipalities from enacting ordinances that hinder conversions more than other forms of property ownership. *Id.*

106. See UNIF. CONDO. ACT § 4-112 (amended 1980), 7 U.L.A. 609 (1980); 765 ILL. COMP. STAT. 605/30 (2006).

107. 765 ILL. COMP. STAT. 605/30.

108. The following is a list of the jurisdictions providing tenant protections in the conversion process and the relevant statute: Alabama, ALA. CODE § 35-8A-412 (2006); Alaska, ALASKA STAT. § 34.08.620 (2006); California, CAL. GOV'T CODE §§ 66427.1-66452.13 (West 1997 & Supp. 2008); Colorado, COLO. REV. STAT. ANN. § 38-33-112 (West 2007); Connecticut, CONN. GEN. STAT. ANN. §§ 47-282-47-295 (West 2004 & Supp. 2007); District of Columbia, D.C. CODE ANN. §§ 42-3401.01-42-3405.12 (LexisNexis 2006 & Supp. 2007); Florida, FLA. STAT. ANN. §§ 718.604-718.622 (West 2005 & Supp. 2007); Georgia, GA. CODE ANN. § 44-3-87 (1991 & Supp. 2007); Hawaii, HAW. REV. STAT. ANN. § 514B-1, § 521-38 (LexisNexis 2006); Illinois, 765 ILL. COMP. STAT. 605/30; Maine, ME. REV. STAT. ANN. tit. 33 § 1604-111 (1964); Maryland, MD. CODE ANN., REAL PROP. § 11-102.1 (LexisNexis 2003 & Supp. 2007); Massachusetts, MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983) (West 2003); Michigan, MICH. COMP. LAWS ANN. § 559.204 (West 2007); Minnesota, MINN. STAT. ANN. § 515A.4-110 (West 2002 & Supp. 2007); Missouri, MO. ANN. STAT. § 448.4-112 (West 2000); Nebraska, NEB. REV. STAT. ANN. § 76-886 (LexisNexis 2004); Nevada, NEV. REV. STAT. ANN. § 116.4112 (LexisNexis 2004); New Hampshire, N.H. REV. STAT. ANN. §§ 356-C:1-356-C:10 (1995); New Jersey, N.J. STAT. ANN. §§ 2A:18-61.8-2A:18-61.11 (West 2000); New Mexico, N.M. STAT. § 47-7D-12 (1978 & Supp. 2007); New York, N.Y. GEN. BUS. LAW § 352-eeee (McKinney 1996 & Supp. 2007); North Carolina, N.C. GEN. STAT. §§ 47A-34-47A-37 (2005); Ohio, OHIO REV. CODE ANN. § 5311.25 (G) (LexisNexis 2004 & Supp. 2007); Oregon, OR. REV. STAT. § 100.305 (2005); Pennsylvania, 68 PA. CONS. STAT. ANN. § 3410 (West 2004 & Supp. 2007); Rhode Island, R.I. GEN. LAWS § 34-36.1-4.12 (1995 & Supp. 2006); South Carolina, S.C. CODE ANN. § 27-31-420 (2007); Tennessee, TENN. CODE ANN. § 66-27-123 (2004); Texas, TEX. PROP. CODE ANN. § 82.160 (Vernon 2007); Vermont, VT. STAT. ANN. tit. 27, §§ 1331-1339 (2006); Virginia, VA. CODE ANN. § 55-79.94 (2007); Washington, WASH. REV. CODE ANN § 64.34.440 (West 2005); West Virginia, W. VA. CODE ANN. § 36B-4-112 (LexisNexis 2005); and Wisconsin, WIS. STAT. ANN. § 703.08 (West 2001 & Supp. 2006).

109. See, e.g., COLO. REV. STAT. ANN. § 38-33-112; CONN. GEN. STAT. ANN. § 47-287; D.C. CODE ANN. § 42-3403.02; FLA. STAT. ANN. § 718.606(4); MD. CODE ANN., REAL PROP. § 11-102.1; MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527); VT. STAT. ANN. tit. 27, § 1336.

protected classes, such as elderly, disabled, or low-income tenants;<sup>110</sup> voluntary lease terminations;<sup>111</sup> tenant approval requirements;<sup>112</sup> and substantial enforcement and penalty provisions.<sup>113</sup>

To date, thirty-four states and the District of Columbia have enacted some form of conversion regulation designed to protect tenants.<sup>114</sup> Over the past decade, however, condominium conversion regulation has been relatively settled law. Yet the most recent conversion boom has led to renewed calls for reform, primarily at the local level. This focus on municipal and county regulation may be due to the large number of state conversion statutes that serve as enabling legislation.<sup>115</sup> These statutes provide statewide conversion regulations while also explicitly authorizing local governing bodies to either adopt additional regulations over and above the state requirements<sup>116</sup> or, alternatively, to draft their own unique ordinances.<sup>117</sup> While the Illinois

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110. See, e.g., CONN. GEN. STAT. ANN. § 47-282; D.C. CODE ANN. § 42-3402.08; MD. CODE ANN., REAL PROP. § 11-102.1; MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527); MICH. COMP. LAWS ANN. § 559.204a; MINN. STAT. ANN. § 515A.4-110.

111. Once a notice of conversion is received, voluntary lease termination provisions generally require the tenant to give at least thirty days' notice prior to terminating the tenancy. See, e.g., CONN. GEN. STAT. ANN. § 47-286; FLA. STAT. ANN. § 718.608(4)(a); MD. CODE ANN., REAL PROP. § 11-102.1(e); MICH. COMP. LAWS ANN. § 559.204(3); MINN. STAT. ANN. § 515A.4-110(a); N.H. REV. STAT. ANN. § 356-C:3(a)(10); 68 PA. CONS. STAT. ANN. § 3410(e)(2); VT. STAT. ANN. tit. 27, § 1333(f).

112. Tenant approval requirements are currently used in the District of Columbia, D.C. CODE ANN. § 42-3402.03; New York, N.Y. GEN. BUS. LAW § 352-eeee(1)(b), (1)(c); and Oregon, OR. REV. STAT. § 100.305(6). For an in-depth discussion of tenant approval provisions, see Jonathan Feldman, *Regulating Condominium Conversions: The Constitutionality of Tenant Approval Provisions*, 21 URB. LAW. 85 (1989).

113. See, e.g., TENN. CODE ANN. § 66-27-123(b) (stating that a developer's failure to provide tenants with two months' actual notice will invalidate the future sale of that unit to any purchaser other than the tenant); CONN. GEN. STAT. ANN. § 47-290 (allowing the tenant to introduce evidence of the "substantial probability" that a landlord intends to convert the building or convey the building to a developer, as a defense to an action for possession or as a separate claim in an independent action against the landlord by the tenant). Enforcement provisions are further strengthened by the explicit allowance of a tenant's private cause of action, as found in Florida, FLA. STAT. ANN. § 718.612; Minnesota, MINN. STAT. ANN. § 515A.4-110(a); New York, N.Y. GEN. BUS. LAW § 352-eeee(4); and Washington, WASH. REV. CODE ANN. § 64.34.440.

114. See *supra* note 108.

115. The following states include an enabling provision for counties, cities, and villages: California, CAL. GOV'T CODE § 66452.8(d) (West 1997 & Supp. 2008); Florida, FLA. STAT. ANN. § 718.606(6); Maine, ME. REV. STAT. ANN. tit. 33 § 1604-111(f) (1964); Maryland, MD. CODE ANN., REAL PROP. § 11-138; Massachusetts, MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527); New Hampshire, N.H. REV. STAT. ANN. § 356-B:5 (1995); Virginia, VA. CODE ANN. § 55-79.94(F), (G) (2007); and Washington, WASH. REV. CODE ANN. § 64.34.440(6). The New York statute establishes specific provisions for New York City at the state level. See N.Y. GEN. BUS. LAW § 352-eeee.

116. See, e.g., ME. REV. STAT. ANN. tit. 33 § 1604-111(f) (expressly allowing local governmental bodies to adopt more stringent requirements).

117. See MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983).

statute does not address local government action, Illinois operates under a “home rule” system in which all cities with populations over 25,000, such as Chicago, have increased local control.<sup>118</sup> Cities with home rule status may act independently of state statutes to address local needs and concerns.<sup>119</sup>

### III. THE CONDOMINIUM PROPERTY ACT’S CONVERSION REGULATIONS: SIGNIFICANT FLAWS AND PROPOSED LEGISLATIVE SOLUTIONS

Throughout the conversion wave of 2004 through 2006, the Illinois Condominium Property Act’s section 605/30 conversion regulations contained several flaws that limited the statute’s applicability and denied a number of tenants their rights in the conversion process.<sup>120</sup> Additionally, the Act’s tenant protections were weak when compared with those provided by other states, particularly those with the highest rates of condominium conversions.<sup>121</sup> These weaknesses have thwarted the Act’s legislative intent and prevented it from mitigating the impact of conversions on both individual tenants and the rental market as a whole. The requirement that a tenant must be allowed to remain in his unit for at least 120 days after receiving notice of the conversion allows the tenant additional time to relocate and dissipates the impact of a large number of tenants being forced out into the rental market at one time. Additionally, the right of the tenant to purchase his unit respects the tenant’s interest in the unit as a home and ensures that tenants are given the opportunity to stay in their communities.<sup>122</sup>

This Part focuses on the three main problems inherent in the Act prior to the amendments contained in H.B. 1797: the stealth conversion problem and the Act’s inapplicability to tenants who have vacated without having received notice, the Act’s ineffective enforcement mechanisms, and the Act’s relatively weak tenant protections.<sup>123</sup> The problem of weak tenant protections is presented through a comparative analysis of the protections found in all state conversion

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118. See ILL. CONST. art. VII, § 6.

