



2020 is taking off as “year of the homeowner” in the New York State Legislature

By Erica F. Buckley

2019 was known as the year of the tenant with historic rent reforms under the Housing Stability and Tenant Protection Act (the “HSTPA”). While the HSTPA made numerous changes to the Rent Stabilization Laws to protect renters, it caused some unintended consequences to housing cooperatives and tenant ownership opportunities under Part M and Part N of the HSTPA. Part M extended various protections to tenants, including tenants not otherwise protected by the Rent Stabilization Laws, and those changes have been interpreted to apply to shareholders in housing cooperatives.¹ Part N amended the “tenant protection” provisions of the Martin Act, raising the threshold to convert rental buildings to cooperative or condominium to 51% of all tenants in occupancy from 15% of the residential apartments in a building or group of buildings, an unprecedentedly high threshold. Part M creates unintended restraints on cooperatives to carry out shareholder selection and business operations. Landlords view Part N as stripping their ability to convert rental property to for-sale status.² Proponents of homeownership are concerned that the HSTPA may hamper homeownership opportunities in the future—a policy concern given New York City’s already abysmal homeownership rate, which according to a recent report by the New York University Furman Center was only 33% in 2018.³ This, coupled with other legislative proposals have left many existing and aspiring homeowners wondering when lawmakers will embrace homeownership again. 2020 might be the year of amends.

The New York State Legislature is off to a running start to make 2020 the year of the homeowner, with a particular emphasis on cooperatives. Although the legislative session has only been in session for less than a month, we have already seen some pro-homeownership bills on the agenda, as follows:

¹ See, e.g., *Surfair Equities, Inc. v. Marin*, 2020 N.Y. Slip Op. 50111(U) (Civ. Ct., Queens County 2020) (holding HSTPA, § 1, part M, inapplicable to holdover proceeding against proprietary lessee as action commenced prior to effective date of the HSTPA).

² See Josh Barbanel and Will Parker, “New York Condo Conversions Near the End, a Casualty of Rent Reform,” the *Wall Street Journal*, (July 9, 2019).

³ See [NYU Furman Center Blog, “Snapshot of Homeownership in New York City,” \(December 17, 2019\), available here](#).

A9608 “establishes the Office of the HDFC Cooperative Ombudsman”

Introduced by Assembly Member Harvey Epstein, this bill creates a much-needed ombudsman at the New York Office of the Attorney General to provide a neutral, informative, and accessible resource to boards and shareholders of housing development fund companies. Shareholders and Boards of HDFC Cooperatives will have access to training and technical and legal assistance, including dispute resolution services, as well as monitoring and oversight of elections. The ombudsman will be empowered to issue subpoenas to obtain documents or testimony as related to the resolution of disputes, as well as engage housing courts to provide specialized expertise. Finally, the ombudsman will assist tenants in rental properties converting to HDFC cooperative status by providing training and resources on the cooperative conversion process. The ombudsman will be an attorney with extensive experience in real estate, affordable housing, cooperative law, and conflict and dispute resolution and be subject to the Public Officers Law.

The ombudsman will be paid for by two discrete sources of revenue: 1) a \$6.00 per unit fee annually on all residential cooperative apartments and condominium units state-wide; and 2) the creation of a new fund under the State Finance Law that will receive revenue from filing fees collected by the Real Estate Finance Bureau. The bill raises certain filing fees for offering plans and other submissions to the Real Estate Finance Bureau, and such monies from filing fees will be split equally between the Real Estate Finance Bureau and the HDFC cooperative ombudsman. The proposed amendment to the State Finance Law also require the Real Estate Finance Bureau to add additional staff to the Bureau, and to spend monies that are placed in the existing Real Estate Finance Bureau Fund under Section 80 of the State Finance Law in entirety. [A copy of the bill is available here.](#)

S6770/A8718 “excludes tenant-shareholders in cooperative housing corporations from certain housing provisions”

As set forth in the sponsor’s Memorandum in Support, the HSTPA was a landmark bill for tenants’ rights, however several provisions of the HSTPA were unclear regarding its application to shareholders with proprietary leases in housing cooperatives. This bill would clarify such provisions, including the following, deeming them inapplicable to shareholders in a housing cooperative:

- Prohibition on receiving a deposit or advance in excess of one month’s rent;
- Prohibition on running background checks for shareholder selection;
- Caps on fees for the processing, review, and acceptance of applications;
- Caps on background and credit checks;
- Prohibition on setting of late fees in excess of \$50 for the payment of late rent; and
- Prohibitions on the collection of fees, charges, or penalties other than rent in a summary proceeding (including the ability to assess attorneys’ fees against a defaulting shareholder).

[A copy of the bill is available here.](#)

Other bills on the horizon

In addition to the foregoing, there is already wide-spread discussion about two other bills that are on the brink of introduction. First, Assembly Member Harvey Epstein is said to be in the process of introducing much-needed legislation to clarify various misconceptions about HDFC Cooperatives.

His bill will likely be a re-draft of a bill from 2017, which was introduced by Senator Betty Little known as “An Act to Amend the Private Housing Finance Law, in Relation to the Assets and Supervision of Housing Development Fund Corporations,” available [here](#).

News also broke that Senator Zellnor Myrie was soon to introduce a bill that would give tenants the right of first option to purchase their buildings and convert them to HDFC Cooperatives. Senator Myrie is modeling his bill after the “Tenant Opportunity to Purchase Act,” which Washington, D.C., enacted more than 30 years ago and is said to be responsible for the conversion of more than 10,000 units of rental housing to homeowner status.⁴ While specific details about the bill are yet to come, of interest is that D.C. assists tenants through its Office of the Tenant Advocate in exploring homeownership. The HDFC cooperative ombudsman could play a similar role, should such position exist at the New York Attorney General’s Office.

What’s next?

The attention given to homeownership should be welcome news to all since ownership creates neighborhood stability, wealth, community, and a sense of empowerment for tenants who become owners. Nixon Peabody’s Cooperatives and Condominiums team will continue to pay close attention to the progress on these bills, and stands ready to work with stakeholders seeking to make homeownership a reality, whether through tenant or landlord representation, or direct lobbying to state lawmakers on how to make these bills gain the support needed to become law. We are excited to be a part of making 2020 #yearofthehomeowner.

Additional information on [Nixon Peabody’s full service Cooperatives and Condominiums practice and team is available here](#). For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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⁴ See [Georgia Kromrei, “Bill: Make Landlords Give Tenants First Shot to Buy Buildings,” the Real Deal \(January 31, 2020\) available here](#).