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Charles M. Cobbe

University of Michigan Law School

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CONVERSION OF APARTMENTS TO CONDOMINIUMS AND COOPERATIVES: PROTECTING TENANTS IN NEW YORK

In recent years, the number of conversions of rental apartments to cooperative and condominium¹ ownership has increased dramatically.² Such conversions often result in extreme hardships for tenants in the buildings affected. Those who are unable or unwilling to pay the purchase price of an apartment are generally forced to seek other rental accommodations at a time when these are increasingly difficult to find³—a problem which becomes especially severe for elderly tenants and those with low incomes.⁴ In addition, tenants who purchase apartments may suffer the abuses which often accompany sales of condominium and cooperative units.⁵ A further problem in certain areas is that the widespread dislocation which is often a consequence of conversions destroys the cohesiveness of neighborhoods where large numbers of tenants have long resided.⁶

Recent amendments⁷ to the New York General Business Law are designed to protect rental tenants against these hardships. The amendments' primary device for achieving this purpose is the prohibition against the sale of any apartments in a building as cooperative or condominium units unless a minimum number of rental tenants in that building have agreed to purchase apartments. Evaluation of the desirability of enacting similar measures in other states requires consideration of several questions: the exact causes of the increasing numbers of conversions; the consequences of conversions, not only for

¹ For the differences between cooperative apartments and condominium units, see 4A R. POWELL & P. ROHAN, *POWELL ON REAL PROPERTY* §§ 633.1, 633.7 (1973); *Susskind v. 1136 Tenants Corp.*, 43 Misc. 2d 588, 251 N.Y.S.2d 321 (Civ. Ct. City of New York 1964). Because these differences have little impact on the problems dealt with in this note, both types of units will be referred to as "apartments;" "purchasing an apartment" will refer to the purchase either of the fee simple in a condominium unit or of shares in a cooperative corporation, which entitle their owner to a proprietary lease. "Sponsor" will denote the person who, in the case of cooperatives, organizes a corporation to purchase a building and sell shares and grant leases to tenants; the same word will also refer to the person who draws up the offering statement for sale of units in either a condominium or a cooperative.

² See notes 8-10 and accompanying text *infra*.

³ Lippman, *The Condominium Boom*, *Washington Post*, May 26, 1974, § A at 1, col. 3, and at 8, col. 1.

⁴ Lippman, *supra* note 3, § A, at 8, cols. 5-6.

⁵ See notes 24-26 and accompanying text *infra*.

⁶ Samurovich, *The Co-op Battle: 35% vs. 51%—Pro*, *N.Y. Times*, Apr. 22, 1973, § 8, at 1, col. 1.

⁷ N.Y. GEN. BUS. LAW §§ 352-e(1) to (3) (McKinney Supp. 1974).

tenants in the buildings involved, but also for the neighborhoods where converted buildings are located; and the merits of alternative solutions to the problem.

I. THE PROBLEM

A. Frequency of Conversions

Although little precise information is available regarding the numbers of rental apartments converted each year,⁸ the rapid growth in the number of conversions is clear. One authority predicts that within twenty years, 50 percent of the population of the United States will live in condominium housing;⁹ such a change in living patterns, particularly in light of the current stagnation in the housing construction industry, is expected to involve extensive conversions of older buildings to condominium or cooperative status. In metropolitan Washington, D.C., one of the few areas for which information on the trend is available, it was estimated in 1974 that 20,000 to 25,000 apartments would be converted out of a total stock of approximately 450,000 rental units.¹⁰

B. Reasons for Conversions

The fundamental reason for the increase in conversions is that sale of buildings as condominiums or cooperatives is far more profitable in many areas than continued operation of the same buildings on a rental basis. Proceeds from the sale of a building as a condominium may amount to ten times the annual rental income from the building; in comparison, sale to another landlord may bring as little as six times the rental income.¹¹ However, it remains uncertain whether the disparity between the profitability of maintaining rental housing and that

⁸ This lack of information was noted by Representative Rosenthal, who proposed a study of the growth in condominium housing and emphasized the problem of widespread conversions, 120 CONG. REC. H5371 (daily ed. June 20, 1974).

⁹ Rugaber, *Condominium Trend Cuts Rental Market*, N.Y. Times, Sept. 28, 1974, at 1, col. 4, *citng*, at 14, a statement by David Clurman, author of CONDOMINIUMS AND COOPERATIVES AND THE BUSINESS CONDOMINIUM. See also Benzer, *Condominiums Broaden Scope*, New York Times, Oct. 12, 1973, § 3, at 3, col. 1, predicting that 2.25 million condominium units would be in existence by the end of 1973, compared to 300,000 in 1970; although, again, there is no indication how many of these would be created by conversion, these figures suggest a great increase in conversions. Increasing conversions in several major cities are noted in U.S. NEWS & WORLD REP., Aug. 6, 1973, at 48, and U.S. NEWS & WORLD REP., Oct. 9, 1972, at 60.