119. *Id.*

120. 765 ILL. COMP. STAT. 605/30 (2006).

121. *Id.*; see also Slatin, *supra* note 12.

122. See Daniel M. Warner, *No Place of Grace: Recognizing Damages for Loss of Home-Place*, 8 WIS. ENVTL. L.J. 3, 4 (Spring 2002) (arguing for the expansion of the “loss of consortium” doctrine to include the loss of a person’s home and for the recognition of damages for the disruption of an emotionally important relationship, that of an individual’s relationship to his home).

123. See *infra* notes 127–192 and accompanying text.

regulations, particularly as it relates to the notice period, the provision of relocation assistance, and additional protections for more vulnerable categories of tenants, such as the elderly and disabled.<sup>124</sup> Then, this Part analyzes H.B. 1797 and its effectiveness in addressing these problems.<sup>125</sup> It also presents several additional proposals to further strengthen the Act and ensure its effective regulation of the conversion process.<sup>126</sup>

#### A. *The Stealth Conversion Problem*

The Illinois Condominium Property Act's notice provision has significantly facilitated developers' abilities to circumvent the Act's tenant protections and encouraged "stealth conversions."<sup>127</sup> A stealth conversion occurs when an apartment building is converted to condominiums without notice or accommodations for the existing tenants before they are required to vacate.<sup>128</sup> The Act requires a developer to provide all tenants with a minimum of 120 days of tenancy prior to being vacated for purposes of a conversion.<sup>129</sup> In spite of this requirement, developers following the law's notice provision have been able to convert occupied units in just sixty days and avoid notifying any tenants of the conversion or their rights.<sup>130</sup> This is due to the limited scope of the notice provision, which requires developers to notify only those tenants in occupancy thirty days prior to recording the declaration of intent.<sup>131</sup> The language of the statute reads as follows:

No real estate may be submitted to the provisions of the Act as a conversion condominium unless (i) a notice of intent to submit the real estate to this Act . . . has been given to *all persons who were tenants of the building located on the real estate on the date the notice is given*. Such notice shall be given at least 30 days, and not more than 1 year prior to the recording of the declaration which submits the real estate to this Act.<sup>132</sup>

Working with short-term or month-to-month tenancies, however, landlords have been able to empty their buildings quickly by simply giving tenants a thirty-day notice of termination and, then, once tenants have vacated, waiting the minimum period of thirty days before

124. See *infra* notes 165–192 and accompanying text.

125. See *infra* notes 193–220 and accompanying text.

126. See *infra* notes 221–246 and accompanying text.

127. 765 ILL. COMP. STAT. 605/30 (2006).

128. *Advocates Criticize 'Stealth' Condo Conversions*, *supra* note 1; see also Keenan, *supra* note 52, at 690 (discussing "conversion act avoidance").

129. 765 ILL. COMP. STAT. 605/30.

130. See *id.*

131. *Id.*

132. *Id.* (emphasis added).

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filing a declaration of intent to submit the property to the Act.<sup>133</sup> This way, landlords avoid having to provide notice to any tenants prior to recording the declaration and are able to begin selling the units within just thirty days from the date the tenant vacated. The landlord is therefore able to convert in just sixty days, half the minimum amount of time a conversion project should take if the landlord were to observe the spirit of the law and provide tenants the full 120 days to locate a new apartment.<sup>134</sup>

The result of such evasive practices is to deny month-to-month tenants, usually in the lowest income brackets, the protections of the right of first refusal and, more significantly, an extension of the lease to which they would otherwise be entitled.<sup>135</sup> A major source of this problem has been the absence of any provisions that provide tenants these rights retroactively, after they have already vacated the apartment.<sup>136</sup> Tenants who vacate without having received notice have had little or no recourse, even where the property owner clearly intended to convert the unit in violation of the minimum 120-day notice period. Additionally, there has been no clear statement of damages or penalties for which a developer would be liable in the case of a violation.

During the most recent housing boom, the incentive for developers to avoid compliance with conversion regulations was the anticipated realization of large profits from the sale of the unit compared with the minimal monthly profit realized on a rental unit.<sup>137</sup> This was particularly true in quickly gentrifying areas where the demand for condominiums quickly outstripped the profitability of apartments. The demand for condominiums and their increasing values was inflated by the speculation of investors purchasing converted units solely for the purpose of resale.<sup>138</sup> Such forces encouraged apartment building owners to reap their profits quickly, before the housing market slowed and home values in gentrifying neighborhoods began to stabilize.<sup>139</sup> Land-

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133. Under the Illinois Forcible Entry and Detainer Act, 735 ILL. COMP. STAT. 5/9-207, in the case of a tenancy for any term less than one year, except for a tenancy from week to week, a landlord may terminate the tenancy by thirty days' notice in writing, and maintain an action for eviction, if the tenant holds over without special agreement. In the situation of a tenancy without a written lease in which the tenant is in possession and pays monthly, a month-to-month tenancy is presumed. *Marr v. Ray*, 37 N.E. 1029 (Ill. 1894).

134. 765 ILL. COMP. STAT. 605/30.

135. *See id.*

136. *See id.*

137. *See supra* notes 44–47 and accompanying text.

138. Handley, *supra* note 30; *see also* Parke M. Chapman, *Vultures Circle Condo Market*, NAT'L REAL EST. INVESTOR, Sept. 1, 2005, at 22. Chapman reports that as much as 30% of Chicago's condominium units were sold to speculators in 2005.

139. *See* Chapman, *supra* note 138, at 22.

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lords in Illinois have continued to take advantage of this loophole in the conversion regulations, knowing that the law does not require them to provide tenants with notice and longer tenancies if they are able to empty the building of tenants thirty days prior to recording the declaration.<sup>140</sup>

The loophole in the Act's notice provision has not only affected month-to-month tenants, but also those with written leases of a year or longer. The fact that rights are only afforded to tenants in possession on the date of notice provides landlords further incentive to coerce tenants to vacate an apartment before the end of a lease term. While a landlord's pressure to vacate may be minimal and a tenant may simply agree to leave, the pressure may also take the form of a decrease in services, withholding of maintenance, or violations of the relevant building codes, possibly rising to the level of constructive eviction or illegal lockout.<sup>141</sup> In such situations, a tenant would have a cause of action under the state's landlord-tenant statutes or the relevant municipal landlord-tenant ordinance.<sup>142</sup> Given that the landlord's goal in pushing out tenants is the conversion of the units, however, violations of landlord-tenant law for the purposes of conversion are properly addressed within the Act.<sup>143</sup> Whatever the circumstances, when a tenant leaves for any reason other than a lease violation or action for possession and the building is converted and offered for sale within the following 120 days, that tenant should receive notice and all of the attendant rights of a tenant in possession.

### B. Enforcement Mechanisms

When an unscrupulous landlord is unable to take advantage of the Act's loophole with respect to month-to-month tenants, he may take advantage of the Act's minimal enforcement mechanisms and violate

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140. *Advocates Criticize 'Stealth' Condo Conversions*, *supra* note 1.

141. Constructive eviction occurs where a landlord does "something of a grave and permanent character with the intention of depriving the tenant of enjoyment of the premises," making it necessary for the tenant to move. *Home Rentals Corp. v. Curtis*, 602 N.E.2d 859, 862 (Ill. App. Ct. 1992) (quoting *Applegate v. Inland Real Estate Corp.*, 441 N.E.2d 379, 382 (Ill. App. Ct. 1982)). The Anti-Lockout provision of the Chicago Residential Landlord Tenant Ordinance states the following:

It is unlawful for any landlord or any person acting at his direction knowingly to oust or dispossess or threaten or attempt to oust or dispossess any tenant from a dwelling unit without authority of law . . . or by interfering with the services of said unit; including but not limited to electricity, gas, hot or cold water, plumbing, heat or telephone service . . . .

CHI., ILL., MUNICIPAL CODE § 5-12-160 (1990).

142. 765 ILL. COMP. STAT. 705/1-742/30; *see, e.g.*, Chicago Residential Landlord Tenant Ordinance, CHI., ILL., MUNICIPAL CODE § 5-12-010.

143. 765 ILL. COMP. STAT. 605/30.

the law outright.<sup>144</sup> Such a violation occurs when the landlord fails to provide notice of an impending conversion before requiring a tenant to vacate or fails to observe the tenant's statutory rights.<sup>145</sup>

The main impetus for H.B. 1797 was the Act's complete lack of enforcement mechanisms to ensure that developers follow the statute's notice requirement.<sup>146</sup> The statute states that real estate may not be converted into a condominium unless the developer provides all tenants with notice of the impending conversion and records a certificate acknowledging that notice was provided to the tenants "prior to the execution . . . of any agreement for the sale of a unit."<sup>147</sup> At no point, however, is the certificate reviewed for its veracity, and there is no apparent consequence if this certificate is fraudulently signed and acknowledged. The Illinois Attorney General does not have specific jurisdiction to pursue these problems through the Consumer Fraud and Deceptive Business Practices Act.<sup>148</sup> Therefore, the only enforcement mechanism is the tenant's private cause of action. Without the language found in H.B. 1797, however, this option was extremely limited by the express language of the Act.<sup>149</sup> To the extent that the Act previously addressed the possibility of violations, the statute states the following:

Any provision in any lease or other rental agreement, or any termination of occupancy on account of condominium conversion, not authorized herein, or contrary to or waiving the foregoing provisions, shall be deemed to be void as against public policy.<sup>150</sup>

This language could arguably be read as a defense to an eviction or as a cause of action to enjoin some other form of "termination of occupancy on account of condominium conversion."<sup>151</sup> This statement, however, is especially vague given the absence of an explicit definition of what constitutes a termination of occupancy on account of condominium conversion, how such a termination should be proven, and whether a tenant would be entitled to damages.

