

RETHINKING ROTH: WHY THE FLORIDA LEGISLATURE SHOULD EMPOWER LOCAL GOVERNMENTS TO REGULATE CONDOMINIUM CONVERSIONS

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I. INTRODUCTION

*[C]ondominiums are strictly creatures of statute.*¹

In the last five years, the United States has suffered under the specter of financial Armageddon.² In particular, Florida has suffered serious economic setbacks³ with much of the blame placed on the failure of the housing sector.⁴ Industry experts identify the condominium-conversion craze⁵ as a major component of the cataclysmic collapse of the Florida real estate mar-

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1. *Neuman v. Grandview at Emerald Hills, Inc.*, 861 So. 2d 494, 496 (Fla. 4th Dist. App. 2003).

2. See Jon Hilsenrath, Serena Ng & Damian Paletta, *Worst Crisis since '30s, with No End Yet in Sight*, Wall St. J. A1 (Sept. 18, 2008) (quoting economist Mark Gertler, who described the financial crisis that began in 2007 as “the worst . . . since the Great Depression”).

3. Michael Grunwald, *Is Florida the Sunset State?* Time Mag. U.S., <http://www.time.com/time/magazine/article/0,9171,1821648-1,00.html> (July 10, 2008) (highlighting Florida as a leader in mortgage fraud and foreclosures in the United States).

4. E.g. Damien Cave, *Florida's Crossroads of Foreclosure and Despair*, N.Y. Times A1 (Feb. 8, 2009) (available at 2009 WLNR 2490819) (describing the economic impact of the housing crisis on Lehigh Acres, a Florida community that was drastically affected).

5. Robyn A. Friedman, *Rental Squeeze: Developers Profit from Condo Conversions, but at a High Price to South Florida's Apartment Dwellers*, S. Fla. Sun-Sentinel 1E (Mar. 20, 2005) (available at 2005 WLNR 23615047) (stating that real estate analysts compared the large number of condominium conversions to a “shark feeding frenzy”); Amy Keller, *Shifting Winds*, <http://www.floridatrend.com/article/11043/shifting-winds?page=3> (May 1, 2006) (citing South Florida as “one of the most prolific condo markets in the nation”).

ket.⁶ The concept of converting apartment buildings into condominiums is a relatively recent phenomenon in the Sunshine State.⁷ In 1980, the Florida Legislature passed the Roth Act⁸ in an effort to regulate the conversion of existing improvements to real property to the condominium form of ownership. In light of the collapse of the Florida housing market,⁹ this Article argues that the State's current regulatory scheme governing condominium conversions needs significant amendment and revision to effectively manage the variety of social problems that have arisen as a byproduct of these conversions.

Historically, lawmakers and legal scholars have focused on the social problems originating from condominium conversions that relate to dislodging long-term and special-needs tenants and the depletion of affordable rental housing.¹⁰ This Article, however, focuses on the repercussions that condominium conversions in Florida have on the unit purchasers and the resulting burdens on society as a whole. The dubious byproducts of condominium conversions in Florida of late include the degradation of older buildings, financial insolvency for both owners and condominium associations, the proliferation of criminal activity, and the potential spread of urban blight.¹¹

Many commentators consider South Florida to be ground zero for condominium-conversion developers and investors, and

6. *E.g.* Monica Hatcher, *South Florida Condo Conversions Collapse*, Miami Herald G12 (Aug. 3, 2009) (available at <http://www.builderonline.com/development/south-florida-condo-conversions-collapse.aspx>) (reporting that consultant Jack McCabe observed "a serious oversupply" of condominium units on the market in 2005, with over half of the sales going to speculators). McCabe turned out to be a soothsayer; quoted in a 2006 blog entry, McCabe predicted lawsuits, foreclosures, and condos selling for "pennies on the dollar." Ben Jones, The Housing Bubble Blog, *Florida Condo Conversions 'Saturate' Market*, <http://thehousingbubbleblog.com/?p=411> (Apr. 3, 2006, 9:11 a.m.).

7. See Stephen E. Nagin, *The Condo Conversion Craze: What's Happening in Florida?* 55 Fla. B.J. 74, 74 (Feb. 1981) (stating that in 1981, more than eighty-five percent of court cases involving condominiums had been decided in the preceding five years).

8. Fla. Stat. §§ 718.604–718.622 (2012). The Roth Act was named in memory of James S. Roth, director of the Division of Florida Land Sales and Condominiums from 1979 to 1980. *Id.* at § 718.604. Consult *infra* Part III(B) for a discussion of the legislative history of the Roth Act.

9. Cave, *supra* n. 4.

10. *E.g.* John M. Payne, *Condominium Conversions*, 15 Real Est. L.J. 252, 257–259 (1987) (stating that rental projects supply affordable housing, and condominium conversions can decrease that supply).

11. See *infra* Part IV for a discussion of the social ills that condominium conversions cause.

the area has suffered greatly from the effects of conversion fever.¹² But the effects of condominium conversions are not limited to South Florida, and all of the major metropolitan areas in Florida have experienced their deleterious consequences.¹³ Therefore, this Article asserts that Florida should modify its approach to regulating condominium conversions by sanctioning local government participation in its regulatory efforts, thus alleviating the negative consequences of condominium conversion on citizens.

The primary flaw in Florida's legislative and judicial approach to condominium conversion is its failure to recognize a condominium conversion as a change in use.¹⁴ Instead, Florida recognizes the conversion process as merely a change in ownership.¹⁵ This approach ignores the distinct segments of the population that apartments and condominiums serve, and turns a blind eye to an obvious truth—that the metamorphosis of an apartment building to condominiums is a subdivision, and, accordingly, it should be subject to special regulations governing the subdivision of property.

Part II of this Article documents condominium law's historical origins and reviews the condominium form of ownership's history in the United States, including the condominium conversion's birth, thereby establishing condominium regulation's framework. Part III traces condominium law's evolution in Florida from the first statutes to the present day, including the legislative history and the Roth Act's passage, designed to regulate conversion activity. Additionally, Part III addresses condominium

12. E.g. Marilyn Alva, *Terminators Target Converted-Condo Glut: Units Revert to Apartments*, Investor's Bus. Daily A06 (June 18, 2010) (available at 2010 WLNR 12357705). This was also true when the Roth Act was passed. See John A. Ritter, *Condominium Conversions: A City Attorney's View*, 55 Fla. B.J. 94, 94 (Feb. 1981) (stating that lack of available rental housing for low-income and elderly tenants had become a major social issue in South Florida).

13. See Steve Bergsman, *The Sun Also Rises (Eventually)*, 71 Mortg. Banking 38 (Jan. 1, 2011) (available at 2011 WLNR 2024550) (detailing the drop in condominium prices in various Florida cities).

14. Compare Fla. Stat. § 718.606 (indicating that a conversion occurs when an improvement is "converted to ownership as a residential condominium") (emphasis added) with *Bos. Redevelopment Auth. v. Charles River Park "C" Co.*, 490 N.E.2d 810, 813–814 (Mass. App. 1986) (interpreting Massachusetts law and holding that a condominium conversion constitutes a significant change in the property's use that would require approval under a specific urban renewal plan's terms).

15. Fla. Stat. § 718.606.

conversion's origins and its effects in Florida, especially in the last decade.

Part IV identifies and analyzes the plethora of social, legal, and financial problems that condominium conversions create. Part IV also chronicles the massive shift of housing units from the rental market to the condominium market and the unforeseen disaster that has resulted throughout the State.

Part V evaluates the laws and regulations that other states and municipalities throughout the United States have adopted and enforced, achieving varying success by more stringently regulating condominium conversion. Part V closely analyzes the State of California and its statutory scheme for regulating conversions. Part V also considers the approaches in Massachusetts and Virginia, which demonstrate that condominium conversions can be viewed as a change in use and that local governments can be viable entities to enforce regulations. Part V also surveys the constitutional issues raised when enacting regulatory schemes on condominium conversions.

Finally, Part VI suggests potential reforms Florida can implement to protect itself from a similar real estate crash in the future. This Article advocates that the current statute be supplanted with a more realistic approach: namely, recognizing that the conversion of an existing structure to a condominium is a subdivision and, further, delegating the power to regulate these subdivisions to where it belongs—local government.

II. HISTORY OF THE CONDOMINIUM

Condominium means "common ownership by two or more people."¹⁶ A condominium is different from other forms of ownership because it is composed of three discrete but interrelated parts.¹⁷ The principal difference between the condominium form of ownership and fee simple ownership¹⁸ is the "shared responsi-

16. Peter M. Dunbar, *The Condominium Concept 2* (10th ed., Pineapple Press 2007).

17. *Id.* The three discrete parts consist of "exclusive ownership of a single unit; . . . joint ownership, as tenants-in-common with others, of common areas; and . . . an agreement or scheme among owners for the management and administration of the total condominium property." *Id.*

18. See generally John E. Cribbet & Corwin W. Johnson, *Principles of the Law of Property* 41-43 (3d ed., West 1989) (describing in detail the concept of fee simple ownership). The term "fee simple absolute" is a common law term that refers to the most com-

bilities with other owners.”¹⁹ These “shared responsibilities” often relate to what is known as the “common elements.”²⁰ Essentially, the common elements are anything outside of the horizontal space owned individually by the owners.²¹ In turn, the association, a representative body of all unit owners, maintains the common elements, and residents must follow the condominium’s governing documents.²² The first codification of condominium law came via the Napoleonic Code²³ in France at the turn of the nineteenth century.²⁴ Some parts of the world initially resisted this form of ownership, calling it a “heresy” to the common law.²⁵ There is, however, also evidence that the idea was developed in the English common law.²⁶

plete ownership of real property, including the right to exclude others, devise the property, and alienate the property. *Id.* at 41.

19. Frederic White, *Distinctive Features of Condominiums and Cooperatives*, in *Thompson on Real Property* § 36.01, § 36.04(b) (David A. Thomas ed., 2d ed., Matthew Bender & Co. 2012).

20. *Id.*; Gary A. Poliakoff, *Law of Condominium Operations* § 1:2 (West 2011).

21. Dunbar, *supra* n. 16, at 6. Common elements may include hallways, swimming pools, recreational facilities, parking lots, landscaping, exterior lighting, laundry facilities, clubhouses, and, of course, the underlying land. See Poliakoff, *supra* n. 20, at § 1:2 (explaining that common elements “consist of recreation and community facilities . . . and other areas that are commonly used by the unit owners”).