¹⁰ Lippman, *Condominiums Bring Better Profits*, Washington Post, May 27, 1974, § A, at 24, col. 1. Other estimates are somewhat lower. See Rugaber, *supra* note 9, at 14. The differences may well be due to varying definitions of "metropolitan area."

¹¹ Rugaber, *supra* note 9, at 14. Comparably high returns are obtainable from sales of buildings as cooperatives, see Note, *Cooperative Housing and the Federal Securities Laws*, 71 COLUM. L. REV. 118, 120 (1971).

of selling apartments as condominiums is the result of an unreasonably low rate of return from rental housing or, instead, of excessive profits from sales of apartments to occupant-owners.¹²

There is ample evidence to support the first of these two explanations.¹³ Landlords face increasing property taxes and maintenance costs, as well as high interest rates on loans necessary for renovation and improvements.¹⁴ Finally, it is asserted that demands by increasingly militant tenants for changes in landlords' maintenance practices not only increase financial costs but also make ownership of rental housing less attractive in personal, psychological terms.¹⁵

The opposite interpretation would emphasize that the demand for condominium and cooperative housing is increasing over the long run. Reasons for this are the psychological and financial benefits of home ownership¹⁶ which cooperative and condominium housing offer to those who can not afford single-family houses.¹⁷ At the same time, high construction costs and municipal measures designed to limit population growth impede the construction of new multiple-unit housing,¹⁸ with the result that the brunt of increasing demand falls on a diminishing number of rental buildings still available for conversion. The inference is that the widening gap between quantities supplied and demanded makes possible excessive profits for landlords and sponsors who convert older buildings.¹⁹

C. Hardships for Rental Tenants

Conversions often involve hardships for rental tenants whether or not they purchase their apartments. Many rental tenants have no

¹² One reason for the disparity between profits from rental housing and those available from sales of condominiums and cooperatives is that the maximum allowable income tax deduction for depreciation is comparatively small for older apartment buildings. INT. REV. CODE OF 1954, § 167(b); Treas. Regs. § 1.167(j)-6 (1972). However, this fact alone does not support the view that expenses of operating rental housing are excessive, since the tax provisions might be considered as highly generous to owners of new apartment buildings rather than overly stringent toward owners of old buildings.

¹³ McDonald, *The Co-op Battle: 35% vs. 51%-Con.* N.Y. Times, Apr. 22, 1973, § 8, at 1, col. 4. Similar arguments, made with respect to rent and eviction controls, are apposite here; see Note, *Residential Rent Control in New York City*, 3 COLUM. J. LAW & SOC. PROBS. 30, 56-58 (1967).

¹⁴ Rugaber, *supra* note 9, at 14.

¹⁵ Rugaber, *supra* note 9, at 14, col. 2.

¹⁶ Cribbet, *Condominium—Home Ownership for Megalopolis?*, 61 MICH. L. REV. 1207, 1208-09 (1963).

¹⁷ Lippman, *supra* note 3, § A, at 8, col. 2.

¹⁸ Lippman, *supra* note 3, § A, at 8, col. 4.

¹⁹ At one point, the minimum profit margin expected by sponsors of conversions was stated to be 20-25 percent. U.S. NEWS & WORLD REP., Oct. 9, 1972, at 60, col. 2. Presumably, this statement refers to the profits of developers and sponsors who purchase rental buildings for conversion; nevertheless, it is inferable that part of the available profits also reach landlords who sell their buildings to these developers.

alternative to leaving their apartments when conversion occurs. Down payments for apartments are often beyond the means of tenants,²⁰ and mortgage installments may be much higher than rental payments on comparable property.²¹ Elderly tenants generally do not seek to build equity in their apartments, since they often can not expect to live past the initial period of ownership, during which a large portion of mortgage payments is consumed by interest costs.²² Low-income tenants do not benefit appreciably from tax deductions for property taxes and mortgage interest.²³ Even some tenants who can afford to purchase apartments will probably choose not to do so because they find the prices excessive.

The financial and psychological costs of moving because of conversions are especially severe for older tenants.²⁴ In addition, a tenant who locates alternative housing may find that his new accommodations have been converted in their turn, making it necessary to seek still another apartment.²⁵ The impact of a conversion is aggravated when lease agreements require tenants to vacate their apartments before the stated date of termination if their building is sold or converted.²⁶

Conversion abuses may also adversely affect tenants who purchase their apartments. Purchasers may be victimized by sponsors who sell buildings or units at inflated prices or execute contracts for maintenance of the property at excessive fees.²⁷ Sponsors or developers may also misrepresent maintenance costs or the extent and quality of the premises.²⁸ These practices are especially reprehensible in connection with older buildings, which require careful maintenance and

²⁰ 120 CONG. REC. H5371, (daily ed. June 20, 1974), reprinting at H5383-84 Ottenberg, *Why Further Legislation Related to Condominiums is Needed on the National Level*, Washington Star-News, Oct. 7, 1973 [hereinafter cited as Ottenberg].