In addition to this language, the Act contains enforcement provisions that are narrowly tailored to address violations of the tenant's right of first refusal:

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144. *See id.*

145. *See id.*

146. Statement of Rep. Harry Osterman, H.B. 1797, 95th Gen. Assem. Reg. Sess. (Ill. House Transcripts May 1, 2007).

147. 765 ILL. COMP. STAT. 605/30.

148. *See* 815 ILL. COMP. STAT. 505/1; 815 ILL. COMP. STAT. 505/2Z.

149. *See* 765 ILL. COMP. STAT. 605/30.

150. *Id.*

151. *Id.*

The recording of the deed conveying the unit to the purchaser which contains a statement to the effect that the tenant of the unit either waived or failed to exercise the right of first refusal or option or had no right of first refusal or option with respect to the unit *shall extinguish any legal or equitable right or interest to the possession or acquisition of the unit* which the tenant may have or claim with respect to the unit arising out of the right of first refusal or option provided for in this Section. *The foregoing provision shall not affect any claim which the tenant may have against the landlord for damages arising out of the right of first refusal provided for in this Section.*<sup>152</sup>

This provision thereby extinguishes a tenant's interest in the unit when a third party purchaser in good faith purchases the unit and records the deed, believing that the tenant either waived or failed to exercise the right of first refusal. Given that the Act explicitly precludes the tenant from enforcing the substantive right of first refusal, the developer's only liability for failing to provide the tenant with notice and the right of first refusal is damages. However, actual money damages in this situation are likely to be either nonexistent or speculative and difficult to calculate.<sup>153</sup> Furthermore, prior to H.B. 1797, the statute did not provide for attorneys' fees and court costs, which burdened the enforcement of this right.<sup>154</sup>

Assuming that the developer notifies the tenant of the right of first refusal, the tenant must receive notice of any executed contract for sale and a period of thirty days in which to exercise the right to purchase.<sup>155</sup> During that thirty-day period, the developer is required to grant the "tenant access to any portion of the building in order to inspect" its physical condition, as well as access to any reports or documents pertaining to the condition of the building.<sup>156</sup> As the statute states, "the refusal of the developer to grant such access is a business offense punishable by a fine of \$500."<sup>157</sup> "Each refusal to an individual lessee who is a potential purchaser is a separate violation."<sup>158</sup> This provision, which applies to a very limited group of tenants, has been

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152. *Id.* (emphasis added).

153. *See* Kellner v. Bartman, 620 N.E.2d 607, 609 (Ill. App. Ct. 1993) (explaining the trial court's discussion of damages for failure to observe a contractual right of first refusal as "pure guesswork and speculation").

154. *See* 765 ILL. COMP. STAT. 605/30.

155. *Id.*

156. *Id.*

157. *Id.* The \$500 penalty is likely to be read as \$1,000 in light of a 1998 amendment to 730 ILL. COMP. STAT. 5/5-1-2, which now defines "business offense" as "a petty offense for which the fine is in excess of \$1,000." P.A. 90-0384, 1997 Ill. Laws 4511 (effective Jan. 1, 1998) (amending the statute by substituting "\$1,000" for "\$500").

158. 765 ILL. COMP. STAT. 605/30.

the only attempt to penalize a landlord for failing to observe a tenant's rights in the conversion process.<sup>159</sup>

A number of states provide clearer statements of how conversion regulations should be enforced and stronger penalties and damage provisions to further encourage compliance. The enforcement mechanisms found in other states range from extreme to minimal forms of redress. At the extreme, Tennessee allows a tenant who never received notice to invalidate the sale of the unit to a good-faith purchaser, which runs contrary to the traditional protections provided for a bona fide purchaser.<sup>160</sup> The bona fide purchaser rule protects a third party who purchases the unit in good faith and also protects the public's ability to reasonably rely on the records found in the registry of deeds.<sup>161</sup> Alternatively, placing the liability for violating the tenant's rights directly on the landlord is a more effective means of ensuring compliance. For this reason, provisions such as Connecticut's—providing rights retroactively to tenants who have vacated a unit without notice<sup>162</sup>—New Hampshire's and Vermont's—explicitly prohibiting the avoidance of conversion regulation through the termination of tenancies without good cause<sup>163</sup>—and those states that provide explicit provision of a tenant's private cause of action against the landlord<sup>164</sup> are much more valuable in terms of encouraging compliance and providing an aggrieved tenant with a meaningful remedy. As discussed below, H.B. 1797 encompasses many of these provisions in order to remedy this weakness in the Act.

### C. A Comparative Analysis of Tenant Protection Provisions

In addition to the stealth conversion problem and negligible enforcement mechanisms, the Act has noticeably lacked strong protections for Illinois's most vulnerable tenants. The tenant rights provided are particularly weak when compared with the rights provided by

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159. Recent estimates show that, on average, only 10% of occupying tenants purchase their units. Chapman, *supra* note 138, at 26.

160. TENN. CODE ANN. § 66-27-123(b) (2004). The bona fide purchaser rule applies to one who has acquired legal title to property and paid adequate consideration without knowledge of any third party rights or interests in the property at the time he acquired title and paid value. *Hocking v. Hocking*, 484 N.E.2d 406, 410 (Ill. App. Ct. 1985); *see also Daniels v. Anderson*, 642 N.E.2d 128, 132–33 (Ill. 1994) (discussing the bona fide purchaser rule in the context of the right of first refusal).

161. Keenan, *supra* note 52, at 724.

162. CONN. GEN. STAT. ANN. § 47-290 (West 2004).

163. N.H. REV. STAT. ANN. § 356-C:8 (1995); VT. STAT. ANN. tit. 27, § 1338 (2006).

164. *See* FLA. STAT. ANN. § 718.612(2) (West 2005); MINN. STAT. ANN. § 515A.4-110(c) (West 2002); N.Y. GEN. BUS. LAW § 352-eeee(4) (McKinney 1996); WASH. REV. CODE ANN. § 64.34.440 (West 2005).

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other jurisdictions, including those containing some of the most active condominium conversion markets. Illinois could greatly strengthen tenants' rights while remaining competitive with the other major condominium conversion markets.<sup>165</sup> As described in the following three subsections, the Act contains three main weaknesses when compared with other conversion regulations.<sup>166</sup> Subsection one discusses the Act's minimal notice period before tenants are required to vacate.<sup>167</sup> Subsection two details the Act's failure to provide any relocation assistance for nonpurchasing tenants.<sup>168</sup> Finally, subsection three analyzes the Act's lack of much-needed protections for vulnerable classes of tenants.<sup>169</sup> H.B. 1797 fails to address all three of these limitations.<sup>170</sup>

1. *Notice of Intent to Convert and Lease Extensions*

Although Illinois is among a large number of states that require developers to provide tenants with notice of 120 days before vacating, ten states provide notice of more than 120 days, ranging from 180 days to three years, for unprotected classes of tenants.<sup>171</sup> Among those ten states, five contain the majority of the nation's most active conversion markets, including Manhattan, five real estate markets located in California, ten markets located throughout Florida, the suburbs of D.C. located in Maryland, and Boston.<sup>172</sup> New York City, which is the nation's most active market for condominium conversions, also happens to be one of the most restrictive jurisdictions, requiring that tenants be allowed to extend their leases for a minimum of three years and altogether prohibiting the eviction of senior and disabled tenants for pur-

165. See Slatin, *supra* note 12. The top twenty markets for conversion sales as of November 2005 were as follows: (1) Manhattan, New York; (2) Broward County, Florida; (3) Orlando, Florida; (4) Tampa, Florida; (5) Phoenix, Arizona; (6) District of Columbia, Virginia suburbs; (7) Palm Beach, Florida; (8) Miami, Florida; (9) Chicago, Illinois; (10) San Diego, California; (11) Southwest Florida; (12) Los Angeles, California; (13) East Bay, California; (14) Las Vegas, Nevada; (15) District of Columbia, Maryland suburbs; (16) Orange County, California; (17) Seattle, Washington; (18) Jacksonville, Florida; (19) All Others, Florida; and (20) Boston, Massachusetts. *Id.*

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166. See 765 ILL. COMP. STAT. 605/30 (2006).

167. See *infra* notes 171–175 and accompanying text.

168. See *infra* notes 176–187 and accompanying text.

169. See *infra* notes 188–192 and accompanying text.

170. See H.B. 1797, 95th Gen. Assem. (Ill. 2007).

171. See ALASKA STAT. § 34.08.620 (2006); CAL. GOV'T CODE § 66427.1 (West 1997 & Supp. 2008); CONN. GEN. STAT. ANN. § 47-284 (West 2004); FLA. STAT. ANN. § 718.622 (West 2005); MD. CODE ANN., REAL PROP. § 11-102.1 (LexisNexis 2003); MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983) (West 2003); N.H. REV. STAT. ANN. § 356-C:3(7) (1995); N.Y. GEN. BUS. LAW § 352-eeee (McKinney 1996); 68 PA. CONS. STAT. ANN. § 3410(a) (West 2004); VT. STAT. ANN. tit. 27, § 1333(a) (2006).

