

majority of the occupied rental units in a rental housing project.

(Pub. L. 96-399, title VI, § 604, Oct. 8, 1980, 94 Stat. 1673.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 1441a, 1831q.

§ 3604. Exemptions

The provisions of this chapter shall not apply to—

(1) a cooperative or condominium unit sold or offered for sale by the Federal Government, by any State or local government, by any corporate instrumentality of the United States, or by any agency thereof;

(2) a cooperative or condominium project in which all units are restricted to nonresidential purposes or uses; or

(3) any lease or portion thereof—

(A) which establishes any leasehold or other estate or interest in, over or under land on or in which one or more residential condominium or cooperative units are located, the termination of which will terminate the condominium or cooperative project, or reduce the number of units in such project, or

(B) which establishes a leasehold interest in, or other rights to use, possess, or gain access to, a condominium or cooperative unit.

(Pub. L. 96-399, title VI, § 605, Oct. 8, 1980, 94 Stat. 1675.)

§ 3605. Notice of conversion and opportunity to purchase; responsibility of State and local governments

It is the sense of the Congress that, when multifamily rental housing projects are converted to condominium or cooperative use, tenants in those projects are entitled to adequate notice of the pending conversion and to receive the first opportunity to purchase units in the converted projects and that State and local governments which have not already provided for such notice and opportunity for purchase should move toward that end. The Congress believes it is the responsibility of State and local governments to provide for such notice and opportunity to purchase in a prompt manner. The Congress has decided not to intervene and therefore leaves this responsibility to State and local governments to be carried out.

(Pub. L. 96-399, title VI, § 606, Oct. 8, 1980, 94 Stat. 1676.)

§ 3606. Federal Housing Administration mortgage or loan insurance; expedition of application process and decision

Where an application for mortgage or loan insurance in connection with a conversion or purchase of a rental housing project being undertaken by a tenants' organization is submitted, the Secretary of Housing and Urban Development shall expedite the processing of the application in every way and shall make a final decision on such application at the earliest practicable time.

(Pub. L. 96-399, title VI, § 607, Oct. 8, 1980, 94 Stat. 1676.)

§ 3607. Termination of self-dealing contracts

(a) Operation, maintenance, and management contracts; penalty

Any contract or portion thereof which is entered into after October 8, 1980, and which—

(1) provides for operation, maintenance, or management of a condominium or cooperative association in a conversion project, or of property serving the condominium or cooperative unit owners in such project;

(2) is between such unit owners or such association and the developer or an affiliate of the developer;

(3) was entered into while such association was controlled by the developer through special developer control or because the developer held a majority of the votes in such association; and

(4) is for a period of more than three years, including any automatic renewal provisions which are exercisable at the sole option of the developer or an affiliate of the developer,

may be terminated without penalty by such unit owners or such association.

(b) Time of termination

Any termination under this section may occur only during the two-year period beginning on the date on which—

(1) special developer control over the association is terminated; or

(2) the developer owns 25 per centum or less of the units in the conversion project,

whichever occurs first.

(c) Vote of owners of units

A termination under this section shall be by a vote of owners of not less than two-thirds of the units other than the units owned by the developer or an affiliate of the developer.

(d) Effective date of termination

Following the unit owners' vote, the termination shall be effective ninety days after hand delivering notice or mailing notice by prepaid United States mail to the parties to the contract.

(Pub. L. 96-399, title VI, § 608, Oct. 8, 1980, 94 Stat. 1676.)

CODIFICATION

In subsec. (a), "October 8, 1980" was substituted for "the effective date of this title". See Effective Date note set out under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3609, 3611 of this title.