²¹ *Id.*

²² *Id.*

²³ Rugaber, *supra* note 9, at 14, col. 4. Many will reap no benefit at all; even with these deductions, the minimum standard deduction will be more beneficial than itemizing deductions.

²⁴ Rugaber, *supra* note 9; Ottenberg, *supra* note 20, at H5384.

²⁵ See, e.g., Rugaber, *supra* note 9, at 1, cols. 5-7, and 14, cols. 6-8.

²⁶ Courts have generally construed lease terms to this effect narrowly in favor of tenants. See *Bruder v. Crafts & D'Amora Co.*, 79 Misc. 88, 139 N.Y.S. 307 (Sup. Ct. 1913). However, a carefully worded lease provision will enable the landlord or the purchaser of the premises to recover possession regardless of the stated duration of the lease. See *Turner v. Gorton*, 247 Mich. 47, 225 N.W. 484 (1929); *Fisher v. Parkwood, Inc.*, 213 A.2d 757 (D.C. App. 1965). Most cases permitting early termination involve leases for commercial purposes; however, no authority has been found which clearly prohibits this practice in cases of residential leases.

²⁷ Note, *Florida Condominiums—Developer Abuses and Securities Law Implications Create a Need for a State Regulatory Agency*, 25 U. FLA. L. REV. 350, 353 (1973).

²⁸ *Id.* at 356-57. Similar abuses occur in the creation of cooperative corporations. Note, *supra* note 11, at 120-22.

may have serious defects. Nevertheless, state statutes are of widely varying effectiveness in controlling these abuses.²⁹

II. THE NEW YORK SOLUTION

A. General Purposes of the Amendments

Before the present amendments were enacted, the New York statutes governing sales of cooperative apartments and condominium units required only disclosure of certain information of interest to persons actively seeking to purchase apartments.³⁰ In contrast, the present amendments are intended to ensure that rental tenants will not be required to move out without first being given the opportunity to purchase their apartments at reasonable prices.³¹ The amendments are designed to achieve this purpose by enhancing the power of rental tenants to bargain with conversion sponsors over the prices of apartments to be sold.³²

B. Tenants' Agreements to Purchase as a Condition to Conversion

The amendments provide that no condominium unit or cooperative apartment may be sold unless 35 percent of the rental tenants in the affected building have agreed to purchase apartments. Before an offering statement for the sale of apartments may be issued to the public, it must be "accepted" by the Attorney General;³³ this acceptance is conditional upon inclusion in the statement of a provision that the conversion will not become "effective"—that no apartments will be sold—unless 35 percent of the tenants in occupancy have agreed to purchase apartments.³⁴

²⁹ See Horizontal Real Property Act, MICH. COMP. LAWS ANN. § 559.25 (1967) (requiring inspection of the development site by state authorities); Condominium Property Act, ILL. REV. STAT. ch. 30, § 322 (Smith-Hurd 1969) (requiring full disclosure by developers but not inspection by state authorities); OHIO REV. CODE ANN. § 5311.05 (Page 1970) (also requiring only disclosure of pertinent facts; *i.e.*, descriptions of the land and the buildings on it, description of common facilities, designation and description of each unit, and other related information).

³⁰ N.Y. GEN. BUS. LAW § 352-e(1)(b) (McKinney 1968); N.Y. REAL PROP. LAW § 339-ee (McKinney 1968). The former imposes disclosure requirements on sponsors of cooperatives only; the latter, however, subjects condominium sales to these same requirements.

³¹ Memorandum from New York State Senator Roy Goodman, undated, at 3 (copies available from office of Senator Goodman, New York State Senate, State Capitol, Albany, New York 12224). See also notes 40-45 and accompanying text *infra*.

³² Memorandum from Senator Goodman, *supra* note 31, at 3.

³³ N.Y. GEN. BUS. LAW § 352-e(2) (McKinney Supp. 1974).

³⁴ *Id.* § 352-e(2-a)(1)(i). Under N.Y. ADMIN. CODE § Y51-12.0, (N.Y. UNCONSOL. LAWS (McKinney 1974)) and N.Y. UNCONSOL. LAWS § 8605 (McKinney 1974), it is possible for

This requirement represents a major change from local laws and regulations³⁵ which previously governed conversions in New York City. Under the local regulations, failure to obtain from tenants the requisite agreements to purchase merely prevented a sponsor from evicting tenants.³⁶ No provision prevented him from converting a building to cooperative status and selling to the public apartments which were voluntarily vacated by their tenants. The sponsor could then retain the cooperative shares corresponding to all other apartments until these could be sold as their occupants voluntarily moved out.³⁷ Similar practices were possible in cases of condominium conversions.³⁸

In contrast to earlier measures, the present amendments make agreements to purchase by a percentage of rental tenants a condition to the sale of any apartment,³⁹ including even those apartments which

some apartments in a building to be subject to rent and eviction controls while others in the same building are not. Since this creates a danger that the required agreements to purchase may be obtained from tenants who are not protected by rent controls, thus permitting a conversion to proceed against the wishes of those who are protected, the present amendments provide that local rent and eviction controls shall remain in force. N.Y. GEN. BUS. LAW § 352-e(3) (McKinney Supp. 1974). Therefore, a sponsor must obtain agreements to purchase from 35 percent of all tenants protected by rent controls. CODE OF THE REAL ESTATE INDUSTRY STABILIZATION ASS'N OF NEW YORK CITY, INC. § 61, following N.Y. ADMIN. CODE § YY51-6.0 (N.Y. UNCONSOL. LAWS (McKinney 1974)).