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172. See Slatin, *supra* note 12.

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poses of conversion.<sup>173</sup> Massachusetts provides a minimum notice requirement of one full year, with two years for elderly, disabled, and low-income tenants.<sup>174</sup> Maryland, California, and Florida provide 180 days at a minimum, while Florida provides a full 270 days to those tenants who have resided in their units for more than 180 days.<sup>175</sup>

## 2. *Relocation Assistance*

Illinois does not require developers to provide any form of relocation assistance to conversion tenants.<sup>176</sup> In contrast, eleven states, including a number of jurisdictions with highly active conversion markets, require developers to pay tenants' moving expenses in specified circumstances.<sup>177</sup> Florida, home to ten of the nation's top twenty conversion markets, codified a developer's option to provide nonpurchasing tenants with a cash relocation payment of *at least* one month's rent in consideration for the tenant extending the lease for 180 days rather than 270.<sup>178</sup> While California requires reimbursement of up to \$1,100 in moving costs and up to \$1,100 for the first month's rent at a new apartment only if the tenant fails to receive notice, Los Angeles has stipulated that landlords must pay not only the moving costs of all nonpurchasing tenants but also a "relocation fee" "to assist the tenants in meeting costs of relocation, higher rents for replacement housing, and any related expenses."<sup>179</sup> The ordinance, adopted in May of 2007, requires developers to pay all nonpurchasing tenants who have lived in their units for fewer than three years \$6,810 per unit and \$14,850 per unit for tenants with children, elderly tenants, and disabled tenants.<sup>180</sup> For those tenants who have lived in their units for three years or longer, these fees are increased to \$9,040 and \$17,

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173. N.Y. GEN. BUS. LAW § 352-eeee.

174. MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983).

175. CAL. GOV'T CODE § 66427.1; FLA. STAT. ANN. § 718.606; MD. CODE ANN., REAL PROP. § 11-102.1.

176. See 765 ILL. COMP. STAT. 605/30 (2006).

177. CAL. GOV'T CODE § 66427.1; COLO. REV. STAT. ANN. § 38-33-112 (West 2007); CONN. GEN. STAT. ANN. § 47-287; D.C. CODE ANN. § 42-3403.02 (LexisNexis 2006); FLA. STAT. ANN. § 718.606(4); MD. CODE ANN., REAL PROP. § 11-102.1 (LexisNexis 2003); MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983) (West 2003); N.J. STAT. ANN. §§ 2A:18-61.10-61.11 (West 2000); R.I. GEN. LAWS § 34-36.1-4.12 (1995); TENN. CODE ANN. § 66-27-123 (2004); VT. STAT. ANN. tit. 27, § 1336.

178. FLA. STAT. ANN. § 718.606(4).

179. Compare CAL. GOV'T CODE § 66452.8(c), with L.A., CAL., MUNICIPAL CODE § 47.06(C), (D) (2007), available at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lmc\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lmc_ca).

180. L.A., CAL., MUNICIPAL CODE § 47.06(D) (2008), available at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lmc\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lmc_ca).

080.<sup>181</sup> Similarly, Massachusetts requires that tenants who vacate within the notice period be reimbursed for actual moving expenses up to \$750 for most tenants and up to \$1,000 for elderly, disabled, and low- or moderate-income tenants.<sup>182</sup> Boston increases those sums to a flat payment of \$3,000 for most tenants and \$5,000 for elderly, disabled, and low- or moderate-income tenants.<sup>183</sup> Los Angeles and Boston are at the generous end of the spectrum; however, these cities also provide examples of urban environments that are comparable to Chicago. While New York City does not provide financial relocation assistance, the lack of financial assistance is mitigated by its provision of the longest lease extensions in the nation.<sup>184</sup>

Compensation for moving costs may calm the tensions within a community over the possibility of tenants' displacement and may be viewed as equitable compensation for disrupting tenants' lives.<sup>185</sup> At a minimum, reimbursement of moving expenses, which in several states is capped at \$500, seems a small price for a developer to pay and can greatly assist tenants in the relocation process.<sup>186</sup> As one commentator has argued, however, fixed payment amounts are preferable to reimbursement of actual costs because of the increased ease in administration and less room for dispute over proof of actual costs and reasonable expenses.<sup>187</sup> Relocation assistance may also work in developers' favor, because it provides tenants with greater flexibility and ease in relocating, thereby reducing the need for an extended lease period and possibly hastening tenants' departures.

### 3. *Protections for Elderly, Disabled, and Low-Income Tenants*

Finally, nearly half of the states to regulate condominium conversions extend additional protections for more vulnerable categories of tenants.<sup>188</sup> These additional protections represent the legislative re-

181. *Id.*

182. MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983) (West 2003).

183. BOSTON, MASS. MUNICIPAL CODE § 10-2.10(g) (2006).

184. See N.Y. GEN. BUS. LAW § 352-eeee (McKinney 1996); see *supra* note 173 and accompanying text.

185. Keenan, *supra* note 52, at 711.

186. See, e.g., D.C. CODE ANN. § 42-3403.02 (LexisNexis 2006); WASH. REV. CODE ANN. § 64.34.440 (West 2005).

187. Keenan, *supra* note 52, at 711.

188. See CONN. GEN. STAT. ANN. §§ 47-282-47-295 (West 2004); D.C. CODE ANN. §§ 42-3401.01-42-3405.12; MD. CODE ANN., REAL PROP. § 11-102.1 (Lexis Nexis 2003); MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983) (West 2003); MICH. COMP. LAWS ANN. § 559.204a (West 2007); MINN. STAT. ANN. § 515A.4-110 (West 2002); MO. ANN. STAT. § 448.4-112 (West 2000); N.H. REV. STAT. ANN. §§ 356-C:1-356-C:10 (1995); N.J. STAT. ANN. §§ 2A:18-61.8-2A:18-61.11 (West 2000); N.Y. GEN. BUS. LAW § 352-eeee (McKin-

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sponse to studies revealing the disproportionate effect of conversions on seniors and other vulnerable populations.<sup>189</sup> Illinois, however, makes no effort to protect seniors, disabled individuals, or low-income tenants.<sup>190</sup> While larger, individual municipalities with home rule powers can make their own regulations, there is no protection available for those more vulnerable tenants living in non-home rule locales. Those jurisdictions that have enacted special provisions for select groups of tenants recognize that elderly, disabled, and low-income tenants are most significantly impacted by condominium conversions.<sup>191</sup> Again, some of the most active conversion markets in the nation are covered by such protections at the state level, including the District of Columbia, Maryland, Massachusetts, New York, and Washington.<sup>192</sup>

*D. H.B. 1797 and Additional Proposed Amendments to the  
Condominium Property Act*

The ideal conversion regulation balances developers' desire to pursue the most profitable use of their properties with tenants' desire to remain in their homes and avoid substantial life disruption or displacement.<sup>193</sup> In exchange for vacating their homes, the law should provide tenants with equitable accommodations in a way that is not so burdensome that it discourages developers from converting at all.<sup>194</sup> In a situation where the developer violates the conversion regulation and denies tenants their rights, the statute should provide adequate means for tenants to seek enforcement and resolve disputes. If a regulation is effective in this regard, a community should be able to withstand a boom in conversions with minimal public outcry or the need for organized advocacy.<sup>195</sup>

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ney 1996); 68 PA. CONS. STAT. ANN. § 3410 (West 2004); R.I. GEN. LAWS § 34-36.1-4.12 (1995); S.C. CODE ANN. § 27-31-420 (2007); VA. CODE ANN. § 55-79.94 (2007); WASH. REV. CODE ANN. § 64.34.440.

189. See, e.g., HUD REPORT, *supra* note 9, at VI-18.

190. 765 ILL. COMP. STAT. 605/30 (2006).

191. Keenan, *supra* note 52, at 713; Louthan, *supra* note 50, at 208.

192. D.C. CODE ANN. § 42-3403.03; MD. CODE ANN., REAL PROP. § 11-102.1; MASS. GEN. LAWS ANN. ch. 183A § 1 (St. 1983, c. 527) (emergency legislation 1983); N.Y. GEN. BUS. LAW § 352-eeee; WASH. REV. CODE ANN. § 64.34.440.

193. See Keenan, *supra* note 52, at 640 ("Prudent regulation must fairly balance the competing interests of the property owner and the tenants, in addition to considering the public's need for condominium housing opportunities.").

194. See *id.* at 701 ("Any [lease extension] beyond a term of one year appears to be extreme and may well curtail conversion efforts.").

195. See, e.g., *Advocates Criticize 'Stealth' Condo Conversions*, *supra* note 1, at 5; *Rally and March Against Condos on September 30*, *supra* note 8; Black, *supra* note 13; Olsen & Trevino, *supra* note 33; Sheehan, *supra* note 52.