22. Poliakoff, *supra* n. 20, at § 1:2. The governing documents typically include a declaration, rules and regulations, articles of incorporation, and bylaws. *Id.*

23. Article 664 of the 1804 Code of Napoleon (or French Civil Code) stated:

When the different stories of a house belong to different proprietors, if the titles to the property do not regulate the mode of reparations and reconstructions, they must be made in manner following:

- The main walls and the roof are at the charge of all the proprietors, each in proportion to the value of the story belonging to him.
- The proprietor of each story makes the floor belonging thereto.
- The proprietor of the first story erects the staircase which conducts to it; the proprietor of the second story carries the stairs from where the former ends to his apartments; and so of the rest.

Donna S. Bennett, *Condominium Homeownership in the United States: A Selected Annotated Bibliography of Legal Sources* 3 (unpublished paper, Mar. 2010) (available at http://works.bepress.com/donna_bennett/3).

24. J. Leyser, *The Ownership of Flats—A Comparative Study*, 7 *Int’l & Comp. L.Q.* 31, 34 (1958). The Code “regulated, although only in a single article (Art[icle] 664), the separate ownership of floors of a building.” *Id.*

25. William Schwartz, *Condominium: A Hybrid Castle in the Sky*, 44 *B.U. L. Rev.* 137, 141 (1964); see also Alberto Ferrer & Karl Stecher, *Law of Condominium: With Forms, Statutes, and Regulations* 19–21, 32 (Equity Pub. Corp. 1967) (reporting that for a period of time, Germany, Austria, and Switzerland prohibited ownership of only part of a building).

26. Robert R. Wright, *The Law of Airspace* 68–71 (Bobbs-Merrill Co. 1968). “[A] man may have an inheritance in an upper chamber, though the lower buildings and soile be in

The condominium form of ownership in the United States is of relatively recent origin. Interestingly, the territory of Puerto Rico wrote and passed the first condominium-enabling statute within a United States jurisdiction.²⁷ This new law helped meet the high demand for housing at the time, on an island where land was and continues to be a limited and precious resource.²⁸

The pressing need for alternatives to the traditional concepts of property became apparent in the 1960s due to “[t]he worldwide population explosion, the mass migration to urban and suburban areas, and the accelerating rate of technical advance.”²⁹ Congress subsequently passed the Housing Act of 1961,³⁰ which allowed the federal government to provide mortgage insurance for condominiums in states where condominiums were recognized as a form of ownership.³¹ Soon after, the Federal Housing Administration developed a model condominium statute in response to the legislation passed in Puerto Rico.³² By the close of the 1960s, all fifty states had adopted some form of condominium-enabling legislation.³³ The next step in the condominium law’s development was the Uniform Condominium Act.³⁴ This model act aimed to remedy developers and associations’ abuses that initial legislative efforts

another, and seeing it is an inheritance corporeal it shall passe by livery.” *Id.* at 69 (quoting Lord Coke).

27. Ennio M. Colon Garcia, *The Horizontal Property Regime or Condominium System of Property in Puerto Rico and Louisiana: A Comparative Outlook*, 16 *Rev. Juridica U. Inter. P.R.* 227, 230–231 (1982) (stating that, although the Spanish Civil Code had previously brought the condominium concept to Puerto Rico, the first “elaborate horizontal property legislation” was created in 1951, followed by a comprehensive new regime enacted in 1958); 31 *Laws P.R. Ann.* § 1275 (West 2009); see also 31 *Laws P.R. Ann.* § 1291 (West 2009) (the subsequent condominium legislation that followed in 1958).

28. Colon Garcia, *supra* n. 27, at 231; see John E. Cribbet, *Condominium—Home Ownership for Megalopolis?* 61 *Mich. L. Rev.* 1207, 1212–1213 (1963) (identifying three factors contributing to condominiums’ popularity in Puerto Rico: a strong desire for ownership, better affordability, and a shortage of adequate housing caused by the rising population and “lack of good building sites”).

29. Cribbet, *supra* n. 28, at 1207–1208 (asserting that every society requires an ample supply of “satisfactory housing” to provide its citizens with a “good life”).

30. *Pub. L. No. 87–70*, § 234, 75 *Stat.* 149, 160–162 (1961).

31. Charles E. Ramsey, *Condominium*, 9 *Prac. Law.* 21, 22 (1963).

32. Robert G. Natelson, *Condominiums, Reform, and the Unit Ownership Act*, 58 *Mont. L. Rev.* 495, 500 (1997).

33. Patrick J. Rohan, *The “Model Condominium Code”—A Blueprint for Modernizing Condominium Legislation*, 78 *Colum. L. Rev.* 587, 587 (1978) (noting that a decade after Puerto Rico, every jurisdiction had enacted legislation governing condominiums, including Washington, D.C. and the U.S. Virgin Islands).

34. *Unif. Condo. Act* §§ 1–5, 7 *U.L.A.* 452 (1980) (available at <https://www.law.upenn.edu/library/archives/ulc/fnact99/1980s/uca80.pdf>).

did not address.³⁵ Condominium law has continued to evolve to the present day as legislators, owners, and developers' knowledge grows with experience, and they refine the law.

What is the appeal of the condominium? At least on the surface, this form of ownership offers unique advantages to society.³⁶ On a basic level, a condominium can equal the dream of home ownership, a dream that may never come to fruition through traditional property concepts.³⁷ The essence of the condominium concept is the fruits of equity coupled with the conveniences of apartment living.³⁸ In an urban setting, land scarcity drives up prices for building sites, creating a need to maximize space and density. Therefore, the most viable option is to build vertically. Most demographics of the population embraced this no-maintenance concept of living, especially retirees and singles.³⁹ A novel idea, the concept of horizontal property took off like a rocket and is now a common form of ownership throughout the United States.⁴⁰

A new wrinkle was added to American condominium history in the 1970s: the idea of converting existing structures to the condominium form of ownership, commonly known as condominium conversion.⁴¹ A variety of social and economic changes in the

35. *Id.* at prefatory note.

36. See generally Curtis J. Berger, *Condominium: Shelter on a Statutory Foundation*, 63 Colum. L. Rev. 987, 994–999 (1963) (asserting that the advantages of condominium ownership extend to consumers, developers, and lenders).

37. In some urban areas, land is so scarce that constructing a single-family home is cost prohibitive even for wealthy consumers. For instance, an acre of land in Manhattan near the Empire State building had an estimated value of ninety million dollars in 2006. Andrew Haughwout, James Orr & David Bedoll, *Current Issues in Economics and Finance, Second District Highlights: The Price of Land in the New York Metropolitan Area*, 14 Fed. Reserve Bank of N.Y. 2 (Apr.–May 2008) (available at http://newyorkfed.org/research/current_issues/ci14-3.pdf).

38. John M. Payne, *Condominiums and the Ancient Estates in Land: New Context for Old Learning*, 14 Real Est. L.J. 291, 291 (1986) (declaring a condominium a “hybrid—it looks like the apartment house or garden apartment of old, yet it accords to each ‘tenant’ the attributes of fee simple ownership”).

39. Berger, *supra* n. 36, at 990–991.

40. According to the United States Census Bureau, there were over eight million condominiums in the United States in 2009. U.S. Census Bureau, *American Housing Survey for the United States: 2009*, at 1 (Mar. 2011) (available at <http://www.census.gov/prod/2011pubs/h150-09.pdf>).

41. 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, 644 (1987) (stating that as a result of economic pressures, many rental units in multifamily structures were converted to condominiums in the 1970s).

rental housing market caused the condominium-conversion phenomenon to take off during the 1970s.⁴² One of the first major problems to arise out of condominium conversions was tenant displacement.⁴³ In fact, the primary discussion topic among government leaders and legal scholars contemplating condominium conversion regulation has been conversion activity's consequences for tenants.⁴⁴ While that is a worthy discussion topic, this Article focuses on the effects that converted units have had on purchasers and society as a whole.

During the early 1980s, governmental entities on the federal, state, and local levels began to show interest in regulating conversions.⁴⁵ In 1980, the United States Department of Housing and Urban Development (HUD) published a comprehensive condominium-conversion study.⁴⁶ A portion of the study examined the conversion process' impacts on converted-unit purchasers.⁴⁷ The study noted that purchasers received the tax-savings benefits from the mortgage interest deduction and the investment potential of the unit through appreciation.⁴⁸ Another perceived benefit

42. *Id.* at 642–644. These changes included increasing construction and labor costs, exorbitant interest rates, rent control laws, increased operating costs, and the failure of rents to rise in an inflationary environment. *Id.* at 642–643.

43. Jennifer Silver & Cathy Shreve, *Condominium Conversion Controls: An Information Bulletin of the Community and Economic Development Task Force of the Urban Consortium*, at Executive Summary (U.S. Dep't Hous. & Urb. Dev. 1979).

44. The main arguments by conversion opponents have been the displacement of elderly and low-income tenants, the reduction of rental housing stock, and the lack of affordable rental housing in metropolitan areas. *E.g.* Robert Chambers, Student Author, *Pushed Out: A Call for Inclusionary Housing Programs in Local Condominium Conversion Legislation*, 42 Cal. W. L. Rev. 355, 361–362 (2006); Jonathan Feldman, *Regulating Condominium Conversions: The Constitutionality of Tenant Approval Provisions*, 21 Urb. Law. 85, 86 (1989); Richard D. Marshall, *Statutorily Protected Tenants Vis-A-Vis the Free Market*, 16 Real Est. L.J. 265 (1988). Ordinances regulating how developers and condominium owners must handle tenants' evictions have been met with different levels of approval. *Compare Grace v. Town of Brookline*, 399 N.E.2d 1038, 1043 (Mass. 1979) (upholding a statute regulating the eviction of tenants in a condominium conversion) with *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1067 (Fla. 3d Dist. App. 1981) (invalidating a city ordinance that delayed conversions by unilaterally extending the leases of tenants and imposing a moratorium on conversions).

45. See U.S. Dep't Hous. & Urb. Dev., *The Conversion of Rental Housing to Condominiums and Cooperatives: A National Study of Scope, Causes and Impacts*, chs. X–XII (June 1980) (discussing the various regulations enacted by each level of government).

46. *Id.*

47. *Id.* at chs. IX-27 to IX-32.

48. *Id.* at ch. IX-28. The average tax savings per month was \$130 at the time of the study. *Id.*

was the provision of maintenance services.⁴⁹ The report also addressed the potential for developer abuses during the conversion process.⁵⁰ The majority of regulations, however, were enacted on the state and local level, with Florida playing a key role in the development of condominium law.