³⁵ The present amendments follow a long series of similar provisions, previously enacted by both state and local legislatures, whose purpose was to restrict conversions as devices to evade rent and eviction control laws. State regulations permitted evictions where 35 percent of the tenants affected had agreed to purchase apartments, N.Y. RENT AND EVICTION REGULATIONS § 55(3)(c)(i) (following N.Y. UNCONSOL. LAWS §§ 8581-8597 (McKinney 1974)). Although the courts recognized that rental tenants were, therefore, not fully protected from eviction in the event of conversion, see *Hoenig v. McGoldrick*, 281 App. Div. 663, 117 N.Y.S.2d 535 (1952), they announced that they would closely supervise conversions which appeared to be designed to circumvent the rent and eviction controls. *People ex rel. McGoldrick v. Sterling*, 283 App. Div. 88, 96, 126 N.Y.S.2d 803, 811 (1953). After responsibility for controlling rents and evictions was shifted to local authorities in 1962, see *Local Emergency Housing Rent Control Act*, N.Y. UNCONSOL. LAWS §§ 8602-8606 (McKinney 1974) and N.Y. ADMIN. CODE § Y51-6.0(a) to (b), N.Y. UNCONSOL. LAWS (McKinney 1974), the courts continued to admit the same narrow exceptions to statutory tenancies where premises were converted. See *Richards v. Kaskel*, 32 N.Y.2d 524, 300 N.E.2d 388, 347 N.Y.S.2d 1 (1973). No significant changes in the controls occurred when the authority to "stabilize" rents was delegated to a private association. N.Y. ADMIN. CODE § YY51-6.0 and CODE OF THE REAL ESTATE INDUSTRY STABILIZATION ASS'N OF NEW YORK CITY, INC., § 1 *et seq.* (N.Y. UNCONSOL. LAWS (McKinney 1974)).

³⁶ CODE OF THE REAL ESTATE INDUSTRY STABILIZATION ASS'N OF NEW YORK CITY, INC. § 61, (N.Y. UNCONSOL. LAWS (McKinney 1974)) [hereinafter cited as STABILIZATION CODE].

³⁷ For instances of this practice, see *Horsley, Renters in Co-op Protected*, N.Y. Times, Apr. 7, 1974, § 8, at 1, col. 1. The only apparent restriction was that a sponsor could not retain unsold apartments without first offering them for sale to their rental occupants. See *People ex rel. McGoldrick v. Sterling*, 283 App. Div. 88, 126 N.Y.S.2d 803 (1953); *Minicis v. 148 East 83d Street, Inc.*, 15 N.Y.2d 432, 209 N.E.2d 63, 261 N.Y.S.2d 1 (1965).

³⁸ See N.Y. Times, Nov. 13, 1973, at 49, col. 8; N.Y. Times, Apr. 4, 1974, at 45, col. 5.

³⁹ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(i) (McKinney Supp. 1974). The amendments are enforced in this manner: the statement must provide that it will not be "declared effective" unless the 35-percent requirement and other conditions are fulfilled. Although the amendments do not expressly so state, the declaration of effectiveness, in the form of an amend-

have been vacated voluntarily.⁴⁰ The purpose of this change is clearly the protection of power of rental tenants to bargain with sponsors over the prices of apartments.⁴¹ The amendments add little to the effectiveness of local provisions in preventing evictions; instead, they compel sponsors to consider the ability and willingness of tenants to pay for condominium or cooperative units.

The amendments' purpose of enhancing the bargaining power of tenants is highlighted by the fact that, as first introduced, the amendments required a sponsor to obtain agreements to purchase from 51 percent, rather than 35 percent, of rental tenants before a conversion could take place.⁴² It is estimated that, in most conversions, 20 to 25 percent of rental tenants involved are willing to purchase their apartments.⁴³ Proponents of a 51-percent requirement have argued that the narrow difference between the number of tenants who purchase spontaneously and the 35 percent required under earlier, local provisions tempted sponsors to harass or coerce the remaining tenants in order to reach the required minimum.⁴⁴