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In light of the recent condominium conversion protests and wave of complaints from communities experiencing high rates of conversions, the Act has not served its purpose.<sup>196</sup> Although Chicago is a home rule city and can regulate conversions locally, condominium ownership is not limited to the urban environment.<sup>197</sup> Rather, condominiums are a popular form of home ownership in many suburban communities and other cities throughout the state.<sup>198</sup>

Given the flaws in Illinois’s conversion regulations described above, it is easy to see how developers have been able to take advantage of the Act’s weaknesses and convert thousands of apartments without providing tenants with accommodations.<sup>199</sup> These abuses led to H.B. 1797’s passage.<sup>200</sup> While H.B. 1797 largely addresses the need for effective enforcement mechanisms, there are still outstanding issues to be addressed.<sup>201</sup> This Section analyzes the bill’s new enforcement mechanisms and their likely effects.<sup>202</sup> It then provides additional proposals for amendments to more fully address all of the law’s shortcomings and provide more equitable procedures for condominium conversions throughout Illinois.<sup>203</sup>

1. *Analysis of H.B. 1797*

H.B. 1797 directly responds to the Act’s lack of enforcement provisions by establishing a private cause of action, statutory damages, an allowance for attorneys’ fees and costs for both private and pro bono legal service providers, and possible injunctive relief.<sup>204</sup> These provisions serve several key functions in ensuring that tenant rights will be enforced as the legislature intended. The primary functions of such provisions are not only to encourage tenants to enforce their rights, but also to ensure that such litigation is financially feasible and worthwhile.<sup>205</sup> Subsection (a)(2) states the following:

If the owner fails to provide a tenant with notice of the intent to convert as defined in this Section, the tenant permanently vacates

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196. See *supra* note 195.

197. See *supra* note 118 and accompanying text.

198. See *supra* note 29 and accompanying text.

199. See *supra* notes 1–14 and accompanying text.

200. H.B. 1797, 95th Gen. Assem. (Ill. 2007); see *supra* notes 1–14 and accompanying text.

201. See H.B. 1797, 95th Gen. Assem. (Ill. 2007).

202. See *infra* notes 204–220 and accompanying text.

203. See *infra* notes 221–246 and accompanying text.

204. H.B. 1797, 95th Gen. Assem. (Ill. 2007).

205. See Margaret Annabel de Lisser, Comment, *Giving Substance to the Bad Faith Exception of Evans v. Jeff D.: A Reconciliation of Evans with the Civil Rights Attorney’s Fees Awards Act of 1976*, 136 U. PA. L. REV. 553, 553–62 (1987) (discussing the multiple goals of fee-shifting provisions within the context of civil rights legislation).

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the premises as a direct result of non-renewal of his or her lease by the owner, and the tenant's unit is converted to a condominium by the filing of a declaration submitting a property to this Act without having provided the required notice, then the owner is liable to the tenant for the following:

- (A) the tenant's actual moving expenses incurred when moving from the subject property, not to exceed \$1,500;
- (B) three month's rent at the subject property; and
- (C) reasonable attorney's fees and court costs.<sup>206</sup>

This language establishes clear statutory liability for developers who fail to provide tenants with the required notice of conversion and provides a clear private cause of action for an aggrieved tenant. The set amount of statutory damages, up to \$1,500 in moving expenses and three months' rent at the subject property, as well as the allowance of attorneys' fees and costs, serve to encourage enforcement of the notice requirement, even where a tenant experiences little to no actual monetary losses.<sup>207</sup>

Additionally, allowing recovery of tenants' attorneys' fees and costs is critical to ensuring enforcement of conversion regulations, particularly in the context of a law traditionally intended to protect low-income individuals.<sup>208</sup> Providing attorneys' fees and costs makes filing such claims financially feasible not only for tenants, but for private legal practitioners as well. In an era in which legal aid services for the poor turn away approximately one million cases a year due to a severe shortage of resources, private practitioners must be a part of the solution.<sup>209</sup>

Furthermore, H.B. 1797 subsection (k), which states, "A non-profit housing organization, suing on behalf of an aggrieved tenant under this Section, may also recover compensation for reasonable attorney's fees and court costs necessary for filing such action," provides further encouragement for enforcement.<sup>210</sup> Such a clear provision allowing non-profit housing organizations to recover expenses promotes advocacy on the part of non-profit organizations, encouraging them to reach out to tenants and allowing them to financially support the work of enforcement.<sup>211</sup>

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206. H.B. 1797, 95th Gen. Assem. (Ill. 2007).

207. See de Lisser, *supra* note 205, at 557.

208. See *Waller v. Bd. of Educ.*, 328 N.E.2d 604, 606 (Ill. App. Ct. 1975) (stating that attorneys' fees are generally prohibited in the absence of specific statutory language indicating the legislature's intent to permit their award as a component of damages).

209. Evelyn Nieves, *80% of Poor Lack Civil Legal Aid, Study Says*, WASH. POST, Oct. 15, 2005, at A9.

210. H.B. 1797(k), 95th Gen. Assem. (Ill. 2007).

211. See Comment, *Court Awarded Attorney's Fees and Equal Access to the Courts*, 122 U. PA. L. REV. 636, 682-85 (1974) ("The award of fees to Legal Services would thus provide a much-

Moreover, subsection (j), which states, “A tenant is entitled to injunctive relief to enforce the provisions of subsections (a) and (c) of this Section,” provides clear legal footing for a tenant who has yet to vacate his apartment.<sup>212</sup> This provision allows tenants who have been denied the required notice of conversion or who have been wrongly served a notice of eviction prior to conversion the ability to contest developers’ actions before the stealth conversion is a *fait accompli*.<sup>213</sup> The availability of injunctive relief allows tenants to enforce their rights as conversion tenants, including the lease extension of 120 days, as provided for in subsection (c), before being forced to move.<sup>214</sup>

Such a situation is appropriate for injunctive relief, even absent statutory authorization. In Illinois, parties are entitled to an injunction if they can establish that there is “no adequate remedy at law,” they possess “a certain and clearly ascertainable right,” and they “will suffer irreparable harm if no relief is granted.”<sup>215</sup> When a tenant is asked to vacate without having received notice of the conversion, there are no monetary damages prior to moving, meaning that there is no adequate remedy at law. Additionally, the Act defines tenants’ rights to notice and additional, ascertainable rights in the conversion process.<sup>216</sup> Finally, tenants would suffer irreparable harm if they were forced to move from their homes and the units were then sold. Because the amendment explicitly authorizes injunctive relief, however, these elements are no longer necessary.<sup>217</sup> Rather, the plaintiff must only show that the Act was violated.<sup>218</sup>

These specific enforcement provisions will provide a clear cause of action for tenants whose rights have been ignored or violated. Additionally, the fact that litigation will be both financially feasible and worthwhile for tenants will provide notice to developers that it may

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needed financial boost so that the program could more adequately provide advice and advocacy for people in poverty.”).

212. H.B. 1797(j), 95th Gen. Assem. (Ill. 2007).

213. See H.B. 1797(a), (c), 95th Gen. Assem. (Ill. 2007).

214. H.B. 1797(c), (j), 95th Gen. Assem. (Ill. 2007). See also Statement of Sen. Raoul, Senate Transcript, May 22, 2007, H.B. 1797(c), 95th Gen. Assem. (Ill. 2007), available at <http://www.ilga.gov/senate/transcripts/strans95/09500043.pdf>.

215. County of Kendall v. Rosenwinkel, 818 N.E. 2d 425, 433 (Ill. App. Ct. 2004).

216. 765 ILL. COMP. STAT. 605/30 (2006).

217. As the Illinois Appellate Court stated in *Rosenwinkel*:

[I]t is well established that where, as here, the government is expressly authorized by statute to seek injunctive relief, the three traditional equitable elements necessary to obtain an injunction, as listed above, need not be satisfied. . . . In such a case, the State or governmental agency need show only that a statute was violated and that the statute relied upon specifically allows injunctive relief.

818 N.E. 2d at 434 (citations omitted).

218. *Id.*

save them significant time and money to observe the conversion regulations in the first instance. These provisions, however, do not solve all of the problems inherent in the Act's conversion regulations. As discussed in Section C above, the three main weaknesses in section 605/30—the loophole for month-to-month tenants, the lack of enforcement mechanisms, and the weak tenant protections—must be addressed to bring the statute in line with some of the most active conversion markets.<sup>219</sup> Additional amendments are required to fully address each of these problems. These three remaining areas of concern are outlined below, along with several proposed additional amendments designed to address each of these problems.<sup>220</sup>

a. The Month-to-Month Loophole

While H.B. 1797's injunctive relief is a powerful tool for tenants who are denied their conversion rights but have not yet vacated their units, it is an indirect and possibly weak tool for closing the loophole for month-to-month tenants.<sup>221</sup> When very narrowly or strictly construed, the language of H.B. 1797 does little to protect month-to-month tenants who should be given notice of the conversion 120 days before being required to vacate.<sup>222</sup>

The language of new subsection (a)(2) creates liability for a developer's failure to provide the required notice but fails to change who should receive the required notice.<sup>223</sup> Ultimately, if tenants are entitled to a minimum of 120 days before they may be required to vacate for purposes of a conversion, then a developer who requires a tenant—even a month-to-month tenant—to vacate within 30 days, and within less than 120 days submits the property to the Act and sells the unit, has de facto violated the statute.<sup>224</sup> Because the Act still only requires that notice be provided to those tenants in occupancy 30 days prior to the submission of the property to the Act, H.B. 1797 has done little to address this loophole for month-to-month tenants.<sup>225</sup>

One way to address this problem is to model the regulations found in the Connecticut Common Interest Ownership Act.<sup>226</sup> This provision is fairly similar to the language of H.B. 1797, but, rather than providing tenants with damages, the statute provides certain tenants

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219. See *supra* notes 165–192 and accompanying text.