§ 3608. Judicial determinations respecting unconscionable leases

(a) Lease characteristics; authorization by unit owners; conditions precedent to action

Cooperative and condominium unit owners through the unit owners' association may bring an action seeking a judicial determination that a lease or leases, or portions thereof, were un-

conscionable at the time they were made. An action may be brought under this section if each such lease has all of the following characteristics:

- (1) it was made in connection with a cooperative or condominium project;
- (2) it was entered into while the cooperative or condominium owners' association was controlled by the developer either through special developer control or because the developer held a majority of the votes in the owners' association;
- (3) it had to be accepted or ratified by purchasers or through the unit owners' association as a condition of purchase of a unit in the cooperative or condominium project;
- (4) it is for a period of more than twenty-one years or is for a period of less than twenty-one years but contains automatic renewal provisions for a period of more than twenty-one years;
- (5) it contains an automatic rent increase clause; and
- (6) it was entered into prior to June 4, 1975.

Such action must be authorized by the cooperative or condominium unit owners through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, and may be brought by the cooperative or condominium unit owners through the units owners' association. Prior to instituting such action, the cooperative or condominium unit owners must, through a vote of not less than two-thirds of the owners of the units other than units owned by the developer or an affiliate of the developer, agree to enter into negotiation with the lessor and must seek through such negotiation to eliminate or modify any lease terms that are alleged to be unconscionable; if an agreement is not reached in ninety days from the date on which the authorizing vote was taken, the unit owners may authorize an action after following the procedure specified in the preceding sentence.

(b) Presumption of unconscionability; rebuttal

A rebuttal presumption of unconscionability exists if it is established that, in addition to the characteristics set forth in subsection (a) of this section, the lease—

- (1) creates a lien subjecting any unit to foreclosure for failure to make payments;
- (2) contains provisions requiring either the cooperative or condominium unit owners or the cooperative or condominium association as lessees to assume all or substantially all obligations and liabilities associated with the maintenance, management and use of the leased property, in addition to the obligation to make lease payments;
- (3) contains an automatic rent increase clause without establishing a specific maximum lease payment; and
- (4) requires an annual rental which exceeds 25 per centum of the appraised value of the leased property as improved: *Provided*, That, for purposes of this paragraph "annual rental" means the amount due during the first twelve months of the lease for all units, regardless of whether such units were occupied or sold during that period, and "appraised value" means

the appraised value placed upon the leased property the first tax year after the sale of a unit in the condominium or after the sale of a membership or share interest in the cooperative association to a party who is not an affiliate of the developer.

Once the rebuttable presumption is established, the court, in making its finding, shall consider the lease or portion of the lease to be unconscionable unless proven otherwise by the preponderance of the evidence to the contrary.

(c) Presentation of evidence after finding of unconscionability

Whenever it is claimed, or appears to the court, that a lease or any portion thereof is, or may have been, unconscionable at the time it was made, the parties shall be afforded a reasonable opportunity to present evidence at least as to—

- (1) the commercial setting of the negotiations;
- (2) whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his interests;
- (3) the effect and purpose of the lease or portion of the lease or portion thereof, including its relationship to other contracts between the association, the unit owners and the developer or an affiliate of the developer; and
- (4) the disparity between the amount charged under the lease and the value of the real estate subject to the lease measured by the price at which similar real estate was readily obtainable in similar transactions.

(d) Remedial relief; matters considered; attorneys' fees

Upon finding that any lease, or portion thereof, is unconscionable, the court shall exercise its authority to grant remedial relief as necessary to avoid an unconscionable result, taking into consideration the economic value of the lease. Such relief may include, but shall not be limited to rescission, reformation, restitution, the award of damages and reasonable attorney fees and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff¹ is frivolous, malicious, or lacking in substantial merit.

(e) Actions allowed after termination of special developer control

Nothing in this section may be construed to authorize the bringing of an action by cooperative and condominium unit owners' association, seeking a judicial determination that a lease or leases, or portions thereof, are unconscionable, where such unit owners or a unit owners' association representing them has, after the termination of special developer control, reached an agreement with a holder of such lease or leases which either—

- (1) sets forth the terms and conditions under which such lease or leases is or shall be purchased by such unit owners or associations; or
- (2) reforms any clause in the lease which contained an automatic rent increase clause,

¹ So in original. Probably should be "plaintiff".

unless such agreement was entered into when the leaseholder or his affiliate held a majority of the votes in the owners' association.