The cases provide examples of such abuses by sponsors. In *Richards v. Kaskel*,⁴⁵ sponsors of a conversion offered to repurchase any apartments which tenants might buy; they also made false statements to tenants that the requisite number of apartments had been sold to enable the sponsors to evict nonpurchasing tenants. The former practice is clearly unfair, in that it threatens to make evictions possible even where few apartments are ultimately inhabited by former rental tenants. In *Gilligan v. Tishman Realty & Constr. Co.*,⁴⁶ the court recognized that such repurchase agreements might also be used to frighten other tenants into buying apartments merely out of fear that the required number of purchases by tenants would soon be reached, making evictions possible. In the same case, it was also alleged that tenants had been subjected not only to misrepresentations of the law

ment to the original statement, must be accepted by the Attorney General before final sales may take place. Under earlier, local measures similar to the present amendments, the tenants' remedy, where a plan is improperly declared effective, is annulment of the declaration and of the Attorney General's acceptance of that declaration. See *Ten Forty-five Fifth Avenue Tenants Ass'n v. Attorney Gen.*, 73 Misc. 2d 600, 342 N.Y.S.2d 769 (Sup. Ct. 1973). The effect of these remedies is apparently not to render the conversion plan totally inoperative; rather, the sponsor must simply try again to meet the 35-percent requirement within one year of the Attorney General's acceptance of the plan.

⁴⁰ It is probably impossible for sponsors to sell apartments without issuing an offering statement. See notes 75-77 and accompanying text *infra*.

⁴¹ Memorandum from Senator Goodman, *supra* note 31, at 3.

⁴² S. 9090, 197th Sess. § 2-a(1)(i) (1974).

⁴³ Rugaber, *supra* note 9, at 14.

⁴⁴ Samurovich, *supra* note 6, § 8, at 1, col. 1.

⁴⁵ 32 N.Y.2d 524, 300 N.E.2d 388, 347 N.Y.S.2d 1 (1973).

⁴⁶ 283 App. Div. 157, 126 N.Y.S.2d 813 (1953), *aff'd mem.*, 306 N.Y. 974, 120 N.E.2d 230 (1954).

of conversions but also to outright verbal abuse.⁴⁷ Although remedies were granted in these cases, it is probable that many tenants bring no action against sponsors because they are unaware that remedies are available. In addition, certain practices calculated to induce reluctant tenants to purchase apartments remain permissible⁴⁸ despite their apparent unfairness; in particular, a sponsor may emphasize to tenants the unfavorable consequences arising from failure to purchase apartments in the event that the conversion is completed.⁴⁹

It is argued that an increase in the requirement to 51 percent would have deterred sponsors from such behavior by reducing the likelihood of its success.⁵⁰ Whether or not coercive behavior by sponsors is common, it is clear that an increase in the number of purchases required would have strengthened the position of tenants in the "war of nerves"⁵¹ which inevitably accompanies attempts to convert rental buildings.⁵² In any event, the 51-percent requirement, a source of heavy opposition to the amendments from representatives of the real estate industry,⁵³ and a major reason for the legislature's failure to enact similar amendments in previous sessions,⁵⁴ was reduced to 35 percent by the Senate.⁵⁵

C. Further Provisions to Protect Tenants' Bargaining Power

Other provisions in the amendments are also intended to increase the tenants' bargaining power, as well as to protect tenants from the hardships of sudden dislocation in the event that a conversion is completed. If the sponsor of a conversion fails to obtain the required number of agreements to purchase within one year of the Attorney General's acceptance of the offering statement, the conversion plan must be abandoned⁵⁶ and no new offering statement may be submitted to the Attorney General for a further eighteen months.⁵⁷ This provision reflects the drafters' belief that many tenants purchase apartments on

⁴⁷ 283 App. Div. at 163, 126 N.Y.S.2d at 818-19.

⁴⁸ 283 App. Div. at 160-61, 126 N.Y.S.2d at 816.

⁴⁹ *Id.*

⁵⁰ Samurovich, *supra* note 6.

⁵¹ Gilligan v. Tishman Realty & Constr. Co., 283 App. Div. 157, 160, 126 N.Y.S.2d 813, 816 (1953).

⁵² N.Y. Times, Apr. 23, 1974, at 40, col. 2 (editorial).

⁵³ N.Y. Times, Apr. 19, 1973, at 37, col. 2, (citing a statement by Senator Ohrenstein on the real estate industry's role in opposition to the bill).

⁵⁴ *Id.*

⁵⁵ S. 9090-B, 197th Sess. § 2-a(1)(i) (1974).

⁵⁶ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(ii) (McKinney Supp. 1974). This period was increased from six months, as originally proposed. S. 9090-B, 197th Sess. § 2-a(1)(ii) (1974).

⁵⁷ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(ii) (McKinney Supp. 1974).

the sponsors' terms merely to avoid eviction because of conversion and that it is, therefore, necessary to limit the time during which the threat of conversion persists.⁵⁸ Similarly, the prohibition against the introduction of new conversion plans soon after abandonment of earlier ones protects tenants from uncertainty by limiting the frequency with which a sponsor may introduce new plans.⁵⁹

Tenants who refuse to purchase apartments are protected from eviction for two years after the first offering of apartments to the public.⁶⁰ Tenants in rent-controlled apartments are entitled to controlled rents during this moratorium on evictions, and other tenants are protected from "unreasonable increases" in rent levels.⁶¹ These provisions enable tenants to resist efforts to sell apartments, by assuring them that, even if they do not agree to purchase, they will have adequate time to find satisfactory alternative housing in the event that a conversion is completed.