220. See *infra* notes 221–246 and accompanying text.

221. H.B. 1797(j), 95th Gen. Assem. (Ill. 2007).

222. *Id.*; see 765 ILL. COMP. STAT. 605/30.

223. H.B. 1797(a)(2), 95th Gen. Assem. (Ill. 2007).

224. See 765 ILL. COMP. STAT. 605/30.

225. See H.B. 1797(a)(1), 95th Gen. Assem. (Ill. 2007).

226. CONN. GEN. STAT. ANN. § 47-290(d) (West 2004).

who have vacated without having received notice the right to all the benefits of a conversion tenant.<sup>227</sup> As adapted to the language of the Illinois statute, this provision would read as follows:

If any tenant vacates a unit after receiving a notice to terminate tenancy based on a reason other than material noncompliance with the rental agreement; and the unit occupied by such tenant becomes a conversion condominium unit within 120 days of the date of such notice to quit; and no other tenant subsequently occupied the unit before it became a converted unit, that tenant shall be entitled to the benefits provided to a conversion tenant as provided for in this Section. The notice required along with the schedule of selling prices and offer to sell the unit shall be given to such tenant by mailing the notice to him at his last-known address.<sup>228</sup>

This provision ensures that tenants who have already vacated will still receive the right of first refusal for the full 120 days following the receipt of notice. Alternatively, the provision serves to inform developers that deliberately terminating tenancies for the purposes of conversion will not absolve them from providing tenants with conversion rights. If developers terminate tenancies for reasons other than nonpayment of rent or other breaches of a lease, and the units thereafter remain vacant until they are converted to condominiums, it is evident that those developers terminated the leases in anticipation of conversion and hoped to avoid the conversion regulations.

#### b. Additional Enforcement Provisions

Given the widespread problem of landlords attempting to prematurely terminate tenancies or evict tenants to hasten a conversion, tenants need additional protection from eviction at the time of conversion.<sup>229</sup> While H.B. 1797 provides for injunctive relief, tenants may still find it difficult to establish their rights under the Act before a declaration submitting the building to the Act is recorded or the unit sold. Tenants are at a disadvantage regarding access to information about building owners' intentions for their buildings.<sup>230</sup> In fact, in stealth conversions in which owners fail to provide tenants notice of conversions, it is much more likely that these cases will originate as actions for eviction rather than tenants' actions for injunctive relief.<sup>231</sup> For this reason, a presumption of condominium conversion eviction,

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227. *Id.*

228. *See id.*

229. *See supra* note 8 and accompanying text.

230. *See, e.g., Advocates Criticize 'Stealth' Condo Conversions, supra* note 1.

231. *See supra* note 8 and accompanying text.

modeled after the Boston ordinance<sup>232</sup> and the Connecticut statute,<sup>233</sup> should be included in the Act and should read as follows:

A tenant in possession may, as a defense to any action to recover possession or in an independent action brought by such tenant, introduce evidence of the landlord's intent to convert the real estate to a condominium. If the landlord is unable to rebut the presumption of condominium eviction or the court finds that there is a substantial probability the landlord or his successor in interest will submit the real estate to this Act within 120 days from the date the action by the owner or tenant was instituted, the court shall enjoin the action for possession and may grant other appropriate relief.

#### Presumption of Condominium Conversion Eviction

Any action to recover possession against a tenant who was in occupancy at the time of conversion of the property to condominium, or at the time of initial sale of the unit as an individual condominium unit, shall be presumed to be a condominium conversion eviction and void as against public policy where any one or more of the following has occurred:

- (a) Any dwelling unit in any building or structure in which the unit is located has been sold as a condominium or cooperative unit;
- (b) A declaration submitting the real estate to this Act has been duly recorded;
- (c) Any tenant of any unit in the building wherein the unit is located has received a notice of intent as required by this Section;
- (d) In any unit converted to a condominium, the landlord has increased or is seeking to increase the tenant's rent beyond a reasonable market rate, unless the landlord shows that his intent is not to facilitate the sale or transfer of the housing accommodation to a prospective purchaser.<sup>234</sup>

Such a presumption would be similar to the presumption of retaliatory eviction found in the Chicago Residential Landlord Tenant Ordinance, providing tenants both a defense to actions for possession and an additional private cause of action for equitable relief before the units are converted and sold.<sup>235</sup>

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232. BOSTON, MASS. MUNICIPAL CODE § 10-2.10(a), (d) (2006).

233. CONN. GEN. STAT. ANN. § 47-290(d) (West 2004).

234. See also Keenan, *supra* note 52, at 693-94 (proposing model conversion legislation with a provision establishing a rebuttable presumption of condominium conversion eviction).

235. CHI., ILL., MUNICIPAL CODE 5-12-150 (2006). This prohibition on retaliatory conduct by the landlord lists seven protected tenant activities, such as requesting repairs or complaining of code violations to appropriate government agencies, and states, "if there is evidence of tenant conduct protected herein within one year prior to the alleged act of retaliation, that evidence shall create a rebuttable presumption that the landlord's conduct was retaliatory." *Id.*

### c. Strengthening Tenant Protections

Finally, Illinois should strengthen its current tenant protections to ensure the equitable treatment of tenants in the conversion process. H.B. 1797 fails to make any improvements to the basic tenant protections found in the Act or to provide special protections for the most vulnerable groups of tenants. Therefore, the Act should be amended to increase the required minimum notice period to 180 days; require developers to provide each household with relocation assistance; and provide additional notice and relocation assistance to all elderly, disabled, and low-income tenants, as well as families with children. By increasing the required notice period from 120 days to 180 days—six months in which to locate comparable housing—tenants would receive greater flexibility and assurance that they will have the time to locate affordable accommodations.<sup>236</sup> The conversion markets throughout Florida provide persuasive evidence that requiring developers to allow tenants to continue renting for a total of six months would not likely deter many conversions.<sup>237</sup> Furthermore, given that the Act has lacked virtually any enforcement mechanisms, developers may have avoided the conversion regulations simply because there has been no threat of enforcement and not because the regulations are too burdensome.

Because approximately 90% of conversion tenants relocate, the provision of financial assistance to aid in the costs of moving would significantly assist conversion tenants and help to facilitate the building's transition.<sup>238</sup> In the interests of equity and ease of administration, relocation assistance should be a uniform, fixed amount and provided only to those tenants who are current on their rent payments. Municipalities with home rule powers, such as Chicago, would be free to adopt larger relocation assistance amounts as appropriate to the local rental market. This provision should be inserted just after the current paragraph stating, "Each lessee in a conversion condominium shall be informed by the developer at the time the notice of intent is given whether his tenancy will be renewed or terminated upon its expiration."<sup>239</sup> The additional provision should read as follows:

If the tenancy is to be terminated upon its expiration, the tenant shall be entitled to receive \$500 in relocation assistance upon vacat-

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236. See, e.g., *supra* note 171 and accompanying text.

237. Half of the nation's top twenty conversion markets are located in Florida, all of which are subject to Florida's minimum 180-day notice requirement under FLA. STAT. ANN. § 718.606 (West 2005). See Slatin, *supra* note 12.

238. Chapman, *supra* note 138, at 26.

239. 765 ILL. COMP. STAT. 605/30(d) (2006).

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ing the unit. If there is more than one tenant who bears the cost of relocation from a unit, the landlord shall pay the tenants proportionally. The landlord is not required to make a relocation assistance payment to a tenant who is not current on rental payments. This payment is to be made in addition to all other amounts owed to the tenant including a security deposit. If a landlord does not provide the relocation assistance payment as required, the tenant has a private cause of action to collect the payment and is entitled to costs and reasonable attorney fees for bringing the action.<sup>240</sup>

Finally, the Act should provide additional accommodations for more vulnerable tenants, including elderly, disabled, and low-income tenants, as well as tenants with minor children. Tenants with small children are significantly impacted by displacement due to the possible disruption for children in having to change schools during the school year and the decreasing supply of housing units large enough to accommodate families.<sup>241</sup> This provision should provide additional protections based on the following definitions:

Qualified tenants include aged or senior citizens as defined by the Act on Aging, 20 Ill. Comp. Stat. 105/3.05;<sup>242</sup> individuals with a handicap as defined by the Human Rights Act, 775 Ill. Comp. Stat. 5/1-103(I);<sup>243</sup> low income and very low-income households as defined by the Affordable Housing Act, 310 Ill. Comp. Stat. 65/3(c),

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240. See CONN. GEN. STAT. ANN. § 47-290(d) (West 2004); D.C. CODE ANN. § 42-3403.02 (LexisNexis 2006).

241. A recent study conducted by the University of Illinois at Chicago Voorhees Center provides a detailed picture of the mismatch between current housing supply and demand. The study categorized Chicago households by income and size and then matched them with units appropriate to their size and income. This research reveals a gap of 55,433 units suitable for large households (four to eight people) earning below 30% of the area median income as of 2000. This gap is projected to grow and represents increased risks of overcrowding and homelessness. NATHALIE P. VOORHEES CTR. FOR NEIGHBORHOOD AND CMTY. IMPROVEMENT, AFFORDABLE HOUSING CONDITIONS AND OUTLOOK IN CHICAGO: AN EARLY WARNING FOR INTERVENTION 1, 24 (2006), [http://www.uic.edu/cuppa/voorheesctr/Publications/vnc\\_woodsrap\\_0706.pdf](http://www.uic.edu/cuppa/voorheesctr/Publications/vnc_woodsrap_0706.pdf).