(Pub. L. 96-399, title VI, § 609, Oct. 8, 1980, 94 Stat. 1677.)

EFFECTIVE DATE

Section effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96-399, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3609, 3610, 3611, 3613 of this title.

§ 3609. Void lease or contract provisions

Any provision in any lease or contract requiring unit owners or the owners' association, in any conversion project involving a contract meeting the requirements of section 3607 of this title of in any project involving a lease meeting the requirements of section 3608 of this title, to reimburse, regardless of outcome, the developer, his successor, or affiliate of the developer for attorneys' fees or money judgments, in a suit between unit owners or the owners' association and the developer arising under the lease or agreement, is against public policy and void.

(Pub. L. 96-399, title VI, § 610, Oct. 8, 1980, 94 Stat. 1678.)

EFFECTIVE DATE

Section effective Oct. 8, 1980, except that prohibition included in this section as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall be effective one year after Oct. 8, 1980, see section 618 of Pub. L. 96-399, set out as a note under section 3601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3610, 3611 of this title.

§ 3610. Relationship of statutory provisions to State and local laws

Nothing in this chapter may be construed to prevent or limit the authority of any State or local government to enact and enforce any law, ordinance, or code with regard to any condominium, cooperative, or conversion project, if such law, ordinance, or code does not abridge, deny, or contravene any standard for consumer protection established under this chapter. Notwithstanding the preceding sentence, the provisions of this chapter, except for the application of section 3608 of this title and the prohibition included in section 3609 of this title as it relates to a lease with respect to which a cause of action may be established under section 3608 of this title, shall not apply in the case of any State or local government which has the authority to enact and enforce such a law, ordinance, or code, if, during the three-year period following October 8, 1980, such State or local government enacts a law, ordinance, or code, or amendments thereto, stating in substance that such provisions of this chapter shall not apply in that State or local government jurisdiction.

(Pub. L. 96-399, title VI, § 611, Oct. 8, 1980, 94 Stat. 1679.)

§ 3611. Additional remedies

(a) Suits at law or equity

Unless otherwise limited as in section 3607 or 3608 of this title, any person aggrieved by a violation of this chapter may sue at law or in equity.

(b) Recovery of actual damages

In any action authorized by this section for a violation of section 3607 or 3609 of this title where actual damages have been suffered, such damages may be awarded or such other relief granted as deemed fair, just, and equitable.

(c) Contribution

Every person who becomes liable to make any payment under this section may recover contributions from any person who if sued separately, would have been liable to make the same payment.

(d) Amounts recoverable; defendant's attorneys' fees

The amounts recoverable under this section may include interest paid, reasonable attorneys' fees, independent engineer and appraisers' fees, and court costs. A defendant may recover reasonable attorneys' fees if the court determines that the cause of action filed by the plaintiff is frivolous, malicious, or lacking in substantial merit.

(Pub. L. 96-399, title VI, § 612, Oct. 8, 1980, 94 Stat. 1679.)

§ 3612. Concurrent State and Federal jurisdiction; venue; removal of cases

The district courts of the United States, the United States courts of any territory, and the United States District Court for the District of Columbia shall have jurisdiction under this chapter and, concurrent with State courts, of actions at law or in equity brought under this chapter without regard to the amount in controversy. Any such action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the sale took place, and process in such cases may be served in other districts of which the defendant is an inhabitant or wherever the defendant may be found. No case arising under this chapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States, except where any officer or employee of the United States in his official capacity is a party.

(Pub. L. 96-399, title VI, § 613, Oct. 8, 1980, 94 Stat. 1679.)

§ 3613. Limitation of actions

No action shall be maintained to enforce any right or liability created by this chapter unless brought within six years after such cause of action accrued, except that an action pursuant to section 3608 of this title must be brought within four years after October 8, 1980.

(Pub. L. 96-399, title VI, § 614, Oct. 8, 1980, 94 Stat. 1680.)