The same protection is available to any tenant, whether or not he holds a written lease.⁶² In theory, therefore, a landlord might be required to extend unwritten, month-to-month leases for two years whereas, absent a conversion attempt, termination of these leases would be permissible on thirty days' notice. However, both the burden on landlords and the protection for tenants are illusory in these cases. Landlords are still free to terminate month-to-month tenancies in advance of conversion attempts without facing the costs of numerous long-term vacancies; nor does the amendments' prohibition against conversions where excessive vacancies exist⁶³ prevent this practice, since the amendments refer only to vacancies of longer than five months' duration.⁶⁴

A further measure which enhances tenants' bargaining power is that the sponsor must disclose any offering statement to all tenants concerned at least fifteen days before he submits it to the Attorney General.⁶⁵ This requirement is intended to allow tenants time to organize and negotiate the prices at which apartments will be sold.⁶⁶

D. Prohibition Against Excessive Vacancies

Finally, the amendments provide that no building may be converted

⁵⁸ Memorandum from Senator Goodman, *supra* note 31, at 3.

⁵⁹ Memorandum from Senator Goodman, *supra* note 31, at 4.

⁶⁰ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(ii) (McKinney Supp. 1974).

⁶¹ *Id.*

⁶² *Id.*

⁶³ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(iv) (McKinney Supp. 1974).

⁶⁴ *Id.*

⁶⁵ N.Y. GEN. BUS. LAW § 352-e(2-a)(2) (McKinney Supp. 1974).

⁶⁶ Memorandum from Senator Goodman, *supra* note 31, at 3.

if, at the time of conversion, it contains an "excessive number" of vacant apartments.⁶⁷ Without this provision, sponsors might circumvent the requirement of sales to a minimum of tenants. Although sponsors are clearly not permitted to count vacant apartments among the agreements to purchase,⁶⁸ they could, by holding a large number of apartments vacant, reduce the absolute number of tenants whose agreements to purchase would be necessary. As applied to areas where there are no eviction controls, this provision would prevent sponsors from refusing to renew leases of tenants who decline to purchase apartments. In this way, the provision would prevent situations where a tenant's only options are to vacate his apartment before the beginning of the actual conversion process or to purchase it on the sponsor's terms. An additional purpose is to prevent sponsors from aggravating housing shortages by "warehousing" apartments.⁶⁹ It is not clear whether foregoing rental incomes in this manner would be feasible for sponsors even in the absence of this statutory provision; the judgment of the drafters was apparently that the high returns available from conversions⁷⁰ would compensate landlords and sponsors for the temporary decline in income, thus making statutory restraints necessary.

III. EVALUATION AND ALTERNATIVES

In evaluating the amendments, it is necessary to consider whether they are likely to make conversions significantly less frequent and, if so, what will be the consequences for the availability of economical, well maintained housing for large segments of the American population. In addition, it is instructive to compare the amendments to measures enacted with similar purposes in other states.

A. Effect on Frequency of Conversions

The amendments will probably substantially reduce the number of conversions in areas where rent and eviction controls are in force. This is the view of opponents of the amendments, who have maintained that the new measures will virtually terminate the practice of

⁶⁷ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(iv) (McKinney Supp. 1974). "Excessive number" is defined as double the normal average vacancy rate for the two prior years for the building(s) to be converted.

⁶⁸ *Id.* Compare FLA. STAT. ANN. § 711.78 (Supp. 1974) (permits sponsors to count unoccupied apartments as votes in favor of conversion).

⁶⁹ As computed by municipal authorities in 1967, the net rental vacancy rate in New York City was 3.19 percent. Note, *supra* note 13, at 62.

⁷⁰ See note 11 and accompanying text *supra*.

converting rental buildings in New York City.⁷¹ Since the new restrictions are added to existing local rent and eviction controls,⁷² which provide secure and relatively inexpensive housing for many tenants, these opponents are probably correct, unless sponsors are able and willing to offer condominium and cooperative units at prices low enough to attract present rental tenants.

There appears at first view to be at least one way in which sponsors might circumvent the amendments. In anticipation of conversion but before attempting to obtain from tenants the required agreements to purchase, sponsors could circulate preliminary, nonfirm offers⁷³ in order to attract new tenants who would commit themselves, informally and in advance, to purchasing apartments. As the number of such tenants approached 35 percent of the number of tenants in occupancy, the sponsor might submit a formal offering statement to the Attorney General.