242. The Illinois Act on Aging provides protections for the “aged” or “senior citizens” based upon the following definition:

“Aged” or “Senior citizen” means a person of 55 years of age or older, or a person nearing the age of 55 for whom opportunities for employment and participation in community life are unavailable or severely limited and who, as a result thereof, has difficulty in maintaining self-sufficiency and contributing to the life of the community.

20 ILL. COMP. STAT. 105/3.05.

243. The Illinois Human Rights Act provides protections for individuals with disabilities and defines “handicap” as follows:

“Handicap” means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person’s use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder . . . .”

775 ILL. COMP. STAT. 5/1-103(I).

(d),<sup>244</sup> and tenants living with dependent children up to age eighteen or nineteen if still attending high school.

Those who meet the definition of qualified tenants should receive additional protections as enumerated by the following language:

All qualified tenants are entitled to 270 days' notice from the date on which a copy of the notice of intent was given to the tenant; the tenant shall have the right to extend his tenancy until the expiration of such 270 day period. If a tenancy is to be terminated upon its expiration and the unit is occupied by a qualified tenant, that tenant shall be entitled to receive \$750 in relocation assistance upon vacating the unit.<sup>245</sup>

Such protections would provide meaningful rights for particularly vulnerable classes of tenants and acknowledge the fact that displacement caused by conversions creates disproportionate hardship for these groups of tenants. Such a provision would also be consistent with state legislative policy providing additional statutory protection for vulnerable groups of citizens.<sup>246</sup> Incorporating a strong statement of policy supporting such protected classes would raise the bar for all tenants across the state of Illinois and provide important benefits for the elderly, individuals with disabilities, families, and low-income tenants living in non-home rule cities.

#### IV. IMPACT: CONDOMINIUM CONVERSIONS AND THEIR IMPLICATIONS FOR AFFORDABLE HOUSING IN ILLINOIS

The amendments contained in H.B. 1797, as well as the proposed amendments to the Condominium Property Act detailed above, would provide important safeguards necessary to ensure that the

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244. The Illinois Affordable Housing Act establishes a comprehensive housing policy based upon the following definitions of "low income" and "very low-income" households:

(c) "Low income household" means a single person, family or unrelated persons living together whose adjusted income is more than 50%, but less than 80%, of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937.

(d) "Very low-income household" means a single person, family or unrelated persons living together whose adjusted income is not more than 50% of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States Department of Housing and Urban Development for purposes of Section 8 of the United States Housing Act of 1937.

310 ILL. COMP. STAT. 65/3(c), (d).

245. See, e.g., *supra* note 188 (listing similar state statutes with increased protections for vulnerable groups of tenants).

246. See Illinois Act on Aging, 20 ILL. COMP. STAT. 105/2; Illinois Affordable Housing Act, 310 ILL. COMP. STAT. 65/2; Illinois Human Rights Act, 775 ILL. COMP. STAT. 5/1-5/102.

rights of tenants living in apartments converted to condominiums are not ignored or abused.<sup>247</sup> These safeguards are particularly important in light of the severe lack of affordable housing in Illinois.<sup>248</sup> This Part places the Act and the recent condominium conversion craze in the context of Illinois’s increasingly tight rental market.<sup>249</sup> It reviews a number of statistical indicators, as well as one neighborhood case study, which, together, provide a clear picture of the ways condominium conversions, and stealth conversions in particular, have affected the availability of affordable housing for low-income families.<sup>250</sup>

For the past several decades, the Act’s condominium conversion regulations have been essentially hortatory and served as hopeful guidelines rather than effective regulations balancing the needs of tenants and community developers.<sup>251</sup> While the Act’s failures have exhibited themselves most prominently during highly active real estate markets with low rental vacancy rates, it would be unwise to assume that the problem will simply disappear due to the more recent housing market slump. The Act’s three primary failures—the lack of enforcement mechanisms, rights for month-to-month tenants, and strong tenant protections compared to other states—each require attention and resolution. These problems surrounding the conversion of rental units to condominiums are important aspects of a much larger and ongoing problem facing the entire state of Illinois: the severe lack of affordable housing.<sup>252</sup>

In 2006, Illinois was the most expensive state in the Midwest for renters, based on the high cost of average monthly rents.<sup>253</sup> Illinois renters are heavily cost-burdened, and rents have continued to rise, increasing 23% percent since 2000.<sup>254</sup> As of 2006, 38% of all Illinois renters were paying 35% or more of their income to rent, a 7% increase since 2000.<sup>255</sup> Such numbers have dire implications for moder-

247. See *supra* notes 204–246.

248. DeKalb County Online, Housing Action Ill., *Illinois Families Must Earn \$15.95 an Hour to Afford a Two-Bedroom Apartment*, <http://www.dekalbcountyonline.com> (last visited Nov. 21, 2007); see also NATHALIE P. VOORHEES CTR. FOR NEIGHBORHOOD AND CMTY. IMPROVEMENT, *supra* note 241, at 1.

249. See *infra* notes 251–288 and accompanying text.

250. See *infra* notes 253–275 and accompanying text.

251. See *supra* notes 120–192 and accompanying text.

252. DeKalb County Online, *supra* note 248; see also NATHALIE P. VOORHEES CTR. FOR NEIGHBORHOOD AND CMTY. IMPROVEMENT, *supra* note 241, at 1.

253. DeKalb County Online, *supra* note 248 (reporting on the findings of the National Low Income Housing Coalition’s annual report, *Out of Reach 2006*).

254. *Id.*

255. Compare U.S. CENSUS BUREAU, 2006 AMERICAN COMMUNITY SURVEY, ILLINOIS, SELECTED HOUSING CHARACTERISTICS (showing 1,422,885 total renter-occupied units in Illinois in 2006; of those units, 543,611 paid 35% or more of household income to rent; of the total number

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ate- and low-income residents, leaving many vulnerable to homelessness. Furthermore, with such a large proportion of Illinois residents' income going to rent, there is often little left over for basic necessities, such as food, clothing, transportation, and healthcare.<sup>256</sup>

The conversion of thousands of apartment units to condominiums, combined with a growing state population, has further tightened the Illinois rental market.<sup>257</sup> One million renters in Illinois are in need of housing assistance and compete for just 230,000 subsidized housing units.<sup>258</sup> For this reason, the protection of the private rental market, particularly through the regulation of condominium conversions, is a necessary component of any solution to Illinois's affordable housing crisis.

In the metropolitan Chicago area, the significant concentration of condominium conversion activity is reflected in the magnitude of the area's affordable housing crisis. As the poverty rate in Cook County has steadily increased, the demand for affordable housing has risen.<sup>259</sup> Condominium conversions remove large numbers of affordable rental units from the Chicago market, while many of the new housing units have been targeted at higher-income buyers and renters.<sup>260</sup>

A recent study of the Chicago neighborhood of Rogers Park provides a detailed example of the ways in which condominium conversions have drastically changed the face of an entire community by skirting state and local conversion regulations.<sup>261</sup> On the city's far north side, Rogers Park is a neighborhood historically known for its "abundance of affordable rental units and its economic and racial di-

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of units, 95,814 were not computed), *with* U.S. CENSUS BUREAU, 2000 AMERICAN COMMUNITY SURVEY, ILLINOIS, SELECTED HOUSING CHARACTERISTICS (showing 1,496,323 total renter-occupied units in Illinois in 2000; of those units, 458,419 paid 35% or more of household income to rent; of the total number of units, 94,534 were not computed); *see also* 3 CHICAGO REHAB NETWORK, 2003 AFFORDABLE HOUSING FACT BOOK 164 (2003) (stating that as of 2000, 18.5% of all Illinois renters were paying 50% or more of their income to rent).

256. MID-AM. INST. ON POVERTY, ILLINOIS AFFORDABLE HOUSING PRIMER: AUGUST 2002 1, <http://www.heartlandalliance.org/creatingchange/pdf/2002AffordableHousingPrimer.pdf>.

257. *Id.*; *see also* Heidi L. Golz, Comment, *Breaking into Affluent Chicago Suburbs: An Analysis of the Illinois Affordable Housing Planning and Appeal Act*, 15 J. AFFORDABLE HOUSING & CMTY. DEV. L. 181 (2006) (discussing various reasons for the lack of affordable housing and the Illinois General Assembly's passage of the Affordable Housing Planning and Appeal Act of 2004, 310 ILL. COMP. STAT. 67/1 (2004), requiring local governments to establish plans for affordable housing development).