III. CONDOMINIUMS IN FLORIDA

A. Early Legislative Efforts

Florida became one of the first states to pass condominium-enabling legislation in 1963 with the passage of the Florida Condominium Act.⁵¹ This new form of ownership made an immediate impact on the State, an impact that continues to this day.⁵² Similar to the debate about the condominium concept's origins, lawyers and scholars had mixed opinions about the legal necessity of an enabling statute.⁵³ Practically speaking, the passage of a statute was necessary because developers and banks were reluctant to proceed with condominium projects, absent state government endorsement.⁵⁴ The State, in turn, wanted to protect its citizens from unscrupulous developers.⁵⁵

49. *Id.* at ch. IX-30.

50. *Id.* at chs. IX-29 to IX-30. Mostly discussed were converted buildings in poor condition and one case of inadequate funds in the reserve account for repair. *Id.* The study further noted that complaints were more frequent in older buildings and those that were previously poorly maintained as rentals. *Id.*

51. Fla. Stat. § 711 (1963) (later replaced and codified in Florida Statutes Chapter 718 by The Florida Condominium Act of 1976, Chapter 76-222, Laws of Florida).

52. See The Fla. B., *Florida Condominium and Community Association Law* 1-7 (2d ed., The Fla. B. & LexisNexis 2011) (explaining the impact of the 1975 condominium statute on the state and the condominium concept). "Florida is the acknowledged leader in condominiums" with more than a million units. *Id.* According to the Division of Condominiums, Timeshares, and Mobile Homes, there are currently 1,478,121 condominium units in Florida. Fla. Dep't Bus. & Prof'l Reg., *County Summary Report*, <ftp://dbprftp.state.fl.us/pub/llweb/countysummary.csv> (updated Aug. 12, 2012) (providing a spreadsheet relating to condominiums in Florida) (copy on file with *Stetson Law Review*).

53. Russell McCaughan, *The Florida Condominium Act Applied*, 17 U. Fla. L. Rev. 1, 1 (1964) (noting that it "is a matter of definition as well as opinion" whether condominiums can exist without condominium-enabling legislation); Richard R. Powell, *Powell on Real Property* § 633.8, 648 n. 31 (one volume ed., Matthew Bender & Co. 1968) (referencing an article stating that several condominium projects began in Florida before condominium-enabling legislation was enacted).

54. McCaughan, *supra* n. 53, at 2. The idea behind the legislation was for the condominium to be treated in the same manner as "any other parcel of real estate." *Id.* at 4.

55. Richard R. Reynolds, *Florida Condominiums* 17 (Am. Realty Press 1971). In a 1971 speech, then-governor Reubin Askew stated,

Much like the trend nationally and in other states, Florida overhauled the Condominium Act in 1976 after experiencing the growing pains that inevitably came with this new hybrid form of ownership.⁵⁶ The comprehensive new statute is still in effect today and addresses condominium creation,⁵⁷ governance,⁵⁸ and termination.⁵⁹ At the time, the allure of condominium living in Florida was becoming increasingly popular.⁶⁰ By 1981, the population of citizens residing in condominiums in the State was an astounding twenty-five percent, a meteoric rise considering that fewer than twenty years had elapsed since Florida first recognized the condominium form of ownership.⁶¹ Predictably, a large volume of condominium conversions began to appear in the late 1970s,⁶² and soon thereafter, there was a call for state regulation imposing new limitations on condominium conversions to prevent abuse.

B. The Roth Act

The Florida legislature responded to the large volume of condominium conversions by passing the Roth Act, a statutory scheme with the larger Florida Condominium Act to govern the conversion of existing improvements to the condominium form of ownership.⁶³ Before the new statute's passage, Mr. James Roth conducted a detailed study and recommended model legislation.⁶⁴

The state of Florida took the lead in the regulation of land sales primarily to protect the purchasers. And I believe we likewise have an obligation to protect our citizens and citizens-to-be who are taking their life savings and making their homes here by purchasing condominium and cooperative apartments.

Id.

56. Fla. Stat. § 718 (Supp. 1976).

57. Fla. Stat. § 718.104 (2012).

58. *Id.* at § 718.111.

59. *Id.* at § 718.117.

60. Nagin, *supra* n. 7, at 74. In fact, the entire *The Florida Bar Journal* in February 1981 was dedicated to condominiums. The Fla. B., *Features*, 55 Fla. B.J. 67 (Feb. 1981) (discussing exclusively condominiums).

61. Nagin, *supra* n. 7, at 74.

62. See James S. Roth, *Condominium Conversions in Florida: A Report to Governor Bob Graham*, Dep't of Bus. Reg. 4 (1980) (chronicling the surge in condominium-conversion activity).

63. Fla. Stat. §§ 718.604–718.622. The act was named for James S. Roth, who was Director of the Division of Florida Land Sales and Condominiums from 1979 to 1980. *Id.* at § 718.604.

64. Roth, *supra* n. 62, at § 11.

The Roth Report established the need for legislation to deal with five stated objectives.⁶⁵ It was clear from the outset that the Report did not advocate a moratorium on conversion,⁶⁶ a common stopgap measure that other municipalities across the country employed.⁶⁷ This Report was instrumental to condominium-conversion law's development, and the majority of the new legislation paralleled its recommendations.⁶⁸ Florida developers were building condominiums at a breakneck pace.⁶⁹ The Report cited a number of factors for this drastic increase in volume.⁷⁰ Perhaps foreshadowing things to come, the Report cited a "buy now"⁷¹ mentality among consumers and investors, who were attempting to stabilize their own housing costs⁷² and saw great potential for appreciation.⁷³ With the market overheating,⁷⁴ builders and

65. Roth, *supra* n. 62, at 3. The first, second, and fourth stated objectives related to tenant protection; the third stated objective related to protections for the unit purchaser; and the fifth stated objective was to encourage long-term apartment construction. *Id.*

66. Ltr. from James S. Roth, Dir. Fla. Land Sales & Condo., to Bob Graham, Governor, *Condominium Conversions in Florida: A Report to Governor Bob Graham*, 2 (Feb. 11, 1980) (copy on file with *Stetson Law Review*). The Report stated that a moratorium on conversion activity would be an overreaction and would be detrimental to the free marketplace. *Id.*

67. See U.S. Dep't Hous. & Urb. Dev., *supra* n. 45, at ch. XII-4 (detailing the cities that enacted some form of a moratorium).

68. David Brian Mursten, *Florida's Regulatory Response to Condominium Conversions: The Roth Act*, 34 U. Miami L. Rev. 1077, 1078 n. 5 (noting the similarities between the Report's recommendations and the text of the final bill that the legislature passed).

69. Roth, *supra* n. 62, at 4. In the three years before the report, 1977 to 1979, the Division of Florida Land Sales and Condominiums saw individual condominium unit filings increase from 33,300 to 55,800 to 81,960 units. *Id.* Approximately twenty percent of the units filed in 1979 were condominium conversions. *Id.*

70. *Id.* at 11. These included population shifts, federal income tax concerns, inflation, and a weak dollar. *Id.*

71. *Id.* at 12. This same "buy now" philosophy pervaded the market prior to the housing crash in the mid-2000s as many consumers purchased primary residences and investment properties with the promise of untold riches. See Dean Baker, *The Housing Crash Recession: How Did We Get Here?* PBS NOW, <http://www.pbs.org/now/shows/412/housing-recession.html> (Mar. 21, 2008) (noting that before the housing crash, due to the expectation that housing prices would continue to rise, homebuyers took on mortgages beyond their means, and investors made unwise loans).

72. One scholar argued that federal tax law was the driving force behind increased condominium conversions. See Ross Lewin, *The Case for Governmental Action to Retard Condominium Conversion Activity*, 1 Yale L. & Policy Rev. 126, 127 (1982) (identifying tax deductions available to "homeownership properties" as the single most important driving force behind condominium conversions).

73. Roth, *supra* n. 62, at 12.

74. Ritter, *supra* n. 12, at 97 n. 5 (referencing a story in the Miami Herald that reported one thousand persons waiting in line to reserve two hundred converted apartments).

developers had to find a quick supply to capitalize on the demand, which they did by converting apartment buildings into condominiums.⁷⁵ The developer's benefits were outstanding, including a product that was ready for almost immediate sale, no fluctuating interest rates, and few unpredictable construction costs and other uncertainties that come with speculative building.⁷⁶ Equally enthusiastic were the apartment building owners whom developers paid a premium because the value was not based on rental income.⁷⁷

The Report also addressed the pitfalls of converting older buildings to condominiums and the long-term effects on the purchaser, which is this Article's primary focus.⁷⁸ The Report acknowledged the problems of converting older buildings: "repair, maintenance[,] and replacement of the common elements of a condominium are . . . magnified."⁷⁹ Recognizing the restrictive cost of inspecting the plumbing and electrical systems ensconced in the wall, the Report further noted that developers received little opposition from consumers to marketing condominiums converted from older, deteriorated buildings.⁸⁰ The Report concluded this section by unequivocally stating that "[c]onverted buildings[] almost universally have a useful life which is significantly shorter than the useful life of newly constructed condominiums."⁸¹ The Report speculated that the scarcity of land, combined with continuing demand, would encourage developers to convert less

75. Ltr., *supra* n. 66, at 1.

76. *Id.*; see also Joel B. Channing, *Condominium Conversions: A Developer's View*, 55 Fla. B.J. 85, 85-87 (Feb. 1981) (stating that "[t]here is a potential built-in market . . . in virtually every project" and discussing how a developer can successfully manage a condominium-conversion project).

77. David M. Richardson, *Legal Considerations: Profits on Conversion—Maximizing the Landlord's After-Tax Return*, 55 Fla. B.J. 121, 121 (Feb. 1981) (citing an apartment-complex owner who had recently received a multi-million dollar appraisal on the property and was subsequently approached by a condominium converter offering double the appraised price).

78. Roth, *supra* n. 62, at §§ 7, 11.

79. *Id.* at 26.

80. *Id.* at 27-28 (noting the superficial nature of renovations and the inability to accurately determine a component's condition and remaining useful life).