However, it is unlikely that this practice would be approved by the courts. The amendments prohibit conversions where an excessive number of apartments are not inhabited by "bona fide" tenants.⁷⁴ Any doubt as to the meaning of "bona fide" should be resolved in light of the amendments' purposes—enabling tenants to bargain over the prices of apartments and preventing evictions because of conversions. In addition, earlier courts have stated generally that attempts to circumvent eviction controls would be viewed with disfavor.⁷⁵

If measures similar to the New York amendments were enacted in other states, sponsors of conversions in these areas would probably encounter less serious, but nevertheless substantial, difficulty in persuading the required number of rental tenants to purchase apartments unless prices were held at a low level. It is true that tenants in most areas do not enjoy rental rates artificially depressed by statute and regulation, as in New York City.⁷⁶ In most cities, it is also undoubtedly

⁷¹ Letter from Seymour Rabinowitz to New York State Senator Roy Goodman, May 21, 1974, at 1; letter from William Jay Lippman, President, Cooperative Housing Lawyers Group, to Michael Whiteman, Counsel to the Governor, May 22, 1974, at 5 (copies of both letters available from office of Senator Goodman, New York Senate).

⁷² N.Y. ADMIN. CODE § YY51-6.0(c)(1) to (4), (9); STABILIZATION CODE §§ 20, 61.1 to 61.4, (N.Y. UNCONSOL. LAWS (McKinney 1974)). These provisions are preserved by N.Y. GEN. BUS. LAW § 352-e(3) (McKinney Supp. 1974).

⁷³ N.Y. GEN. BUS. LAW § 352-e(1)(a) (McKinney 1968).

⁷⁴ N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(iv) (McKinney Supp. 1974).

⁷⁵ *People ex rel. McGoldrick v. Sterling*, 283 App. Div. 88, 96, 126 N.Y.S.2d 803, 811 (1953). *Judson v. Frankel*, 279 App. Div. 372, 110 N.Y.S.2d 156 (1952), also supports the general proposition that courts would be unreceptive to attempts to circumvent laws regulating rents and evictions.

⁷⁶ The effect of these controls in holding prices at a low level is substantial. See Note, *supra* note 13, at 37.

less difficult than in New York for tenants to find alternative housing upon conversion of their buildings.⁷⁷ Nevertheless, rentals in many areas have remained low in comparison with the cost of purchasing apartments.⁷⁸ In addition, certain types of tenants—especially young adults and the aged—often prefer rental housing because it does not require heavy commitments of resources over long periods.

B. Effects of the Amendments on Housing Patterns

It is apparent that the New York Legislature has determined that rental incomes are, in general, adequate, that prices of condominium and cooperative apartments are excessive, and that the Legislature is, therefore, justified in forcing landlords either to continue to operate their buildings on a rental basis or to lower prices of condominium and cooperative apartments to levels acceptable to rental tenants. Legislatures in other states where conversions are frequent must, however, determine for themselves whether these conversions are the result of inadequate rental incomes.⁷⁹ Where this is the case, it would be unrealistic to expect limits on conversions to contribute toward the conservation of adequate amounts of well maintained rental housing. Even where legislatures find, as did the New York State Legislature, that the primary reason for conversions is the excessive profit opportunity,⁸⁰ it remains necessary to balance the costs of conversions to rental tenants against the advantages inherent in condominium and cooperative housing.

Opponents of the New York amendments maintain that the conversion of any apartment building increases the number of residents in the affected neighborhood who own their dwellings and are, therefore, less inclined to change residences at the high rate of turnover often associated with rental occupancy. For this reason, argue the opponents, conversions increase the numbers of residents who are concerned about maintenance of their buildings.⁸¹ It may also be true that residents who own their apartments are likely to be more concerned than tenants about prevention of vandalism and other crime. To these arguments, proponents of the New York amendments reply that many rental tenants have occupied their apartments for long periods and that conversions, by driving out such tenants, destroy the cohesiveness

⁷⁷ See notes 24-25 and accompanying text *supra*.

⁷⁸ Rugaber, *supra* note 9.

⁷⁹ See notes 12-15 and accompanying text *supra*.

⁸⁰ See notes 16-18 and accompanying text *supra*.

⁸¹ Letter from William Jay Lippman, *supra* note 71, at 3.

of neighborhoods.⁸² This effect of conversions is even more undesirable, it is argued, to the extent that the purchasers of converted apartments are motivated by the desire to receive rental income and speculate in real estate rather than by any intent to occupy the units they have purchased.⁸³

Neighborhoods are affected by conversions in other ways as well. Perhaps conversions help to attract relatively affluent persons to areas such as central city neighborhoods in need of economic revival. In the same way, condominium or cooperative ownership may increase the attractiveness of living in areas of high population density, thus promoting the efficient use of land and partially relieving the pressure of population growth in outlying areas.

Against these considerations must be weighed the costs of allowing the removal of aged and low-income rental tenants and, possibly, making wide areas in the centers of cities accessible only to the relatively affluent. Legislators should recognize that, in many respects, tenants of rental apartments constitute a class of persons having distinct characteristics of income and age, and that it may be desirable to protect the interests of this class by statutes which offset economic pressures tending to cause an increase in conversions.