258. MID-AMERICA INST. ON POVERTY, *supra* note 256, at 7.

259. NATHALIE P. VOORHEES CTR. FOR NEIGHBORHOOD AND CMTY. IMPROVEMENT, *supra* note 241, at 1.

260. *Id.*

261. COMMUNITY HOUSING AUDIT, *supra* note 8.

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versity.”<sup>262</sup> Over the past several years, however, this neighborhood has experienced some of the highest conversion rates in the city.<sup>263</sup>

The Community Housing Audit of Rogers Park, conducted by Lakeside Community Development Corporation in the summer of 2006, found that condominium conversions had reduced the neighborhood’s supply of rental housing at a rate of 900 to 1,000 units per year, causing a 17.4% reduction in the overall rental housing supply between 2003 and 2006.<sup>264</sup> While the high rate of conversions increased the number of home ownership opportunities in the neighborhood, disparities between home ownership rates of whites and minorities grew substantially.<sup>265</sup> Whites accounted for 29% of the neighborhood’s population as of 2000, but accounted for 60% of all conventional home mortgages originated in Rogers Park between the years of 2000 and 2004.<sup>266</sup> This suggests that significant numbers of renters of color have been displaced as a direct result of rampant condominium conversions.<sup>267</sup> The steep increase in home prices also led to an increase in the number of upper-income home-buyers entering the neighborhood.<sup>268</sup>

Housing auditors encountered abundant evidence of redevelopment efforts being conducted contrary to state and local laws and in violation of tenants’ rights.<sup>269</sup> The auditors identified seven large apartment buildings where redevelopment was clearly visible, yet no permits were posted, and their status as rental buildings could not be determined.<sup>270</sup> These buildings comprised a total of 210 units. It remains unclear whether these projects were stealth conversions or whether the required building permits were simply not posted.<sup>271</sup> Additionally, auditors reported instances of extensive remodeling in occupied buildings, as well as instances in which landlords had asked tenants to move prior to the end of their lease terms and informed them that their monthly leases would not be renewed due to the conversion of the building—without mentioning their rights in the conversion process.<sup>272</sup> These reports led the auditors to conclude that “a significant amount of development is taking place with minimal or no

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262. *Id.* at 3.

263. *See id.*

264. *Id.*

265. *Id.* at 21.

266. *Id.* at 3, 21.

267. COMMUNITY HOUSING AUDIT, *supra* note 8, at 3–4.

268. *Id.* at 21.

269. *Id.*

270. *Id.* at 17.

271. *Id.*

272. *Id.* at 20–21.

regulatory oversight. . . . [T]enants' rights are being regularly violated."<sup>273</sup>

Finally, while the real estate market began to slow down in 2006, several forecasts predict continued conversions, merely at a reduced rate.<sup>274</sup> Neighborhoods like Rogers Park will remain attractive for future condominium conversions, as new home-buyers continue to seek out amenities, such as quality housing, close proximity to public transportation, and lakefront access.<sup>275</sup>

Any proposals to further increase the regulation of condominium conversions will likely face resistance from a number of sources, including the various Realtors' associations, developers, and property owners seeking to maintain the greatest freedom to develop and profit from their property.<sup>276</sup> There is significant reluctance to impose any barriers to condominium development given the substantial level of economic investment and public revenue involved.<sup>277</sup> The initial sale and purchase of a building generates profits for the seller, fees for the real estate broker, and tax revenues for state and local governments.<sup>278</sup> Rehabilitation construction generates additional public revenue for the city through substantial building permit fees and also provides additional income and jobs for the numerous contractors hired to perform the work.<sup>279</sup> Finally, the sale of individual condominium units further generates tax revenue at the time of sale and in each successive tax year.<sup>280</sup> The conversion of a rental building commonly increases the property's market value, thereby increasing future property tax assessments and revenues.<sup>281</sup>

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273. COMMUNITY HOUSING AUDIT, *supra* note 8, at 21.

274. *Id.* at 20.

275. *Id.*

276. See, e.g., Illinois Association of REALTORS®, IAR Statement of Policy, <http://www.illinoisrealtor.org/iar/newsreleases/statepol.html> (last visited Feb. 25, 2008).

277. See John J. Betancur, *Can Gentrification Save Detroit? Definition and Experiences From Chicago*, 4 J.L. SOC'Y 1, 4 (2002) (describing both the benefits and costs of gentrification).

278. The typical real estate broker commission is 6% of the sale price. David Bradley, *Discount Real Estate Firms Tout Commission Savings*, CHI. TRIB., Dec. 30, 2005, sec. 6, at 1. See 65 ILL. COMP. STAT. 5/8-3-19 (2006) (granting home rule municipalities authority to impose real estate transfer taxes). The Chicago Real Property Transfer Tax imposes a tax on the transfer of "title to, or beneficial interest in, real property located in the city." CHI., ILL., MUNICIPAL CODE 3-33-030 (2006).

279. As of 2006, building permit fees in Chicago were capped at 1% of the total project costs for new construction, alterations, and repairs. CHI., ILL., MUNICIPAL CODE 13-32-310.

280. See Betancur, *supra* note 277; see also 35 ILL. COMP. STAT. 200/10-15 (authorizing property tax for condominiums); see, e.g., COOK COUNTY, ILL. CODE OF ORDINANCES §§ 74-1-69 (2007) (Real Property Taxation).

281. David B. Soleymani, Note, *The New York Assessment Anomaly: Valuation Following Condominium Conversion*, 1987 COLUM. BUS. L. REV. 733, 739.

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Indeed, there are many reasons to promote condominium conversions as part of larger neighborhood redevelopment efforts. The rehabilitation of older buildings, increased homeownership opportunities, increased economic investment, and potential business development all benefit a community's social and economic life.<sup>282</sup> Without careful planning and conscientious regulation, however, uncontrolled economic development runs the risk of causing the large-scale displacement of low-income, minority households, commonly associated with gentrification.<sup>283</sup> Preserving affordable housing and regulating land use and development, including condominium conversions, are therefore necessary to prevent further economic and racial segregation, housing shortages, and longer commute times for individuals that cannot afford to live near their place of employment.<sup>284</sup>

In October 2006, Mayor Richard M. Daley responded to calls for increased control of condominium conversions and additional investments in affordable housing by announcing his support for an incentive-based policy.<sup>285</sup> The Mayor's plan eschewed mandatory set-asides of affordable units as a qualification for development subsidies in favor of financial incentives for developers. Further, it called for a housing task force to recommend a comprehensive condominium conversion policy using incentives to "mitigate the loss of affordable rental units" caused by the conversion of apartment buildings.<sup>286</sup>

Efforts to incorporate affordable housing incentives into the redevelopment plans of conversion buildings are commendable but will fail to fully address the problem as long as the state law regulating condominium conversions remains weak and practically inapplicable to month-to-month tenants. H.B. 1797 provides much-needed enforcement provisions allowing tenants to feasibly enforce their rights under the Act either before or after they are required to vacate their units.<sup>287</sup> Despite this important enhancement, however, H.B. 1797 fails to bring the Act in line with the most progressive conversion regulations found across the country. Therefore, in order to fully address the disruption to tenants' lives and communities caused by condominium conversions, the Condominium Property Act must be amended to

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282. See Zielenbach, *supra* note 43, at 452–53.

283. Betancur, *supra* note 277, at 9–11; John A. Powell & Marguerite L. Spencer, *Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color*, 46 *How. L.J.* 433, 436–37 (2003).

284. Golz, *supra* note 257, at 185; Powell & Spencer, *supra* note 283.

285. Fran Spielman, *Daley Backs Incentives for Affordable Homes: Mayor Says They'll Work Better Than Set-Asides*, *CHI. SUN-TIMES*, Oct. 11, 2006, at 72.

286. *Id.* For a brief description of developer incentives, see Chambers, *supra* note 38, at 369.

287. H.B. 1797, 95th Gen. Assem. (Ill. 2007).

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close the month-to-month loophole, further improve the enforcement provisions, and strengthen tenant protections. Additionally, the Consumer Fraud and Deceptive Business Practices Act should be amended to provide the Attorney General's Office with express jurisdiction to pursue violations of the Condominium Property Act.<sup>288</sup> Such positive steps would help ensure the equitable development of all Illinois communities.

## V. CONCLUSION

Ultimately, the recent housing boom has had many positive effects for Illinois communities, including increased investment, rising homeownership rates, renewed economic opportunities, and the redevelopment of distressed properties. While the conversion of apartment buildings to condominiums can be a beneficial development within a particular neighborhood for all of these reasons, conversions can also leave many long-time residents displaced from their communities, exacerbate the affordable housing crisis, and cause significant resentment and turmoil. The Illinois Condominium Property Act's provisions regulating condominium conversions were intended to prevent such negative outcomes by establishing clear procedures and rights that must be afforded to tenants before the units are sold.<sup>289</sup> Unfortunately, the Act's regulations have failed to serve their intended purpose, leaving many tenants with little protection and virtually no legal recourse when their rights are violated. H.B. 1797 provides an excellent first step in what will hopefully be an ongoing legislative effort to ensure that the Act effectively serves its intended purpose.

Despite the improvements of H.B. 1797, Illinois conversion regulations are still in need of an extensive update. Many states with highly active conversion markets have established much more effective and far-reaching protections for tenants living in buildings slated for conversion. Collectively, these state statutes provide an excellent resource for statutory provisions that effectively serve the needs of tenants while balancing the rights of landlords to develop their property and maximize its full profit potential. The amendments contained in H.B. 1797, together with the additional amendments presented here, would provide meaningful protections to tenants by ending the month-to-month loophole, establishing effective enforcement mechanisms, and strengthening tenant protections. Such amendments are

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288. 815 ILL. COMP. STAT. 505/1 (2006); 815 ILL. COMP. STAT. 505/2Z.

289. See 765 ILL. COMP. STAT. 605/30.

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necessary to ensure that future community development is conducted in an equitable and respectful manner, mindful of not only the individual impact upon tenants' lives but also the overall impact on the availability of affordable housing throughout Illinois.

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