81. *Id.* at 28. On a humorous note, the Division of Florida Land Sales and Condominiums experienced resistance from unit owners in response to a change in the law requiring a reserve account for replacement of building components, with many arguing that there was no incentive to create a reserve fund to replace components that had a greater expected life span than the owners themselves. *Id.* at 27-28. The term "useful life" is the expected life span of a building component. *E.g.* Fla. Stat. § 718.616(b)(2).

desirable apartment buildings, a prediction that in later years would come to fruition.⁸²

The provisions of the Roth Act included: tenant notification,⁸³ tenant education,⁸⁴ a tenant purchase opportunity,⁸⁵ building condition disclosure,⁸⁶ builder warranties or reserve accounts,⁸⁷ and a provision prohibiting discrimination against tenants by new purchasers.⁸⁸ The statute's building disclosure requirement was intended to apply to building components to the extent that they would have to be repaired or replaced and were "not the sole responsibility of an individual unit owner."⁸⁹ In short, the primary statutory devices that the Roth Act put in place to protect purchasers were: (1) the disclosure requirements; and (2) a reserve account, or, in the alternative, an implied warranty.⁹⁰ After the law passed, lawsuits inevitably followed.

C. Judicial Review of Municipal Regulations

Before the Roth Act's ratification, the City of Miami Beach enacted ordinances extending tenants' lease terms and imposing a temporary moratorium on condominium conversions.⁹¹ Defending the City's ordinances in *City of Miami Beach v. Rocio Corp.*,⁹² the City argued that the Municipal Home Rule Powers Act⁹³ granted it the authority to enact conversion restrictions.⁹⁴ The

82. Roth, *supra* n. 62, at 29.

83. Fla. Stat. § 718.608 (compelling a developer to deliver a written notice to tenants with mandated language explaining the tenants' rights).

84. *Id.* at § 718.614 (requiring developers to inform tenants with right of first refusal about financing options, down payments, monthly payments, and tax benefits).

85. *Id.* at § 718.612 (granting certain tenants a right of first refusal to purchase their own units, meaning the tenants have the right to purchase before any other party).

86. *Id.* at § 718.616 (obligating the developer to disclose the building's condition to purchasers in a report containing components that the statute specified).

87. *Id.* at § 718.618 (calling for the developer to establish reserve accounts for "capital expenditures and deferred maintenance," give an implied warranty of fitness, or post a surety bond).

88. *Id.* at § 718.62 (prohibiting discrimination against tenants who choose not to purchase).

89. Mursten, *supra* n. 68, at 1101–1102.

90. Fla. Stat. §§ 718.616, 718.618. For a detailed analysis of the shortcomings of these protections, see Part IV of this Article.

91. *Rocio Corp.*, 404 So. 2d at 1066–1067.

92. 404 So. 2d 1066 (Fla. 3d Dist. App. 1981).

93. Fla. Stat. §§ 166.011–166.411 (2012) (among other things, empowering municipalities to enact local laws except when the State has expressly preempted the subject area).

94. *Rocio Corp.*, 404 So. 2d at 1067.

Florida Third District Court of Appeal determined that the State had not expressly preempted local regulation in this area by adopting the Florida Condominium Act but nonetheless held that the ordinances conflicted with state law.⁹⁵ The court reasoned that when read as a whole, the Florida Condominium Act was intended to prohibit discrimination against condominiums as a form of ownership, which was "clearly not a statement of preemption."⁹⁶ In its final analysis, the court determined that a municipality cannot forbid action allowed under state law absent express authority to do so and thus struck down the ordinances.⁹⁷

Other courts in Florida have upheld less intrusive municipal conversion regulations.⁹⁸ In *Bennett M. Lifter, Inc. v. Metropolitan Dade Co.*,⁹⁹ the plaintiff challenged an ordinance that was enacted in response to many hotels and motels in a zoning district being converted to condominiums, among other ownership forms.¹⁰⁰ The plaintiff sued for an injunction preventing the enforcement of a county ordinance that would have applied existing zoning requirements to hotels and motels that were being subdivided.¹⁰¹ The court affirmed the trial court's finding that the ordinances were lawful because they did not prohibit the activity of creating condominiums but instead regulated use, and further, "certain of Plaintiffs' properties, in particular, clearly underwent a use change upon being subdivided."¹⁰²

In *Orange West, Ltd. v. City of Winter Garden*,¹⁰³ a property owner challenged city subdivision regulations as being inapplica-

95. *Id.* The court concluded that the Florida Condominium Act provided rights; it was not a restriction of rights. *Id.* at 1070. Additionally, however, the court stated, "Municipal ordinances are inferior to state law and must fail when conflict arises." *Id.* at 1069. The conflict was that the ordinance countermanded the rights provided by the Florida Condominium Act. *Id.* at 1070-1071.

96. *Id.* at 1069.

97. *Id.* at 1071.

98. *Bennett M. Lifter, Inc. v. Metro. Dade Co.*, 482 So. 2d 479, 486 (Fla. 3d Dist. App. 1986) (affirming the trial court opinion upholding a subdivision ordinance that required a motel to comply with parking and density requirements prior to conversion into condominiums); *Orange W., Ltd. v. City of Winter Garden*, 528 So. 2d 84, 86 (Fla. 5th Dist. App. 1988) (upholding against preemption a municipal zoning ordinance that restricted a mobile home park from becoming a condominium development while the lots were nonconforming and a proper plat had not been filed).

99. 482 So. 2d 479 (Fla. 3d Dist. App. 1986).

100. *Id.* at 480.

101. *Id.*

102. *Id.* at 483, 485.

103. 528 So. 2d 84 (Fla. 5th Dist. App. 1988).

ble to a mobile home park that was converted into condominiums.¹⁰⁴ The ordinances at issue defined a mobile home park, in part, as “a tract of land, *under a single ownership*” and forbade the sale of individual lots.¹⁰⁵ The court found that state condominium regulation did not preempt the ordinances and that they enforced valid prohibitions against improper lot dimensions and lack of a plat map.¹⁰⁶ Arguably, both of these cases are distinguishable from *Rocio Corp.* because the ordinances involved were valid exercises of the police power to locally regulate property rights rather than complete prohibitions of condominium conversions.

IV. THE SOCIAL ILLS OF CONDOMINIUM CONVERSIONS

As mentioned in Part II of this Article, the historic arguments against condominium conversion are that it causes the displacement of tenants and the decline of affordable rental housing.¹⁰⁷ Additional social problems have come to light in the wake of the current housing crisis in Florida.¹⁰⁸ These problems are numerous and include physical deterioration of units and the common elements,¹⁰⁹ high foreclosure rates,¹¹⁰ increased crime,¹¹¹

104. *Id.* at 85.

105. *Id.* at 85 n. 1 (emphasis added).

106. *Id.* at 86–87.

107. *E.g.* Payne, *supra* n. 10, at 257–259.

108. *See e.g.* Mary Shanklin, *Lawsuit: A \$60 Million Mess in MetroWest*, Orlando Sent. A1 (Nov. 8, 2010) (available at 2010 WLNR 22307653) (reporting problems in The Hamptons, a converted condominium community in Orlando, including a price drop of nearly seventy-five percent, sloppy workmanship, building code violations, and owners occupying only eighty-one of almost eight hundred units).

109. *See e.g.* Alison Trinidad, *Conversion Condos Flooded with Lawsuits*, Fla. Times-Union (Sept. 9, 2007) (available at 2007 WLNR 17827729) (relating the plethora of construction-defect litigation in Duval County filed by condominium associations of converted complexes).

110. *See e.g.* Eve Samples, *Why Are the Responsible Homeowners Hit Hardest?* Stuart News (Fla.) A1 (Oct. 10, 2010) (reporting foreclosure rates as high as sixty-five percent among condominium conversions on Florida’s Treasure Coast).

111. The Author is not aware of studies on criminal activity occurring solely in condominium-conversion communities; however, several studies analyze the effect of high foreclosure rates in general on the crime rate. In addition to the above anecdotal evidence, see also Jonathan Mummolo & Bill Brubaker, *As Foreclosed Homes Empty, Crime Arrives*, Wash. Post, <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/26/AR2008042601288.html> (Apr. 27, 2008) (detailing the increase of crime in different parts of the country in areas of high foreclosure activity); Ingrid Gould Ellen, Johanna Lacoé & Claudia Ayanna Sharygin, *Do Foreclosures Cause Crime?* 3 (Furman Ctr. Real Est. & Urb. Policy, Working Paper, June 23, 2011) (available at <http://furmancenter.org/research/>)

insolvent associations,¹¹² fractured communities,¹¹³ loss of wealth,¹¹⁴ and property tax base reduction.¹¹⁵ In fact, traditional lenders have imposed stricter requirements on financing certain types of condominium purchases,¹¹⁶ so owners in particularly troubled communities may face mortgage default and surrounding suburban decay with no foreseeable end.¹¹⁷

publications/do-foreclosures-cause-crime) (concluding that foreclosures can lead to elevated crime).

112. See e.g. Susan Taylor Martin, *Foreclosures Torpedo Converted Condo*, St. Pete. Times 1A (May 15, 2010) (available at 2010 WLNR 10185704) (detailing the plight of a Pinellas County conversion whose association did not have money for repairs or to pay the building insurance premium, with only \$162 in reserves and anticipated annual expenses of \$182,783); see also Joseph Dobrian, *Condominium Associations Hit Hard by Foreclosures Consider Bankruptcy*, 75 J. Prop. Mgmt. 30, 32 (May–June 2010) (reporting that many condominium associations were contemplating bankruptcy).

113. See e.g. Dick Hogan, *After The Craze: Condo Conversions Leave Fractured Communities*, News-Press (Ft. Myers, Fla.) (Aug. 21, 2010) (available at 2010 WLNR 16783103) (reporting that portions of many converted apartment buildings are being reverted back to apartments with “owners and renters living in uneasy proximity”).

114. Melissa E. Holsman & Nadia Vanderhoof, *Condo Conversions Go from Flip to Flop*, Stuart News (Fla.) A1 (Oct. 10, 2010) (available at 2010 WLNR 20406037) (describing owners who have lost money because of the drastic drop in the value of their purchased units); Brian Bandell, *Pembroke Pines Condos Sold at 89% Discount*, S. Fla. Bus. J. (June 2, 2011) (available at 2011 WLNR 11048329) (describing the sale of sixty-eight units in a conversion project).

115. See e.g. Nadia Vanderhoof, *Recovery of Prices, Sales at Failed Condo Conversions May Take a Decade*, Stuart News (Fla.) A1 (Oct. 12, 2010) (available at 2010 WLNR 20406066) (citing the effects of conversion now being felt at other levels, including the shrinking property tax revenue of cash-strapped municipalities); Shannon Behnken, *More Paying Zero Taxes*, Tampa Trib. Metro Sec. 1 (May 22, 2011) (available at 2011 WLNR 10246847) (reporting on condominium conversions in Tampa, Florida, where the units were worth less than the homestead exemption that the State allowed, resulting in a taxable value of zero). The term “homestead exemption” refers to a property tax exemption that property owners receive on their primary residence. Fla. Stat. § 196.031 (2012).