C. Alternatives to the New York Amendments

1. *Notice and First Refusal*—Two states other than New York have enacted measures to protect rental tenants during conversions. In Virginia, landlords and sponsors are required to notify tenants ninety days in advance of conversion and to give them the exclusive right, for the first sixty days of this period, to purchase their apartments.⁸⁴ These provisions share with the New York amendments the purpose of giving tenants an opportunity to purchase. However, sponsors are free to complete conversion at the end of this ninety-day period whether or not rental tenants in occupancy have found the terms of the conversions attractive. Thus, tenants are not able to influence the prices at which apartments are sold and may find that, despite their nominal right to purchase, they are prevented by high prices from doing so.

2. *Tenants' Consent*—In Florida a sponsor must obtain consent to

⁸² Samurovich, *supra* note 6, at 1, col. 1.

⁸³ *Id.* Proponents of this view offer no statistics about how many purchasers of apartments intend only to speculate or to lease their apartments to rental tenants. Legislatures should investigate conditions prevailing in their states, since the prevalence of speculation and leasing probably varies widely and, accordingly, requires a variety of legislative responses.

⁸⁴ VA. CODE ANN. § 55-79.94(b) (Supp. 1974).

a conversion—rather than agreements to purchase apartments—from 60 percent of the tenants in occupancy.⁸⁵ It is difficult to compare this measure with the New York amendments in terms of its effect in reducing the freedom of sponsors to convert buildings without bargaining with tenants. The number of tenants consenting to a conversion under the Florida statute includes both those who are willing to find other accommodation and those who desire to purchase their apartments, while the number who consent to purchase under the New York amendments obviously includes only the latter category. Consequently, the number of tenants whose consent is required must be relatively high to achieve the same result as a requirement that a smaller number agree to purchase. In addition, the effectiveness of the Florida statute is probably diluted by the absence of any prohibition against conversions where excessive numbers of apartments have been held vacant; furthermore, sponsors are permitted to count vacant apartments in the group of consenting occupants.⁸⁶ Nevertheless, since the Florida provision allows rental occupants to participate in the decision about whether a conversion will be completed, it achieves to some degree the purposes of the New York amendments.

3. *Substitute Apartments*—A third alternative, not enacted in any state, would be to prohibit evictions upon conversions of buildings unless sponsors offered other rental accommodations to replace those which tenants have been required to vacate. Such a provision would have either of two effects. Where tenants retained significant discretion to reject the alternative housing offered to them—and this might be possible only at the cost of frequent litigation between tenants and sponsors—the result would probably be the prevention of evictions altogether. This provision would also mean that only very large landlords would have the option of converting, because owners of only one or two buildings would have no substitutes to offer. This “unfairness” to small landlords would be a serious political problem.

At best, then, the consequences would be the same as under previous, local regulations in New York City:⁸⁷ few or no tenants would be required to leave their apartments, but sales of individual units could proceed as tenants voluntarily moved out. The remaining tenants would have little voice in setting prices at which apartments would be sold. The other possible effect of this provision might be that tenants,

⁸⁵ FLA. STAT. ANN. § 711.68(3)(d) (Supp. 1974).

⁸⁶ *Id.*; compare N.Y. GEN. BUS. LAW § 352-e(2-a)(1)(i) (McKinney Supp. 1974) (requires that agreements to purchase be obtained from *tenants* and containing no provision allowing the sponsor to include vacant apartments).

⁸⁷ See text accompanying notes 35-38 *supra*.

whose bargaining position would be weak because of their inability to afford legal remedies, would be forced to accept inferior substitutes for the apartments they have vacated.

IV. CONCLUSION

The availability of rental housing, the frequency of conversions, and the profits which landlords and sponsors derive from conversions undoubtedly vary considerably across the United States. The findings of legislatures as to these questions of fact must largely determine their responses to the problems of conversions in their states. To the extent that they find that profits from conversions are excessive, that conversions are not essential to maintaining adequate supplies of multiple-unit dwellings in good condition, and that the interests of rental tenants are worthy of protection, they should give careful consideration to the New York amendments.

In their essence, these amendments alter the relations between landlords and tenants by limiting the right of the former to dispose of their property in certain ways and by recognizing that the latter are entitled to a degree of security in their tenancies not provided by the terms of their leases and to a genuine opportunity, based on their status as tenants in a building, to purchase apartments in that building at prices which they can afford. This special concern for tenants is not new. It is embodied—although in a weakened form—in the Virginia provisions already discussed.⁸⁸ At least one judicial opinion has suggested that earlier regulations in New York were intended to ensure that cooperatives remained a device to be used primarily for the benefit of tenants in occupancy.⁸⁹ The creation of a special position for rental tenants upon conversion of the buildings they inhabit should be of compelling interest to legislatures now that housing patterns and forms of ownership are undergoing major changes.

—Charles M. Cobbe

⁸⁸ See note 84 and accompanying text *supra*.

⁸⁹ *People ex rel. McGoldrick v. Sterling*, 283 App. Div. 88, 95, 126 N.Y.S.2d 803, 810 (1953) (dictum).