116. Michael A. Quinn, *Announcement 08-34: Project Eligibility Review Service and Changes to Condominium and Cooperative Project Policies* 6 (Fed. Nat’l Mortg. Ass’n Dec. 16, 2008) (available at <https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2008/0834.pdf>) (announcing that Fannie Mae will not lend on condominiums if the association has a dues delinquency rate of greater than fifteen percent of the total units). Although concrete information on the default rate of condominium conversions is not public record, it is an indicator that eighty-three percent of condominiums sold in Hillsborough County in 2011 were paid for with cash. Mid-Fla. Reg’l Multiple Listing Serv., Subscriber Database (accessed Oct. 30, 2012) (copy on file with *Stetson Law Review*); see also Mary Ellen Podmolik, *Condo Deals Die in Shadows of Financially Distressed Buildings*, Chi. Trib., http://articles.chicagotribune.com/2011-02-28/classified/ct-biz-0228-condos-lending--20110228_1_condo-buildings-condo-deals-condo-market (Feb. 28, 2011) (describing condominium owners as being in “mortgage jail” and noting the difficulty in obtaining a loan to purchase a condominium because of the strict criteria of Fannie Mae, Freddie Mac, and the FHA, who “account for about [ninety] percent of the secondary loan market”).

117. See Bergsman, *supra* n. 13 (relating that economist Chris Lafakis anticipated “that South Florida home prices will not return to peak levels until the year 2030”).

Condominium conversions are not inherently evil propositions, but the bulk of the benefit falls to the investors and developers.¹¹⁸ The benefits accruing to the owners and the local community are uncertain and less pronounced. One primary advantage that conversion property presents to residents is that often tenants occupying an apartment complex will purchase converted units, thereby avoiding moving's hassles while gaining property ownership's benefits.¹¹⁹ Additionally, when housing available for purchase is scarce, a conversion can rapidly increase supply, an advantage that is less relevant in the current housing market.¹²⁰ Lastly, condominium conversions are frequently the least expensive option available for buyers in a rapidly appreciating market.¹²¹ Arguably though, this benefit becomes one of the biggest burdens when projects fail. The most affordable real property is usually purchased by the families who are the least prepared financially to deal with a severe crisis.¹²² Undoubtedly, a substantial number of condominium conversions in Florida were fundamentally flawed due to the overheated market, the age and condition of the original improvements,¹²³ fraud,¹²⁴ and possible inaccurate disclosure efforts.¹²⁵

118. Payne, *supra* n. 10, at 252 (citing the rapid return for investors as a benefit of condominium conversion and noting that for the "consumers, the blessings are distinctly more mixed").

119. See Channing, *supra* n. 76, at 85–86 (advising developers on how to increase the number of tenants who choose to purchase).

120. See Ltr., *supra* n. 66, at 1 (stating that "conversion of an existing building represents the most efficient and expeditious method of meeting the demand for condominium ownership").

121. Roger C. Vandever, Student Author, *Conversion of Apartments to Condominiums: Social and Economic Regulations under the California Subdivision Map Act*, 16 Cal. W. L. Rev. 466, 469 (1980) (recognizing that for some buyers, condominium conversions may be the only financially affordable option on the market).

122. See Grunwald, *supra* n. 3 (quoting University of Florida real estate professor Wayne Archer, who opined, "Those lower-priced options are the places that are going to hurt for a long time"); see also Vandever, *supra* n. 121, at 468 (reporting that often, major expenses await unaware tenants who purchase their units in converted buildings with deteriorating conditions).

123. Hatcher, *supra* n. 6 (reporting that developers were forced to buy older complexes when the more recently constructed apartment buildings sold quickly, and as one commentator stated, many of the buildings "never should have been converted").

124. See e.g. Kimberly Miller, *Experts Suspect Real Estate Fraud in Royal Palm Beach*, http://www.wptv.com/dpp/news/region_c_palm_beach_county/royal_palm_beach/experts-suspect-real-estate-fraud-in-royal-palm-beach (Aug. 8, 2011) (detailing several strong indicators of fraud in one particular condominium conversion).

125. See Lisa Magill, Fla. Condo & HOA Legal Blog, *Condo Conversions: Scrutinize the Disclosures*, <http://www.floridacondohoalawblog.com/2010/08/articles/developmental>

The sales pitch used to increase demand despite these problems: one thousand people are moving to Florida every day.¹²⁶ The condominium-conversion craze that Florida has experienced in the last decade is somewhat analogous to a Ponzi scheme or a “pump and dump” securities conspiracy. In a Ponzi scheme, existing investors are paid off by new investors, but eventually the fraud collapses because either there are not enough new investors to recruit, or too many investors try to cash out.¹²⁷ A “pump and dump” operation involves perpetrators creating an artificial market frenzy to drive up the price of a stock, which they then sell at a profit.¹²⁸ Speculators owned many of the condominiums in the South Florida real estate market, and the demand was artificial, as most speculators were selling to other speculators.¹²⁹ House prices rose to unjustified levels (the “pump”) and for a while sold at those inflated prices (the “dump”).¹³⁰

During the ten-year span from 1990 to 1999, developers in Florida converted 341 apartment complexes to the condominium form of ownership.¹³¹ In a four-year period from 2004 to 2007, investors in Florida converted almost five times that amount: 1,622 apartment complexes.¹³² There were numerous reasons for this staggering surge in conversions. Florida has historically been a growth-friendly state, embracing the mentality that “if you

-issues/condo-conversions-scrutinize-the-disclosures (Aug. 6, 2010) (explaining that if conversion disclosure reports are inaccurate, Florida law may allow relief against a third party who prepared the report).

126. Bergsman, *supra* n. 13 (quoting research consultant Jack McCabe as speculating that the cliché was invented by builders or real estate agents trying to create demand in the market).

127. U.S. SEC, *Ponzi Schemes—Frequently Asked Questions*, <http://www.sec.gov/answers/ponzi.htm> (accessed Apr. 27, 2013); see also Tom Barber, *Criminal Enforcement of Florida's Securities Laws*, 79 Fla. B.J. 8, 19 n. 29 (Feb. 2005) (defining a Ponzi scheme as “a classic investment swindle in which early investors are paid off with money put up by later ones in order to encourage more and bigger risks”).

128. FBI, *Common Fraud Schemes*, <http://www.fbi.gov/scams-safety/fraud/fraud> (accessed Apr. 27, 2013).

129. Stephane Fitch, *The Last Speculators*, *Forbes*, <http://www.forbes.com/forbes/2006/0327/056.html> (Mar. 27, 2006). Jack McCabe, an industry expert, remarked, “It works fine—until you’re the greater fool and nobody else comes along to pay that higher price.” *Id.*

130. Bergsman, *supra* n. 13. “New owners threw some paint on, put sod down and blacktopped, trying to sell units for \$150 to \$200 a square foot. Now, it has come back down to where it should have been—\$50 a square foot.” *Id.*

131. Fla. Dep’t Bus. & Prof’l Reg., *County Summary Report*, ftp://dbprftp.state.fl.us/pub/lweb/condo_conv.csv (accessed Oct. 30, 2012) (copy on file with *Stetson Law Review*).

132. *Id.*

build it, they will come.”¹³³ For condominium converters in particular, the governing statutes are not as stringent as those in other states with surging populations.¹³⁴ Not surprisingly, the state acknowledged as the leader in condominiums¹³⁵ is also home to the most influential condominium-conversion company, Crescent Heights of Miami.¹³⁶

Initially, Florida’s counties were preoccupied with counting new property tax revenue; money from the bank’s coffers flowed freely; and conversion developers were satisfying demand while turning a tidy profit at a breakneck pace.¹³⁷ And then the bottom fell out. The median price for a Miami condominium in August 2005 was \$258,500.¹³⁸ Five years later, it hovered at \$104,800, with its remaining descent undetermined.¹³⁹ This downward spiral is replicating in major population centers throughout the State.¹⁴⁰ Today, there are many places in Florida where a consumer can purchase a condominium-conversion unit for the price of a new car.¹⁴¹ Widespread fraud has also contributed to the real estate meltdown in Florida, with some condominium-conversion

133. James C. Nicholas, *Economics and Growth Management in Florida*, in *Why Florida Needs Smart Growth* 7, 10 (1000 Friends of Fla. Mar. 2009) (available at <http://www.1000friendsofflorida.org/PUBS/Whyfloridaneedssmartgrowth.pdf>) (citing growth as one of the “dominant components” of the state’s economy and highlighting that twenty-five percent of jobs are related to the growth industry). The original quote is from the movie *Field of Dreams*: “If you build it, he will come.” *Field of Dreams*, Motion Picture (Universal Pictures 1989).

134. For an examination of regulation in other states, see *infra* Part V (analyzing the conversion laws of other jurisdictions).

135. The Fla. B., *supra* n. 52, at 1-7.

136. *Boom Owes Much to Miami Firm*, Wash. Post F1 (Jan. 14, 2006) (available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/01/13/AR2006011300850.html>) (reporting on the early success of the company that led other builders and developers to enter the condominium-conversion industry). In fact, many conversion developers got their start at Crescent Heights and later left to start their own companies. Telephone Interview with Jack McCabe, Founder & CEO McCabe Research & Consulting, LLC (Aug. 2, 2011).

137. See Behnken, *supra* n. 115 (citing the loss in property tax revenue after the boom); Ltr., *supra* n. 66 (stating that condominium conversions act as a resource for meeting market demand); Payne, *supra* n. 10, at 252 (acknowledging the quick and profitable business of condominium conversion for investors).

138. Bergsman, *supra* n. 13.

139. *Id.*

140. *Id.* (reflecting an approximate drop in median prices of condominiums of seventy-three percent in Orlando, sixty-four percent in Fort Lauderdale, and forty-nine percent in the Tampa Bay area during the same time period).

141. Alva, *supra* n. 12 (quoting consultant Jack McCabe as saying that condominium conversions have crashed harder than units built originally as condominiums and that in 2010 “you [could] buy a condo conversion for less than a new car”).

projects leading the way.¹⁴² An investigation of a failed conversion project by a local newspaper in Royal Palm Beach, Florida, uncovered forged closing statements, one unit that had been sold to two different buyers, and the sale of multiple units to buyers who could clearly not afford them.¹⁴³

The Roth Report recognized that converted buildings have a shorter life span than new condominium developments, and repair and maintenance costs in older buildings are magnified.¹⁴⁴ Despite this fact, developers continued to convert older buildings, and the number of old apartment buildings being converted grew exponentially in the mid-2000s.¹⁴⁵

V. REGULATORY EFFORTS OF OTHER STATES AND MUNICIPALITIES

Other states and the smaller political subdivisions within them have adopted and enforced a variety of laws and ordinances regulating condominium conversions. The relative success of these regulatory schemes is debatable and primarily depends on the perspective of the party interpreting them. More stringent regulations can effectively prohibit condominium conversions while still surviving judicial scrutiny.¹⁴⁶ Other forms of oversight focus on maintaining the balance of rental housing and home

142. LexisNexis Mortg. Asset Research Inst., *Thirteenth Periodic Mortgage Fraud Case Report* 6 (May 2011) (available at <http://img.en25.com/Web/LexisNexis/MortgageFraudReport-13thEdition.pdf>) (acknowledging that Florida was the national leader in cases of mortgage fraud in 2010); MortgageOrb.com, *Keeping Track of Condo Conversion Fraud*, http://www.mortgageorb.com/e107_plugins/content/content.php?content.1235 (Oct. 2007) (noting that Florida is prone to condominium-conversion fraud).

143. Miller, *supra* n. 124. The suspicious buyers, who all later declared bankruptcy, included a Costco employee who paid close to \$1,000,000 for three units, an Illinois cab driver who spent close to \$700,000, and a convicted felon who bought five units for \$1,680,000. *Id.*

144. Roth, *supra* n. 62, at 26, 28. Consult *supra* Part III for information on the Roth Act and Roth Report.

145. For example, between 2004 and 2007, there were ninety-two apartment buildings converted into condominiums in Hillsborough County. Fla. Dep't Bus. & Prof'l Reg., *County Summary Report*, ftp://dbprftp.state.fl.us/pub/llweb/condo_conv.csv (accessed Oct. 30, 2012) (copy on file with *Stetson Law Review*).

146. *E.g. Griffin Dev. Co. v. City of Oxnard*, 703 P.2d 339, 339–340 (Cal. 1985) (en banc) (holding that denial of a special permit for a condominium conversion was not an unconstitutional taking).

ownership opportunities for certain socioeconomic classes.¹⁴⁷ This Part discusses regulation in California, Massachusetts, and Virginia, and certain constitutional challenges to condominium-conversion regulation.

A. California

In California, local municipalities regulate condominium conversions under the Subdivision Map Act.¹⁴⁸ At the outset, it is important to note two distinct differences between California and Florida law. First, California's state legislature has expressly given local governments the power to regulate this area.¹⁴⁹ Second, under California law, the conversion of an apartment building to a condominium is a subdivision of existing property, provided the building has five or more units.¹⁵⁰ Therefore, the state legislature in California has effectively empowered local government to prescribe the guidelines and procedures applicable to condominium conversions.

Generally, California courts have upheld this delegation of power. While local conversion ordinances were being overturned in Florida,¹⁵¹ the City of Oxnard, California, enacted new ordinances¹⁵² requiring conversion projects to obtain special use permits, conform to specific mandatory standards, and "substantially conform" to the city's advisory standards.¹⁵³ In *Griffin Development Co. v. City of Oxnard*,¹⁵⁴ a developer submitted an application for a permit to convert an apartment building to con-

147. *E.g.* Vandever, *supra* n. 121, at 495 (discussing a San Francisco ordinance created to maintain a supply of affordable housing in the face of rapid conversion to condominiums).

148. Cal. Govt. Code §§ 66410–66499.38 (current through 2012).

149. Compare Cal. Govt. Code § 66411 (stating that "[r]egulation and control of the design and improvement of subdivisions are vested in the legislative bodies of local agencies") with Fla. Stat. §§ 718.604–718.622 (enacting a comprehensive state scheme of regulation for conversions).

150. Cal. Att'y Gen. Op. 79-523, 1979 WL 29255 at *1 (Aug. 7, 1979).

151. See *supra* Part III for a discussion of Florida cases in which conversion laws were struck down.

152. *Griffin Dev. Co.*, 703 P.2d at 340 n. 1 (referencing Oxnard Mun. Code (Cal.) § 34-226). The ordinances made conversion for most apartment complexes impossible by containing strict criteria on size, parking, number of bedrooms, and storage requirements. *Id.* at 340.

153. *Id.* at 340.

154. 703 P.2d 340.

dominiums.¹⁵⁵ The City denied the application, and the developer petitioned the court for a writ of mandate to compel the City to approve the application.¹⁵⁶ Despite the fact that the standards for conversions were more severe than those applying to apartments, the California Supreme Court held that the regulations were a legitimate exercise of the police power.¹⁵⁷ The Court rejected the argument that a conversion was simply a change in the form of ownership and sided with the City's findings that apartments and condominiums serve distinct segments of the population.¹⁵⁸ The decision had its fair share of critics, including one of the justices sitting en banc.¹⁵⁹

Other municipalities in California have imposed stringent conditions on the physical condition of buildings proposed for conversion. For instance, the City of San Diego mandates that certain essential building components with a useful life of five years or less must be replaced before completing the conversion.¹⁶⁰ While Florida law requires the developer to obtain a licensed engineer's building condition report,¹⁶¹ some California municipalities supplement the building report with subject-matter experts' additional opinions and findings.¹⁶²

California cities have also enacted condominium-conversion regulations to deal with Mother Nature's threats. Akin to the way Floridians must cope with hurricane devastation, Californians must cope with earthquake destruction.¹⁶³ Much like Florida

155. *Id.* at 340.

156. *Id.*

157. *Id.* at 340, 344. The Court unequivocally stated that condominium-conversion regulation in California is permitted, provided it is reasonably enacted to protect the community's health, safety, and welfare. *Id.* at 342.

158. *Id.* at 344 (referring to the City's planning director's memorandum, which noted the different needs of owners and renters).

159. *Id.* at 345 (Mosk, J., dissenting). The restrictions are "purportedly regulatory, but conceded by the city . . . to be prohibitory in effect." *Id.*

160. San Diego Mun. Code (Cal.) § 144.0507(e) (current through 2012).

161. Fla. Stat. § 718.616 (2012).

162. City of Oceanside Zoning Ord. (Cal.) § 3207 (current through 2012). In addition to an engineer's report, the ordinance requires inspections and reports by licensed professionals in the following fields: appliance repair, pest control, roofing, plumbing, electrical, and others. *Id.*

163. Ronald B. Reiss, *California's S.B. 547: Local Government Balancing of Public Safety and Historic Preservation*, 26 Urb. Law. 347, 348 (1994) (explaining that all of California is in danger of being damaged by a significant earthquake); see U.S. Geological Survey, *California: Earthquake History*, <http://earthquake.usgs.gov/earthquakes/states/>

enacted more stringent building codes in the wake of Hurricane Andrew,¹⁶⁴ some California cities have enhanced building codes to prevent buildings from collapsing in the event of a significant seismic event.¹⁶⁵ There is concern, however, that many condominium communities in buildings converted from aging apartment complexes lack the funding necessary to do routine maintenance, much less seismic retrofitting.¹⁶⁶

The City of San Francisco has perhaps the most restrictive and onerous conversion requirements of any city in the country.¹⁶⁷ The City restricts condominium conversions by limiting the number of units converted each year to two hundred.¹⁶⁸ To gain entry to the City's annual conversion-rights lottery, the building must contain fewer than seven units, and certain units must meet a strict three-year owner-occupancy requirement.¹⁶⁹ The reward of meeting these stipulations is the mere privilege of having the developer's name dropped in the hat; winning the lottery triggers the requirement to comply with a bounty of additional provisions, including a bevy of city inspections regarding permits, safety, and conservation measures.¹⁷⁰ The courts have affirmed the City's strict measures governing conversions.¹⁷¹

californiahistory.php (last modified July 18, 2012) (recollecting the history of major earthquakes in California).

164. Mike Tsikoudakis, *Hurricane Andrew Prompted Better Building Code Requirements: Some Regions Seeing New Building Codes*, <http://www.businessinsurance.com/article/20120819/NEWS06/308199985#> (Aug. 19, 2012).

165. *E.g.* Santa Monica Mun. Code (Cal.) § 8.72 (2011). The ordinance requires owners of wood frame soft-story buildings to retrofit for earthquake safety and prohibits any additions, alterations, or remodeling of the building until retrofitting is complete. *Id.*

166. Tyler P. Berding, *The "Soft-Story" Problem and Earthquake Safety: Another Issue for Condominium Conversions*, <http://www.berding-weil.net/articles/soft-story-problem-earthquake-safety.php> (accessed Apr. 27, 2013). The term "seismic retrofitting" means strengthening an existing building to better withstand an earthquake. Cal. Govt. Code § 8894.2 (current through 2012).

167. *See generally* R. Boyd McSparran & David R. Gellman, *Condominium Conversion in San Francisco* (Apr. 1, 2012) (available at http://www.g3mh.com/wp-content/uploads/G3MH_Condo-Conversion-Brochure.pdf) (detailing the intricacies of San Francisco's condominium-conversion requirements).

168. *Id.* at 2. The restriction is two hundred units, not two hundred buildings, so the number of buildings converted each year is much lower. *Id.*

169. *Id.* at 2, 4.

170. *Id.* at 5.

171. *See Leavenworth Props. v. City & Co. of San Francisco*, 189 Cal. App. 3d 986, 991-993 (Cal. App. 1st Dist. 1987) (holding that the City's moratorium on conversion was rationally related to the City's expressed goals); *Traweck v. City & Co. of S.F.*, 659 F. Supp. 1012, 1022-1024 (N.D. Cal. 1985), *aff'd in part and vacated in part*, 920 F.2d 589

In summary, municipalities in California, with the state legislature's express consent, have imposed a variety of regulatory schemes including quotas and compliance with existing building codes in an attempt to ameliorate condominium conversions' social and economic problems.

B. Massachusetts

An amalgamation of federal, state, and local mandates govern condominium conversions in Massachusetts.¹⁷² The Conversion Act¹⁷³ focuses primarily on tenant protection and preserving the rental housing stock for disadvantaged groups.¹⁷⁴ The Act specifically excludes certain municipalities that have already enacted condominium-conversion regulation under a special act and expressly permits them to repeal or amend those regulations.¹⁷⁵ The Act requires notice to the tenant before beginning a conversion, with a minimum notice period of one year,¹⁷⁶ and sometimes additional, greater protections are enforced.¹⁷⁷

Massachusetts courts have addressed the question of whether the conversion of apartment buildings to condominiums is a change in use or merely a change in ownership.¹⁷⁸ In the early 1980s, the owner of an apartment building attempted to convert an apartment building in Boston to condominiums.¹⁷⁹ The Boston Redevelopment Authority filed for injunctive relief, arguing that the property was located in an urban renewal area requiring approval for a change from "multi-family residential

(9th Cir. 1990) (affirming the city ordinance limiting the annual number of conversions as a valid exercise of the municipality's police power).

172. Douglas E. Chabot, Student Author, *Casting New Light on a Continuing Problem: Re-Considering the Scope and Protections Offered by Massachusetts's Condominium Conversion Regulations*, 42 Suffolk U. L. Rev. 101, 106 (2008) (relating that conversions are governed by the state Conversion Act, municipal ordinances, and the federal Condominium and Cooperative Conversion Protection and Relief Abuse Act).

173. 1983 Mass. Acts 926-933.

174. Chabot, *supra* n. 172, at 102, 107 (identifying disabled, low-income, and elderly tenants as beneficiaries of the law).

175. 1983 Mass. Acts 927.

176. Chabot, *supra* n.172, at 107.

177. *Id.* at 113 (citing nine municipalities that regulate conversions, four of which add supplemental restrictions, such as a permit requirement).

178. *E.g. Bos. Redevelopment Auth.*, 490 N.E.2d at 813 (noting that another case held that a conversion was a "fundamental change" in the project and holding that a conversion was at least a "modification" of a building plan).

179. *Id.* at 811.

use” and that a condominium conversion would be such a change in use.¹⁸⁰ Reversing the trial court’s order granting summary judgment, the court held that the conversion required approval from the agency because it was a significant change in the plan, which limited the building to “multi-family residential use.”¹⁸¹ The court relied on the reasoning that apartments and condominiums serve different segments of the population and impose different obligations on the occupants.¹⁸²

C. Other States’ Regulatory Approaches

In addition to the standard protections afforded to tenants in most states, Virginia law expressly delegates certain authority to local government.¹⁸³ Virginia takes the additional step of enabling local municipalities to require a special-use permit or variance for a proposed condominium conversion that does not conform to zoning or land use regulations.¹⁸⁴ In an attempt to enforce county compliance with the statute’s provisions, a resident in an apartment house brought an action against a zoning board for granting a variance to a building-owner who wished to convert it into condominium units.¹⁸⁵ The Court found that the zoning board was justified in granting the variance because the plaintiff was unable to meet his burden of proof to show that the building owner did not establish the undue hardship that a variance required.¹⁸⁶ The Court reasoned that the statute gave discretion to the zoning board and that

where a building has lawfully operated as an apartment as a nonconforming use *and* where the *only* change in the building will be in the form of ownership *and* that change will have no

180. *Id.*

181. *Id.* at 814–815.

182. *Id.* at 813 (citing *Bronstein v. Prudential Ins. Co. of Am.*, 459 N.E.2d 772, 778–789 (1984)) (asserting that the differences between the tenants and owners’ obligations constitute a fundamental change in use).

183. Va. Code § 55-79.94(E) (current through 2012) (granting “any county, city, or town” the authority to require local filing of information that the State requires and extend certain tenant protections).

184. *Id.* at § 55-79.43(E).

185. *Natrella v. Bd. of Zoning Apps. of Arlington Co.*, 345 S.E.2d 295, 296–297 (Va. 1986).

186. *Id.* at 302.

land use impact, . . . it would be unreasonable [not to grant the variance].¹⁸⁷

Other states have similar statutes in place, with corresponding judicial holdings.¹⁸⁸ Disclosure requirements,¹⁸⁹ special protections for elderly and disabled tenants,¹⁹⁰ right-of-rescission periods,¹⁹¹ and minimum tenant purchasing requirements¹⁹² are common measures.

D. Constitutional Challenges to Regulation

A complete analysis of Constitutional due process¹⁹³ and takings challenges to condominium-conversion regulation falls outside the scope of this Article, but a general discussion is warranted. The Takings Clause of the U.S. Constitution protects private property from government confiscation by requiring that any taking be for public use and just compensation for the taking be paid to the landowner.¹⁹⁴ The government can regulate private property as a legitimate exercise of its police power,¹⁹⁵ however, if a governmental regulation “goes too far,”¹⁹⁶ the result can be a

187. *Id.* at 301 (emphasis in original).

188. *E.g.* N.H. Rev. Stat. § 356-B:5 (current through 2011) (stating that cities and towns may require a special-use permit, exception, or variance for proposed condominium conversions that are nonconforming); *Cohen v. Town of Henniker*, 593 A.2d 1145, 1148 (N.H. 1991) (holding that under New Hampshire Revised Statutes Section 356-B:5, a municipality may require a variance prior to conversion but may deny it only if the project would affect land use).

189. Ohio Rev. Code § 5311.26 (current through 2012).

190. D.C. Code § 42-3402.08 (current through 2012).

191. Or. Rev. Stat. § 100.730 (current through 2011).

192. N.Y. Gen. Bus. Law § 352-eee (McKinney 2012).

193. U.S. Const. amend. XIV (stating “nor shall any State deprive any person of life, liberty, or property, without due process of law”).

194. U.S. Const. amend. V (stating “nor shall private property be taken for public use, without just compensation”). The public-use requirement of the takings clause is broad. *See Kelo v. City of New London*, 545 U.S. 469, 489–490 (2005) (holding that a city’s economic redevelopment plan, which involved condemnation proceedings and a subsequent transfer of the property to a private party, satisfied the constitutional “public[-]use” requirement).

195. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395–396 (1926) (holding that restrictions on land use are valid, provided they are substantially related to the public health, safety, morals, or welfare).

196. *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). This phrase that Justice Holmes penned was the first “test” for the murky and much maligned regulatory takings jurisprudence. *See* Dan Herber, Student Author, *Surviving the View through the Lochner*

compensable government taking.¹⁹⁷ The quintessential regulatory takings case, *Penn Central Transportation Co. v. City of New York*,¹⁹⁸ involved the historic Grand Central Station and the New York City Landmarks Preservation Commission.¹⁹⁹ The commission designated the building as a historic landmark and prevented the owners from developing airspace above the terminal.²⁰⁰ The Court's historic ruling held that the regulation was not a taking.²⁰¹ The Court reasoned that regulatory takings cases necessitate an ad hoc inquiry in each instance, weighing three significant factors: (1) "the economic impact of the regulation"; (2) its impact on "distinct investment-backed expectations"; and (3) "the character of the governmental action."²⁰²

Arguably, most condominium-conversion regulations would pass muster under the *Penn Central* test because an apartment building yields rental income, which may be characterized as a "reasonable return" on an investment.²⁰³ Federal courts have also upheld other stringent regulations, such as development moratoria.²⁰⁴ Ultimately, any state or local conversion regulation enacted under the police power must be reasonably related to the health, safety, morals, and welfare of its citizens to withstand a takings challenge.²⁰⁵

Looking Glass: Tahoe-Sierra and the Case for Upholding Development Moratoria, 86 Minn. L. Rev. 913, 922–923 (2002) (Justice Holmes' opinion in *Pennsylvania Coal Co.*).

197. For an interesting analysis of recent regulatory takings jurisprudence, see Michael B. Kent, Jr., *Construing the Canon: An Exegesis of Regulatory Takings Jurisprudence after Lingle v. Chevron*, 16 NYU Envtl. L.J. 63 (2008).

198. 438 U.S. 104 (1978).

199. *Id.* at 107.

200. *Id.* at 115–117.

201. *Id.* at 138.

202. *Id.* at 124.

203. A theme of the Landmark Preservation Law was ensuring owners a "reasonable return" on their investment, which the Court found in its operation as a train station. *Id.* at 110, 136.

204. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 318, 342–343 (2002) (upholding a temporary moratorium on development against a takings claim).

205. The Florida Constitution has an analogous provision to the Takings Clause found in the Federal Constitution. See Fla. Const. art. X, § 6(a) (stating: "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner").

VI. REFORM IN THE SUNSHINE STATE

Instituting legislative reform is challenging because of the considerable procedural hurdles involved, the purposeful deliberation inherent in the process, and the ever-increasing expense of generating popular support.²⁰⁶ Pushing the issue further back in the collective social consciousness is the fact that the Florida real estate market has been in free fall, and the collapsing economic market will likely limit condominium-conversion projects in the foreseeable future.²⁰⁷ Regardless, urgent action is necessary to avoid the ever-present danger—history repeating itself. Any attempt to modify existing condominium-conversion law is likely to fail if the market has already entered a new upward cycle. A legislator recognized Florida condominium-conversion laws' shortcomings and introduced a bill in 2006 to study possible deficiencies in the Roth Act.²⁰⁸ In 2007, the legislature amended the Roth Act in form, but in substance, the result was negligible.²⁰⁹

Two notable differences between California and Florida condominium law are the roles of local government and the basic definition of a condominium itself. The Florida legislature should enact legislation that (1) expressly grants the power to municipalities to enact additional regulations on condominium conversions under the Municipal Home Rule Powers Act²¹⁰ and (2) recognizes the condominium conversion as a form of subdivision.

206. William N. Eskridge, Jr., Philip P. Frickey & Elizabeth Garrett, *Cases and Materials on Legislation: Statutes and the Creation of Public Policy* 66–72 (4th ed., West 2007) (discussing hurdles and the value of deliberation in the legislative process).

207. Christine Braden, *Moratorium Put on Hold: It Would Have Disallowed Condo Conversions*, Fla. Keys Keynote, Marathon (Jan. 5, 2007) (available at 2007 WLNR 339839) (quoting Morgan McPherson, then the mayor of Key West, who stated that “[t]he idea of condo conversions is pretty much dead. The market caught up with itself”).

208. Fla. Sen. 1270, 19th Legis., Reg. Sess. (Jan. 6, 2006) (available at <http://archive.flsenate.gov/data/session/2006/Senate/bills/billtext/pdf/s1270.pdf>) (sponsored by Sen. Margolis, the bill died in the Justice Council).

209. Fla. H. 7031, 20th Legis., Reg. Sess. (Mar. 16, 2007). Although the 2007 bill added some specificity to the statute, it remained essentially the same as the 2006 bill.

210. Fla. Stat. §§ 166.011–166.411.

A. Local Regulation

Since 1968, the Florida Constitution has recognized some inherent powers in municipalities.²¹¹ Proponents of “New Federalism” advocate restoring to the states the power that the federal government has eroded over the course of the last century, believing that governments closer to the people are more effective and responsive to society’s needs.²¹² Thus, a corollary is that local governments are more in tune with the public sentiment than state governments, which is a reasonable and logical extension of this belief.

South Florida was considered to be ground zero for condominium-conversion activity over the last five years.²¹³ Cities like Miami Beach have recognized the threat posed by conversion activity and attempted to proactively ameliorate its effects and balance the interests of property owners, tenants, and society as a whole, only to have the judiciary invalidate these efforts.²¹⁴

Florida’s efforts in regulating condominium conversion have been focused primarily on requiring disclosure, but the effectiveness of disclosure laws is questionable.²¹⁵ The policy approach of requiring disclosure is based on the theory that more knowledge will lead to better-informed decision makers.²¹⁶ The practice of requiring copious documentation, however, may have limited effectiveness.²¹⁷ Burdensome documentation requirements were a

211. Fla. Const. art. VIII, § 2(b) provides: “Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions[,] and render municipal services”

212. Donald R. Songer, *Government Closest to the People: Constituent Knowledge in State & National Politics*, 17 *Polity* 387, 387 (1984). Although states are indeed “closer to the people” geographically, studies have cast doubt on this principle, and some argue that states are “the least salient units for the general public” when compared to federal and local governments. *Id.* at 387.

213. Bergsman, *supra* n. 13, at 2.

214. *Rocio Corp.*, 404 So. 2d at 1066–1067.

215. Vincent Di Lorenzo, *Disclosure as Consumer Protection: Unit Purchasers’ Need for Additional Protections*, 73 *St. John’s L. Rev.* 43, 68 (1999) (analogizing the condominium purchaser to the small investor in securities regulation who “does not understand the prospectus and, therefore, is not protected by a full disclosure approach”).

216. David Weil, Archon Fung, Mary Graham & Elena Fagotto, *The Effectiveness of Regulatory Disclosure Policies*, 25 *J. Policy Analysis & Mgt.* 155, 156, 175 (2006) (available at <http://www.archonfung.net/papers/FungTransparencyJPAM06.pdf>).

217. R. Jeff Andrews, *Governmental Considerations: A Proposed Common Interest Community Act*, 55 *Fla. B.J.* 144, 145 (Feb. 1981); see Weil, *supra* n. 216, at 161, 175–176 (suggesting that mandatory disclosure must be “comprehensible” and “carefully crafted” to be effective).

prominent problem during the first wave of condominium conversions in Florida and usually led to attorneys producing long, technical, and unreadable documents in an attempt to comply with the statute.²¹⁸ Additionally, condominium-conversion developers' and purchasers' legal and strategic positions are skewed.²¹⁹ For example, in New York, when a wave of conversions finally settled in the 1980s, many purchasers found themselves trapped in a risky situation with little recourse.²²⁰ A better solution than required disclosures and market mechanisms is to empower local governments to develop enforcement mechanisms and provide greater oversight during the conversion process.

B. Calling a Subdivision a Subdivision

In Florida, plat approval, or subdivision control, is a power vested in local jurisdictions.²²¹ Throughout the United States, "subdivision regulation emphasizes local control over those aspects of land development that have a direct financial impact on local government."²²² Under subdivision regulations, parcels cannot be alienated until the plat is approved and recorded—a process that may require fees and public hearings.²²³ In fact, a governing entity may enjoin the sale of property where the owner has failed to comply with subdivision regulations.²²⁴ California has adopted the subdivision approach to condominium conversions,²²⁵ but current Florida law conflicts with this approach. Both states' statutes define the term "subdivision" similarly, with the obvious distinction that California expressly states that con-

218. Andrews, *supra* n. 217, at 145–146.

219. David St. John & Rodney L. Tennyson, *Legal Considerations: Construction Defects in Condominium Conversions—the Legal Issues*, 55 Fla. B.J. 127, 131 (Feb. 1981) (recognizing the general cost-saving strategy of defendants to delay and prolong court proceedings as long as possible).

220. Di Lorenzo, *supra* n. 215, at 70–71. The author related the deficient nature of market mechanisms, finding that sales at any price in a condominium conversion are not always possible due to large loan balances on units. *Id.* at 71.

221. Louise Tudzarov, *Platting the Condominium: Is It Required?* 15 Real Est. L.J. 22, 24 (1986).

222. Laurie Reynolds, *Local Subdivision Regulation: Formulaic Constraints in an Age of Discretion*, 24 Ga. L. Rev. 525, 525–526 (1990).

223. Tudzarov, *supra* n. 221, at 24–25.

224. *Id.* at 25.

225. See *supra* Part V(A) for an analysis of the regulations adopted in the State of California.

dominiums are subdivisions.²²⁶ Under Florida's Subdivision Map Act, local governments must deny a subdivision map based on specific findings that the project is inconsistent with the general and specific land use plans.²²⁷ Discretion of local entities in denying plat approval in both states, however, requires published standards on which governmental entities base their decisions to protect the community's health, safety, and welfare.²²⁸

C. Is a Condominium Conversion a Subdivision?

Historically, governments have generally accepted the idea that airspace could be divided.²²⁹ When an apartment building is constructed, it is a single parcel of identifiable land. Converting an apartment building to a condominium necessitates the division of airspace in the building, creating more than one parcel of identifiable, taxable property—it is essentially a subdivision.

Arguments can be made that condominiums should continue to elude the reach of local governments,²³⁰ but as California has

226. In Florida, subdivision is defined as

the division of land into three or more lots, parcels, tracts, tiers, blocks, sites, units, or any other division of land; and includes establishment of new streets and alleys, additions, and resubdivisions; and, when appropriate to the context, relates to the process of subdividing or to the lands or area subdivided.

Fla. Stat. § 177.031(18) (2012). In California, subdivision is defined as

the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized county assessment roll as a unit or as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property shall be considered as contiguous units, even if it is separated by roads, streets, utility easement or railroad rights-of-way. "Subdivision" includes a condominium project, as defined in subdivision (f) of Section 1351 of the Civil Code, a community apartment project, as defined in subdivision (d) of Section 1351 of the Civil Code, or the conversion of five or more existing dwelling units to a stock cooperative, as defined in subdivision (m) of Section 1351 of the Civil Code.

Cal. Govt. Code § 66424 (emphasis added).

227. Cal. Govt. Code § 66474(a)–(b).

228. See *S. Coop. Dev. Fund v. Driggers*, 696 F.2d 1347, 1351–1353, 1356 (11th Cir. 1983) (reversing Manatee County's denial of a plat map as a violation of due process when no discernible standards are available for an applicant to review); *Bright Dev. v. City of Tracy*, 20 Cal. App. 4th 783, 798–799 (Cal. App. 3d Dist. 1993) (holding that in order to impose a requirement upon an applicant for a vesting tentative map, a city must give the applicant notice of the requirement, preferably in a written standard).

229. See *supra* Part II for an examination of the history of the condominium form of ownership.

230. See *Tudzarov*, *supra* n. 221, at 33 (arguing that local zoning regulations are discriminatory because the use is identical and only the ownership is different).

recognized, local governments have legitimate reasons to enact and enforce regulations to further their communities' health, safety, and welfare.²³¹ Assuming for argument's sake that the Florida legislature would grant the power to regulate condominium conversions to municipalities, each governmental entity would bear the burden of studying the issue and implementing reasonable standards of regulation. This solution is not unprecedented in Florida, as demonstrated by the Monroe County Tourist Development Council's study of the impact of condominium conversions in the Florida Keys.²³² In fact, the Key West City Commission was on the verge of enacting a moratorium in 2007 but declined to do so as the market appeared to solve the problem.²³³ This stance taken by the Key West Commission on regulating conversions is flawed because the market is cyclical and the issue will likely reappear in the future.

A municipality attempting to regulate conversions would be wise to implement a study detailing the social problems that condominium conversions cause.²³⁴ By documenting condominium conversions' social and economic consequences, a municipality will be armed with the evidence that courts require municipalities to show when exercising the police power through economic regulations. In addition to the social pitfalls mentioned in Part IV of this Article, local governments may improve the State's housing stock's quality by closely monitoring older buildings' conversions to extend their lifespans, which—as the Roth Report forewarned—are considerably shorter than those of new buildings.²³⁵

231. *Griffin Dev. Co.*, 703 P.2d at 343–344.

232. Jessica Bennett, *Study of the Impact of Condominium Conversions to the Florida Keys and Key West* pt. II (Monroe Co. Tourist Dev. Council Aug. 2005–May 2006) (available at <http://www.keylargochamber.org/pdf/TDCCondoConversionStudy.pdf>).

233. Braden, *supra* n. 207.

234. See *supra* Part IV for an analysis of the ill effects of condominium conversions.

235. Roth, *supra* n. 62, at 28. An additional topic of consideration outside the scope of this Article is the rising and prohibitive insurance costs for homeowners in the State. Municipalities requiring converters to update buildings may potentially lower the cost of insurance to the condominium purchasers while fortifying the building. See Bradley G. Bodiford, *Florida's Unnatural Disaster: Who Will Pay for the Next Hurricane?* 21 U. Fla. J.L. & Pub. Policy 147, 154–155 (2010) (discussing Florida's practice of artificially lowering hurricane insurance rates in light of the State's high risk for hurricanes).

VII. CONCLUSION

In the last five years, Florida has suffered greatly as a result of the national recession and its own real estate crash. It remains to be seen how long the State must persevere and adapt to fiscal pressure. Avoiding the mistakes of the past should be of paramount concern as Florida picks up the pieces and moves toward the future.

The practice of converting existing buildings to the condominium form of ownership brings with it a multitude of social problems. The unique nature of this property convention and its tendency toward volatility in rising markets demand that the Florida legislature rethink its regulatory approach.

By adopting some of the strategies employed in other states, specifically California, the State of Florida can better regulate the quality of housing that condominium conversions produce and mitigate the social ills that are symptoms of condominium conversion. Specifically, the legislature should expressly permit Florida municipalities to enact further regulations, consistent with their comprehensive plans, and treat the conversion of buildings to condominiums as a subdivision. By enacting reasonable safeguards and requirements, local governments can better protect their citizens' health, safety, and welfare.

